

This instrument was prepared by:

97072006

Catherine P. Powell, Esquire
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1199 Oxford Road, N.E.
Atlanta, Georgia 30308-2216

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

97 OCT 23 AM 9:02

MORRIS W. CARTER
RECORDER

ASSIGNMENT OF LESSOR'S INTEREST IN LEASE

THIS ASSIGNMENT, made this 15 day of September, 1997, by Curtis James Investments, an Ohio general partnership (herein called "Borrower") to NationsBank, N.A., a national banking association chartered under the laws of the United States of America, whose principal mailing address is 19th Floor, NationsBank Plaza, 600 Peachtree Street, N.E., Atlanta Georgia, 30308-2213 (herein called "Lender").

WITNESSETH:

FOR VALUE RECEIVED, Borrower hereby grants, transfers and assigns to Lender, its successors and assigns, all of the right, title and interest of Borrower in and to that certain Lease (as such term is hereinafter defined), with modification, if any, described in Schedule "A" hereof, covering premises (herein called "Premises") briefly described as:

See Exhibit "A" attached hereto and made a part hereof

together with any extensions of any thereof and any guarantees of the Lessee's obligations under any thereof (said lease, together with all such guarantees, modifications and extensions, being hereinafter collectively referred to as "the Lease"), for the purpose of securing (a) payment of all sums now or at any time hereafter due Lender and secured by that certain Security Agreement (herein called "Security Conveyance") made by Borrower to Lender of even date herewith, together with any renewals or extensions thereof and any future advances made thereunder to the extent permitted under Indiana law, and (b) performance and discharge of each obligation, covenant and agreement of Borrower contained herein or contained in the Security Conveyance or note secured thereby.

Lender agrees that:

A. So long as there shall exist no event of default, as hereinafter defined, on the part of Borrower, Borrower shall have the right to collect, but not more than thirty (30) days prior to accrual, all rents, issues and profits from the Premises and to retain, use and enjoy the same.

B. Upon the payment in full of all indebtedness secured hereby, as evidenced by the execution of an instrument of satisfaction or full release of the Security Conveyance without the

recording of another Security Conveyance in favor of Lender affecting the Premises, this assignment shall become and be void and of no effect.

Borrower warrants that:

- A. There is no other assignment of any of its rights under the Lease to any other person.
- B. Borrower has done no act nor omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions herein.
- C. Borrower has not accepted rent under the Lease for more than thirty (30) days in advance of its due date.
- D. There is no default by Lessee under the terms of the Lease to the knowledge of Borrower.
- E. Borrower is not prohibited under any agreement with any other person or any judgment or decree from the execution and delivery of this assignment or Lease, the performance of each and every covenant of Borrower hereunder and in Lease, and the meeting of each and every condition herein contained.
- F. No action has been brought or threatened which in any wise would interfere with the right of Borrower to execute this assignment and perform all of Borrower's obligations herein contained.
- G. Lease, except as specifically recited in Schedule "A", is in full force and effect and unmodified.

Borrower agrees, so long as it is indebted to Lender, that:

1. Borrower will (i) fulfill, perform and observe each and every condition and covenant of Borrower contained in the Lease; (ii) give prompt notice to Lender of any claim of default under Lease (a) given by Lessee to Borrower or (b) given by Borrower to Lessee, together with a complete copy of any such claim; (iii) at the sole cost and expense of Borrower, enforce, short of termination of the Lease, the performance and observance of each and every covenant and condition of the Lease to be performed or observed by Lessee; and (iv) appear in and defend any action growing out of, or in any manner connected with, the Lease or the obligations or liabilities of Borrower, as lessor thereunder, or of the Lessee or any guarantor thereunder.

2. The rights assigned hereunder include all of Borrower's right and title (i) to modify the Lease; (ii) to terminate the term or to accept the surrender thereof; (iii) to waive, or release the Lessee from, the performance or observance by the Lessee of any obligation or condition of the Lease; (iv) to permit the prepayment of any rents under the Lease for more than thirty (30) days prior

to the accrual thereof; and (v) to give any consent to any assignment by the Lessee of the Lease or to sublease any part or portion of the Premises.

3. Borrower will not (i) modify the term of the Lease or accept the surrender thereof unless required so to do by the terms of the Lease; (ii) permit the Lessee to anticipate the payment of any rents under the Lease by Lessee or any sublessee for more than thirty (30) days prior to accrual; (iii) waive, or release Lessee or any sublessee from, the observance or performance of any obligation to be performed by either under the terms of the Lease or liability on account of any warranty given by either of them.

4. Upon the occurrence of any one of the following events (herein called an "event of default"):

- (i) the failure by Borrower to perform or observe any covenant of Borrower contained in this assignment, in any instrument evidencing any debt secured by this assignment, or in the Security Conveyance;
- (ii) should any warranty of Borrower herein contained or contained in any evidence of debt given by Borrower to Lender and secured hereby, or contained in Security Conveyance, prove untrue or misleading in any material aspect;
- (iii) failure by Borrower to meet any condition set forth in Lease; or
- (iv) should any event occur under any instrument, deed or agreement, given or made by Borrower to or with any third party, which causes the acceleration of any debt to any such third party the acceleration of which would materially affect Borrower's ability to pay when due any amounts owed to Lender.

then and thereupon Lender may: (a) declare the total indebtedness due Borrower to Lender, secured by the assignment, immediately due and payable; (b) proceed to enter upon, take possession of, and operate the Premises under this assignment without becoming a mortgagee possession; (c) proceed to perform any and all obligations of Borrower, contained under Lease, and exercise any and all rights of Borrower therein contained as fully as Borrower itself could, and this without regard to the adequacy of security for the indebtedness hereby accrued and with or without the bringing of any legal action or the causing of any receiver to be appointed by any court; (d) make, enforce, modify and accept the surrender of Lease, or any single Lease if more than one be assigned hereunder; (e) obtain and evict tenants; (f) fix or modify rent; and (g) do all other acts which Lender may deem necessary or proper to protect its security. Borrower does hereby specifically authorize Lender, in Borrower's name or in Lender's name, to sue for or otherwise collect and receive all rents, issues and profits, including those past due and unpaid, and apply the same first against all costs and expenses of operation of the Premises, of the performance of Borrower's obligations under Lease and

of collection, including reasonable attorney's fees. Any amounts remaining after such application shall be applied next to interest on, and then to the principal of, the indebtedness secured hereby and upon the payment in full thereof, both principal and interest, then this assignment and all rights of Lender hereunder shall cease and terminate. Entry upon and taking possession of the property and the collection of the rents and the application thereof, as aforesaid, shall in no wise operate to cure or waive any default under any other instrument given by Borrower to Lender, or prohibit the taking of any other action by Borrower under any such instrument or at law or in equity to enforce payment of the indebtedness secured by Lease or to realize on any other security.

Borrower further agrees that:

1. Should Borrower fail to perform or observe any covenant or comply with any condition contained in the Lease, then Lender, but without obligation so to do and without notice to or demand on Borrower or releasing Borrower from its obligation so to do, may perform such covenant or condition and to the extent that Lender shall incur any costs or pay any monies in connection therewith, including any costs or expenses of litigation, then costs, expense or payment shall be included in the indebtedness secured hereby and shall bear interest from the incurring or payment thereof at the default rate set forth in the note.

2. No action taken by Borrower or Lender shall cause or permit the estate of any Lessee under any Lease to merge with Borrower's reversionary interest.

3. Lender shall not be obligated to perform or discharge any obligation of Borrower under Lease, and Borrower agrees to indemnify and hold Lender harmless against any and all liability, loss or damage which Lender may incur under the Lease or under or by reason of this assignment and of and from all claims and demands whatsoever which may be asserted against it by reason of an act of Lender under this assignment or under Lease.

4. Notwithstanding any provision of this Assignment to the contrary, Borrower hereby transfers, assigns and sets over to Lender all of Borrower's right, title and interest in and to (a) the Lease, and (b) all rents, issues, profits, income and proceeds from the Premises. This assignment is intended by Borrower and Lender to create and shall be construed to create, an absolute assignment to Lender. Borrower shall have a revocable license to collect and receive the rents and to retain, use and enjoy such rents. Such license may be revoked by Lender, without notice to Borrower, upon the occurrence of an event of default under this Assignment.

The parties agree that wherever used in this assignment, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the words "Borrower" and "Lender" shall include individuals, corporations (and if a corporation, its officers, employees, agents or attorneys) and any and all other persons or entities and the respective heirs, executors, legal representatives, administrators, successors and assigns of the parties hereto, and all those holding under either of them; the word "note" shall also include one or more notes or bonds, and the pronouns used herein shall

include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto.

IN WITNESS WHEREOF, Borrower has caused these presents to be executed under seal on the date hereinabove written.

Signed, sealed and delivered in the presence of:

BORROWER:

Candy Randall

Witness

CANDY RANDALL

Printed Name

CURTIS JAMES INVESTMENTS, an Ohio general partnership

By: W. Curtis Smith

W. Curtis Smith, Partner

By: James P. Borke

James P. Borke, Partner

Candy Randall

Witness

CANDY RANDALL

Printed Name

STATE OF Ky
COUNTY OF Kenton

Before me, a Notary Public in and for said County and State, personally appeared W. Curtis Smith, one of the partners of Curtis James Investments, an Ohio general partnership, who acknowledged execution of the foregoing instrument as such partner acting for and on behalf of said general partnership, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 15 day of Sept., 1997.

Teresse J. Simmons
Notary Public

Teresse J. Simmons
Print Name

My Commission Expires:

11-12-2000

County of residence:

Boone

[NOTARIAL SEAL]

STATE OF Ky
COUNTY OF Kenton

Before me, a Notary Public in and for said County and State, personally appeared James P. Borke, one of the partners of Curtis James Investments, an Ohio general partnership, who acknowledged execution of the foregoing instrument as such partner acting for and on behalf of said general partnership, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 15 day of Sept., 1997.

Teesa J. Simmons
Notary Public

Teesa J. Simmons
Print Name

My Commission Expires:

11-12-2000

County of residence:

Boone

[NOTARIAL SEAL]

SCHEDULE "A"

Any and all leases, rental agreements or tenancy agreements naming Borrower as lessor or landlord thereunder, for the lease of any space, offices or buildings located on the real estate described on Exhibit "A" attached hereto, including without limitation, that certain Sublease Agreement dated August __, 1997, by and between Borrower, as landlord therein, and C.J. Apple I, Inc., as tenant therein.

EXHIBIT "B"Legal Description

That parcel of land lying in the Northwest 1/4 of Section 24, Township 36 North, Range 12 West of the Second Principal Meridian, being described as COMMENCING at the intersection of the centerline of Ridge Road and the Westerly right-of-way line of the Louisville, New Albany and Chicago Railway Company; thence Westerly along said centerline of Ridge Road 50.72 feet; thence South along a line 50.00 feet West of and parallel with said Westerly right-of-way line 40.58 feet, to the South line of said Ridge Road and the POINT OF BEGINNING; thence continue South 187.91 feet, to a point of curve; thence Southwesterly along a curve line convex Southeasterly, having a radius of 180.00 feet an arc distance of 181.19 feet, the chord of said arc lying South 28'-50'-13" West distant 173.64 feet, to a point of reverse curve; thence Southerly along a curved line convex Northwesterly, having a radius of 220.00 feet an arc distance of 118.47 feet, the chord of said arc lying South 42'-14'-49" West distant 117.04 feet, to the North line of Schoon's South View 1st Addition Subdivision extended Easterly; thence North 80'-19'-00" West along said North line of said subdivision to a point on a line drawn parallel with the centerline of Manor Avenue and 298.00 feet Westerly (as measured along the said North line of Schoon's South View 1st Addition Subdivision) of the said centerline of Manor Avenue; thence North along said line parallel with the centerline of said Manor Avenue a distance of 454.42 feet to the South line of Ridge Road aforesaid; thence Easterly along said South line of Ridge Road a distance of 466.51 feet, to the POINT OF BEGINNING in the Town of Munster, Lake County, Indiana.

mail To ✓
Dinsmore + Shohl P.L.L.
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Cincinnati, Ohio

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