

NOTE TO PROBATE JUDGE: This Agreement is being recorded as additional security for the Obligations described in a Mortgage of even date herewith between the Borrower and the Lender, which Mortgage is being filed for record concurrently with the recording of this Agreement.

ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

THIS ABSOLUTE ASSIGNMENT OF RENTS AND LEASES (this "Agreement") dated October 11th, 2001 is between **SALVADOR S. SANCHEZ**, an individual with a principal residence in the State of CA (the "Borrower"), as assignor, and **NATIONAL BANK OF COMMERCE OF BIRMINGHAM**, a national banking association (the "Lender"), as assignee.

Recitals

Capitalized terms used in these Recitals have the meanings defined for them above or in Section 1.2. The Borrower has requested that the Lender extend Credit to the Borrower under the Credit Documents. To induce the Lender to extend such Credit, the Borrower has (a) executed and delivered to the Lender a mortgage of even date herewith (the "Mortgage") covering the land described in Exhibit A (the "Land"), which Mortgage is being recorded in the office of the Judge of Probate of the county in which the Land is situated concurrently with the recording of this Agreement, and (b) agreed to execute this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals, and to induce the Lender to extend Credit to the Borrower under the Credit Documents, the Borrower agrees with the Lender as follows:

ARTICLE 1

Rules of Construction and Definitions

SECTION 1.1 Rules of Construction. This Agreement is subject to the rules of construction set forth in the Mortgage.

SECTION 1.2 Definitions. As used in this Agreement, capitalized terms that are not otherwise defined herein have the meanings defined for them in the Mortgage and the following terms are defined as follows:

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- (a) **Events of Default** is defined in Section 4.1. An Event of Default shall "exist" if the same has occurred and is continuing.
- (b) **Existing Leases** is defined in Section 2.1(a).
- (c) **Improvements** is defined in Section 2.1(a).
- (d) **Leases** is defined in Section 2.1(a).
- (e) **Permitted Encumbrances** means any Liens and other matters affecting title to the Property that are described in Exhibit C.
- (f) **Property** is defined in Section 2.1.
- (g) **Real Property** is defined in Section 2.1(a).
- (h) **Rents** is defined in Section 2.1(c).

ARTICLE 2

Granting Clauses

SECTION 2.1 Assignment. The Borrower does hereby sell, assign, transfer and set over to the Lender, its successors and assigns, and does hereby grant to the Lender, its successors and assigns the following (collectively, the "Property"):

- (a) All leases and subleases, written or oral, and all agreements for use or occupancy of any portion of the Land or any improvements, buildings, structures and fixtures now or hereafter located thereon (the "Improvements") (the Land and the Improvements being hereinafter sometimes together called the "Real Property") with respect to which the Borrower is the lessor or sublessor, including the existing leases, if any, described on Exhibit B attached hereto and made a part hereof (the "Existing Leases"), any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Land or the Improvements, all such leases, subleases, agreements and tenancies heretofore mentioned (including the Existing Leases), whether entered into before or after the filing by or against the Borrower of any petition for relief under the federal Bankruptcy Code, being covered by this assignment and being hereinafter collectively referred to as the "Leases";
- (b) any and all guaranties of the lessee's and any sublessee's performance under any of the Leases, including the existing guaranties, if any, described on Exhibit B attached hereto and made a part hereof (the "Existing Guaranties");

(c) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Borrower may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, whether paid or accruing before or after the filing of any petition by or against the Borrower for relief under the federal Bankruptcy Code, arising or issuing from or out of the Leases or from or out of the Land or the Improvements, or any part thereof, including minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Land or the Improvements, together with any and all rights and claims that the Borrower may now or hereafter have against any such lessee under the Leases or against any subtenants or occupants of the Land or any of the Improvements, all such moneys, rights and claims described in this Section 2.1(c) being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default exists, the Borrower shall have the right under a license granted hereby to collect, receive and retain the Rents, but except as permitted in Section 3.2(d), no Rents shall be collected in advance of the due date thereof; and

(d) any award, dividend or other payment made hereafter to the Borrower in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Borrower hereby appoints the Lender as the Borrower's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment after the occurrence of an Event of Default.

SUBJECT, HOWEVER, to the encumbrances, if any, described on Exhibit C hereto ("Permitted Encumbrances").

ARTICLE 3

Representations, Warranties and Covenants

SECTION 3.1 Representations and Warranties. The Borrower represents and warrants to the Lender that, except for Permitted Encumbrances:

(a) The Borrower has good title to the Rents and Leases and good right to assign the same, and no other person has any right, title or interest therein.

(b) The Borrower has duly and punctually observed and performed all and singular the terms, covenants, conditions and warranties of the Existing Leases on the Borrower's part to be observed and performed.

(c) The Borrower has not previously sold, assigned, transferred or granted any Lien on the Leases or the Rents, whether now due or hereafter to become due.

(d) No Rents due for any period subsequent to the month next succeeding the date of this Agreement have been collected, and no payment of any of the Rents has been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(e) The Borrower has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.

(f) To the best of the Borrower's knowledge, the lessees under the Existing Leases and the guarantors under the Existing Guaranties are not in default under any of the terms thereof.

SECTION 3.2 Covenants of Borrower. The Borrower covenants and agrees that the Borrower shall:

(a) observe and perform all of the Borrower's obligations under the Leases and give prompt notice to the Lender if the Borrower fails to do so;

(b) enforce or secure in the name of the Lender the performance of each obligation to be performed by any lessee under the Leases;

(c) appear in and defend any proceeding arising under, or in any manner connected with the Leases or the obligations of the Borrower and any lessee thereunder, and upon request by the Lender, do so in the name and on behalf of the Lender but at the expense of the Borrower, and pay all costs and expenses of the Lender, including reasonable attorneys' fees, in any proceeding in which the Lender may appear;

(d) not receive or collect any Rents from any lessee of any of the Real Property for a period of more than one month in advance, or sell, assign, transfer or grant any Lien on future payments of the Rents;

(e) not waive, excuse, discount, set off, compromise, or in any manner release or discharge any lessee of any of the Real Property from any of the lessee's obligations under any Lease, including the obligation to pay rent as specified in any Lease;

(f) not enter into any Leases except on a form approved by the Lender, nor cancel, terminate or consent to the surrender of any Lease, or modify the provisions thereof without the prior written consent of the Lender;

(g) not renew or otherwise extend the term of any of the Existing Leases; provided, however, that the Borrower may, upon the expiration of the term of any of the Existing Leases, lease the property covered thereby to the lessee thereunder by a lease or leases expressly subject and fully subordinate to the Lien of the Mortgage and to this Agreement;

(h) promptly upon the execution by the Borrower of any future Lease, (1) furnish the Lender with the name and address of the lessee thereunder, the term of such Lease and a description of the premises covered thereby and, upon request of the Lender, a copy of such Lease, and (2) execute all such further assignments of such Lease and the Rents therefrom as the Lender may require;

(i) not, without the prior written approval of the Lender, execute any management or leasing agreements affecting any of the Real Property; and

(j) if required by the Lender, cause each Lease to provide, in a manner approved by the Lender, that the Lease is junior and subordinate to the Lien of the Mortgage and to this Agreement and that the Lessee will recognize as lessor, Lender or any person succeeding to the interest of the Borrower, upon the foreclosure of the Mortgage or any exercise by the Lender of its rights, powers and remedies under this Agreement or the Mortgage with respect to the Lease.

ARTICLE 4

Default and Remedies

SECTION 4.1 Events of Default. The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Agreement (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any Governmental Requirement):

(a) any representation or warranty made in this Agreement or in any of the other Credit Documents shall prove to be false or misleading in any material respect as of the time made; or

(b) any report, certificate, financial statement or other instrument furnished in connection with the Credit, this Agreement or any of the other Credit Documents, shall prove to be false or misleading in any material respect as of the time furnished; or

(c) default shall be made in the payment when due of any of the Obligations; or

(d) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of the Borrower to be observed or performed pursuant to the terms of this Agreement (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 4.1 specifically dealt with) and such default shall remain unremedied for a period of thirty (30) days; or

(e) any default or event of default, as therein defined, shall occur under any of the other Credit Documents (after giving effect to any applicable notice, grace or cure period specified therein).

SECTION 4.2 Rights and Remedies of Lender Upon Default.

(a) **Acceleration of Obligations.** If an Event of Default exists that does not already result in the automatic acceleration of the Obligations under another Credit Document, the Lender shall have the right without further notice to the Borrower (except any such notice as may be specifically required under the other Credit Documents) to declare all of the Obligations immediately due and payable.

(b) **Operation of Real Property.** If an Event of Default exists, in addition to all other rights herein conferred on the Lender, the Lender (or any person designated by the Lender) may, but shall not be obligated to, enter upon and take possession of any or all of the Real Property, exclude the Borrower therefrom, and hold, use, administer, manage and operate the same to the extent that the Borrower could do so, without any liability to the Borrower resulting therefrom; and the Lender may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Borrower with respect to the Real Property.

(c) **Right to Receiver.** If an Event of Default exists, the Lender shall be entitled, as a matter of right, to the appointment by any competent court or tribunal, without notice to the Borrower or any other party, of a receiver of the rents, issues and profits of the Real Property, with power to lease and control the Real Property and with such other powers as may be deemed necessary.

(d) **Rents and Leases.** If an Event of Default exists, the Lender at its option, shall have the right, power and authority without the need to take possession of the Real Property or to obtain the appointment of a receiver, to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(1) to terminate the license granted to the Borrower in Section 2.1(c) to collect the Rents, to notify the tenants under the Leases or any other parties in possession of any of the Real Property to pay all Rents directly to the Lender and, without taking possession, in the Lender's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor;

(2) with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Real Property or any part thereof for the account of the Borrower, to make, modify, enforce, cancel or accept surrender of any Lease, to remove and evict any lessee or sublessee, to increase or reduce rents, to decorate, clean and make repairs, and otherwise to do any act or incur any cost or expenses the Lender shall deem proper to protect the security hereof, as fully and to the same extent as the Borrower could if in possession; and

(3) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation of the Borrower under this Agreement.

The Borrower hereby releases any claims against any tenants under the Leases or any other parties in possession of any of the Real Property for any Rents or other sums paid to the Lender in accordance with this Agreement. The collection of the Rents and application thereof as aforesaid or the entry upon and taking possession of the Real Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Agreement, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Lender, once exercised, shall continue for so long as the Lender shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default.

(e) **Order of Application of Proceeds.** All payments received by the Lender as proceeds of any of the Real Property, as well as any and all amounts realized by the Lender in connection with the enforcement of any right or remedy under this Agreement, shall be applied by the Lender as set forth in the Mortgage.

(f) **Waiver of Certain Laws.** The Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisalment before disposition of any portion of the Property (commonly known as appraisalment laws), or (2) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any disposition made in collecting the Obligations (commonly known as stay laws and redemption laws). The Borrower also waives any and all rights the Borrower may have to a hearing before any Governmental Authority prior to the exercise by the Lender of any of its rights or remedies under the Credit Documents and applicable law.

SECTION 4.3 Default Rate. If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists.

SECTION 4.4 Remedies Cumulative. The rights, powers and remedies of the Lender under this Agreement are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.

ARTICLE 5

Miscellaneous

SECTION 5.1 Notices.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement shall be given in the manner, and shall be effective at the time, provided in Section 6.1 of the Mortgage.

(b) Five Business Days' written notice to the Borrower as provided above shall constitute reasonable notification to the Borrower when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

SECTION 5.2 Expenses. The Borrower shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Lender, incurred by the Lender in connection with (a) the negotiation, preparation and review of this Agreement (whether or not the transactions contemplated by this Agreement shall be consummated), (b) the enforcement of this Agreement, (c) the custody and preservation of the Property, (d) the protection or perfection of the Lender's rights and interests under this Agreement in the Property, (e) the filing or recording of this Agreement or any related financing, continuation or termination statements, or similar documents (including any stamp, documentary, mortgage, recording and similar taxes and fees), (f) the exercise by or on behalf of the Lender of any of its rights, powers or remedies under this Agreement and (g) the prosecution or defense of any action or proceeding by or against the Lender, the Borrower, any other Obligor, or any one or more of them, concerning any matter related to this Agreement, the Real Property, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Default Rate and shall be included in the Obligations. The Borrower's obligations under this Section 5.2 shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 5.3 Heirs, Successors and Assigns. Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the Borrower may not assign or transfer this Agreement without the prior written consent of the Lender; and all covenants and agreements of the Borrower contained in this Agreement shall bind the Borrower's heirs and assigns and shall inure to the benefit of the successors and assigns of the Lender.

SECTION 5.4 Independent Obligations. The Borrower agrees that each of the obligations of the Borrower to the Lender under this Agreement may be enforced against the Borrower without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

SECTION 5.5 Governing Law. This Agreement shall be construed in accordance with and governed by Title 9 of the U.S. Code and the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the assignment of the Property hereunder are governed by the laws of any jurisdiction other than the State of Alabama.

SECTION 5.6 Date of Agreement. The date of this Agreement is intended as a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on that date.

SECTION 5.7 Separability Clause. If any provision of the Credit Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 5.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

SECTION 5.9 Waiver and Election. The exercise by the Lender of any option given under this Agreement shall not constitute a waiver of the right to exercise any other option. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Credit Documents, nor consent to any departure by the Borrower therefrom, shall be effective unless in writing and signed by an authorized officer of the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

SECTION 5.10 No Obligations of Lender; Indemnification. The Lender does not by virtue of this Agreement or any of the transactions contemplated by the Credit Documents assume any duties, liabilities or obligations with respect to any of the Real Property or the Property unless expressly assumed by the Lender under a separate agreement in writing, and this Agreement shall not be deemed to confer on the Lender any duties or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Borrower agrees to indemnify and hold the Lender harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Borrower or any Obligor in this Agreement or any other Credit Document; (b) any breach of any of the warranties or obligations of the Borrower or any Obligor under this Agreement or any other Credit Document; and (c) the Real Property, or the assignment to the Lender of the Property. The provisions of this Section 5.11 shall survive

the payment of the Obligations in full and the termination, satisfaction and release (in whole or in part) of this Agreement.

SECTION 5.11 Advances by the Lender. If the Borrower shall fail to comply with any of the provisions of this Agreement, the Lender may (but shall not be required to) make advances to perform the same, and where necessary enter the Real Property for the purpose of performing the Borrower's obligations under any such provision. The Borrower agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from the Borrower's failure to pay such amounts.

SECTION 5.12 Rights and Obligations Absolute. All rights of the Lender hereunder and all obligations of the Borrower hereunder shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Credit Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Credit Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

SECTION 5.13 Absolute Assignment. The assignment of the Property by the Borrower to the Lender under this Agreement is intended to be an absolute assignment and not merely a conditional assignment or security interest. The Property is intended to be, and hereby is, assigned absolutely by the Borrower to the Lender, subject only to the license granted to the Borrower under Section 2.1(c), which license is terminable at the option of the Lender upon the occurrence of an Event of Default.

SECTION 5.14 Re-Assignment of Leases and Rents. When the Obligations are paid in full and such payment is evidenced by a recorded written instrument of satisfaction of the Mortgage, the Lender shall, upon written request by the Borrower, transfer, assign and set over to the Borrower all of the Lender's right, title and interest in, to and under the Property.

SECTION 5.15 Arbitration. This Agreement incorporates by reference requirements for arbitration of disputes set forth in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned Salvador S. Sanchez has executed this Agreement on the date of the acknowledgment of the Borrower's signature below.

Salvador S. Sanchez
Salvador S. Sanchez

STATE OF California)
COUNTY OF Los Angeles)

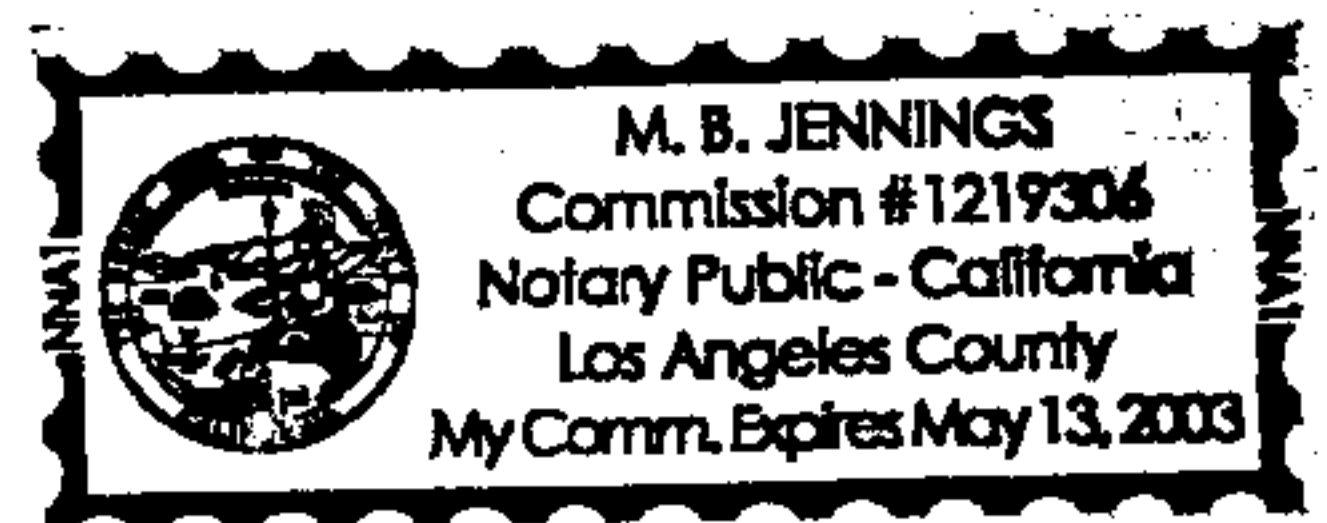
I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Salvador S. Sanchez, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she executed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

Given under my hand and official seal this the 10th day of October, 2001.

[Signature]
Notary Public

[AFFIX SEAL]

My commission expires: May 13, 2003



This instrument prepared by:
Stephen W. Stallcup
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2618
(205) 254-1000

EXHIBIT A

(Land Description)

THE FOLLOWING PROPERTY DOES NOT CONSTITUTE THE HOMESTEAD OF SALVADOR S. SANCHEZ OR HIS WIFE.

PARCEL 1:

Lot 2B, according to the Map and Survey of Brook Highland Plaza Resurvey, recorded in Map Book 18, page 99, in the Probate Office of Shelby County, Alabama.

PARCEL 2:

(A) Perpetual, non-exclusive easements, appurtenant to Parcel 1, for vehicular and pedestrian ingress and egress, vehicular parking, utility lines and facilities, and stormwater drainage, over, under and across certain portions of that certain adjoining property, as set forth and described in that certain Easement Agreement dated December 30, 1994, by and between Brook Highland Limited Partnership, a Georgia Limited Partnership and Developers Diversified of Alabama, Inc., an Alabama Corporation, recorded in Instrument Number 1995-27233, in the Probate Office of Shelby County, Alabama, as affected by that certain "AGREEMENT RE ACCESS EASEMENT" dated November 13, 1998, by and between Brook Highland Limited Partnership, a Georgia limited partnership and Ihop Realty Corp., a Delaware Corporation, as recorded in Instrument #1998-46413, in the Probate Office of Shelby County, Alabama.

(B) Perpetual, non-exclusive easement, appurtenant to Parcel 1, for utility lines, over, under and across certain portions of that certain adjoining property, as set forth and described in that certain Reciprocal Easement Agreement dated August 9, 1988, by and among Billy D. Eddleman and Douglas D. Eddleman, Eddleman & Associates, an Alabama General Partnership and AmSouth Bank, N.A. as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee of the Public Employees Retirement System of Ohio, recorded in Real Volume No. 199, page 18, in the Probate Office of Shelby County, Alabama.

EXHIBIT B

Existing Leases

<u>Lessor</u>	<u>Lessee</u>	<u>Date</u>
Salvador S. Sanchez ¹	IHOP Properties, Inc.	Oct. 12, 2000

Existing Guaranties

That certain Unconditional Guaranty of Payment and Performance dated October 9, 2000 executed by IHOP Corp., a Delaware corporation in favor of the Borrower.

¹By Assignment and Assumption of Lease dated of even date herewith executed by CNL Funding 2001-A, LP in favor of Lessor.

EXHIBIT C

(Permitted Encumbrances)

1. The Mortgage.
2. Permitted Encumbrances listed in Exhibit C to the Mortgage.

00706827.1

Inst # 2001-44498

10/15/2001-44498
10-36-1AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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