

CP 931076LD 4016  
Janie Best

999447

L E A S E H O L D  
M O R T G A G E

Assignment of Rents  
And Security Agreement

THIS MORTGAGE (herein "Instrument") is made this 23rd day of September, 1988, between the Mortgagor, Lake County Trust Company, as Trustee under Trust Agreement dated October 12, 1970, and known as Trust No. 1637, whose address is 2200 N. Main St., Crown Point, IN 46307 (herein "Borrower"), and the Mortgagee, Gainer Bank, National Association, whose address is 115 S. Court St., P. O. Box 200, Crown Point, IN 46307, (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of Seventy Hundred Fifty Thousand and NO/100-----Dollars (\$750,000.00), which indebtedness is evidenced by a note of even date herewith (herein "Note"), executed by Borrower.

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions and modifications thereof; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower; (c) the payment of all other sums, with interest thereon advanced in accordance herewith to protect the security of this Instrument; and (d) the performance of the covenants and agreements of Borrower herein contained; and (e) all other liabilities and obligations of the Borrower in favor of the Lender, direct or indirect, absolute or contingent, primary or secondary, matured or unmatured, whether or not related to or of the same class as any specific debt secured hereby, now existing or hereafter arising; Borrower does hereby mortgage, warrant, grant, convey and assign to Lender its successors and assigns, the following described property in Lake County, State of Indiana:

Leasehold Estate as granted by that certain Lease dated November 1, 1970 and recorded December 21, 1970 as Document No. 83469, made by and between Citizens Bank of Michigan City, Indiana, as Trustee under Trust Agreement dated May 5, 1970 and known as Trust No. 607 (Lessor) and Lake County Trust Company, as Trustee under Trust Agreement dated October 12, 1970 and known as Trust No. 1637 (Lessee), as amended and more fully described by Addendum dated April 29, 1971, and by Settlement Agreement dated January 14, 1977, arising out of certain litigation in the Lake Superior Court, Room No. One, under Cause No. 172-1032, and by Lease Amendment "B" dated January 14, 1977, and by Lease Amendment "C" dated March 29, 1977, and by Lease Amendment Agreement dated July 17, 1986 (hereinafter called "1986 Lease Amendment"), and by Memorandum Regarding Lease dated March 6, 1987 and recorded July 17, 1987 as Document No. 928356 and by Amendment to Legal Description of Lease dated June 23, 1987 and recorded July 17, 1987 as Document No. 928357, demising and leasing premises described as:

Part of the Northwest Quarter of Section 25, Township 36 North, Range 9 West of the Second Principal Meridian in Lake County, Indiana, being more particularly described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 25; thence South 89 degrees 03 minutes 55 seconds East along the North line of the Northwest Quarter of said Section 25, a distance of 1019.25 feet; thence South 0 degrees 11 minutes 51 seconds West 36.17 feet to the point of beginning; thence South 89 degrees 55 minutes 15 seconds East, 43.32 feet; thence North 0 degrees 00 minutes 25 seconds East 15.53 feet to a line that is 20.0 feet South of and parallel with the North line of said Section 25; thence South 89 degrees 03 minutes 55 seconds East 53.33 feet along said parallel line;

For see doc. # 999449  
For see doc. # 999448

CHICAGO TITLE INSURANCE COMPANY  
INDIANA DIVISION

LILLIAN A. BLASTICK  
RECORDER, LAKE COUNTY  
CROWN POINT, INDIANA 46307

STATE OF INDIANA, S.S. REC.  
LAKE COUNTY  
FILED FOR RECORD  
SEP 27 1 10 PM '88

2700  
K

thence South 0 degrees 11 minutes 51 seconds West 157.61 feet; thence South 89 degrees 48 minutes 09 seconds East 7.50 feet; thence South 0 degrees 11 minutes 51 seconds West 67.10 feet; thence North 89 degrees 55 minutes 15 seconds West 279.26 feet; thence North 0 degrees 11 minutes 51 seconds East 210.00 feet; thence South 89 degrees 55 minutes 15 seconds East 175.16 feet to the point of beginning (herein "Lease");

all rights and benefits of whatsoever nature derived or to be derived by the Borrower under or by virtue of the Lease, including without limitation the right to exercise options, to give consents, and to receive monies payable to the Borrower thereunder as Lessee; and all subleases of the Leasehold Estate or any part thereof now or hereafter entered into by the Borrower, the subreversions thereunder and all rights and benefits to be derived by the Borrower therefrom; and all rents, income issues and profits of the Leasehold estate;

together with all buildings, improvements, and tenements now or hereafter erected on the property, and all easements, rights, right-of-ways, driveways, pavement, curb and street front privileges, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Instrument, whether actually physically annexed to said property or not, excluding therefrom the items described in Exhibit A, attached hereto; and all of the foregoing, together with said property are herein referred to as the "Property".

TO HAVE AND TO HOLD the same unto the Lender, its successors and assigns for and during the balance of the unexpired term of the Lease.

COVENANTS AND WARRANTIES: Borrower covenants and warrants as follows:

A. that said ground lease is in full force and effect and unmodified;

B. that all rents (including additional rents and other charges) reserved in the said ground lease have been paid to the extent they were payable prior to the date hereof;

C. that there is no existing default under the provisions of the said ground lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the Mortgagor to be observed and performed;

D. that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements, covenants, conditions and

Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Paragraph 27 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this Paragraph 27, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than two months prior to the due dates of such rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution of termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the Breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall, upon 5 days written notice to Borrower, have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower, or anyone having an interest in the Property by reason of anything done or

left undone by Lender under this Paragraph 27 other than for Lender's own willful misconduct or gross negligence.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this instrument pursuant to Paragraph 8 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

28. ACCELERATION; REMEDIES. Upon Borrower's material breach of any covenant, warranty or condition or agreement of Borrower in this Instrument or in the Lease, including but not limited to the covenants to pay when due any sums secured by this instrument or payable under the Lease, which remain unremedied after any applicable grace period, Lender, at Lender's option may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceedings, and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees, appraisal fees, expert witness fees, costs of court reporters, travel expenses, costs of documentary evidence, abstracts and title reports. The performance by Lender on behalf of Borrower of any Lease covenants shall not remove or waive, as between Lender and Borrower, the correspondent default under the terms hereof.

29. RELEASE. Upon payment of all sums secured by this Instrument, Lender shall provide Borrower with a Release of this Instrument in recordable form for Borrower to record at its expense.

30. WAIVER OF VALUATION AND APPRAISEMENT. Borrower hereby waives all right of valuation and appraisement.

31. FUTURE ADVANCES. Upon request of Borrower, Lender, at Lender's option so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument.

32. REPRESENTATION AND REVIEW. Borrower acknowledges that Borrower is represented by legal counsel and that before executing and delivering the Loan Documents, such documents and the rights of Borrower were fully explained to Borrower by such counsel and that Borrower understands the nature and extent of the obligations thereby undertaken.

THIS MORTGAGE is executed by the LAKE COUNTY TRUST COMPANY, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Lake County Trust Company, hereby warrants that it possess full power and authority to execute this instrument), and it expressly understood and agreed



## EQUIPMENT LIST

12' Tyler Rear Load Roll-In

48' Tyler Multi-Deck Lunchmeat

Tyler Jumbo Island Ice Cream/Frozen Food

36' with One End Frozen Food

36' with One End Ice Cream

79' Run Zero Zone Frozen Food

71' Run Zero Zone Frozen Food

24' Tyler Service Deli

Option for Deli

1 12' walnut front shelf

1 Mezzanine shelf 12" x 72" with lights

1 Mezzanine shelf 12" x 72" without lights

1 3 step tray without pans

12' Tyler Service Fish

Options for Fish

1 12' walnut front shelf

1 Mezzanine shelf 12" x 72" with lights

1 Mezzanine shelf as" x 72" without lights

8' Tyler Island Dual Temp Cases

Tyler Walk-In Cooler/Freezers

Walk-in freezer 10'0" x 22'0" x 8'3 1/2" H

Walk-in Deli Cooler 12'0" x 12'0" x 8'3 1/2" H

Walk-in Dairy Cooler 12'0" x 56'0" x 9'3 1/2" H

Walk-in Produce Cooler 13'0" x 28'0" x 9'3 1/2" H

Used Equipment to Match Existing:

1 - Tyler ATP12 Meat Case

1 Bloom Box unit Cooler

3 Climate Control Remote Air Cooled Condensers

1 Crystal Tips Flake Ice Maker

Shelving, Warehouse, Pallet-Type 84" H x 42" Deep with 2 tiers

1 - 88' run sales

1 - 92' run sales

1 - 80' run sales

1 - 100' run back room

1 - 60' run back room

Kent Gondola and Wall Shelving

- 1 - 48' gondola 18 x 18 x 72" with 96-17" shelves
- 1 - 88' gondola 18 x 18 x 72" with 136-17" shelves
- 1 - 88' gondola 18 x 18 x 72" with 72-17" shelves
- 1 - 72' wall (bakery) 24 x 84 with mirrors and lighted canopy with 72 wire shelves
- 1 - 80' wall (H & BA) 12 x 84 with lighted canopy and 120 - 9" shelves
  
- 9 NCR 255 Checkout Terminals with Scanners and Scales
- 9 Burroughs Checkout Stands
- 1 9100 Dual Processor
- 1 Bass BX module
- 2 Bass FM Mobile Station
- 15 Paging Telephones
- 6 10 Button Telephones
- 1 50 Watt Amplifier
- 19 Speakers
- 1 A330 Bizeba Automatic Stacker Slicer
- 1 GM2000 Vacuum Packing Machine
- 1 Model 65 Ice Machine
- 1 Road Sign
- 1 Videotec Closed Circuit Television System
- 2 3 Compartment Sinks
- 2 Broasters
- 2 Deep Fryers
- 100 Shopping Carts
- 1 Clark Forklift
- 1 Baler
- 1 Orion Energy Management System
- 1 Buchbinder Flower Case

*Super Center, Inc. by  
Donald Weiss, Pres.*

*6/30/87*

file:equip.list  
disk:WS IBM/CMPQ

restrictions of record listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

COVENANTS AND AGREEMENTS. Borrower hereby covenants and agrees as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and prepayment and late charges provided in the Note and all other sums secured by this Instrument.

2. PERFORMANCE OF LEASE. Borrower will at all times fully perform and comply with all agreements, covenants, terms and conditions imposed on or assumed by it as Lessee under the Lease, and if Borrower shall fail to do so, Lender may, but shall not be obligated to, take any action Lender deems necessary or desirable to prevent or to cure any default by Borrower in the performance of or compliance with any of Borrower's covenants or obligations under the Lease. On receipt by Lender from the Lessor under the Lease of any written notice of default by the Lessee thereunder, Lender may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof is questioned or denied by Borrower or by any party on behalf of Borrower. Borrower hereby expressly grants to Lender, and agrees that Lender shall have, the absolute and immediate right to enter in and on the encumbered premises or any part thereof, to such extent and as often as Lender, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Borrower. Lender may pay and expend such sums of money as Lender in its sole discretion deems necessary for any such purpose, and Borrower hereby agrees to pay to Lender immediately and without demand, all such sums so paid and expended by Lender, together with interest thereon from the date of each such payment at the rate of interest in the Note. All sums so paid and expended by Lender and the interest thereon shall be added to and be secured by the lien of this Instrument. Further, Borrower will not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair the security of this Instrument, or will be grounds for declaring a forfeiture of the Lease.

3. TERMINATION OR MODIFICATION OF LEASE. Borrower will not surrender its Leasehold estate and interest hereinabove described, nor terminate or cancel the Lease nor pursuant to paragraph 10 of the Lease Amendment Agreement dated July 17, 1986, give Lessor written notice of its intent not to exercise any renewal option of the lease and will not without the express written consent of Lender modify, change, supplement, alter or amend the Lease either orally or in writing, and any such termination, cancellation, notice of its intent not to exercise any renewal option of the lease, modification, change, supplement, alteration, or amendment of the Lease without the prior written consent thereto by Lender shall be void and of no force and effect. As further security to Lender, Borrower does hereby deposit with Lender its Lessee's original of the Lease and all amendments thereto or certified copy thereof, to be retained by Lender until all indebtedness secured hereby is fully paid. Further, Borrower shall give Lender immediate notice of any default under the Lease or the receipt by it of any notice of default or other communication from the Lessor thereunder; and shall provide to the Lender any and all information which Lender may request concerning the Lease.

4. RELEASE OR FORBEARANCE UNDER LEASE. No release or forbearance of Borrower's obligations under the Lease, pursuant to the Lease or otherwise, shall release Borrower from any of its obligations hereunder, including its

obligations with respect to the payment of rent as provided for in the Lease and the performance of all of the terms, provisions, covenants, conditions, and agreements contained in the Lease, to be kept, performed and complied with by the Lessee therein.

5. MERGER. Unless Lender shall otherwise expressly consent in writing, the fee title to the property demised by the Lease and the Leasehold Estate shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Lessor or in the Lessee, or in a third party by purchase or otherwise.

6. BORROWER BREACH; RIGHT OF LENDER. Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, or under the Lease, Lender may pay, in any amount and in any order as Lender shall determine in Lender's sole discretion, any rents, taxes, assessments, insurance premiums, judgment liens, tax liens, mechanic's liens and Other Impositions which are now or will hereafter become due, which shall then become immediately due and owing by the Borrower to the Lender.

7. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under Paragraph 6 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to Paragraph 12 hereof; (v) principal of advances made pursuant to Paragraph 12 hereof; (vi) interest payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to Paragraph 12 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this Paragraph 7.

8. CHARGES; LIENS. Borrower shall pay all water and sewer rates, taxes, assessments, premiums, and Other Impositions attributable to the Property. Borrower shall promptly furnish to Lender upon request, all notices of amounts due under this Paragraph 8, and in the event Borrower shall make payment directly, Borrower shall, upon request, promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property; provided that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender; or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

9. HAZARD INSURANCE. Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included with the term "extended coverage", rent loss and such other hazards, as Lender shall reasonably require and in such amounts and for

such periods as Lender shall reasonably require. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under Paragraph 6 hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form reasonably acceptable to Lender and shall include a standard mortgage clause in favor and in form acceptable to Lender. Lender shall have the right to hold the policies; and Borrower shall promptly furnish to Lender all renewal notices and all receipts of said premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

In the event of Loss in excess of \$50,000.00, Borrower shall give written notice as soon as reasonably possible to the insurance carrier and to Lender. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Borrower authorizes and empowers Lender as attorney-in-fact for Borrower to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceedings; provided, however, that nothing contained in this Paragraph 9 shall require Lender to incur any expense or take any action hereunder.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the property damaged, provided (1) such restoration or repair is economically feasible, (2) the security of this Mortgage is not impaired by either the loss or restoration or repair, and (3) Borrower has a subtenant reasonably acceptable to Lender for the property. If such restoration or repair is not economically feasible, or if the security of this mortgage would be impaired by either the loss or the restoration or repair, or if Borrower does not have a subtenant reasonably acceptable to the Lender for the property the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. Any such application to the sums secured by this Mortgage shall not postpone the Borrower's obligations to make the next scheduled payment of interest and principal.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as the parties may mutually approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the payments referred to in Paragraphs 1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to Paragraph 28 hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

10. PRESERVATION AND MAINTENANCE OF PROPERTY.  
Borrower (a) shall not commit waste or permit impairment or

deterioration of the Property except ordinary wear and tear, (b) shall not abandon the Property, (c) shall keep the Property, including improvements thereon in good repair, (d) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (e) shall give reasonable notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security to this Instrument or the rights or powers of Lender. Except for remodeling, non-structure changes in normal course of business and any structural changes which do not materially affect the value and/or structural integrity of the Property, Borrower shall not, without the written consent of Lender, remove, demolish or alter any improvement now existing or hereafter erected on the Property.

11. USE OF PROPERTY. Other than use as retail business, or unless required by applicable law or unless Lender has otherwise consented in writing, which consent shall not unreasonably be withheld, Borrower shall not allow changes in the use for which all or part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

12. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems reasonably necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in Paragraph 9 hereof.

Any amounts disbursed by Lender pursuant to this Paragraph 12, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged in whole or in part, by the indebtedness secured hereby. Nothing contained in this Paragraph 12 shall require Lender to incur any expense or take any action hereunder.

13. INSPECTION. Lender may make or cause to be made reasonable entries upon and inspections of the Property.

14. BOOKS AND RECORDS. Borrower shall keep and maintain at all times at Borrower's address stated herein or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's request, Borrower shall furnish to Lender, within one hundred and twenty days after the end of each fiscal year of Borrower, a balance sheet, a statement

of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant.

15. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear and prosecute any such action or proceeding. Borrower shall consult with Lender and shall not enter into any compromise, settlement, or other resolution of the condemnation action without the written consent of Lender which consent shall not unreasonably be withheld. So long as the condemnation has not resulted in a material decrease in value of the Property and/or Borrower has not defaulted, then the proceeds of any award, payment of or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part hereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Borrower. Upon default by Borrower hereunder, Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name any action or proceedings relating to any condemnation or other taking. Upon default by Borrower the proceeds of any award, payment or claim for damages, direct or consequential in connection with any condemnation or other taking, whether direct or indirect, of the Property or part hereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

In the event of a total taking of the Property, Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 7 hereof, with the balance, if any, to Borrower. In the event of partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the property immediately prior to the date of taking, with the balance of proceeds paid to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of any monthly installments referred to in Paragraphs 1 and 2 hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds damages or claims arising in connection with such condemnation or taking as Lender may require.

16. BORROWER AND LIEN NOT RELEASED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefore, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any

actions taken by Lender pursuant to the terms of this Paragraph 16 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

17. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under Paragraphs 9 and 15 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

18. ESTOPPEL CERTIFICATE. Borrower shall within ten days of a written request from Lender, furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

19. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Indiana Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and transfers to Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Borrower hereby authorizes the Lender at the expense of the Borrower to execute and file a financing statement or statements on its behalf in those public offices deemed necessary by Lender to protect its security interest. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Upon Borrower's breach of any covenant or agreement of Borrower contained in the Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in Paragraph 29 of this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies

under the Uniform Commercial Code or of the remedies provided in Paragraph 28 of this Instrument.

20. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

21. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY. If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal Bankruptcy Court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure of any portion of Borrower's assets and such seizure is not discharged within thirty (30) days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by Paragraph 28 of this Instrument. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to Paragraph 12.

22. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION. On sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) beneficial interests in Borrower other than to the children and/or grandchildren of Marvin and/or Mildred Weiss (if Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by Paragraph 28 of this Instrument.

23. NOTICE. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Instrument or in the Note shall be given by mailing such notice by certified mail addressed to Borrower at Borrower's address stated above or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Instrument or in the Note shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

24. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 22 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, either party may act through its employees, agents or independent contractors as authorized. The captions and headings of the Paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

25. GOVERNING LAW; SEVERABILITY. This Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Instrument or the Note conflicts with applicable law, such shall not affect other provisions of this Instrument or the Note which can be given effect with the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as other charges levied in connection with such indebtedness which constitutes interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

26. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise or any of the remedies permitted by applicable law or provided herein.

27. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any sublease or other agreement for the occupancy or use of all or any part of the Property regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in Paragraph 7 hereof with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not as assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this