

01-26-1999

FORM PATENT AND TRADEMARK OFFICE-1594

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U.S. DEPARTMENT OF COMMERCE

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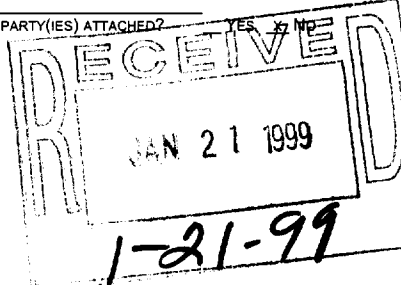
INSTRUMENTS OR COPY THEREOF

1. NAME OF CONVEYING PARTY(IES):

NEXSTORE, INC.

- INDIVIDUAL(S)
- GENERAL PARTNERSHIP
- CORPORATION-STATE OF FL
- OTHER
- ASSOCIATION
- LIMITED PARTNERSHIP

ADDITIONAL NAME(S) OF CONVEYING PARTY(IES) ATTACHED?  YES  NO



2. NAME AND ADDRESS OF RECEIVING PARTY(IES):

NAME: Foothill Capital Corporation

INTERNAL ADDRESS:

STREET ADDRESS:

400 Northpark Town Center  
1000 Abernathy Road, Suite 1450  
Atlanta, Georgia 30328

- INDIVIDUAL(S) CITIZENSHIP \_\_\_\_\_
- ASSOCIATION
- GENERAL PARTNERSHIP
- LIMITED PARTNERSHIP
- CORPORATION-STATE OF CA
- OTHER

If ASSIGNEE IS NOT DOMICILED IN THE UNITED STATES, A DOMESTIC REPRESENTATIVE DESIGNATION IS ATTACHED  YES  NO

ADDITIONAL NAME(S) AND ADDRESS(ES) ATTACHED?  YES  NO

3. NATURE OF CONVEYANCE:

- ASSIGNMENT
- SECURITY AGREEMENT
- OTHER \_\_\_\_\_
- MERGER
- CHANGE OF NAME

EXECUTION DATE: 29 DECEMBER 98

4. APPLICATION NUMBER(S) OR REGISTRATION NUMBER(S):

A. TRADEMARK APPLICATION NO(S)

ADDITIONAL NUMBERS ATTACHED?  YES  NO

B. TRADEMARK REGISTRATION NO(S)

2,062,717

5. NAME AND ADDRESS OF PARTY TO WHOM CORRESPONDENCE CONCERNING DOCUMENT SHOULD BE MAILED:

NAME:

Susan Peterson

INTERNAL ADDRESS:

Carlton, Fields, et al.

STREET ADDRESS:

Post Office Box 3239  
Tampa, FL 33601-3239

6. TOTAL NUMBER OF APPLICATIONS AND REGISTRATIONS INVOLVED:

1

7. TOTAL FEE (37 CFR 3.41): \$ 40.00

ENCLOSED

AUTHORIZED TO BE CHARGED TO DEPOSIT ACCOUNT\*  
\*NOTE: (ONLY IF AMOUNT ENCLOSED IS INCORRECT)

8. DEPOSIT ACCOUNT NUMBER:

03-0683

(ATTACH DUPLICATE COPY OF THIS PAGE IF PAYING BY DEPOSIT ACCOUNT)

DO NOT USE THIS SPACE

9. STATEMENT AND SIGNATURE.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Edgel C. Lester, Jr.

NAME OF PERSON SIGNING

SIGNATURE

DATE

TOTAL NUMBER OF PAGES COMPRISING COVER SHEET: 1

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## SECURITY AGREEMENT

This SECURITY AGREEMENT ("Agreement") is made this 29<sup>th</sup> day of December, 1998, by and between NEXSTORE, INC., a Florida corporation ("Borrower") and FOOTHILL CAPITAL CORPORATION, a California corporation ("Lender").

### RECITALS

WHEREAS, Lender and Borrower and KNIGHT COMMERCE CENTRE, INC., a Florida corporation ("Knight"), COMMERCE CENTRE L.C., a Florida limited liability company ("Commerce"), and NEXSTORE 1, INC., a Florida corporation ("NexStore 1") have contemporaneously entered into that certain Loan and Security Agreement ("Loan Agreement") dated on or of even date herewith pursuant to which Lender has made a certain term loans to NexStore, Knight and Commerce in the aggregate principal amount of \$14,325,000.00 and a revolving credit loan to NexStore 1 in the maximum principal amount of \$700,000.00, collectively (the "Loans"), which Loans are or will be evidenced by one or more Term Notes and a Revolving Credit Note (collectively, the "Note") which Note is secured by that certain Fee and Leasehold Mortgage entered into by and between NexStore, Knight and Commerce, as mortgagor, and Lender, as mortgagee ("Mortgage"); and

WHEREAS, Lender and Borrower desire to perfect Lender's security interest in the Collateral described in the Mortgage and Loan Agreement and, in particular, certain trademarks more particularly described in Exhibit A attached hereto and the goodwill associated therewith (the "Property"), by compliance with the provisions of 15 U.S.C. §1051 et seq. and the rules and regulations promulgated thereunder; and

WHEREAS, such compliance requires the filing and recording of a security agreement in the United States Patent and Trademark Office.

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. Incorporation by Reference. Lender and Borrower have entered into the Mortgage and the Loan Agreement on or of even date herewith, the terms of which are incorporated herein by reference and made a part hereof, which agreements provide, inter alia, that Borrower has granted a security interest to Lender in certain collateral, including, but not limited to, trademarks which are registered with the United States Patent and Trademark Office and the goodwill associated with such trademarks, which collateral is listed on Exhibit A hereto, respectively. In order that the parties comply with the provisions of 15 U.S.C. §1060 to place on the public record the security interest of Lender in the Collateral described on Exhibit A, the parties restate the security interest granted to Lender in this document. In the event of a conflict between the terms of the Mortgage, the Loan Agreement and this Agreement, the terms of the Loan Agreement shall govern, provided, however, that it is the intent of the parties that the remedies in these three agreements are cumulative and should be construed together to grant to Lender the

greatest possible rights with respect to the Collateral described in each document. Additionally, and notwithstanding the foregoing, nothing in the Loan Agreement or Mortgage should be construed in any way to limit or impair the perfection of Lender's security interest in the "Collateral" (as defined below).

2. Security. For the purposes of securing payment of the Note and the prompt and complete performance by Borrower of all of its obligations under the Note, the Loan Agreement, the Mortgage and this Agreement, Borrower hereby grants, transfers, assigns and gives to Lender a security interest in the Property and to any and all other trademarks and goodwill associated therewith owned or controlled by Borrower, as Borrower shall hereafter create, develop, acquire or register together (the "Collateral"). Such grant, transfer, assignment and security interest created hereby shall give Lender a continuing lien in, on and to all such Collateral, to remain in force so long as Borrower is, in any manner, obligated to Lender under the Note, the Loan Agreement, the Mortgage or this Agreement.

3. Representations and Warranties. Borrower hereby represents and warrants to Lender as follows:

a. Borrower is the sole and exclusive owner of all right, title and interest in and to the Collateral, and no other person or party has any ownership interest or claim on or to any of such Collateral. Borrower will defend this Collateral in any proceedings or against the claims or demands of any person that may affect the title to, ownership of or the interest of Lender therein pursuant to this Agreement, the Mortgage or the Loan Agreement, and Borrower will indemnify Lender for all costs and expenses, including attorneys' fees (including litigation and appeals therefrom, proceedings before agencies or otherwise), incurred by Lender in the defense or protection of its interest in any of the Collateral;

b. Borrower has the full right and power to transfer, assign and grant a security interest in the Collateral in the manner and pursuant to the terms set forth in this Agreement, the Mortgage or the Loan Agreement, without the consent or approval of any third party; and

c. Borrower is not a party to any written or oral contract, agreement, note or other instrument under the terms of which the execution or performance by Borrower of this Agreement, the Mortgage or the Loan Agreement will be a default, or whereby timely performance by Borrower in accordance with the terms of this Agreement, the Mortgage or the Loan Agreement may be prohibited, prevented or delayed. Neither the execution nor performance of this Agreement, the Mortgage or the Loan Agreement by Borrower will result in a violation of any statute, order, writ, injunction, judgment or decree of any court or governmental authority.

4. Affirmative Covenants. Borrower covenants and agrees that, so long as any portion of the indebtedness and obligations secured hereby remains unpaid, Borrower shall:

a. Defend the Collateral against all claims and demands of all persons at any time claiming any interest therein; however, at Lender's option, Lender may contest any such

claims or demands in its name or in the name of Borrower, and Borrower shall pay to Lender on demand the costs, charges and expenses, including attorneys' fees (including litigation and appeals therefrom) incurred by Lender in defending such claims or demands;

b. Join with Lender in executing one or more (i) security agreements or supplemental security agreements, (ii) financing statements pursuant to the Uniform Commercial Code of the State of Georgia, and any other jurisdiction as required by law, in form and substance satisfactory to Lender, and (iii) pay all costs and expenses, including attorneys' and paralegals' fees and costs, incurred by Lender in connection with the preparation and the filing in all public offices wherever filing is deemed by Lender to be necessary or desirable. Borrower hereby authorizes Lender to file the security agreements, supplemental security agreements, financing statements, continuation statements or other appropriate filings signed only by Lender in all places where necessary to protect or continue Lender's security interest in the Collateral in all jurisdictions where such authorization is permitted by law;

c. Make full and timely payment of the Note and all other indebtedness and obligations secured hereby when due;

d. Give Lender all information it may request with respect to Borrower and the Collateral. All information furnished to Lender by Borrower shall be complete and accurate in all material respects. Borrower will, at its own expense, do, make, procure, execute and deliver all acts, things, writings and assurances as Lender may at any time require to protect, assure or enforce its interest, rights and remedies created by, provided in or arising from this Agreement;

e. File within 30 days after the date of this Agreement for registration all trademarks used on goods sold by Borrower, unless otherwise relieved in writing from doing so by Lender;

f. Make all payments when due under the terms of any royalty agreements;

g. Give prompt notice to Lender in the event (i) any royalties are not paid; (ii) any claims are made against the Collateral; and (iii) any claims of any nature in excess of \$5,000.00 are made against Borrower; and

h. File with the United States Patent and Trademark Office for registration and amend this Security Agreement, the Mortgage and the Loan Agreement to reflect the same, all updates and enhancements to the Collateral immediately upon the creation or acquisition of new trademark rights.

5. Negative Covenants. Borrower covenants and agrees that, so long as any portion of the indebtedness and obligations secured hereby remains unpaid, Borrower shall not, without the prior written consent of Lender:

a. Sell, assign, encumber, transfer or otherwise dispose of the Collateral or any portion thereof or interest therein; and

b. Do any act or permit any act to be done, the effect of which may impair the interest of Lender in the Collateral or the value of the Collateral.

6. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

a. If any warranty or representation or any other statement of fact made by Borrower hereunder shall be false or misleading in any material respect when made or furnished;

b. Failure of Borrower to perform any and all of the covenants, agreements and provisions contained in this Agreement;

c. Sale or encumbrance of any or all of the Property or the property comprising the Collateral, or the making of any levy, seizure or attachment thereof or thereon; and

d. Any other "Event of Default" as defined in the Note, the Mortgage or Loan Agreement or any other document executed in connection with this transaction.

7. Remedies. Upon the occurrence of any Event of Default, Lender shall have the following rights and remedies:

a. To declare immediately due and payable, at its option and without demand or notice of any kind, any and all indebtedness and obligations secured hereby, and reduce the same to judgment;

b. To exercise any one or more of the rights and remedies given a secured party under the applicable Uniform Commercial Code and all other laws governing this Agreement; and

c. Transfer to itself all of Borrower's right, title and interest in the Collateral and the Property.

The rights and remedies of Lender provided under this Agreement, the Mortgage and the Loan Agreement and all of the other documents executed in connection with this transaction are cumulative and are in addition to any rights and remedies that it may otherwise have under law, and the rights and remedies of Lender hereunder or otherwise provided at law are cumulative and none is exclusive.

8. Miscellaneous.

a. This Agreement shall not obligate Lender to perform or discharge any of Borrower's obligations, duties or liabilities under or with respect to the Collateral assigned hereby, and Borrower shall and does hereby agree to indemnify Lender for and to hold Lender harmless from any and all liability, loss or damage that may or might be incurred under or with respect to the Collateral assigned hereby and from all and any claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its

part to perform or discharge any of the obligations of Borrower in connection with the Collateral assigned hereby. Should Lender incur any such liability, loss or damage, the amounts thereof, including costs, expenses and attorneys' fees and disbursements (including, but not limited to, any attorneys' fees and disbursements incident to any litigation, mediation or arbitration proceedings and any appeals therefrom), shall be secured hereby, and Borrower shall reimburse Lender for such amounts;

b. This Agreement shall be governed by the laws of the State of Georgia; and

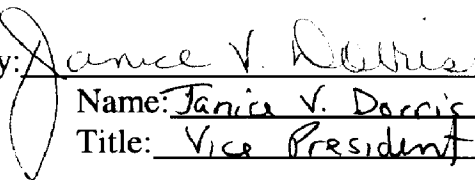
c. This Agreement shall be binding upon Borrower and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

**9. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY RIGHT TO SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE INDEBTEDNESS SECURED HEREBY OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG THE PARTIES, OR ANY OF THEM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.**

IN WITNESS WHEREOF, Lender and Borrower have duly executed this Agreement on the date set forth above.

**LENDER:**

FOOTHILL CAPITAL CORPORATION, a  
California corporation

By:   
Name: Janice V. Darrig  
Title: Vice President

**BORROWER:**

NEXSTORE, INC.,  
a Florida corporation

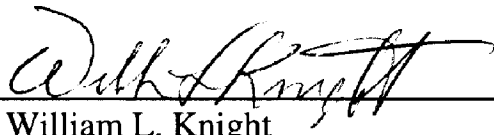
By:   
\_\_\_\_\_  
William L. Knight  
President

EXHIBIT A

Collateral

1. Trademark: "NexStore"  
Federal Registration Number: 2,062,717  
Registration Date: May 20, 1997  
Owned By: NexStore, Inc., a Florida corporation