

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (the "**Mortgage**") is made and entered into on this the 4th day of May, 2001, by and between **GUTHRIE'S HOLDINGS, INC.**, an Alabama corporation, whose notice address is 2057 Valleydale Road, Suite 204, Birmingham, Alabama, 35244 (hereinafter called "**Mortgagor**"), and **COLONIAL BANK**, an Alabama banking corporation, whose notice address is One Commerce Street, Montgomery, Alabama, 36104 (hereinafter called "**Mortgagee**");

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee for money loaned by Mortgagee to Mortgagor, as evidenced by a promissory note of even date herewith, in the total principal amount of Five Hundred Seventy-Five Thousand and No/100 Dollars (\$575,000) (the "**Note**"); and,

WHEREAS, Mortgagor is desirous of securing the prompt payment of the indebtedness evidenced by the Note; and,

WHEREAS, Mortgagor may hereafter become indebted to said Mortgagee for additional sums loaned and/or on account of indebtedness which may accrue to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee under the provisions of this Mortgage, or otherwise; and Mortgagor wishes to execute this conveyance for the security and enforcement of the payment of both the present and any such future indebtedness; and,

WHEREAS, Mortgagor is the owner of a leasehold estate and other rights under that certain Agreement of Lease dated the 9th day of January, 2001, between **RIVER RIDGE RETAIL COMPANY, L.L.C.**, as Landlord, and **HUD GUTHRIE d/b/a GUTHRIE'S CHICKEN**, as Tenant, recorded in the records of the Office of the Judge of Probate of Shelby County, Alabama and subsequently assigned by **HUD GUTHRIE** to **GUTHRIE'S HOLDINGS, INC.** by that certain Consent and Assignment Agreement dated May 4, 2001 (said Agreement of Lease and Consent and Assignment Agreement being hereinafter collectively called the "**Lease**"); and,

NOW, THEREFORE, in consideration of said premises, the disbursement and/or the Agreement to disburse to Mortgagor of the aforesaid sum of Five Hundred Seventy-Five Thousand and No/100 Dollars (\$575,000), to secure the prompt payment of said indebtedness with interest thereon, and the payment of any further sum or sums for which Mortgagor may hereafter

become indebted to Mortgagee under the provisions hereof or otherwise, and further to secure the performance of the covenants, conditions and agreements in the Note, the Construction Loan Agreement, the Lease and in certain other instruments or documents executed in connection with the aforementioned or evidencing this transaction (all of which said documents are hereinafter collectively referred to as the "Loan Documents"), the undersigned has bargained and sold and does hereby grant, bargain, sell and convey to Mortgagee, its successors and assigns, all of Mortgagor's leasehold interest in accordance with the terms of the Lease, and all other rights, title and privileges under same, in and to that certain parcel of real estate lying and being in the County of Shelby, State of Alabama, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Real Estate").

TOGETHER with all rights, title and interest now or hereafter owned by Mortgagor in and to all buildings, structures, equipment and other improvements including, without limitation, all heating, lighting, ventilating and air conditioning apparatus, plumbing, sprinkling and other equipment, appliances and fixtures attached or appertaining to said premises, now or hereafter located on the Real Estate, or any part or parcel thereof; and,

TOGETHER with all and singular rights, privileges, interests, tenements, hereditaments, easements and appurtenances thereunto belonging or in any way appertaining, including, without limitation, any after-acquired title and easement, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, claim and demand whatsoever of Mortgagor of, in and to the same and of, in and to every part and parcel thereof; and,

TOGETHER with any and all rents and other revenues thereof which are now due or may hereafter become due by reason of the renting, leasing and bailment of the Real Estate or improvements thereon; and,

TOGETHER with all right, title and interest of Mortgagor in and to all modifications, extensions and renewals of the Lease and all options and rights to renew or extend the same, including, but not limited to, the options contained therein, and all other, further or additional title, estate, interest or rights which Mortgagor may now have or hereafter acquire in and to the Real Estate; and,

TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to taking of, or decrease in the value of, the Real Estate, 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 attorney's fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

TO HAVE AND TO HOLD the said leasehold estate and all other rights, options, privileges and powers hereby granted (all of which are collectively referred to herein as the "Security") unto the Mortgagee, its successors and assigns, for and during the term that the indebtedness of Mortgagor to Mortgagee, as evidenced by the Note, remains outstanding.

Mortgagor warrants that Mortgagor has a good leasehold title to the Real Estate in accordance with the terms of the Lease, and good title to the other Security, and is lawfully seized and possessed of the Security and has the right to convey same; that the Security is unencumbered except for the Permitted Encumbrances as listed on Exhibit "B" attached hereto and made a part hereof and accepted by Mortgagee; and that Mortgagor will forever warrant and defend the title to the Security unto Mortgagee against the claims of all persons whomsoever.

This instrument is made and intended to secure the payment of the indebtedness of Mortgagor to Mortgagee evidenced by the Note in accordance with the terms thereof, together with any and all other indebtedness now owing or which may hereafter be owing by Mortgagor to Mortgagee, however incurred, and all renewal or renewals and extension or extensions of the Note or other indebtedness, either in whole or in part (all of which are collectively referred to herein as the "Secured Indebtedness").

AND MORTGAGOR FURTHER COVENANTS AND AGREES WITH MORTGAGEE as follows:

1. Mortgagor hereby represents, covenants and warrants:

(a) That the Lease is in full force and effect and unmodified except as hereinabove expressly stated.

(b) That all rents (including additional rents and other charges) reserved in the Lease have been paid to the extent that they were payable prior to the date hereof.

(c) That there is no existing default under the provisions of the Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of Mortgagor to be observed and performed.

2. Mortgagor will at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Lease by the lessee therein to be kept and performed and in all respects conform to and comply with the terms and conditions of the Lease; and Mortgagor further covenants that it will not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair or tend to impair the security of this Mortgage or will be grounds for declaring a forfeiture or termination of the Lease. Mortgagor will, at least six months prior to the last day upon which the Mortgagor, as lessee, may validly exercise any option to renew or extend the term of the Lease or to purchase the leased premises (a) exercise such option in such manner as will

cause the term of the Lease to be effectively renewed or extended for the period provided by such option or purchase the leased premises and (b) give immediate written notice thereof to Mortgagee; it being expressly agreed that, in the event of the failure of Mortgagor so to do, Mortgagee shall have, and is hereby granted, the irrevocable right to exercise any such option either in its own name and behalf or in the name and behalf of a designee or nominee of Mortgagee or in the name and behalf of Mortgagor, as Mortgagee shall in its sole discretion determine; provided, however, that if Mortgagor shall pay in full the Secured Indebtedness in accordance with the provisions of the Note at least six months prior to the last day upon which Mortgagor, as such lessee, may validly exercise any option to renew or extend the term of the Lease, Mortgagor will not be obliged to exercise any such option of renewal or extension, nor will Mortgagee have any right to exercise any such option.

3. Mortgagor shall not modify, extend or in any way alter the terms of the Lease or cancel or surrender the Lease or waive, excuse, condone or in any way release or discharge the lessor thereunder of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and Mortgagor does hereby expressly release, relinquish and surrender unto Mortgagee all its right, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Lease and any attempt on the part of Mortgagor to exercise any such right without the express prior written consent of Mortgagee shall constitute a default under the terms hereof and the Secured Indebtedness shall, at the option of Mortgagee, become due and payable upon giving the undersigned fifteen (15) days prior written notice. Mortgagor shall not exercise any option it has under the Lease to purchase and acquire the real property described on Exhibit "A" hereto, or any part thereof.

4. The whole of the Secured Indebtedness shall, upon giving Mortgagor thirty (30) days prior written notice, immediately become due and payable at the option of Mortgagee, if Mortgagor fails to give immediate notice of any default under the Lease, or if Mortgagor fails to furnish to Mortgagee immediately any and all information which it may request concerning the performance by Mortgagor of the covenants of the Lease or if Mortgagor fails to permit Mortgagee or its representative at all reasonable times to make investigation or examination concerning the performance by Mortgagor of the covenants of the Lease, or this Mortgage, or if Mortgagor fails to permit Mortgagee or its representative at all reasonable times to make investigation or examination concerning such performance. Mortgagor further covenants and agrees that it will promptly deposit with Mortgagee an exact copy of any notice, communication, plan, specification or other instrument or document received or given by it in any way relating to or affecting the Lease which may concern or affect the estate of the lessor or lessee in or under the Lease or in the Real Estate, and upon Mortgagor's failure so to do, Mortgagee may, at its option, upon giving the undersigned thirty (30) days prior written notice, declare the whole of the Secured Indebtedness due and payable at once.

5. In the event of any failure by Mortgagor to perform any covenant on the part of Mortgagor to be observed and performed under the Lease, the performance by Mortgagee on behalf of Mortgagor of the Lease covenant shall not remove or waive, as between Mortgagor

and Mortgagee, the corresponding default under the terms hereof, and any amount so advanced or any costs incurred in connection therewith, with interest thereon, shall be repayable by Mortgagor without demand, secured hereby and any such failure aforesaid shall be subject to all of the rights and remedies of Mortgagee hereunder available on account of any default.

6. In the event of the occurrence of any Event of Default under the Lease, then the whole of the Secured Indebtedness shall, at the option of Mortgagee, upon giving the undersigned fifteen (15) days prior written notice, be deemed to have become immediately due and payable and the same, with interest thereon and with all other costs and charges, including a reasonable attorney's fee, shall thereupon be collectible by suit at law or foreclosure of this Mortgage in the same manner as if the whole of the Secured Indebtedness had been made payable at the time when such Event of Default shall have occurred.

7. Unless Mortgagee shall otherwise expressly consent in writing, fee title to the Real Estate and Mortgagor's leasehold estate under the Lease shall not merge but shall always remain separate and distinct, notwithstanding that both of said estates may at any time be held by Mortgagor or by any third party by purchase or otherwise.

8. Mortgagor shall not hereafter sublease or transfer in a similar manner all or any part of the Real Estate without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed, and any attempt on the part of Mortgagor to make such sublease or transfer without the written consent of Mortgagee shall constitute a default under the terms hereof and the Secured Indebtedness shall, at the option of Mortgagee, become due and payable upon giving the undersigned fifteen (15) days prior written notice. If Mortgagee shall give written consent to such sublease or transfer, Mortgagor covenants and agrees that it will promptly deposit with Mortgagee an original executed copy of any sublease or other instrument effectuating such transfer, and any and all documentary evidence received by it showing compliance by Mortgagor with the provision of such sublease or other instrument, and will also deposit with Mortgagee an exact copy of any notice, communication, plan, specification, or other instrument or document received or given by it in any way relating to or affecting such sublease or other instrument which may concern or affect the estate of the Mortgagor or of the sublessee in or under such sublease or other instrument, and upon Mortgagor's failure to do so, Mortgagee may, at its option, upon giving the undersigned thirty (30) days prior written notice, declare the whole of the Secured Indebtedness due and payable at once.

9. If Mortgagor sells, assigns or transfers, in any manner other than approved subleasing, the Lease or any interest therein without Mortgagee's prior written consent, Mortgagee may, at Mortgagee's option declare all the Secured Indebtedness to be immediately due and payable. Mortgagee shall have waived such option to accelerate if, prior to the sale, assignment or transfer, Mortgagee and the person to whom the Lease is to be sold, assigned or transferred reach agreement in writing that the credit of such person is satisfactory to Mortgagee and the interest payable on the sums secured by this Mortgage shall be at such rate as Mortgagee shall request.

If Mortgagee exercises such option to accelerate, Mortgagee shall mail Mortgagor notice of acceleration. Such notice shall provide a period of not less than thirty days from the date the notice is mailed within which Mortgagor may pay the sums declared due. If Mortgagor fails to pay such sums prior to the expiration of such period, Mortgagee may, without further notice or demand on Mortgagor, invoke any remedies permitted hereunder.

10. Mortgagor shall pay to Mortgagee the Secured Indebtedness with interest thereon as provided in the Note and this Mortgage. Mortgagor shall also pay, when due and payable, (a) all taxes, assessments, general or special, and other charges levied on, or assessed, placed or made against the Security, this instrument or the Secured Indebtedness or any interest of the Mortgagee in the Security or the obligations secured hereby; (b) premiums on policies of fire and other hazard insurance covering the Security, as required in Paragraph 11 herein; and (c) all rents and other amounts payable by Mortgagor under the Lease; Mortgagor shall promptly deliver to Mortgagee receipts showing payment in full of all of the above items. Mortgagee may, at its option, pay any of these charges when payable, either before or after they become past due, without notice, or make advances therefor in excess of the then amount of credit for said charges. The amount so advanced shall be immediately due and payable to Mortgagee and shall become part of the Secured Indebtedness and bear interest at the rate provided for in the Note from date of advancement, subject, however, to the provisions of Paragraph 22 below. In the event of the passage, after the date of this instrument, of any law or ordinance of the United States, the State or any political subdivision thereof, wherein the Security is situated, or any decision by a court of competent jurisdiction, creating or providing for any tax, assessment or charge against the Security, this instrument, or the Secured Indebtedness or any interest of the Mortgagee in the Security or the obligations secured hereby, that is to be paid by Mortgagee, the Secured Indebtedness shall, at the option of Mortgagee, upon giving the undersigned fifteen (15) days prior written notice, become immediately due and payable and, in the event payment thereof is not made forthwith, Mortgagee may take, or cause to be taken, such action or proceeding as may be taken hereunder in the case of any other default in the payment of the indebtedness.

11. (a) Mortgagor shall keep the buildings and improvements constituting part of the Security insured for the benefit of Mortgagee against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke and such other hazards as Mortgagee may from time to time require, all in amounts approved by Mortgagee not exceeding 100% of full insurable value all subject to the original policies with loss clause payable to the lessor under the Lease; all insurance herein provided for shall be in form and companies approved by Mortgagee and, regardless of the types or amounts of insurance required and approved by Mortgagee, Mortgagor shall assign and deliver to Mortgagee, as collateral and further security for the payment of the Secured Indebtedness, all policies of insurance which insure against any loss or damage to the Security, with loss payable to Mortgagee, without contribution by Mortgagee, pursuant to the New York Standard or other mortgage clause satisfactory to Mortgagee. (Provided, however, instead of delivering such policies to Mortgagee, Mortgagor may deliver to Mortgagee one or more certificates, issued by said companies and satisfactory to Mortgagee in form and content, evidencing such policies and

providing that such policies shall not be canceled without giving Mortgagee at least thirty (30) days prior written notice of such cancellation; and provided, further, that if such certificates are furnished to Mortgagee, upon the request of Mortgagee, Mortgagor agrees to furnish to Mortgagee a copy of each such policy.) In the event of loss, Mortgagor will give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, shall to the extent necessary be used for the repair or replacement of the Security, or any part thereof, provided that when said proceeds are paid to Mortgagee there is no uncured default under the terms of this Mortgage, the Note, the Lease, the Loan Documents, or any other instrument between Mortgagor and Mortgagee in connection with this Loan, and provided further that any such repair or replacement shall be done in accordance with the reasonable requirements of Mortgagee. If such default does exist when the proceeds are paid to Mortgagee, the proceeds may be applied by the Mortgagee at its option to the reduction of the Secured Indebtedness and Mortgagor hereby appoints Mortgagee as its attorney in fact to endorse the check evidencing the proceeds and to receive said proceeds. If such repairs or replacements are made, any portion of the proceeds not required for such work shall, at the option of Mortgagee, be applied toward the payment of the Secured Indebtedness.

(b) Not less than ten (10) days prior to the expiration date of each policy of insurance required of Mortgagor pursuant to this paragraph, Mortgagor shall deliver to Mortgagee a renewal certificate or certificates marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee.

(c) In the event of a foreclosure of this Mortgage, the purchaser of the Security shall succeed to all the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance assigned to Mortgagee, with respect to all property conveyed and to be conveyed by this Mortgage, pursuant to the provisions of this paragraph.

12. Mortgagor shall maintain the Security in good condition and repair, shall not commit or suffer any waste with respect to the Security, and shall comply with, or cause to be complied with, all statutes, ordinances and requirements of any governmental authority relating to the Security or any part thereof. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Security, now or hereafter encumbered by this Mortgage, which may be affected by any proceeding of the character referred to in paragraph 14 herein. No part of the Security, including, but not limited to, any building, structure, parking lot, driveway, landscape scheme, or other ground improvement, equipment or other property, now or hereafter conveyed as security by or pursuant to this Mortgage, shall be removed, demolished or materially altered without the prior written consent of Mortgagee. Mortgagor shall complete, within a reasonable time, and pay for any building, structure or other improvement at any time in the process of construction on the Real Estate. Without prior written consent of Mortgagee, Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Security or any part

thereof. Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Security at all reasonable times and access thereto shall be permitted for that purpose.

13. Mortgagor shall execute and deliver (and pay the costs of recording thereof) to Mortgagee and to any subsequent holder from time to time, upon demand, any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the rights of Mortgagee to all or any part of the Security intended to be hereby conveyed, whether now conveyed, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof. 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, whether or not any offsets or defenses exist against the Secured 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.

14. Notwithstanding any taking of any property, herein conveyed and agreed to be conveyed, by eminent domain, alteration of the grade of any street or other injury to, or decrease in value of, the Security by any public or quasi-public authority or corporation, Mortgagor shall continue to pay principal and interest on the Secured Indebtedness, and any reduction in the Secured Indebtedness resulting from the application by Mortgagee of any award or payment for such taking, alterations, injury or decrease in value of the Security, as hereinafter set forth, shall be deemed to take effect only on the date of such receipt, said award shall be payable jointly to Mortgagor and Mortgagee and shall, to the extent necessary, be used for the purpose of altering, restoring or rebuilding any part of the Security which may have been altered, damaged, or destroyed as a result of any such taking, alterations of grade, or other injury to the Security, provided that when said award is paid to Mortgagor and Mortgagee or paid into the appropriate court there is no uncured default under the terms of this Mortgage, the Note, the Lease, or any other instrument between Mortgagor and Mortgagee in connection with this loan and provided further any such alteration, restoration or rebuilding shall be done in accordance with the reasonable requirements of Mortgagee. If such default does exist when the award is paid to Mortgagor and Mortgagee or paid into the appropriate court the award may, at the option of Mortgagee, be applied toward payment of the Secured Indebtedness and Mortgagor hereby appoints Mortgagee as its attorney in fact to endorse the check evidencing the award and to receive said award. If such alterations, restoration, or rebuilding is done, any portion of the award not required for such work shall, at the option of the Mortgagee, be applied toward the payment of the Secured Indebtedness. If, prior to the receipt by Mortgagee of such award of payment, the Security shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not deficiency judgment on this Mortgage shall have been sought or recovered or denied and of the reasonable attorney's fees, cost and disbursements incurred by Mortgagee in connection with the collection of such award or payment. Notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be

self-executing, Mortgagor, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemner for the payment thereof, shall (subject to the provisions of the Lease) execute, at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or demands to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this Mortgage and any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the rate specified herein, or in the Note, to the date of payment, whether such remaining principal sum is then due or not by the terms of the Note or of this Mortgage. As used in this paragraph the terms "award" and "payment" shall apply to a payment made for a voluntary conveyance to an entity having the power to acquire property by the exercise of the power of eminent domain, as well as to a payment made in an eminent domain proceeding.

15. Upon the occurrence of any one of the following events (herein called an "Event of Default"):

(1) should Mortgagor fail to pay the Secured Indebtedness, or any part thereof when and as the same shall become due and payable, after the expiration of any grace period contained in the Note;

(2) should any representation or warranty of Mortgagor herein contained, or contained in any instrument, transfer, conveyance, or assignment given with respect to the Secured Indebtedness, prove untrue or misleading in any material aspect;

(3) should the security be subject to actual or threatened waste, or any part thereof be removed, demolished or materially altered so that the value of the Security be diminished except as provided for in paragraphs 11 and 14 herein;

(4) should any federal tax lien or claim of lien for labor or material be filed of record against Mortgagor or the Security and not be removed by payment or bond within thirty (30) days from date of recording;

(5) should any claim of priority of this Mortgage by title, lien or otherwise be finally determined by a court of competent jurisdiction to take priority over this Mortgage or should any claim of priority of this Mortgage by title, lien or otherwise be asserted in any legal or equitable proceeding and Mortgagor shall fail to defend the same within thirty (30) days thereafter or thereafter shall fail to diligently defend the same;

(6) should Mortgagor make any assignment for the benefit of creditors, or should a receiver, liquidator or trustee of Mortgagor or of any of Mortgagor's property be appointed, or should any petition for the bankruptcy, reorganization or arrangement of Mortgagor, pursuant to the Federal Bankruptcy Act or any similar statute, be filed, or should Mortgagor be liquidated or dissolved or its charter expire or be revoked;

(7) should Mortgagor fail to keep, observe, perform, carry out and execute in every particular the non-monetary covenants, agreements, obligations and conditions set out in this Mortgage, or in the Note, or in the Lease, or in the Loan Documents, and such failure shall continue for a period of thirty (30) days after written notice from Mortgagee; or

(8) should Mortgagor exercise any option it has under the Lease to purchase the real property described on Exhibit "A" hereto, or any part thereof;

(9) should Mortgagee transfer or assign the Lease, or any interest therein to any person or entity without first obtaining the written consent of the Mortgagor;

then and thereupon Mortgagee may do any one or more of the following:

(i) enter upon and take possession of the Security without the appointment of a receiver, or an application therefor, employ a managing agent of the Security and let the same, either in its own name, or in the name of Mortgagor, and receive the rents, incomes, issues and profits of the Security and apply the same, after payment of all necessary charges and expenses, on account of the Secured Indebtedness;

(ii) pay any sums in any form or manner deemed expedient by Mortgagee to protect the security of this instrument or to cure any Event of Default other than payment of interest or principal on the Secured Indebtedness; make any payment hereby authorized to be made according to any bill, statement or estimate furnished or procured from the appropriate public officer or the party claiming payment without inquiry into the accuracy or validity thereof, and the receipt of any such public officer or party in the hands of Mortgagee shall be conclusive evidence of the validity and amount of items to be paid, in which event the amounts so paid, with interest thereon from the date of such payment at the rate provided in the Note (subject to the provisions of paragraph 22 below), shall be added to and become a part of the Secured Indebtedness and be immediately due and payable to Mortgagee; and Mortgagee shall be subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security to this instrument;

(iii) declare the entire Secured Indebtedness immediately due, payable and collectible, regardless of maturity, and in such event, the entire Secured Indebtedness shall become immediately due, payable and collectible and thereupon, Mortgagee may institute foreclosure proceedings under the appropriate law. It is agreed that if any legal proceedings are instituted for foreclosure of this Mortgage, or if the Mortgagee should become a party to any suit involving this Mortgage or the title to the Security, all costs and expenses incurred by the Mortgagee, including a reasonable fee for Mortgagee's attorney, shall thereupon become due and payable immediately, as a part of the debt secured hereby and may be secured and recovered hereunder;

(iv) enter upon and take possession of the Security and after, or without, taking such possession of the same, sell the same at public outcry, in front of the courthouse door of the Montgomery County Courthouse, in Montgomery, Alabama, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in a newspaper of general circulation published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the property so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises, or the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages; the Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expense incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosure of this Mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said indebtedness, or interested in the Security or the Real Estate, to prevent or delay, by any means, the exercise of said power of sale on foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon; (c) to the payment and satisfaction of the Secured Indebtedness (including interest to the day of sale); and (d) the balance, if any, shall be paid over to Mortgagor or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale shall be under no obligation to see to the proper application of the purchase money.

It is agreed that the Mortgagor shall hold and enjoy the Security until there is a default under this Mortgage, and/or in the Note, and/or in the Loan Documents. If Mortgagor shall fully perform all the terms, conditions, and covenants of this Mortgage, and of the Note, and of the Loan Documents, and of any notes evidencing advances made subsequent to the date hereof, and shall well and truly pay to the Mortgagee all monies owed to Mortgagee, including any advances made subsequent to the date hereof, then this Mortgage shall be null and void; otherwise it shall remain in full force and effect.

16. Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not all of the Secured Indebtedness shall be due on demand, and without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against the Mortgagor, including an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

17. The rights of Mortgagee, granted and arising under the clauses and covenants contained in this Mortgage, in the Note, and in the Loan Documents shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which Mortgagee may have in law or equity, and none of them shall be in exclusion of the others; and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under mortgages and preservation of Security as provided at law. No act of Mortgagee shall be construed as an election to proceed under any one provision herein, under the Note, or under the Loan Documents to the exclusion of any other provision, or an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

18. Every provision for notice and demand or request to Mortgagor shall be deemed fulfilled by written notice and demand or request personally served on any official or agent of Mortgagor, or mailed by depositing it in the U.S. mail, postage prepaid and addressed to Mortgagor at its notice address set forth hereinabove.

19. Any indulgence or departure at any time by the Mortgagee from any of the provisions hereof, or of any obligation hereby secured, shall not modify the same or relate to the future or waive future compliance therewith by the Mortgagor.

20. If any part of any provision of this Mortgage, or the Loan Documents, or any other agreement, document or writing given pursuant to or in connection with this Mortgage shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of said instrument.

21. The parties hereto expressly agree that it is their express intent that this Mortgage is to be construed under the laws of the State of Alabama and that such laws shall control the interpretation of the same and shall govern this transaction.

22. In no event shall the amount of interest due or payable hereunder or under the Note exceed the maximum rate of interest allowed by applicable law, and in the event any such payment is inadvertently paid by Mortgagor or inadvertently received by Mortgagee, then such excess sum shall be credited as a payment of principal, unless Mortgagor shall notify Mortgagee, in writing, that the Mortgagor elects to have such excess sum returned forthwith. It is the express intent hereof that Mortgagor not pay and Mortgagee not receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be legally paid by Mortgagor under applicable law.

23. The provisions hereof shall be binding upon Mortgagor and its successors and assigns, and shall inure to the benefit of Mortgagee and its successors and assigns.

24. **WAIVER OF JURY TRIAL.** BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE DEBT EVIDENCED BY THIS NOTE OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

[SIGNATURES APPEAR ON IMMEDIATELY FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Mortgagor has caused this instrument to be executed on the day and year first above written.

GUTHRIE'S HOLDINGS, INC.
an Alabama corporation

By: 
HAL H. GUTHRIE, JR.
Its President

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that **HAL H. GUTHRIE, JR.**, whose name as President of **GUTHRIE'S HOLDINGS, INC.**, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal on this the 5 day of ~~May~~, 2001.

MAY, 2001.

[SEAL]

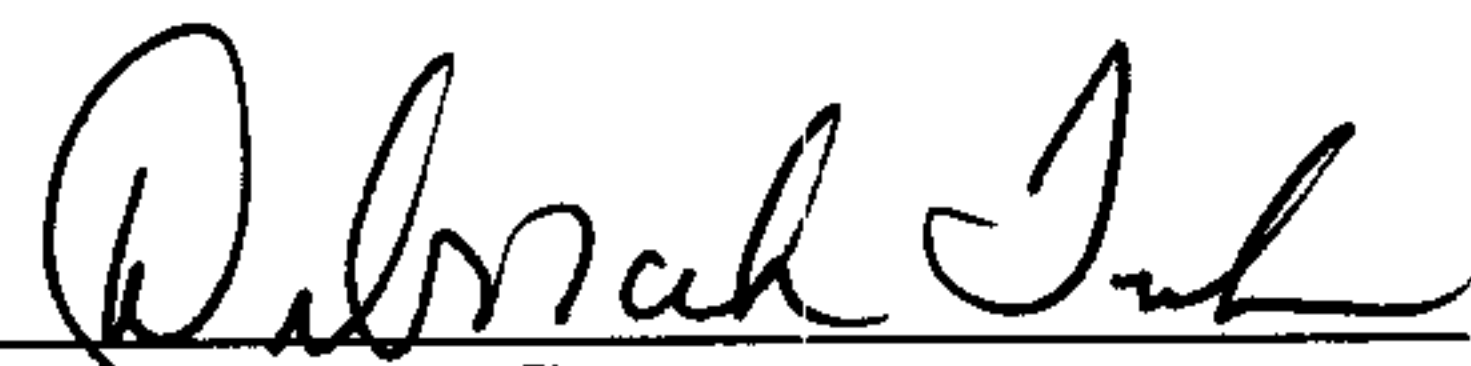

NOTARY PUBLIC
My Commission Expires: May 1, 2001

EXHIBIT "A"

(Real Estate)

Approximately three thousand five hundred (3,500) square feet of real estate as outlined on the plat designated **Exhibit A** (the "Leased Premises") to the Lease, which Leased Premises are located in the River Ridge Shopping Center located on land which is more specifically described as Lots 2, 3, 4, and 5 according to the Map of River Ridge Plaza as recorded in Map Book 26, Page 14, in the Office of the Judge of Probate of Shelby County, Alabama, excluding therefrom at Landlord's option, that certain outparcel as shown on the Site Plan attached to the Lease as Exhibit "A-2."

EXHIBIT "B"

(Permitted Encumbrances)

1. Amended and Restated Mortgage and Security Agreement as executed by River Ridge Development Company, L.L.C. and River Ridge Retail Company, L.L.C. (the "Borrower") in favor of Southtrust Bank (the "Lender") recorded as Instrument # 2001-07390 on March 5, 2001, in the records of the Office of the Judge of Probate of Shelby County, Alabama.

Inst # 2001-19273

05/14/2001-19273
08:23 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
016 MEL 918.50