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(200404/3440)

THIS INSTRUMENT WAS PREPARED BY
AND UPON RECORDING RETURN TO:

Citicorp Leasing, Inc.
2600 Michelson, Suite 1200
Irvine, CA 92612
Attention: COMPLIANCE OFFICER

20040716000392690 Pg 1/49 156.00
Shelby Cnty Judge of Probate, AL
07/16/2004 07:58:00 FILED/CERTIFIED

RLPY 2846 PAGE 0340

Re: Jefferson County

- ✓ Store #1252 - 345 Valley Avenue, Birmingham, Alabama
- ✓ Store #1253 - 9870 Parkway East, Birmingham, Alabama
- ✓ Store #1257 - 104 Bessemer Super Highway, Midfield, Alabama
- ✓ Store #1289 - 2007 Centerpoint Parkway, Birmingham, Alabama
- ✓ Store #1658 - 1101 North Chalkville Road, Trussville, Alabama
- ✓ Store #1981 - 2931 Morgan Road, Bessemer, Alabama
- ✓ Store #2516 - 3211 Edwards Lake Parkway, Birmingham, Alabama

Montgomery County

- ✓ Store #1261 - 2231 E. South Boulevard, Montgomery, Alabama
- ✓ Store #1263 - 2280 Mt. Meigs Road, Montgomery, Alabama
- ✓ Store #1264 - 1195 W. South Boulevard, Montgomery, Alabama
- ✓ Store #1265 - 5010 Vaughn Road, Montgomery, Alabama
- ✓ Store #1266 - 1414 Ann St., Montgomery, Alabama
- ✓ Store #1308 - 625 Madison Avenue, Montgomery, Alabama
- ✓ Store #3942 - 2545 Congressman William L. Dickinson Drive, Montgomery, Alabama
- ✓ Store #4218 - Taylor Road, Montgomery, Alabama

Shelby County

- ✓ Store #1258 - 4671 Highway 280 East, Birmingham, Alabama
- ✓ Store #1736 - 579 Cahaba Valley Road, Pelham, Alabama

Chilton County

- ✓ Store #1757 - 1305 7th Street, South Clanton, Alabama

[SPACE ABOVE FOR RECORDER'S USE ONLY]

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and
FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called "Mortgage") is made as of December 31, 2003 by R&L FOODS, LLC, a Delaware limited liability company, having an address at 202 N. Loudoun Street, Suite 309, Winchester, Virginia 22601 (herein, together with its successors and assigns, the "Mortgagor"), to CITICORP LEASING, INC., a Delaware corporation, having an address at 2600 Michelson Drive, 12th Floor, Irvine, California 92612 ("Citicorp"), acting in its capacity as agent (Citicorp in such capacity, together with its successors and assigns in such capacity, "Agent") for the benefit of Lenders (as hereinafter defined) (such Lenders, collectively, the "Mortgagee").

RECITALS

A. The Mortgagor, together with Wen-Virala, Inc., William R. Reynolds, and Robert E. Lee, have entered into that certain Loan Agreement dated as of December 31, 2003 with Mortgagee and Agent (said Loan Agreement, as it may hereafter be amended, modified, supplemented, extended, renewed or replaced from time to time, being the "Loan Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined).

B. Pursuant to the Loan Agreement and subject to the terms and conditions therein set forth, the Mortgagee has agreed to make one or more loans to Mortgagor to assist Mortgagor in financing certain of its activities in connection with one or more restaurants.

C. The aggregate principal amount of the loans outstanding from time to time under the Loan Agreement may not exceed \$38,400,000, excluding advances made to protect the lien and security of this Mortgage.

D. To evidence and secure such indebtedness, Mortgagor has executed and delivered the Loan Agreement, a Note or Notes as more particularly described in Annex 1 attached hereto and made part hereof (collectively, the "Note") and certain other Loan Documents.

E. It has been agreed that as a condition precedent to the making of the loans, Mortgagor will further secure such indebtedness by the execution and delivery of this Mortgage.

F. As used in this Mortgage, the term "Secured Obligations" means and includes all of the following: (i) all performance and payment obligations of the Mortgagor under or in connection with the Loan Agreement, the Note, or any of the other Loan Documents and (ii) all other obligations of the Mortgagor to the Mortgagee, in each case howsoever created, arising or evidenced, whether direct or indirect, joint or several, absolute or contingent, or now or hereafter existing, or due or to become due, including, without limitation, those obligations arising out of or in connection with the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any and all advances, costs or expenses paid or incurred by the Mortgagee to protect any or all of the Collateral (hereinafter defined) and other collateral under the Loan Documents, to perform any obligation of the Mortgagor hereunder or under any of the other Loan Documents or to collect any amount owing to the Mortgagee which is secured hereby or under the other Loan Documents; interest on all of the foregoing; and all costs of enforcement and collection of this Mortgage, the Loan Documents and the Secured Obligations.

G. For purposes of this Mortgage, the term "Collateral" means and includes all right, title and interest of the Mortgagor in and to all of the following:

(i) All of the land described on Exhibit A attached hereto (the "Land"), together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm

and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

(ii) All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate and owned or purported to be owned by the Mortgagor, together with all building or construction materials, equipment, appliances, machinery, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate and owned or purported to be owned by the Mortgagor, including (without limitation) all trees, shrubs and landscaping materials, reels, and all heating, venting, electrical, lighting, power, plumbing, air conditioning and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");

(iii) All furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, office and record keeping equipment, window cleaning, building cleaning, signs, monitoring, garbage, air conditioning, computers, point of sale devices, drive-through equipment and other equipment), inventory and goods and all other tangible property of any kind or character now or hereafter owned or purported to be owned by the Mortgagor and used or useful in connection with the Real Estate, regardless of whether located on the Real Estate or located elsewhere including, without limitation, all rights of the Mortgagor under any lease to equipment, furniture, furnishings, fixtures and other items of personal property at any time during the term of such lease below (all of the foregoing is herein referred to collectively as the "Goods");

(iv) All goodwill, trademarks, trade names, franchise rights, franchise agreements, option rights, purchase contracts, condemnation claims, demands, awards and settlement payments, insurance contracts, insurance payments and proceeds, unearned insurance premiums, warranties, guaranties, utility deposits, books and records and general intangibles of the Mortgagor relating to the Real Estate or the Improvements and all accounts, contract rights, instruments, chattel paper and other rights of the Mortgagor for payment of money to it for property sold or lent by it, for services rendered by it (including, without limitation, any deposits made by the Mortgagor pursuant to Section 1.19), for money lent by it, or for advances or deposits made by it, and any other intangible property of the Mortgagor related to the Real Estate or the Improvements (all of the foregoing is herein referred to collectively as the "Intangibles");

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

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

(vii) All rights of the Mortgagor, if any, to all plans and specifications, designs, drawings and other matters prepared in connection with the Real Estate (all of the foregoing is herein called the "Plans");

(viii) All rights of the Mortgagor under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Estate or the Improvements, including, without limitation, any architect's contracts, construction contracts and management contracts (all of the foregoing are herein referred to collectively as the "Contracts for Construction");

(ix) All rights of the Mortgagor as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has, with the prior written consent of the Mortgagee, obtained the agreement of any Person to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Collateral or any part thereof (all of the foregoing is herein referred to collectively as the "Contracts for Sale");

(x) All rights of the Mortgagor in any permits, approvals, consents and other authorizations in connection with the Real Estate or the Improvements (all of the foregoing is herein referred to collectively as the "Permits"); and

(xi) All other property or rights of the Mortgagor of any kind or character related to the Real Estate or the Improvements, all substitutions, replacements and additions thereto, whether now existing or hereafter acquired, and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing. All of the Real Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises".

H. For purposes herein, "Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

I. For purposes herein, "Hazardous Substances" means lubricants, waste oils and any petroleum and petroleum products, byproducts or breakdown products, chemical solvents, alcohols, polychlorinated biphenyls ("PCBs"), radioactive materials, asbestos-containing

materials, radon gas and any other chemicals, materials or substances which are or become designated, classified or regulated as being "toxic" or "hazardous," or words of similar import, under any Environmental Law.

J. For purposes herein, "Environmental Law" means any federal, state or local statute, law, ordinance, rule, regulation, code, principle of common or civil law, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to (i) the control, management, disposal, storage or treatment of Hazardous Substances, (ii) any release of or contamination by Hazardous Substances or (iii) the protection of natural resources, health, safety or the environment.

K. For purposes herein, "Lenders" means Citicorp, acting in its individual capacity, and each other lender who may become a lender pursuant to the terms and provisions of the Loan Agreement.

GRANT

NOW THEREFORE, for and in consideration of the Mortgagee's making of the loans, advances and other financial accommodations to or for the benefit of the Mortgagor as more fully set forth in the Loan Agreement, the Note, this Mortgage or the other Loan Documents, including an indebtedness of Mortgagor for borrowed money in a principal amount not exceeding THIRTY-EIGHT MILLION FOUR HUNDRED THOUSAND AND 00/100 (\$38,400,000) DOLLARS, together with interest thereon, and in consideration of the various agreements contained herein, in the Loan Agreement, in the Note, and in the other Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, and in order to secure the full, timely and proper payment and performance of each and every one of the Secured Obligations,

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

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

The Mortgagor hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof it is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple and that it has rights in the other Collateral; that the Collateral is free from all encumbrances whatsoever (and any claim of any other Person thereto) other than the security interest granted to the Mortgagee herein and pursuant to the

other Loan Documents and the encumbrances set forth in the title insurance policy insuring the lien of this Mortgage in favor of the Mortgagee (the "Permitted Exceptions"); that it has good and lawful right to sell, mortgage and convey the Collateral; and that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever with the exception of those arising by, through or under the Permitted Exceptions.

ARTICLE I

COVENANTS AND AGREEMENTS OF THE MORTGAGOR

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

1.1. Payment of Secured Obligations. The Mortgagor agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, all the Secured Obligations (including fees and charges). All sums payable by the Mortgagor hereunder shall be paid without demand, counterclaim, offset, deduction or defense. The Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

1.2. Payment of Taxes.

(a) The Mortgagor will pay or cause to be paid prior to delinquency all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay when due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the Loan Documents, whether levied against the Mortgagor or the Mortgagee or otherwise, and will submit to the Mortgagee all receipts showing payment of all of such taxes, assessments and charges.

(b) The Mortgagor, at the Mortgagor's sole cost and expense, may contest by appropriate legal proceedings prosecuted diligently and in good faith, the amount or validity of any taxes, provided and on condition that: (1) the Mortgagor notifies the Mortgagee of the commencement or expected commencement of such proceedings and keeps the Mortgagee reasonably advised as to the status of such proceedings, (2) the Mortgagee shall not be subject to criminal penalty or to prosecution for a crime nor shall the Premises or any part thereof be in danger of being sold or forfeited as a result of such contest, (3) if requested by the Mortgagee, the Mortgagor deposits with the Mortgagee reserves sufficient to pay the contested taxes, (4) the Mortgagor furnishes whatever security is required in the proceedings or is reasonably requested by the Mortgagee, which may include the delivery to the Mortgagee of the reserves established by the Mortgagor to pay the contested taxes, as additional security, and (5) the Mortgagor shall defend, indemnify and hold harmless the Mortgagee from and against all liability, loss, cost or damage which the Mortgagee shall suffer by reason of such non-compliance or contest,

including, without limitation, reasonable attorneys' fees and disbursements and other actual, out-of-pocket costs and expenses reasonably incurred by the Mortgagee.

1.3. Maintenance and Repair. The Mortgagor will: not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the use, operation or value of the Collateral or the security of this Mortgage; not remove or demolish any of the Improvements; pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; not make any changes, additions or alterations to the Premises except as required by any applicable governmental requirement or as otherwise approved in writing by the Mortgagee; maintain, preserve and keep the Goods and the Premises in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction, all as promptly as possible under the circumstances but in all cases in compliance with any time period provided under applicable requirements of governmental authorities and insurers; not commit, suffer, or permit waste of any part of the Premises; and maintain all grounds and abutting streets and sidewalks in good and neat order and repair.

1.4. Sales, Liens. The Mortgagor will not: sell, contract to sell, assign, transfer or convey, or permit to be transferred or conveyed, the Collateral or any part thereof or any interest or estate in any thereof (including any conveyance into a trust or any conveyance of the beneficial interest in any trust that may be holding title to the Premises) or remove any of the Collateral from the Premises; or create, suffer or permit to be created or to exist any mortgage, lien, claim, security interest, charge, encumbrance or other right or claim of any kind whatsoever upon the Collateral or any part thereof, except those of current taxes not then due and payable, and the Permitted Exceptions.

1.5. Access by Mortgagee. The Mortgagor will at all times: deliver to the Mortgagee either all of its executed originals (in the case of chattel paper or instruments) or (in all other cases), if requested by Mortgagee, certified copies of all Leases, agreements creating or evidencing Intangibles, Plans, Contracts for Construction, Contracts for Sale, Permits, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral; permit access at reasonable times and upon reasonable prior notice by the Mortgagee to the Mortgagor's books and records; permit the Mortgagee to inspect construction progress reports, tenant registers, sales records, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as the Mortgagee may reasonably request; and permit the Mortgagee and its agents and designees, to inspect the Premises at reasonable times.

1.6. Stamp and Other Taxes. If the federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any gross receipts or income tax on the Mortgagee's receipt of interest payments on the principal portion of the Advances), assessment or imposition upon this Mortgage, the Note, any of the Secured Obligations, or any of the other Loan Documents, the interest of the Mortgagee in the Collateral, or any of the foregoing, or upon the Mortgagee by reason of or as holder of any of the foregoing, or shall at any time or times require revenue

stamps to be affixed to this Mortgage, the Note, or any of the other Loan Documents, the Mortgagor shall pay all such taxes and stamps to or for the Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Mortgagor from paying the tax, assessment, stamp, or imposition to or for the Mortgagee, then all sums hereby secured shall become immediately due and payable at the option of the Mortgagee.

1.7. Insurance. The Mortgagor will at all times maintain or cause to be maintained on the Goods, the Premises and on all other Collateral, all insurance reasonably required at any time or from time to time by the Mortgagee and in any event all-risk property insurance covering, without limitation, fire, extended coverage, vandalism and malicious mischief, in an amount which is not less than 100% of the replacement cost of the Improvements and Goods without consideration for depreciation, with an inflation guard endorsement, insurance against business interruption and loss of rentals for such occurrences and in such amounts as the Mortgagee may reasonably require, and insurance against flood if required by the Federal Flood Disaster Protection Act of 1973 and regulations issued thereunder, and comprehensive general public liability insurance, protecting the Mortgagor in an amount acceptable to the Mortgagee, and all other insurance commonly or, in the judgment of the Mortgagee, prudently maintained by those whose business, improvement to, and use of real estate is similar to that of the Mortgagor, all in amounts satisfactory to the Mortgagee, and all of such insurance to be maintained in such form and with such companies as shall reasonably be approved by the Mortgagee, and to deliver to and keep deposited with the Mortgagee original certificates and certified copies of all policies of such insurance and renewals thereof, with premiums prepaid, and with standard non-contributory mortgagee and loss payable clauses satisfactory to the Mortgagee, and clauses providing for not less than 30 days' prior written notice to the Mortgagee of cancellation or material modification of such policies attached thereto in favor of the Mortgagee and successors and assigns of each. All of the above-mentioned original insurance policies or certified copies of such policies and certificates of such insurance satisfactory to the Mortgagee, together with receipts for the payment of premiums thereon, shall be delivered to and held by the Mortgagee. The liability insurance policies required hereunder shall name the Mortgagee as additional insured and loss payee. All renewal and replacement policies shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the expiring policies. The Mortgagor agrees that if an Event of Default shall then exist (other than an Event of Default related to the occurrence of an insured loss), then any casualty loss paid to the Mortgagee under any of such policies shall be applied, at the option of the Mortgagee, toward pre-payment of the Secured Obligations, or to the rebuilding or repairing of the damaged or destroyed Improvements or other Collateral, as the Mortgagee in its sole and unreviewable discretion may elect; provided, however, that any proceeds of insurance made available for the purpose of rebuilding or repairing of the damaged or destroyed Improvements or other Collateral shall be subject to and in accordance with the Mortgagee's standard construction lending conditions and to such other conditions as the Mortgagee may in its discretion impose; and provided further that no election made by Mortgagee under this section shall relieve Mortgagor of the duty to repair and restore. The Mortgagor hereby empowers the Mortgagee, in its discretion, to settle, compromise and adjust any and all claims or rights under any insurance policy maintained by the Mortgagor relating to the Collateral. In the event of foreclosure

of this Mortgage, transfer of title to the Premises by deed in lieu of foreclosure or other transfer of title to the Premises in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. Nothing contained in this Mortgage shall create any responsibility or obligation on the Mortgagee to collect any amounts owing on any insurance policy or resulting from any condemnation, to rebuild or replace any damaged or destroyed Improvements or other Collateral or to perform any other act hereunder. The Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

1.8. Eminent Domain. In case the Collateral, or any part or interest in any thereof, is taken by condemnation, the Mortgagor shall take all action reasonably required by the Mortgagee in order to protect Mortgagor's and Mortgagee's rights with respect to any such taking, including the commencement of, appearance in or prosecution of any appropriate action or proceeding. The Mortgagee is hereby empowered to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "Condemnation Awards") which may be paid for any property taken or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Mortgagee), and all Condemnation Awards so received shall be forthwith applied by the Mortgagee, as it may elect in its sole and unreviewable discretion, to the prepayment of the Advances or any of the other Secured Obligations, or, at the option of the Mortgagee, may be held by the Mortgagee as additional security for the Secured Obligations, or may be applied to the repair and restoration of any property not so taken or damaged, provided, however, that no election made by the Mortgagee under this section shall relieve the Mortgagor of the duty to repair and restore. The Mortgagor hereby empowers the Mortgagee, in the Mortgagee's absolute discretion to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof.

1.9. Governmental Requirements. The Mortgagor will at all times fully comply in all material respects with, and cause the Collateral and the use and condition thereof fully to comply in all material respects with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to the Mortgagor or the Collateral or the use thereof (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances, including, without limitation, Hazardous Substances), and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances, including, without limitation, Hazardous Substances) which are applicable to the Mortgagor or have been granted for the Collateral or the use thereof. Unless required by applicable law, or unless Mortgagee has otherwise first agreed in writing, the Mortgagor shall not make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was

delivered. The Mortgagor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and affecting the Premises or any part thereof without in each case obtaining the Mortgagee's prior written consent thereto.

1.10. No Mechanics' Liens. The Mortgagor will not suffer any construction, mechanic's, laborer's or materialmen's lien to be created or remain outstanding upon the Premises or any part thereof and will bond or otherwise discharge all such liens within thirty (30) days from the date of filing. The Mortgagor agrees to promptly deliver to the Mortgagee a copy of any notices that the Mortgagor receives with respect to any pending or threatened lien or the foreclosure thereof.

1.11. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, execute and record or file (at the Mortgagor's expense) such deeds, conveyances, mortgages and financing statements, obtain such title opinions, title insurance policy endorsements, acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as the Mortgagee may from time to time reasonably request to establish and maintain a valid and perfected first and prior lien on and security interest in the Collateral; maintain its office and principal place of business at all times at the address shown below; and keep all of its books and records relating to the Collateral on the Premises or at such address; and keep all tangible Collateral on the Real Estate except as the Mortgagee may otherwise consent in writing.

1.12. Utilities. The Mortgagor will pay or cause to be paid all utility charges incurred in connection with the Collateral promptly when due and maintain all utility services available for use at the Premises.

1.13. Contract Maintenance; Other Agreements; Leases. The Mortgagor will, for the benefit of the Mortgagee, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and restriction of the Mortgagor affecting the Premises or imposed on it under any agreement between Mortgagor and a third party relating to the Collateral or the Secured Obligations secured hereby, including, without limitation, the Leases, the Contracts for Sale, Contracts for Construction and the Intangibles (collectively, the "Third Party Agreements"), so that there will be no default thereunder and so that the Persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagee; and the Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such Person to avoid such performance. Without the prior written consent of the Mortgagee, the Mortgagor shall not (i) make or permit any termination or amendment of the rights of the Mortgagor under any Third Party Agreement; (ii) collect rents or the proceeds of any Leases or Intangibles more than 30 days before the same shall be due and payable; (iii) modify or amend any Leases, or, except where the lessee is in default, cancel or terminate the same or accept a surrender of the leased premises; (iv) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any Leases; or (v) in any other manner impair Mortgagee's rights and interest with respect to the Rents. The Mortgagor shall promptly deliver to the Mortgagee copies of any demands or notices of default received by the Mortgagor in connection with any Third Party Agreement and allow the Mortgagee the right, but not the obligation, to cure any such default. All security or other deposits, if any, received from tenants under the Leases shall be segregated and maintained in an account satisfactory to the Mortgagee and in compliance with

the law of the state where the Premises are located and with an institution satisfactory to the Mortgagee.

1.14. Environmental Matters. Mortgagor will investigate, clean up, remove or remediate any spill or release of Hazardous Substances at the Premises in accordance with the requirements of all Environmental Laws and will otherwise use, handle, store and dispose of all Hazardous Substances in accordance with the requirements of all Environmental Laws.

1.15. No Assignments; Future Leases. The Mortgagor will not cause or permit any Rents, Leases, Contracts for Sale, or other contracts relating to the Premises to be assigned, transferred, conveyed, pledged or disposed of to any party other than the Mortgagee without first obtaining the express written consent of the Mortgagee to any such assignment or permit any such assignment to occur by operation of law. In addition, the Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any Person, except Leases of storage space in the ordinary course of Mortgagor's business under Leases the form of which has been approved in writing by the Mortgagee which Leases are for a term not exceeding one year and are for a rental rate of at least equal to the then current market rate for similar space.

1.16. Assignment of Leases and Rents and Collections.

(a) All of the Mortgagor's interest in and rights under the Leases now existing or hereafter entered into, and all of the Rents, whether now due, past due, or to become due, and including all prepaid rents and security deposits, and all other amounts due with respect to any of the other Collateral, are hereby absolutely, presently and unconditionally assigned and conveyed to the Mortgagee to be applied by the Mortgagee in payment of all sums due under the Note, the other Secured Obligations and all other sums payable under this Mortgage. Prior to the occurrence of any Default, the Mortgagor shall have a license to collect and receive all Rents and other amounts, which license shall be terminated at the sole option of the Mortgagee, without regard to the adequacy of its security hereunder and without notice to or demand upon the Mortgagor, upon the occurrence of any Default. It is understood and agreed that neither the foregoing assignment to the Mortgagee nor the exercise by the Mortgagee of any of its rights or remedies under Article III hereof shall be deemed to make the Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or any portion thereof, unless and until the Mortgagee, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Collateral by any court at the request of the Mortgagee or by agreement with the Mortgagor, or the entering into possession of any part of the Collateral by such receiver, be deemed to make the Mortgagee a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof. Upon the occurrence of any Default, this shall constitute a direction to and full authority to each lessee under any Leases, each guarantor of any of the Leases and any other Person obligated under any of the Collateral to pay all Rents and other amounts to the Mortgagee without proof of the Default relied upon. The Mortgagor hereby irrevocably authorizes each such Person to rely upon and comply with any notice

or demand by the Mortgagee for the payment to the Mortgagee of any Rents and other amounts due or to become due.

(b) The Mortgagor shall apply the Rents and other amounts to the payment of all necessary and reasonable operating costs and expenses of the Collateral, debt service on the Secured Obligations and otherwise in compliance with the provisions of the Loan Documents.

(c) The Mortgagee shall have the right to assign the Mortgagee's right, title and interest in any Leases to any subsequent holder of this Mortgage or any participating interest therein or to any Person acquiring title to all or any part of the Collateral through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to the Mortgagee. Upon the occurrence of any Default, the Mortgagee shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Mortgage. The Mortgagee shall have the authority, as the Mortgagor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of the Mortgagor and to bind the Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Collateral.

1.17. The Mortgagee's Performance. If the Mortgagor fails to pay or perform any of its obligations herein contained (including payment of expenses of foreclosure and court costs), the Mortgagee may (but need not), as agent or attorney-in-fact of the Mortgagor, make any payment or perform (or cause to be performed) any obligation of the Mortgagor hereunder, in any form and manner deemed expedient by the Mortgagee, and any amount so paid or expended (plus reasonable compensation to the Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the rate of two percent (2%) above the interest rate provided for in Section 3 of the Loan Agreement (the "Default Rate"), shall be added to the principal debt hereby secured and shall be repaid to the Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, the Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the Collateral; complete construction; make repairs; collect rents; prosecute collection of the Collateral or proceeds thereof; obtain insurance and pay premiums therefor; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any obligation of the Mortgagor hereunder, the Mortgagee shall be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of the Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default or an Event of Default.

1.18. Subrogation. To the extent that the Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or the Mortgagor or any other Person pays any such sum with the proceeds of the loan secured hereby, the Mortgagee shall have and be entitled to a lien or other interest on the Collateral equal in priority to the lien or other interest discharged and the

Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit the Mortgagee in securing the Secured Obligations.

1.19. Reserve for Taxes, Assessments and Insurance. Upon request by the Mortgagee, following the occurrence of an Event of Default, the Mortgagor covenants and agrees to pay to the Mortgagee (or the Mortgagee's agent) monthly until all of the Secured Obligations have been paid in full, a sum equal to real estate taxes and assessments and insurance premiums next due upon the Premises (all as reasonably estimated by the Mortgagee or its agent) divided by the number of months to elapse before one month prior to the date when such taxes, and assessments and insurance premiums will become due and payable, such sums to be held by the Mortgagee without interest accruing thereon (except to the extent, if any, required by applicable law), to pay each of the said items.

All payments described above in this Section shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee (or its agent) to the foregoing items in such order as the Mortgagee shall elect in its sole but reasonable discretion. The Mortgagor shall also pay to the Mortgagee, at least 30 days prior to the due date of any taxes, and assessments levied on, against or with respect to the Premises, or any insurance premium due with respect to the Premises, such additional amount as may be necessary to provide the Mortgagee (or its agent) with sufficient funds to pay any such tax, assessment, and insurance premiums under this Section 1.19 at least 30 days in advance of the due date thereof.

The Mortgagee (or its agent) shall, within 20 days of receipt from the Mortgagor of a written request therefor together with such supporting documentation as the Mortgagee (or its agent) may reasonably require (including, without limitation, official tax bills or, as applicable, statements for insurance premiums), cause proper amounts to be withdrawn from such account and paid directly to the appropriate tax collecting authority or insurer. Even though the Mortgagor may have made all appropriate payments to the Mortgagee (or its agent) as required by this Mortgage, the Mortgagor shall nevertheless have full and sole responsibility at all times to cause all taxes, assessments and insurance premiums to be fully and timely paid, and the Mortgagee (or its agent) shall have no responsibility or obligation of any kind with respect thereto except with respect to payments required to be made by the Mortgagor hereunder for which the Mortgagee (or its agent) has received funds to cover such payments in full and all statements, invoices, reports or other materials necessary to make such payments, all not less than 30 days prior to the deadline for any such payment. If at any time the funds so held by the Mortgagee (or its agent) shall be insufficient to cover the full amount of all taxes, assessments and insurance premiums then accrued (as estimated by the Mortgagee or its agent) with respect to the then-current twelve-month period, the Mortgagor shall, within ten days after receipt of notice thereof from the Mortgagee (or its agent) deposit with the Mortgagee (or its agent) such additional funds as may be necessary to remove the deficiency. If the Premises are sold under foreclosure or are otherwise acquired by the Mortgagee, accumulations under this Section 1.19 may be applied to the Secured Obligations in such order of application as the Mortgagee may elect in its sole discretion.

1.20. Periodic Appraisals. If at anytime the Mortgagee shall determine in good faith that as a result of:

- (a) any law, regulation or guideline or any change or interpretation thereof;
- (b) any central bank or other fiscal, monetary or other governmental authority having jurisdiction over the Mortgagee or the activities of the Mortgagee requesting, directing or imposing a condition upon the Mortgagee (whether or not such request, direction or condition shall have the force of law); or
- (c) the Mortgagee, in its discretion deeming appropriate;

the Mortgagee may require that the Mortgagor provide at the Mortgagor's sole cost and expense, within forty-five (45) days after the Mortgagee's request (but not more than once during each calendar year), an update or supplement to the previously furnished appraisal for the Collateral indicating the present appraised fair market value of the Collateral.

1.21. Indemnity Clause. Without limiting any other rights hereunder or under applicable law, the Mortgagor does and shall indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all claims, losses, damages (including natural resources damages), liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including without limitation all reasonable attorneys' fees and expenses, arising directly or indirectly in whole or in part, out of any spill or attributable to the presence, use, generation, disposal, discharge, storage, release or threatened release of Hazardous Substances on, from, under or affecting the Premises, or transported to or from the Premises, whether prior to or during the term of the indebtedness secured hereby, and whether by the Mortgagor or any predecessor in title or any employees, agents, contractors, or subcontractors of the Mortgagor or any predecessors in title, or any third persons at any time occupying or present on the Premises.

1.22. Reasonable Attorney's Fees. Each Mortgagor, endorser, and guarantor jointly and severally agrees to pay all costs, reasonable attorneys' fees, paralegal fees, and expenses incurred in the event it becomes necessary for the Mortgagee to protect its security and/or in the event of collection, whether suit be brought or not, and if suit is brought said parties agree to pay the Mortgagee's costs and reasonable attorneys' fees, paralegal fees and expenses incurred therein including reasonable attorneys' fees, paralegal fees and expenses incurred upon appeal, if any.

1.23. Title Warranty. The Mortgagor covenants with the Mortgagee that the Mortgagor warrants the title to the premises.

ARTICLE IIDEFAULT

2.1. The occurrence of an "Event of Default" or "Default" under the terms and provisions of the Loan Agreement, any of the other Loan Documents or any of the other documents evidencing the Secured Obligations shall constitute an Event of Default or Default, respectively, under this Mortgage. In addition, it shall be an Event of Default hereunder if the Mortgagor shall fail to perform its obligations under any lease or other material contract relating to the Premises and such failure shall continue for thirty (30) days after notice from Mortgagee.

ARTICLE IIIREMEDIES

3.1. Acceleration. Upon the occurrence of any Event of Default under Section ~~2.1(1)~~, the entire indebtedness evidenced by the Note and all other Secured Obligations together with interest at the Default Rate shall become immediately due and payable. Upon the occurrence of any other Event of Default, the entire indebtedness evidenced by the Note and all other Secured Obligations together with interest thereon at the Default Rate shall, subject to the terms of the Loan Agreement and Note, at the option of the Mortgagee, without demand or notice of any kind to the Mortgagor or any other person, become immediately due and payable.

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

3.3. Foreclosure; Power of Sale; Receiver. Upon the occurrence of any Event of Default, the Mortgagee shall also have the right immediately to foreclose this Mortgage or otherwise enforce the lien of this Mortgage. Upon the filing of any complaint for any such purpose, the court in which such complaint is filed may, upon application of the Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to the Mortgagor or to any party claiming under the Mortgagor and without regard to the solvency or insolvency at the time of such application of any Person then liable for the payment of any of the Secured Obligations, without

regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, appoint a receiver for the benefit of the Mortgagee, with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all Rents during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption.

Proceeds of any such sale (whether pursuant to power of sale or otherwise) shall be applied to the payment (in whole or in part) of any or all of the Secured Obligations, including without limitation the following, in such order of application as the Mortgagee may elect: (i) amounts due under the Note, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises, (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all moneys advanced by the Mortgagee to cure or attempt to cure any Default by the Mortgagor in the performance of any obligation or condition contained in any Loan Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any Loan Documents, with interest on such advances at the Default Rate. The surplus of the proceeds of sale, if any, shall then be paid to the Mortgagor, upon reasonable request. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as the Mortgagee may elect, until all of the Premises have been foreclosed against and sold. As part of the foreclosure, the Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided herein. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by applicable law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof. In the case of any sale of the Premises pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor), all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security, including court costs, reasonable attorneys' fees, stenographers' fees, costs of advertising, appraisals and environmental investigations, including the costs of the preparation of phase I and phase II surveys of the Premises, and costs of title insurance and any other documentary evidence of title, shall be paid by the Mortgagor and shall become part of the indebtedness secured by this Mortgage.

In addition to, and not in lieu of, the rights of the Mortgagee set forth above, if an Event of Default shall have occurred, the Mortgagee may, at its option, whether or not possession of the Premises is taken, sell the Premises (or such part or parts thereof as the Mortgagee in its sole and absolute discretion may from time to time elect to sell) at public outcry to the highest bidder for cash in front of the court house door in the county where such property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in a newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the property so purchased. Mortgagee may bid at said sale and purchase said Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee in its sole and absolute discretion may elect. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money.

3.4. Possession of the Premises; Remedies for Leases and Rents. The Mortgagor hereby waives all right to the possession, income, and rents of the Premises from and after the occurrence of any Event of Default, and the Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof. If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled, in its sole discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases and other Collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its sole discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to the Mortgagor or any other Person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall

have full power to use and apply the Rents to the payment, in such order as Mortgagee may determine, of or on account of any one or more of the following: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to the payment of any Secured Obligations. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice of Default hereunder or invalidate any act done pursuant to any such Event of Default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by the Mortgagee or a receiver and the collection, receipt and application of the Rents, the Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of an Event of Default. Any of the actions referred to in this Section 3.4 may be taken by the Mortgagee irrespective of whether any notice of Default has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured.

3.5. Personal Property. If any Event of Default shall occur, the Mortgagee may exercise from time to time any rights and remedies available to it under the Loan Documents or applicable law upon default in payment of indebtedness, including, without limitation, those available to a secured party under the Uniform Commercial Code of the state where the goods are located. The Mortgagor shall, promptly upon request by the Mortgagee, make the Collateral available to the Mortgagee at such place or places of business where it is customarily kept by the Mortgagor. The Mortgagor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings, or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies after an Event of Default occurs. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed by registered or certified mail, return receipt requested, at least five (5) days before such disposition, postage prepaid, addressed to the Mortgagor either at the address shown below or at any other address of the Mortgagor appearing on the records of the Mortgagee. Without limiting the generality of the foregoing, whenever there exists an Event of Default hereunder, the Mortgagee may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any Person obligated on the Collateral to perform directly for the Mortgagee its obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the

Collateral may be located and take possession of and remove such Collateral and render all or any part of the Collateral unusable, all without being responsible for loss or damage, (vi) sell any or all of the Collateral, free of all rights and claims of the Mortgagor therein and thereto, at any lawful public or private sale and on such terms as the Mortgagee deems advisable, and (vii) bid for and purchase any or all of the Collateral at any such public or private sale. Any proceeds of any disposition by the Mortgagee of any of the Collateral may be applied by the Mortgagee to the payment of expenses in connection with the Collateral, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by the Mortgagee toward the payment of such of the Secured Obligations and in such order of application as the Mortgagee may from time to time elect. Without limiting the foregoing, the Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder. The Mortgagor hereby constitutes the Mortgagee its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Event of Default and, as the Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Secured Obligations are outstanding. Mortgagor shall remain liable for any deficiency resulting from the sale of the Collateral and shall pay such deficiency forthwith upon demand, and the Mortgagee's right to recover such deficiency shall not be impaired by the sale or other disposition of Collateral without required notice. Expenses of retaking, holding, preparing for sale, selling or the like will first be paid from the proceeds before the balance will be applied toward any Secured Obligations.

3.6. No Liability on Mortgagee. Notwithstanding anything contained herein, the Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the Third Party Agreements or otherwise. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises (including but not limited to use, storage, manufacture, discharge or transportation of hazardous waste or substances, including, without limitation, Hazardous Substances, by the Mortgagor) or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other Person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers granted to it under this Mortgage, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Third Party Agreements or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and reasonable attorneys' fees.

3.7. Transfer of Premises by Mortgagor. To induce the Mortgagee to extend credit under the Loan Agreement, the Mortgagor agrees that in the event of any transfer (by sale, lease, operation

of law or otherwise) of the Premises without the prior written consent of the Mortgagee, the Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Any transfer consented to by the Mortgagee shall be made subject to this Mortgage, and any such transferee shall assume the obligations of the Mortgagor hereunder, without releasing Mortgagor therefrom.

ARTICLE IV

GENERAL

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

4.2. Legal Expenses. The Mortgagor agrees to indemnify the Mortgagee from all loss, damage and expense, including (without limitation) reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which the Mortgagee may be made or become a party for the purpose of protecting the lien or priority of this Mortgage.

4.3. Security Agreement; Fixture Filing; Future Advances.

(a) This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the Premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Office of the Judge of Probate of the County in which the Premises are located with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures. For purposes of the foregoing, the Mortgagor is the debtor (with its address as set forth below), the Mortgagee is the secured party (with its address as set forth below). If any item of Collateral hereunder also constitutes collateral granted to the Mortgagee under any other mortgage, agreement,

document, or instrument, in the event of any conflict between the provisions of this Mortgage and the provisions of such other mortgage, agreement, document, or instrument relating to the Collateral, the provision or provisions selected by the Mortgagee shall control with respect to the Collateral.

(b) This Mortgage is granted to secure, among other Secured Obligations, future advances and loans (whether obligatory, made at the option of Mortgagee or otherwise) from the Mortgagee to or for the benefit of the Mortgagor or its successors or assigns or the Premises, as provided in the Loan Agreement, and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage, the Loan Agreement and the other Loan Documents. All advances, disbursements or other payments required by the Loan Agreement are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all construction and mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded.

4.4. Defeasance. Upon full payment of all indebtedness secured hereby and satisfaction of all the Secured Obligations in accordance with their respective terms and at the time and in the manner provided, and when the Mortgagee has no further obligation to make any advance, or extend any credit hereunder, under the Note or any Loan Documents, this conveyance shall be null and void, and thereafter, upon demand therefor, an appropriate instrument of reconveyance or release shall promptly be made by the Mortgagee to the Mortgagor, at the expense of the Mortgagor.

4.5. Notices. All notices, demands and other communications provided for hereunder shall be given in accordance with the notice provisions of the Loan Agreement to the parties hereto at the addresses set forth in the Preamble hereof.

4.6. Successors; the Mortgagor; Gender; Severability. All provisions hereof shall bind the Mortgagor and the Mortgagee and their respective successors, vendees and assigns and shall inure to the benefit of the Mortgagee, its successors and assigns, and the Mortgagor and its permitted successors and assigns. THE MORTGAGOR CONSENTS TO THE ASSIGNMENT BY MORTGAGEE OF ALL OR ANY PORTION OF ITS RIGHTS UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS. THE MORTGAGOR ACKNOWLEDGES AND AGREES THAT ANY AND ALL RIGHTS OF MORTGAGEE UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS MAY BE EXERCISED FROM TIME TO TIME BY ANY ASSIGNEE OR SUCCESSOR OF THE MORTGAGEE. The Mortgagor shall not have any right to assign any of its rights hereunder. Except as limited by the preceding sentence, the word "Mortgagor" shall include all Persons claiming under or through the Mortgagor and all Persons liable for the payment or performance by the Mortgagor of any of the Secured Obligations whether or not such Persons shall have executed the Note or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or the

remaining provisions of this Mortgage, it being the parties' intention that this Mortgage and each provision hereof be effective and enforced to the fullest extent permitted by applicable law.

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

4.8. No Waiver; Writing. No delay on the part of the Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

4.9. Governing Law. This Mortgage shall be a contract made under and governed by the internal laws of the State where the Premises are located.

4.10. Waiver. The Mortgagor, on behalf of itself and all Persons now or hereafter interested in the Premises or the Collateral, to the fullest extent permitted by applicable law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Secured Obligations secured by this Mortgage, and the Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Collateral. Without limiting the generality of the preceding sentence, the Mortgagor, on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. The Mortgagor, for itself and for all Persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

4.11. JURY TRIAL. THE MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY LOAN DOCUMENTS TO

WHICH IT IS A PARTY, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

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

4.13. Time of Essence and Severability. Time is declared to be of the essence in this Mortgage, the Loan Agreement, the Note and the Loan Documents and of every part hereof and thereof. If the Mortgagee chooses to waive any covenant, section, or provision of this Mortgage, or if any covenant, section, or provision of this Mortgage is construed by a court of competent jurisdiction to be invalid or unenforceable, it shall not affect the applicability, validity, or enforceability of the remaining covenants, sections, or provisions.

4.14. Matters to Be in Writing. This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

4.15 Agent. To the extent that any action is to be taken, any information is to be delivered to or by Mortgagee, any determination is to be made, or any consent is to be given or withheld by Mortgagee, any such action, delivery, determination or consent shall be taken, made or given or withheld, as the case may be, by Agent or any successor agent thereto.

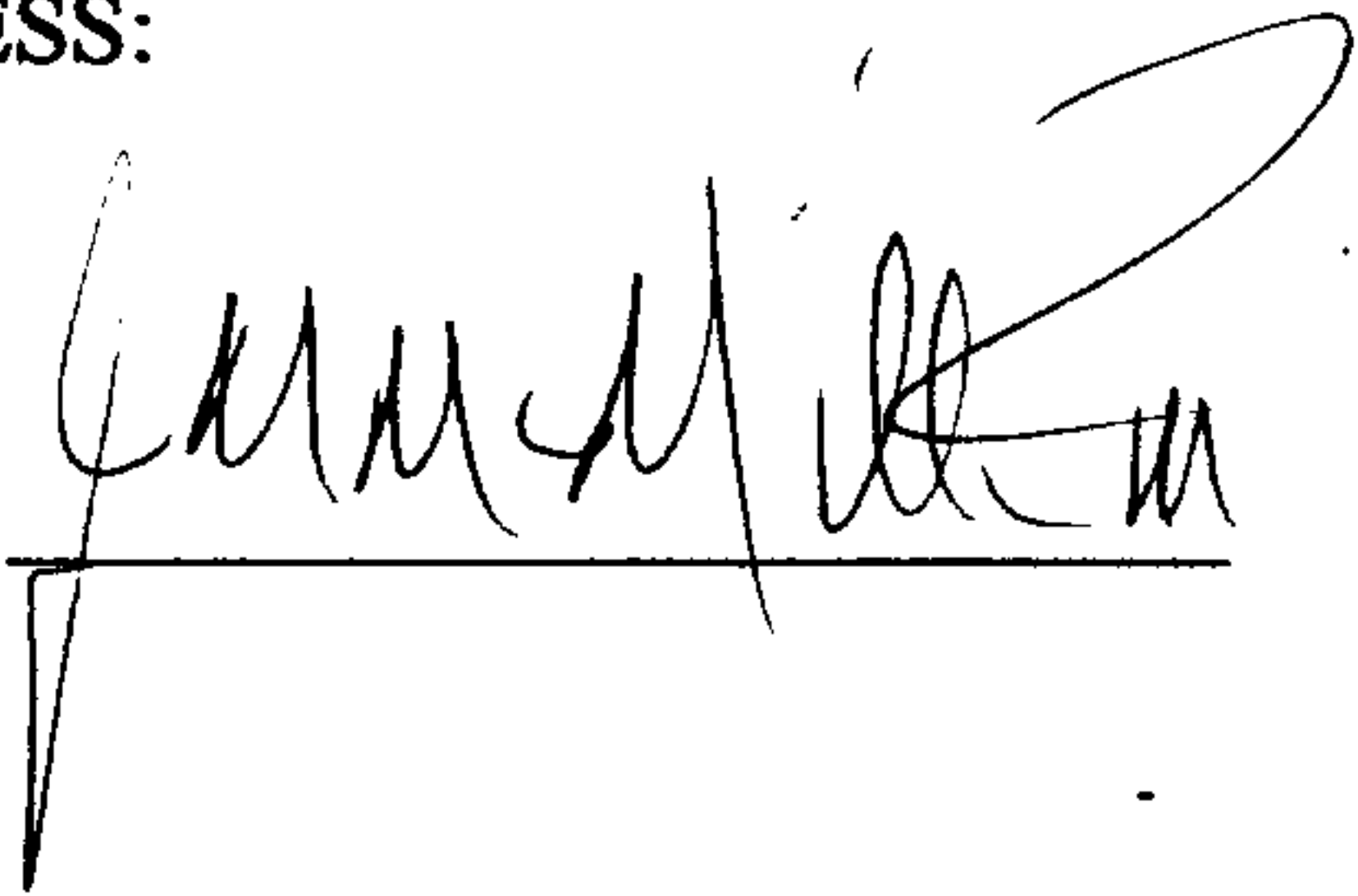
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4.16. Sole Discretion of Mortgagee. Whenever Mortgagee's judgment, consent or approval is required hereunder for any matter, or Mortgagee shall have an option or election hereunder, such judgment, the decision as to whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Mortgagee.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Mortgage on the day and year first above written.

WITNESS:

Name:

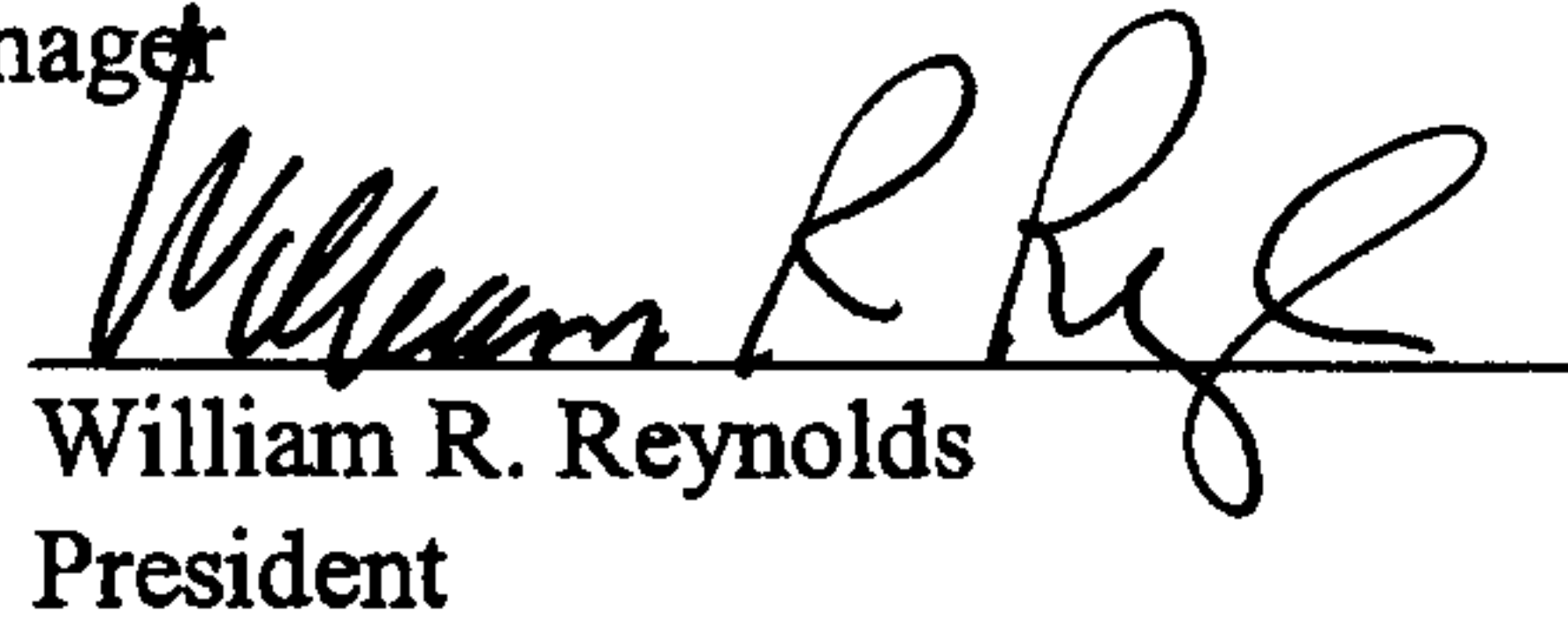


MORTGAGOR:

R&L FOODS, LLC,
a Delaware limited liability company

By: Wen-Virala, Inc.,
a Delaware corporation,
its Manager

By:


William R. Reynolds
President

ACKNOWLEDGMENT

STATE OF Alabama)
)
Jefferson COUNTY)

I, the undersigned Notary Public in and for said County and State, hereby certify that WILLIAM R. REYNOLDS, whose name as President of Wen-Viral, Inc., a Delaware corporation, in its capacity as Manger of R&L Foods, LLC, a Delaware limited liability company, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as Manager as aforesaid.

Given under my hand and official seal, this the 22nd day of December, 2003.

Paula Denise Hear
Notary Public
My Commission Expires: 7-26-2005

EXHIBIT A

DESCRIPTION OF LAND

[See attached pages]

STORE #1252

Lots 8-D and 8-E, according to a Resurvey, as recorded in Map Book 106, page 83, in the Probate Office of Jefferson County, Alabama, of a Resurvey of Lot 8-A, Block 1, and the Fourth Sector of Lot 1-A, of a Resurvey of Lot 1, Block 2, Beacon Park.

STORE ADDRESS: 345 Valley Avenue, Birmingham, AL

STORE #1253 AL 4

Lot 2, according to the Survey of Third Addition to East Town, as recorded in Map Book 86, page 57, in the Probate Office of Jefferson County, Alabama.

STORE ADDRESS: 9870 Parkway East, Birmingham, AL 35215

STORE NO. 1257 AL 7

Lots 13, 14, 15, 16 and 17, Block 7, according to the Survey of Midfield Sector A, as recorded in Map Book 16, page 6, in the Probate Office of Jefferson County, Alabama, Bessemer Division.

STORE ADDRESS: 104 Bessemer Super Highway, Midfield, AL 35228

STORE #1289

Lot 2, except the South 15 feet, and all of Lot 3, according to the Survey of Center Point Gardens, as recorded in Map Book 25, page 65, in the Probate Office of Jefferson County, Alabama.

STORE ADDRESS: 2007 Centerpoint Parkway, Birmingham, AL

STORE #1658 AL 22

PARCEL I:

Commence at the SW corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14, Township 16 South, Range 1 West in Jefferson County, Alabama; thence East along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ a distance of 378.89 feet; thence left $90^{\circ}00'$ and run 576.79 feet; thence right $95^{\circ}55'30''$ and run 262.74 feet; thence right $90^{\circ}00'$ and run 25.00 feet; thence left $90^{\circ}00'$ and run 307.00 feet; thence left $90^{\circ}00'00''$ and run 16.51 feet to the point of beginning; thence right $89^{\circ}04'34''$ and run along the Northerly right of way line of Chalkville-Trussville Road as described in Volume Book 4064, page 155-156, in the Probate Office of Jefferson County, Alabama a distance of 202.81 feet; thence left $48^{\circ}07'48''$ and run a distance of 10.82 feet to the intersection of the West line of Green Drive, said point being on a curve to the right and having the following described characteristics: a delta of $10^{\circ}48'58''$, a radius of 1178.06 feet; thence with a deflection left $40^{\circ}31'17''$ from last mentioned line to chord of said curve and run along arc of said curve and along said Westerly right of way a distance of 222.39 feet said arc being subtended by a chord distance of 222.06 feet; thence deflect left $90^{\circ}25'29''$ (measured from chord from last described curve); thence leaving said Westerly right of way and running along the Southerly line of Parcel II as described in Book 3371, page 441, in the Probate Office of Jefferson County, Alabama a distance of 211.52 feet; thence left $90^{\circ}00'00''$ and run a distance of 233.49 feet to the point of beginning.

PARCEL II:

Non-exclusive ingress/egress, temporary construction and permanent storm sewer easement, being part of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 14, Township 16 South, Range 1 West, Jefferson County, Alabama and being more particularly described as follows:

From the Southwest corner of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 14, run East along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 378.89 feet; thence turn an angle to the left of 90° and run Northerly for a distance of 576.79 feet to a point on the Northerly right of way line of the Chalkville-Trussville Road; thence turn an angle to the right of $95^{\circ}55'30''$ and run Southeasterly along said right of way line for a distance of 262.74 feet; thence turn an angle to the right of 90° and run Southwesterly a distance of 25.00 feet; thence turn an angle to the left of 90° and run Southeasterly a distance of 107.00 feet; thence turn an angle to the left of 90° and run Northeasterly 250 feet; thence turn an angle to the right of 90° and run Southeasterly 150 feet to the point of beginning; thence turn an angle to the left of 90° and run Northeasterly 50 feet; thence turn an angle to the right of 90° and run 267.05 feet more or less to the Westerly right of way of Green Drive; thence turn an angle to the right of $96^{\circ}22'30''$ and run 41.58 feet along said right of way to the point of tangent of a curve to the left, said curve having a radius of 1178.06 feet and central angle of $0^{\circ}25'20''$ and a chord length of 8.68 feet; thence run along the arc of said curve 8.68 feet; thence turn an angle of $81^{\circ}57'26''$ to the right from the chord of said arc and run 261.52 feet Northwesterly to the point of beginning.

PARCEL III:

Easement for lateral line and septic tank field lines across a part of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 14, Township 16 South, Range 1 West, Jefferson County, Alabama, said parcel being more particularly described as follows:

Commencing at the SE corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14, Township 16 South, Range 1 West, Jefferson County, Alabama; thence run North along the East line of said section a distance of 460.24 feet to the point of beginning; thence continue along the last described course a distance of 291.04 feet to the Southeast corner of the new Booster Station as recorded in Book 2998, page 439; thence left $76^{\circ}50'22''$ and run a distance of 67.95 feet to the Southwest corner of said Booster Station, said point also being on the Easterly right of way of Green Drive (60 foot ROW); thence left $89^{\circ}48'25''$ and run Southerly along said right of way a distance of 55.01 feet to a point of a curve to the left and having the following described characteristics: a delta of $10^{\circ}37'37''$, a radius of 1118.06 feet; thence left $05^{\circ}18'47''$ (measured from last STORE ADDRESS: 1101 North Chalkville Road, Trussville, AL

STORE NO. 1981 AL 25

A parcel of land located in the Southwest $\frac{1}{4}$ of Section 36, Township 19 South, Range 4 West, in Jefferson County, Alabama, and being more particularly described as follows:

As a starting point start at the Northwest corner of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 36; thence run South $01^{\circ}38'41''$ East and along the West boundary of said Section 36 for a distance of 360.00 feet to a point; thence North $69^{\circ}39'09''$ East for a distance of 38.55 feet to a point on the East right of way of Morgan Road, a 60 foot right of way; thence run South $03^{\circ}46'19''$ East and along the East right of way of Morgan Road for a distance of 139.71 feet to a point; thence continue South $08^{\circ}08'04''$ East and along the curving right of way of said Morgan Road for a chord distance of 157.10 feet to the point of beginning of the parcel herein described; thence run North $86^{\circ}30'39''$ East for a distance of 182.36 feet to a point; thence run South $11^{\circ}29'33''$ East for a distance of 210.11 feet to a point; thence run South $80^{\circ}00'15''$ West for a distance of 150.18 feet to a point on the East right of way of said Morgan Road, said point being on a curve to the right having a delta of $12^{\circ}59'$ and a radius of 1,033.08 feet; thence run North $18^{\circ}59'10''$ West to the chord and along said curving right of way for a chord distance of 233.57 feet (arc distance 234.07 feet) to the point of beginning of the parcel herein described.

TOGETHER WITH rights acquired under Declaration of Easements dated 10-5-1995, and recorded in Bessemer Real 1111, page 969, in the Probate Office of Jefferson County, Alabama.

STORE ADDRESS: 2931 Morgan Road, Bessemer, AL

STORE #2516 AL 28

Lot 4, according to the Survey of Cole Commercial Subdivision, as recorded in Map Book 172, page 11, in the Probate Office of Jefferson County, Alabama, less and except any portion conveyed to the State of Alabama by instrument recorded under Instrument 9406/4132, being more particularly described as follows:

Begin at the Northernmost corner of Lot 4 as shown on the map of Cole Commercial Subdivision; thence run Southeasterly along the Northeast lot line of said Lot 4 for a distance of 370.31 feet to a point on the Northwestern right of way line of U.S. Highway No. 11, said point being 50.00 feet, measured at right angle, from the centerline of said highway, said point being on a curve to the left having a central angle of $0^{\circ}55'57''$, a radius of 6268.41 feet, and a chord of 102.02 feet which forms an interior angle to the left of $93^{\circ}11'28''$ with the last described course; thence run Southwesterly along said curve for an arc distance of 102.02 feet to the point of tangency; thence run Northwesterly and radial to said curve for a distance of 10.00 feet to a point on said Northwesterly right of way line which is 60.00 feet, measured at right angle, from the centerline of said highway, said point being on a curve to the left, concentric with the previous curve, and have a central angle of $0^{\circ}56'36''$, a radius of 6278.41 feet, and a chord of 103.35 feet; thence run Southwesterly along said right of way line and along said curve for an arc distance of 103.35 feet to the point of curvature of a nontangent curve to the right having a central angle of $10^{\circ}38'19''$, a radius of 25.00 feet, and a chord of 4.64 feet which forms an interior angle to the left of $96^{\circ}02'36''$ with the chord of the previous curve; thence run Northwesterly along said curve and along the Northeasterly right of way line of Edwards Lake Parkway for an arc distance of 4.64 feet to the point of tangency; thence run Northwesterly and tangent to said curve for a distance of 320.19 feet to the point of curvature of a tangent curve to the right having a central angle of $77^{\circ}37'14''$ and a radius of 25.00 feet; thence run Northerly along said curve for an arc distance of 33.87 feet to the point of tangency, said point being on the Southeasterly right of way line of Morrow Road and being the point of compound curvature of a tangent curve to the right have a central angle of $21^{\circ}34'43''$ and a radius of 573.29 feet; thence run Northeasterly along said curve and along said right of way line for an arc distance of 215.91 feet to the point of tangency; thence run Northeasterly along said right of way line and tangent to said curve for a distance of 2.69 feet to the point of beginning.

All situated in Jefferson County, Alabama.

STORE ADDRESS: 3211 Edwards Lake Parkway, Birmingham, AL 35253

STORE #1261 AL 10

Lot A, according to the Survey of B & S Foods Plat 1, as recorded in Map Book 27, page 180, in the Probate Office of Montgomery County, Alabama.

STORE ADDRESS: 2231 East South Boulevard, Montgomery, AL

STORE #1263

Lot "A", according to the Map of B & S Foods Plat 2, as said Map appears of record in the Office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 28, at page 207.

ALSO, a non-exclusive easement of access to Grantee, its invitees, licensees, tenants, successors and assigns, subject to similar rights of access to Grantor, his tenants, invitees, licensees, heirs and assigns, over and through the following described property, to-wit:

Begin at the Northeast corner of Lot Number 49, Block Number 5, of the Irvin Place Plat as recorded in Plat Book 5, page 12-14, said point of beginning being on the West boundary of Panama Street; thence South 59°39' West along the North edges of Lots 49, 48 and 47, of the Irvin Place Plat a distance of 229.0 feet to an iron pin; thence North 24°59' West a distance of 20.09 feet to a small hole in a concrete pavement; thence North 69°39' East a distance of 242.0 feet to an iron pin on the West boundary of Panama Street; thence South 6°18' West along the West boundary of said street a distance of 24.93 feet to an iron pin and to the said point of beginning. The above described tract being a non-exclusive access easement and lying and being in the City and County of Montgomery, State of Alabama.

AND, ALSO, a non-exclusive parking easement for parking space for 25 vehicles to Grantees, its invitees, licensees, tenants, successors and assigns, with all rights of ingress and egress thereto, over, on and through the following described property, subject to similar rights of parking and access in spaces additional to those set aside herein to Grantor, his invitees, licensees, tenants, heirs and assigns, to-wit:

Commence at the Northeast corner of Lot Number 49, Block Number 5, of the Irvin Place Plat as recorded in Plat Book 5, page 12-14, said point being on the West side of Panama Street; thence North 6°18' East along the West side of said street a distance of 24.93 feet to an iron pin; thence South 59°39' North a distance of 24.25 feet to a nail in concrete pavement, said nail being the point of beginning; thence South 59°39' West a distance of 50.0 feet to a nail in concrete pavement; thence North 34°17' West a distance of 50.0 feet to a nail in concrete pavement; thence North 34°17' West a distance of 189.65 feet to a railroad spike in asphalt pavement on the South boundary of Mt. Meigs Road; thence North 57°00' East along the South boundary of said road a distance of 64.6 feet to a railroad spike in asphalt pavement; thence South 29°54' East a distance of 192.2 feet to a nail in concrete pavement and to the said point of beginning. The above described tract being for a non-exclusive parking easement and lying and being in the City and County of Montgomery, State of Alabama.

Easement for use of encroaching improvements located on above described parking easement as per that certain Easement from McGehee-Branch Road Estate Investment Partnership to Grantee dated 11-16-78, in the Probate Office of Montgomery County, Alabama.

ADDRESS: 2280 Mt. Meigs Road, Montgomery, AL 36107

STORE #1264 AL 13

Lot 1, Block A, according to the Survey of Leon Obenhaus Plat No. 1, as recorded in Map Book 31, page 163, in the Probate Office of Montgomery County, Alabama.

STORE ADDRESS: 1195 West South Boulevard, Montgomery, AL

STORE #1265 AL 14

Parcel C, according to the Plat of Vaughn Plaza Shopping Center Plat, No. 1, as said Plat appears of record in the Office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 31, at page 244.

TOGETHER WITH all of the benefits and easements set forth and described in that certain Declaration of Restrictions and Grant of Easements dated 4-21-83, and recorded in Real Property Book 606, at page 154, in the Probate Office of Montgomery County, Alabama, as amended by Modification of Declaration of Restrictions and Grant of Easements dated 6-16-83, and recorded in Real Property Book 619, at page 378, in said Office, and as further amended by Second Modification of Declaration of Restrictions and Grant of Easements dated 3-30-84, and recorded in Real Property Book 661, at page 811, in said Office, appertain to the subject property.

STORE ADDRESS: 5010 Vaughn Road, Montgomery, AL

STORE #1266 AL 15

Lot 1, according to the Survey of Taylor Plat No. 1-A, as recorded in Map Book 32, page 241, in the Probate Office of Montgomery County, Alabama.

STORE ADDRESS: 1414 Ann Street, Montgomery, AL

STORE #1308 AL 17

Lot 1, according to Wendy's Plat No. 1, more particularly described as follows:

Starting at the intersection on the North right of way of Madison Avenue and the West right of way of Union Street located in the City of Montgomery, Alabama, go Westerly along the North right of way of said Madison Avenue 50.00 feet to the Southwest corner of an existing brick building and being also the point of beginning; thence continue along the North right of way of Madison Avenue North $89^{\circ}55'52''$ West, 151.44 feet; thence North $00^{\circ}22'19''$ East, 161.85 feet; thence North $00^{\circ}11'34''$ West, 161.94 feet to the South right of way of Jefferson Street; thence along the South right of way of Jefferson Street North $89^{\circ}55'10''$ East, 101.51 feet; thence South $00^{\circ}18'09''$ East, 160.63 feet; thence North $89^{\circ}50'51''$ East, 100.10 feet to the West right of way of Union Street; thence along the West right of way of Union Street South $00^{\circ}25'55''$ West, 50.45 feet to the Northeast corner of an existing brick building; thence along the North wall of said building North $89^{\circ}43'07''$ West, 50.06 feet to the Northwest corner of said building; thence along the West wall of said building South $00^{\circ}32'41''$ West, 113.55 feet to the Southwest corner of said building and the point of beginning.

Said parcel of land lying in the City of Montgomery, Alabama.

ALSO being known as Madison Avenue & Union Street, Montgomery, Alabama.

STORE ADDRESS: 625 Madison Avenue, Montgomery, AL

STORE #3942

Lot B, according to the survey of Northchase, Plat No. 4, as same is recorded in the Office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 47, page 181.

STORE ADDRESS: 2545 Congressman W.M. Dickinson Drive, Montgomery, AL

STORE #4218 AL 30

Lot A, according to the Survey of Wendy's at Eastchase Plat No. 1, as recorded in Map Book 48, page 90, in the Probate Office of Montgomery County, Alabama.

STORE ADDRESS: Taylor Road, Montgomery, AL

STORE #1258 AL 8

Lot 1, according to the Survey of Colonial Properties Subdivision, as recorded in Map Book 8, page 138, in the Probate Office of Shelby County, Alabama.

LESS AND EXCEPT that portion conveyed to the State of Alabama in Book 277, page 930, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH easement rights as defined in Declaration of Restrictions and grant of easements recorded in Volume 53, page 375, in and to Lot 2, according to the Survey of Colonial Properties Subdivision, as recorded in Map Book 8, page 138, in the Probate Office of Shelby County, Alabama.

STORE ADDRESS: 4671 Highway 280 East, Birmingham, AL 35223

STORE: #1736

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PARCEL I:

Commence at the Northwest corner of the Southeast $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the Southeast $\frac{1}{4}$ for a distance of 329.53 feet, thence turn an angle to the right of $60^{\circ}17'38''$ and run in a Southeasterly direction for a distance of 1009.25 feet to the point of beginning, from the point of beginning thus obtained continue along the last described course for a distance of 250.00 feet to a point on the Northwest right of way of Alabama Highway No. 119, thence turn an angle to the right of $88^{\circ}6'12''$ and run in a Southwesterly direction along the Northwest right of way for a distance of 160.00 feet, thence turn an angle to the right of $91^{\circ}53'48''$ and run in a Northwesterly direction for a distance of 250.00 feet, thence turn an angle to the right of $88^{\circ}6'12''$ and run in a Northeasterly direction for a distance of 160.00 feet to the point of beginning.

PARCEL II:

A SLOPE EASEMENT OVER THE FOLLOWING DESCRIBED PARCEL:

Commence at the Northwest corner of the Southeast $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the Southeast $\frac{1}{4}$ for a distance of 329.53 feet; thence turn an angle to the right of $60^{\circ}17'38''$ and run in a Southeasterly direction for a distance of 979.25 feet to the point of beginning; thence $88^{\circ}06'12''$ right in a Southwesterly direction for a distance of 220 feet; thence $88^{\circ}06'12''$ left in a Southeasterly direction for a distance of 280 feet to a point on the Northwesterly right of way line of Alabama Hwy. #119; thence $91^{\circ}53'48''$ left in a Northeasterly direction and along said right of way line for a distance of 50 feet; thence $88^{\circ}06'12''$ left in a Northwesterly direction for a distance of 250 feet; thence $88^{\circ}06'12''$ right in a Northeasterly direction for a distance of 160 feet; thence $88^{\circ}06'12''$ left in a Northwesterly direction for a distance of 30 feet to the point of beginning.

PARCEL III:

A PERPETUAL NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PARCEL:

Commence at the Northwest corner of the Southeast $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the southeast $\frac{1}{4}$ for a distance of 329.53 feet; thence turn an angle to the right of $60^{\circ}17'38''$ and run in a Southeasterly direction for a distance of 979.25 feet; thence $88^{\circ}06'12''$ right in a Southwesterly direction for a distance of 220 feet; thence $88^{\circ}06'12''$ left in a Southeasterly direction for a distance of 215 feet to the point of beginning; thence continue along last described course a distance of 65 feet to a point on the Northwesterly right of way line of Alabama Hwy #119; thence $91^{\circ}53'48''$ left in a Northeasterly direction and along said right of way line for a distance of 60 feet; thence $88^{\circ}06'12''$ left in a Northwesterly direction for a distance of 65 feet; thence $91^{\circ}53'48''$ left in a Southwesterly direction for a distance of 60 feet to the point of beginning.

STORE ADDRESS: 579 Cahaba Valley Road, Pelham, AL

STORE #1757 AL 24

A parcel of land located in the Northwest $\frac{1}{4}$ of Section 7, Township 21 North, Range 15 East in Chilton County, Alabama, being more particularly described as follows:

As a starting point, start at the Southeast corner of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 7; thence run North $00^{\circ}34'00''$ West a distance of 838.85 feet (North $00^{\circ}34'00''$ West a distance of 841.30 feet, deed) to a point on the North right of way of Woodfin Lane, a 40 foot right of way; thence run North $37^{\circ}22'05''$ West for a distance of 58.94 feet (North $36^{\circ}30'$ West a distance of 58.2 feet, deed) and along said right of way to the point of beginning of the parcel herein described; thence run North $37^{\circ}22'05''$ West a distance of 236.14 feet (North $36^{\circ}30'$ West, deed) and along said right of way to a point; thence run North $41^{\circ}49'27''$ East a distance of 184.81 feet to a point on the South right of way of U.S. Highway No. 31, a 120 foot right of way; thence run South $50^{\circ}09'23''$ East and along said right of way for a distance of 71.14 feet to a point, said point being T.S. Station 1200+44.7, said point being the beginning of a spiral curve having a center line delta of $20^{\circ}10'$ to the right, degree of curve of $02^{\circ}10'$, spiral length of 400.0 feet; thence run South $59^{\circ}42'23''$ East and along said right of way a chord distance of 87.00 feet to a point; thence run South $25^{\circ}22'48''$ West a distance of 272.40 feet (South $26^{\circ}13'52''$ West, deed) to the point of beginning of the parcel herein described.

STORE ADDRESS: 1305 7th Street, South Clanton, AL

ANNEX IMORTGAGE

1. That certain Promissory Note-Floating-Cash Flow Sweep dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$2,000,000, as modified or amended from time to time.
2. That certain Promissory Note-Floating-Business Value dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$4,000,000, as modified or amended from time to time.
3. That certain Promissory Note-Floating-Real Estate Value I dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$4,000,000, as modified or amended from time to time.
4. That certain Promissory Note-Floating-Real Estate Value II dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$4,000,000, as modified or amended from time to time.
5. That certain Promissory Note-Fixed-Real Estate Value I dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$5,000,000, as modified or amended from time to time.
6. That certain Promissory Note-Fixed-Real Estate Value II dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$5,000,000, as modified or amended from time to time.
7. That certain Promissory Note-Fixed-Real Estate Value III dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$3,000,000, as modified or amended from time to time.
8. That certain Promissory Note-Fixed-Business Value I dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$1,400,000, as modified or amended from time to time.

9. That certain Promissory Note-Fixed-Business Value II dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$5,000,000, as modified or amended from time to time.
10. That certain Promissory Note-Fixed-Business Value III dated December 31, 2003, made by Mortgagor and other Borrowers (as defined in the Loan Agreement) in favor of Mortgagee in the original principal face amount of \$5,000,000, as modified or amended from time to time.

MORTGAGE RECORDATION TAX ORDER

STATE OF ALABAMA §
MONTGOMERY COUNTY § A proceeding authorized by
§40-22-2(8), Code of Alabama 1975

BEFORE THE ALABAMA DEPARTMENT OF REVENUE:

Comes the Petitioner, Citicorp Leasing, Inc., a Delaware corporation, (the "Petitioner"), and asks the Department of Revenue to fix and determine the amount of mortgage recording tax due, pursuant to §40-22-2(8), Code of Alabama 1975, upon recordation of the Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (the "Fee Mortgage") and the Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement, and Financing Statement (the "Leasehold Mortgage") from R&L Foods, LLC, a Delaware limited liability company (the "Mortgagor") to the Petitioner (the Fee Mortgage and Leasehold Mortgage are hereinafter collectively referred to as the "Mortgages"). In addition to property described in the Mortgages, the Mortgagor has secured its obligations to Petitioner with additional collateral located outside the State of Alabama, and the Mortgages encompass property in more than one county in Alabama.

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

1. That the total amount of indebtedness owed to the Petitioner, and secured by the Mortgages, is \$38,400,000.00.
2. That the total value of all property covered by the Mortgages is \$47,233,000.00.

3. That the total value of the property located within the State of Alabama, and covered by the Mortgages is \$24,330,000.00.

4. That the amount of indebtedness which is allocable to Alabama, and upon which mortgage tax is due upon recordation of the Mortgages is \$19,779,840.00.

5. That the amount of mortgage recording tax to be paid, at the rate of \$.15 for each \$100.00, or fraction thereof, of indebtedness, which is attributable to the property located within the State of Alabama, is \$29,669.85.

6. That the Mortgages are to be recorded in Jefferson, Montgomery, Calhoun, Shelby and Chilton Counties.

7. That the relative property values of the properties lying within the State of Alabama are as follows:

<u>County</u>	<u>Value</u>	<u>Percentage</u>
Jefferson	\$ 8,717,000.00	35.83%
Montgomery	\$11,560,000.00	47.51%
Calhoun	\$ 204,000.00	.84%
Shelby	\$ 3,069,000.00	12.61%
<u>Chilton</u>	<u>\$ 780,000.00</u>	<u>3.21%</u>
Total	\$24,330,000.00	100%

IT IS ORDERED, THEREFORE, that the probate judge in the county wherein the Mortgages will be recorded first, shall collect mortgage recording tax in the amount of \$29,669.85, and, pursuant to §40-22-2(7), Code of Alabama 1975, after deducting the probate Judge's 5% commission, shall make distribution of such tax to the State of Alabama and to the counties named herein, in the percentages as set out in Paragraph 7.

The probate judge of the county wherein the Mortgages will be recorded first also is entitled to collect any applicable recording fees. Upon payment of the mortgage recording tax and upon the initial filing of the Mortgages, copies of the Mortgages shall be acceptable for recordation in the other counties, pursuant to §40-22-2(5), Code of Alabama 1975, without the payment of any further mortgage recording tax. The probate judges of these counties are entitled to collect applicable recording fees, however. §40-22-2(5).

20040716000392690 Pg 49/49 156.00
Shelby Cnty Judge of Probate, AL
07/16/2004 07:58:00 FILED/CERTIFIED

DONE this 13th day of January, 2004.

STATE OF ALA. CHILTON CO
I CERTIFY THIS
INSTRUMENT WAS FILED

2004 APR -8 AM 10:42

ATTEST: UCC FILE NUMBER OR REC.
BK. & PAGE AS SHOWN ABOVE

[Signature]
As Secretary

ALABAMA DEPARTMENT OF REVENUE

By: *Cynthia Underwood*
Assistant Commissioner of Revenue

[Signature]
Legal Division: Kathryn Elizabeth Jehle

State of Alabama - Jefferson County
I certify this instrument filed on:

2004 MAR 17 P.M. 13:19

Recorded and \$ Mtg. Tax

and \$ Deed Tax and Fee Amt.
\$ 125.50 Total \$ 125.50

MICHAEL F. BOLIN, Judge of Probate



200460/8899 BESS

STATE OF ALABAMA, JEFFERSON COUNTY

I hereby certify that no mortgage tax or deed
tax has been collected on this instrument.

Michael F. Bolin

"NO TAX COLLECTED"

Judge of Probate

INDEX 5.00
RECORD FEE 1.00
RECORD FEE 122.50
CASH 128.50

ITEM 3
ICL 8750 15:58T

State of Alabama - Jefferson County
I certify this instrument filed on:

2004 MAR 16 P.M. 13:50

Recorded and \$ 29,669.85 Mtg. Tax

and \$ Deed Tax and Fee Amt.

\$ 124.50 Total \$ 29,794.35

MICHAEL F. BOLIN, Judge of Probate



200404/3440

STATE OF ALABAMA
MONTGOMERY CO.
I CERTIFY THIS INSTRUMENT
WAS FILED ON

2004 MAR 25 PH 2:58

REESE MCKINNEY, JR.
JUDGE OF PROBATE

DEED _____
MORTG _____
REC. 123.50
INDEX 5.00
D.A. FEE 2.00

12250
12850