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LAWYERS TITLE INS. CORP.  
ONE PROFESSIONAL CENTER  
SUITE 215  
CROWN POINT, IN 46307

**MORTGAGE AND SECURITY AGREEMENT**

99085945

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

99 OCT 19 PM 12:09

MORRIS W. CARTER

THIS MORTGAGE is made on the fifth day of October, 1999 between Kaffee, Inc., a corporation, of 6890 East 85th Court, Merrillville, Indiana 46410, as Mortgagor, and New Equipment Leasing, Inc., a corporation of 7384 Thorncrest Drive, SE, P.O. Box 97, Ada, Michigan, as Mortgagee.

FOR VALUE RECEIVED, Mortgagor mortgages and warrants to Mortgagee lands located in the City of Gary, County of Lake, State of Indiana, described as follows:

Document is  
NOT RECORDED  
This Document is the Property of  
the Lake County Recorder!

Lots 1,2, and 3, Block 1, Gary Land Company's Tenth Subdivision, in the City of Gary, in Plat Book 20, Page 33, recorded in the office of the Recorder of Lake County, Indiana. Key# 44-275-1. Commonly known as 1501 Broadway, Gary, Indiana 46407.

together with the easements, improvements, hereditaments, and appurtenances now or hereafter belonging thereto and the rents, income, and profits therefrom and all fixtures now or hereafter attached to or used in connection therewith, and all machinery, engines, boilers, elevators, and plumbing, heating, air-conditioning, and ventilating equipment now or hereafter located thereon, which shall be deemed to be fixtures and a part of the realty, all of the foregoing being collectively referred to herein as the "Premises."

This Mortgage secures payment and performance by Mortgagor of Mortgagor's obligations under a Master Lease made on the same date as this Mortgage, in the amount of One Hundred Seventy Five Thousand Seven Hundred Forty-Three and 60/100 dollars (\$175,743.60), and including all modifications, extensions, and renewals thereof.

This mortgage secures all indebtedness and obligations now and hereafter owing by mortgagor to mortgagee, regardless of whether any such indebtedness or obligation is (a) not listed above, (b) not presently intended or contemplated by mortgagor or mortgagee, (c) indirect, contingent or secondary (such as a guaranty), (d) unrelated to the premises or to any financing of the premises by mortgagee, (e) of a kind or class that is different from any indebtedness or obligation now owing by mortgagor to mortgagee, or (f) evidenced by a note or other document that does not refer to this mortgage (collectively called the "Indebtedness").

Mortgagor further warrants, represents, and agrees as follows:

1. **Payment of Indebtedness.**

Mortgagor agrees to pay or perform all of the Indebtedness, including all interest thereon, In accordance with the terms of the instruments, documents, or agreements, evidencing the same ("Instruments").

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2. **Warranties.**

Mortgagor warrants and represents to Mortgagee that all financial statements and other information concerning Mortgagor, the premises, and any guarantor of the Indebtedness, heretofore or hereafter furnished to Mortgagee, are and shall be true and correct in all material respects; that the execution, delivery, and performance of this Mortgage by Mortgagor will not violate any law, rule, judgment, order, agreement or instrument binding upon Mortgagor nor require the approval of any public authority or any third party; and that this Mortgage constitutes the valid and binding obligation of Mortgagor, enforceable in accordance with its terms. Mortgagor further represents and warrants to Mortgagee that Mortgagor has full power and authority to carry on its business as presently conducted and to enter into and perform its obligations under this Mortgage.

3. **Assignment of Leases and Contracts.**

Mortgagor, to the extent permitted by law, hereby assigns and mortgages to Mortgagee, and grants to Mortgagee a security interest in, as additional security for the Indebtedness, all or Mortgagor's right, title, and interest in and to all existing and future oral or written leases of all or any part of the Premises or of any interest therein and any and all existing and future land contracts or other agreements by which the Premises or any interest therein is being or shall be sold, together with all rents and profits arising from, and all other proceeds of, any such leases, land contracts, or other agreements. Without the written consent of Mortgagee, Mortgagor will not cancel, accept a surrender of, modify, consent to an assignment of the lessee's interest under, or make any other assignment or other disposition of any such lease, land contract or other agreement or of any interest of Mortgagor therein, and will not collect or accept any payment of rent or of principal or interest or any other amount thereunder more than one month prior to the time when the same shall become due and payable under the terms thereof. Mortgagor will pay and perform all obligations and covenants required of it by the terms of any such lease, land contract, or other agreement. If Mortgagor shall default in the payment or performance of any such obligation or covenant, then Mortgagee shall have the right, but shall have no obligation, to pay or perform the same on behalf of Mortgagor, and all sums shall have no obligation, to pay or perform the same on behalf of Mortgagor, and all sums expended by Mortgagee in connection therewith shall become part of the Indebtedness, payable by Mortgagor to Mortgagee upon demand, together with interest at the Default Rate. Nothing contained in this paragraph or in Paragraph 9 hereof shall be construed to constitute consent by Mortgagee to the sale, lease or transfer of the Premises or any interest therein.

4. **Taxes.**

Mortgagor will pay, or cause to be paid, when due, all taxes, assessments, and other similar charges levied upon or with respect to the Premises before the same become delinquent and will deliver to Mortgagee satisfactory evidence of the payment thereof.

5. **Insurance.**

Mortgagor will cause all buildings, improvements, and other insurable part of the Premises to be insured against loss or damage by fire, windstorm, and such other hazards as Mortgagee from time to time may require, in such amounts and with such insurers as shall be acceptable to Mortgagee, and Mortgagor shall cause all premiums on such insurance to be paid when due. Each policy evidencing such insurance shall provide that loss shall be payable to Mortgagee as its interest shall appear at the time of the loss, shall be in form and substance acceptable to Mortgagee, and shall be delivered to Mortgagee. Each such policy shall provide that at least ten days prior written notice of any cancellation of, or any material change in, such insurance shall be given to Mortgagee by the insurer. Each renewal of each such policy shall be delivered to Mortgagee at least ten days prior to the expiration date of such policy. Upon foreclosure of this Mortgage or other transfer of the Premises in satisfaction of the Indebtedness, all right, title, and interest of Mortgagor in and to any insurance policies then in force, including the right to any premium refund thereon, shall vest in the purchaser or grantee.

In the event of any loss of or damage to the Premises, Mortgagor will give immediate notice thereof to Mortgagee, and Mortgagee shall have the right to make proof of such loss or damage, if mortgagor does not promptly do so. All proceeds payable under any such insurance policy, whether or not endorsed payable to Mortgagee, shall be payable directly to Mortgagee, and Mortgagee is authorized to settle, adjust, or compromise any claims for loss or damage under any such policy.

6. **Maintenance and Repair.**

Mortgagor will maintain the Premises in good condition and repair; will not commit or suffer any waste thereof; will not remove, demolish, or substantially alter any building or fixture on the Premises without the prior written consent of Mortgagee; will cause to be complied with all laws, ordinances, regulations, or requirements of any governmental authority applicable to the Premises; will promptly repair, restore, replace, or rebuild any part of the Premises which is damaged or destroyed by any casualty; and will promptly pay when due all charges for utilities and other services to the Premises,

**7. Mortgagee's Right to Perform; Receiver.**

If Mortgagor shall default in the payment of the aforesaid taxes, assessments, or other similar charges or in procuring and maintaining the aforesaid insurance or in the performance of any other obligation or Mortgagor hereunder, including its obligation to keep the Premises in good condition and repair, then Mortgagee shall have the right, but shall have no obligation, to pay such taxes, assessments, or other similar charges, or procure and maintain such insurance, or cause such other obligation to be performed, and all sums expended by Mortgagee in connection therewith shall become part of the Indebtedness, payable by Mortgagor to Mortgagee upon demand, together with interest at the Default Rate. Mortgagee and any persons authorized by Mortgagee shall have the right to enter upon the Premises at all reasonable times for the purpose of inspecting the Premises of effecting maintenance or repairs or taking any other action pursuant to the preceding sentence. The failure of the Mortgagor to pay any of such taxes, assessments or similar charges when due or to procure and maintain any such insurance shall constitute waste and shall entitle Mortgagee to the appointment by a court of competent jurisdiction or a receiver of the Premises for the purpose of preventing such waste, which receiver, subject to the order of the court, may collect the rents and income from the Premises and exercise such control over the Premises as the court shall order.

**8. Condemnation.**

If all or any part of the Premises are taken, whether temporarily or permanently, under power of eminent domain or by condemnation, the entire proceeds of the award or other payment in relief therefor shall be paid directly to Mortgagee.

**9. Vendee.**

In the event of the sale or transfer, by operation of law or otherwise, of all or any part of the Premises, Mortgagee may deal with the vendee or transferee with respect to this Mortgage and the Indebtedness as fully and to the same extent as it might with Mortgagor, without in any way releasing, discharging, or affecting the liability of Mortgagor hereunder and upon the Indebtedness; provided, however, that Mortgagee does not hereby release Mortgagor from the transfer restrictions set forth in paragraph 10.e., below.

**10. Events of Default and Acceleration.**

Upon the occurrence of any of the following events of default, all or any part of the Indebtedness shall, at the option of Mortgagee, become immediately due and payable without notice or demand:

a. If Mortgagor shall default in the payment when due (whether by acceleration or otherwise) of the principal of or interest on, or any penalty or late charge with respect to, any indebtedness now or hereafter owing by Mortgagor to Mortgagee, or if Mortgagor shall default in the due performance or observance of any other obligation of Mortgagor to Mortgagee, including, without limitation, any obligation under this Mortgage or under any other mortgage, note, security agreement, loan agreement, lease, pledge agreement, assignment, guaranty, or other agreement, instrument or document heretofore or hereafter executed by Mortgagor ("Loan Documents").

b. If Mortgagor shall default in payment of the principal of or interest on any indebtedness for borrowed money owed to any person other than Mortgagee.

c. If any warranty or representation made by Mortgagor to Mortgagee in this Mortgage or in any financial statement, loan document or any other document given in connection with the Indebtedness, or any warranty or representation made by any guarantor of the Indebtedness in any guaranty or in any financial statement or other document given in connection therewith, shall be false or inaccurate in any material respect when made.

d. If Mortgagor (or, if Mortgagor is more than one person, any of such persons) or any guarantor of any of the Indebtedness shall die, become insolvent, or make an assignment for the benefit of its creditors.

e. If Mortgagor, without the written consent of Mortgagee, shall sell, convey, or transfer the Premises or any interest therein or any rents or profits therefrom or shall cause or suffer any mortgage, lien, or other encumbrance or any writ of attachment, garnishment, execution, or other legal process to be placed upon the Premises or any interest therein or any rents or profits therefrom, except in favor of Mortgagee, or if any part of the Premises or any interest therein shall be transferred by operation of law.

f. If all or any material part of the Premises shall be damaged or destroyed by fire or other casualty, regardless of insurance coverage therefor, or shall be taken by condemnation or power of eminent domain.

g. If any law or government regulation shall hereafter impose any tax or assessment upon mortgages or debts secured by mortgages.

h. If any guaranty that now or hereafter secures payment or performance of all or any part of the Indebtedness shall be terminated or limited, for any reason, without the written consent or agreement of Mortgagee.

i. If at any time Mortgagee in good faith believes that the prospect of payment or performance of any part of all of the Indebtedness is impaired.

If a voluntary or involuntary case in Bankruptcy or receivership shall be commenced by or against Mortgagor (or, if Mortgagor is more than one person, any of such persons) or any guarantor of any of the Indebtedness, then the entire Indebtedness shall automatically become immediately due and payable, without notice or demand. All or any part of the Indebtedness also may become, or may be declared to be, immediately due and payable under the terms and conditions contained in any Loan Document.

## **11. Remedies**

Mortgagee shall have all rights and remedies provided for in this Mortgage or otherwise permitted by law. In addition, if the Indebtedness shall not be paid upon maturity, Mortgagee shall have the right, and is hereby authorized:

- a. To the extent permitted by law, to collect and receive all rents, profits, and other amounts that are due or shall hereafter become due under the terms of any leases, land contracts, or other agreements, now or hereafter in effect, by which Mortgagor is or shall be leasing or selling the Premises or any interest therein, and to exercise any other right or remedy of Mortgagor under any such lease, land contract, or other agreement, provided, that Mortgagee shall have no obligation to make any demand or inquiry as to the nature or sufficiency of any payment received or to present or file any claim or take any other action to collect or enforce the payment of any amounts to which Mortgagee may become entitled hereunder, nor shall Mortgagee be liable for any of Mortgagor's obligations under any such lease, land contract, or other agreement.
- b. To obtain or update abstracts of title, title searches and title insurance with respect to the Premises and all sums expended therefore shall be part of the Indebtedness and shall bear interest at the Default Rate.
- c. To foreclose this Mortgage by action pursuant to applicable law.

All rights and remedies of Mortgagee under this Mortgage, whether or not exercisable only on default, shall be cumulative and may be exercised from time to time, and no delay by Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise of any right or remedy, except to the extent otherwise provided by law. In this Mortgage, "maturity" means such time as the Indebtedness shall be or shall become due and payable, whether by the terms of the instruments or pursuant to Paragraph 10 hereof or otherwise.

**12. Security Interest in Fixtures.**

Mortgagor grants to Mortgagee a security interest in any fixtures now or hereafter located on the Premises. If the Indebtedness shall not be paid upon maturity, Mortgagee, at its option, may enforce this security interest in fixtures under the Indiana Uniform Commercial Code or other applicable law or may include the fixtures in any foreclosure of this Mortgage under Paragraph 11 hereof. Any requirement of reasonable notice with respect to any sale or other disposition of fixtures shall be met if Mortgagee sends the notice at least five (5) days prior to the date of sale or other disposition.

**13. Waivers.**

a. Mortgagor and any other person hereafter obtaining any mortgage or lien upon, or any other interest in, the Premises waives, with respect to any foreclosure of this Mortgage, (1) any right to marshaling of the Premises and any right to require a minimum bid or "upset" price, and (2) benefit of any stay, extension, exemption or moratorium law, now existing or hereafter enacted.

b. Mortgagee may at any time release all or any part of the Premises from the lien of this Mortgage or release the personal liability of any person for the Indebtedness, with or without consideration and without giving notice to, or obtaining the consent of, the holder of any Mortgage or lien upon, or other interest in, the Premises. Any such release shall not impair or affect the validity or priority of this Mortgage, regardless of the effect of such release upon any such mortgage, lien or other interest or the holder thereof. Nothing in this subparagraph constitutes consent by Mortgagee to the placing of a mortgage, lien or other encumbrance on the Premises.

c. Mortgagor (1) waives any right to require Mortgagee to sue upon or otherwise enforce payment of the Indebtedness or to enforce any security therefore before exercising its rights and remedies under this Mortgage, and (2) agrees that the validity and enforceability of this Mortgage shall not be impaired or affected by any failure of Mortgagee to obtain or perfect, or secure priority of, any other security at any time given, or agreed to be given, by any person for the Indebtedness.

d. Mortgagor hereby waives all rights to valuation and appraisalment under the laws of Indiana, in the event that Mortgagee forecloses this Mortgage.

**14. Expenses.**

Mortgagor shall pay to Mortgagee on demand any and all expense, including attorneys' fees and legal expenses, paid or incurred by Mortgagee in collecting or attempting to collect the Indebtedness or in protecting and enforcing the rights of and obligations to Mortgagee under any provision of this Mortgage, including, without limitation, taking any action in any bankruptcy, insolvency, or reorganization proceedings concerning Mortgagor or foreclosing this Mortgage by advertisement or by action, and all expenses shall be part of the Indebtedness and shall bear interest, from the date paid or incurred by Mortgagee, at the Default Rate.

**15. Application of Proceeds.**

In the event of the payment to Mortgagee, pursuant to the provisions hereof, of any rents or profits or any proceeds of insurance or proceeds of any condemnation, Mortgagee shall have the right to apply such rents or profits or proceeds, in such amounts and proportions as Mortgagee shall in its sole discretion determine, to the full or partial satisfaction of any or all of the indebtedness and obligations of Mortgagor secured hereby.

**16. Notices.**

All notices to Mortgagor and to Mortgagee shall be deemed to be duly given if and when mailed, with postage prepaid, to the respective addresses of Mortgagor and Mortgagee appearing on the first page hereof, or if and when delivered personally.

**17. Binding Effect.**

The provisions of this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors, assigns, heirs, executors, administrators, and personal representatives.

**18. Severability.**

If any provision of this Mortgage shall be prohibited or unenforceable by any applicable law, the provision shall be ineffective only to the extent and for the duration of such prohibition or unenforceability, and the unenforceability or prohibition thereof shall not invalidate any of the remaining provisions hereof.

IN WITNESS WHEREOF, Mortgagor and Mortgagee have executed this Mortgage as of the day and year first above written.

MORTGAGOR:

Shamsher Singh President  
Kaffee, Inc. Title

STATE OF INDIANA

COUNTY OF

**Document is NOT OFFICIAL!**

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Before me, the undersigned, a Notary Public, in and for said County and State, this 18th day of October, 1999, personally appeared: Shamsher Singh acknowledged the execution of the foregoing Mortgage and Security Agreement. In witness whereof, I have subscribed my name and affixed my official seal.

MY COMMISSION EXPIRES:

March 2, 2000

Betty Jean Gessin  
Betty Jean Gessin, Notary Public  
Resident County: LAKE  
INDIANA

This Instrument Prepared by:  
Steven W. Handlon  
HANDLON & HANDLON  
3207 Willowcreek Road, Suite A  
Portage, Indiana 46368  
(219) 763-7413

When Recorded Return to:  
New Equipment Leasing, Inc.  
P.O. Box 97  
Ada, Michigan 49301-0097