

Shelby County

1044

Alabama Restated Mortgage B
THIS INSTRUMENT WAS PREPARED BY:
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SHONEY'S, INC.

TO

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,
as the Collateral Agent for the Lenders

and

RICHARD T. KORTRIGHT,
as Trustees

RESTATED MORTGAGE INDENTURE and DEED OF TRUST
With Assignment of Leases and Rents
and Security Agreement*

Dated as of June 25, 1990

* This instrument shall be deemed to be an OPEN END RESTATED MORTGAGE INDENTURE and DEED OF TRUST with respect to the Collateral (as defined herein) situated in the State of Ohio. This instrument is a Uniform Commercial Code Financing Statement for fixture filing.

A POWER OF SALE HAS BEEN GRANTED IN THIS RESTATED MORTGAGE. A POWER OF SALE MAY ALLOW THE MORTGAGEE TO TAKE THE MORTGAGED PROPERTY AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY THE MORTGAGOR UNDER THIS RESTATED MORTGAGE.

THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS \$0.00. THIS LOAN SECURES OBLIGATORY ADVANCES AND IS FOR COMMERCIAL PURPOSES.

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RESTATEMENT MORTGAGE INDENTURE AND DEED OF TRUST, WITH
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
and FINANCING STATEMENT*

RESTATEMENT MORTGAGE INDENTURE and DEED OF TRUST with
ASSIGNMENT OF LEASES AND RENTS and SECURITY AGREEMENT* (the
"Mortgage"), dated as of June 25, 1990, from SHONEY'S, INC., a
Tennessee corporation having its principal office and place of
business in the County of Davidson at 1727 Elm Hill Pike, P.O.
Box 1260, Nashville, Tennessee 37202 (the "Mortgagor"), to
CANADIAN IMPERIAL BANK OF COMMERCE, a Canadian chartered bank,
acting through its New York Agency, in its capacity as collateral
agent for the various financial institutions (the "Lenders")
which are, or may from time to time hereafter become, parties to
the Loan Agreement (as hereinafter defined), having its principal
office and place of business in the County of New York at 425
Lexington Avenue, New York, New York 10017 (the "Corporate
Trustee"), and RICHARD T. KORTRIGHT, having his address in the
County of New York at 787 Seventh Avenue, 24th Floor, New York,
New York 10019-6018 (the "Individual Trustee"; the Corporate
Trustee and the Individual Trustee being referred to collectively
as the "Trustees"), for the benefit of the Lenders and the
holders of the Notes from time to time, and to such separate and
co-trustees appointed herein to act as trustees with respect to
certain of the Collateral, for the benefit of the Lenders and the
holders of the Notes from time to time. Capitalized terms used
herein without other definition have the respective meanings
specified in the Loan Agreement.

R E C I T A L S

A. Loan Agreement, Tranche A Notes and Tranche B Notes.
Pursuant to a certain Credit Agreement, dated as of July 13, 1988
(herein, as the same may be amended, supplemented, revised or
restated from time to time, called the "Loan Agreement") by and
between the Mortgagor, as borrower thereunder, the Lenders, and
Canadian Imperial Bank of Commerce, New York Agency, in its
capacity as agent for the Lenders (the "Agent"), the Mortgagor
has executed and delivered to the Lenders the following notes,
each payable in lawful money of the United States of America to
the order of the Corporate Trustee at its principal office in New
York, New York: (i) those certain Tranche A Notes (herein, such
Tranche A Notes, together with any and all amendments or

* This instrument shall be deemed to be an OPEN END RESTATED
MORTGAGE INDENTURE and DEED OF TRUST with respect to Collateral
(as defined herein) situated in the State of Ohio.

supplements thereto, extensions thereof and notes or other obligations which may be taken in whole or partial renewal, substitution or extension thereof, shall be called the "Tranche A Notes"), due and payable in twenty-four installments with a final maturity of July 22, 1996, subject to acceleration as set forth in the Loan Agreement, in the aggregate original face principal amount of Four Hundred Forty Million Dollars (\$440,000,000), bearing interest as provided in the Loan Agreement on the principal amount thereof from time to time outstanding (the form of which Tranche A Note is attached hereto as Exhibit B), and (ii) those certain Tranche B Notes (herein, such Tranche B Notes, together with any and all amendments or supplements thereto, extensions thereof and notes or other obligations which may be taken in whole or partial renewal, substitution or extension thereof, shall be called the "Tranche B Notes"), due and payable in four installments with a final maturity of January 22, 1997, subject to earlier maturity and acceleration as provided in the Loan Agreement, in the aggregate original face principal amount of One Hundred Forty Five Million Dollars (\$145,000,000), bearing interest as provided in the Loan Agreement on the principal amount thereof from time to time outstanding (the form of which Tranche B Note is attached hereto as Exhibit C). (The Tranche A Notes and the Tranche B Notes are herein sometimes collectively called the "Notes.") The Mortgagor is or will become justly indebted to the Lenders in the amounts evidenced by the Notes (the "Loan Amounts") in accordance with the terms of the Notes and the Loan Agreement. Unless otherwise defined herein, terms used herein which are defined or defined by reference in the Loan Agreement or any exhibit thereto shall have the same meanings when used herein as such terms have therein.

B. Related Documents. Any and all loan agreements (including, without limitation, the Loan Agreement), the Notes, the Collateral Documents, the Loan Documents and any other documents and instruments executed and delivered by or for the benefit of the Mortgagor or its Subsidiaries, whether pursuant to the terms of the Loan Agreement or otherwise, in connection with the Notes or security therefor, or for the purpose of supplementing or amending all or any of the foregoing, all of which, as the same may be amended, modified or supplemented from time to time, are hereinafter referred to as the "Related Documents."

C. The Liabilities. As used in this Mortgage, the term "Liabilities" means and includes all of the following: (i) all obligations of the Mortgagor to the Lenders and their successors and assigns, and all of the other holders of any of the Notes (the "Noteholders"), arising under or in respect of the Notes, (ii) all obligations of the Mortgagor to any Lender under any Rate Swap Agreement provided by such Lender, and (iii) all other

obligations and indebtedness of the Mortgagor or its Subsidiaries, to the Lenders, the Trustees or the Noteholders, in each case howsoever created, arising or evidenced, whether direct or indirect, joint or several, absolute or contingent, or now or hereafter existing, or due or to become due, and arising out of or in connection with the Loan Agreement or the Related Documents, including, without limitation, all indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing to the Lenders, the Trustees or the Noteholders under or with respect to, the Loan Agreement, the Related Documents or this Mortgage, all of the covenants, obligations and agreements (and the truth of all representations and warranties) in, under or pursuant to the Notes, this Mortgage, and the Related Documents, any and all advances, costs or expenses paid or incurred by the Lenders, the Trustees or the Noteholders to protect any or all of the Collateral (hereinafter defined) and other collateral under the Related Documents, to perform any obligation of the Mortgagor hereunder and any obligation of the Mortgagor or its Subsidiaries under the Related Documents or collect any amount owing to the Lenders, the Trustees or the Noteholders which is secured hereby or under the Related Documents; interest on all of the foregoing; and all costs of enforcement and collection of this Mortgage, the Related Documents and the Liabilities.

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

(i) Real Estate. All of the land described on Exhibit A* attached hereto (the "Land"), together with all and singular

* This Mortgage may be executed in multiple counterparts. This Mortgage covers Premises located in upwards of 15 states and in multiple counties within those states. To facilitate recordation, there are omitted from certain counterparts those descriptions in Exhibit A which contain descriptions of the Premises located in recording jurisdictions other than the jurisdiction in which the particular counterpart is to be recorded. There is contained a complete description of all the Premises subject to the security interest and lien of this Mortgage in the counterparts of this Mortgage located on file at the principal offices of the Mortgagor and the Trustees set forth in Section 4.6. The complete legal description of all the Premises subject to the security interest and lien of this Mortgage as contained in such counterparts is incorporated herein by reference. Each counterpart of this

(Cont'd)

the tenements, rights, easements, hereditaments, rights of way or use, privileges, liberties, servitudes, licenses, franchises, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

(ii) Improvements and Fixtures. All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate and owned or purported to be owned by the Mortgagor, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate and owned or purported to be owned by the Mortgagor, including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment, booths, counters and signs (all of the foregoing is herein referred to collectively as the "Improvements");

(iii) Personal Property. All furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, window cleaning, building cleaning, monitoring, garbage, air conditioning, cooking, pest control and other equipment) and all other tangible property of any kind or character (but excluding personal property of tenants or independent contractors of the Mortgagor ("Occupant's Equipment")) now or hereafter owned or purported to be owned by the Mortgagor and used or useful in connection with the Real Estate, regardless of whether located on the Real Estate or located elsewhere, including, without limitation, all rights of the Mortgagor under any lease to furniture, furnishings, fixtures and other items of personal property at any time during the term of such lease, and all rights under and to all payments and deposits required by the provisions of

Mortgage shall be deemed an original and of equal dignity and effect for all pertinent purposes.

Section 1.20 of Article I below (all of the foregoing is herein referred to collectively as the "Goods");

(iv) Intangibles. All option rights, purchase contracts, books and records and general intangibles of the Mortgagor relating to the Real Estate or the Improvements and all accounts, contract rights, instruments, chattel paper and other rights of the Mortgagor for payment of money to it for property sold or lent by it, for services rendered by it, for money lent by it, or for advances or deposits made by it, and any other intangible property of the Mortgagor related to the Real Estate or the Improvements and, if this is a leasehold mortgage, the Mortgagor's right of election and possession under Section 365(h) of the Federal Bankruptcy Code, as amended from time to time, or any replacement therefor, in the event that the lessor or landlord under any Primary Lease is a debtor thereunder and rejects the Primary Lease (all of the foregoing is herein referred to collectively as the "Intangibles");

(v) Rents. All rents, issues, profits, royalties, avails, reversions, remainders, income and other benefits derived or owned by the Mortgagor directly or indirectly from the Real Estate or the Improvements, and all proceeds of the conversion, voluntary or involuntary, of any of the Premises into cash or liquidated claims (all of the foregoing is herein collectively called the "Rents");

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

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

(viii) Contracts for Construction or Services. All rights of the Mortgagor, if any, under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Estate or the Improvements, including any architect's contract (all of

the foregoing is herein referred to collectively as the "Contracts for Construction");

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

(x) Primary Leases. If the interest of the Mortgagor with respect to the Real Estate or the Improvements or both, or any part thereof or interest therein, is as a lessee under a lease (each such lease being referred to individually as a "Primary Lease," and all such Primary Leases being collectively referred to as the "Primary Leases"), then all of the Mortgagor's right, title and interest as lessee under all Primary Leases;

(xi) After Acquired Property. Any and all additional estates in the Premises, and other rights and interests hereafter acquired by the Mortgagor relating to the Collateral or any part thereof (all of the property described in clauses (i) (other than the Land), (ii), (iv), (v) and (vi) and all general intangibles constituting proceeds acquired with cash proceeds of any of the property described hereinabove being deemed, as between the Mortgagor and the Trustees, to be fixtures and accessions to the Land to the extent that such property is situated in the State of Georgia); and

(xii) Other Property. All other property or rights of the Mortgagor of any kind or character related to the Real Estate or the Improvements, and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing. (All of the Real Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises".)

E. Restatement. This Mortgage is given in connection with the Agreement for Segregation and Division of Collateral and Restatement of Mortgage dated as of the date hereof between the parties hereto and recorded immediately prior to the recordation hereof (the "Division Agreement") and evidences a division of the collateral encumbered by, and a restatement of, the Mortgage Indenture and Deed of Trust with Assignment of Leases and Rents and Security Agreement described in Schedule 3 attached to the Division Agreement.

G R A N T

NOW THEREFORE, for and in consideration of the Lenders making any loan, advance or other financial accommodation to or for the benefit of the Mortgagor, including sums advanced under the Notes, and in consideration of the various agreements contained herein, in the Notes, the Loan Agreement and any other Related Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, and in order to secure the full, timely and proper payment and performance of each and every one of the Liabilities,

THE MORTGAGOR HEREBY MORTGAGES, WARRANTS, CONVEYS, BARGAINS, SELLS, ALIENS, DEMISES, HYPOTHECATES, PLEDGES, RELEASES, TRANSFERS AND ASSIGNS TO THE TRUSTEES, AND GRANTS TO THE TRUSTEES AND THEIR SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL, (BUT AS TO THE CORPORATE TRUSTEE, ONLY TO THE EXTENT IT MAY LAWFULLY ACCEPT SUCH GRANT IN ANY PARTICULAR JURISDICTION).

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

IN TRUST, NEVERTHELESS, with power of sale, upon the terms and trusts set forth herein, for the equal and proportionate benefit and security of the Noteholders, without preference of any of such Notes over any others by reason of priority in the time of issue thereof, or for any other reason;

The Mortgagor hereby covenants with and warrants to the Trustees, for the benefit of the Trustees, the Lenders and each Noteholder, and with the purchaser at any foreclosure sale that: at the execution and delivery hereof it is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple or, if so indicated on Exhibit A, leasehold; the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than the security interest granted to the Trustees herein and pursuant to the Related Documents and the encumbrances set forth on Schedule B to the Lenders' title insurance policies which have been approved by counsel to the Trustees (the "Permitted Exceptions"); it has good and lawful right to sell, mortgage and convey the Collateral; and it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever with the exception of the Permitted Exceptions. If this Mortgage is a

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leasehold mortgage, the Mortgagor further covenants and warrants that the Primary Lease is the valid, binding and legal obligation of the parties thereto, is enforceable in accordance with its terms, is in full force and effect and has not been amended or modified in any way; that no default has occurred under any Primary Lease and no event has occurred which with the passage of time or giving of notice or both could ripen into a default; that the Mortgagor took possession of the Premises as contemplated by any Primary Lease and has since been in continuous, uninterrupted possession of the Premises; and that the Mortgagor and its successors and assigns will forever warrant and defend the same against all claims and demands whatsoever with the exception of the Permitted Exceptions.

I. COVENANTS AND AGREEMENTS OF THE MORTGAGOR

Further to secure the payment and performance of the Liabilities, the Mortgagor hereby covenants, warrants and agrees with the Trustees, for the benefit of the Trustees, the Lenders and each Noteholder, as follows:

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

1.2. Payment of Taxes. The Mortgagor will pay or cause to be paid before delinquent all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay before due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the Related Documents, whether levied against the Mortgagor or the Trustees or otherwise, and will submit to the Trustees all receipts showing payment of all of such taxes, assessments and charges; provided, however, that the Mortgagor shall not (unless otherwise required by law) be required to pay any such taxes, assessments, levies, claims, charges, expenses or liens which are being contested in good faith and by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles so long as forfeiture of any part of the Collateral will not result from the failure of

the Mortgagor to pay any such taxes, assessments, levies, claims, charges, expenses or liens during the period of any such contest. The Mortgagor's making any payments and deposits required by the provisions of Section 1.20 of this Article I shall not relieve the Mortgagor of, or diminish in any way, its obligations as set out in this Section 1.2.

1.3. Maintenance and Repair. None of the Premises is used principally or primarily for agricultural or farming purposes. The Mortgagor will: not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the value of the Collateral or the security of this Mortgage; not remove or demolish any of the Improvements; subject to Section 1.10, pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; not make any changes, additions or alterations to the Premises or the Improvements other than remodeling in the ordinary course of business except as required by any applicable governmental requirement or as otherwise approved in writing by the Corporate Trustee, which approval shall not be unreasonably withheld, delayed or conditioned; at its sole cost and expense, maintain, preserve and keep the Goods and the Improvements, including the adjoining sidewalks, curbs, vaults and vault space, if any, streets and ways, in good, safe and insurable condition and repair and make any needful and proper repairs, replacements, renewals, additions or substitutions, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, required by wear, damage, obsolescence or destruction, all as promptly as possible under the circumstances, but in all cases in compliance with any time period and construction requirement provided under applicable requirements of governmental authorities and insurance underwriters and, if this is a leasehold mortgage, the Primary Lease; not commit, suffer, or permit waste of any part of the Premises; and maintain all grounds in good and neat order and repair. Anything to the contrary contained herein notwithstanding, the Mortgagor may sell, transfer or otherwise dispose of equipment, furnishings and similar personal property used in connection with the Premises if, in the Mortgagor's reasonable judgment, the same become damaged, destroyed or obsolete, provided that such sale, transfer or disposition is permitted under the terms of the Primary Lease, if any, and all such equipment, furnishings and other personal property is, prior to or concurrently with such sale, transfer or other disposition, replaced with equipment, furnishings and similar personal property that is at least of comparable quality, value and utility and is free and clear of all security interests and other liens except for the security interest granted to the Trustees by this Mortgage; provided, further, that no such equipment, furnishings and other personal property need be so replaced if

the Mortgagor determines in the exercise of good business judgment that the same is no longer required for the continued operation of the Premises or the operation of the business conducted therefrom if (a) the fair market value of such property, immediately prior to the date of such damage, destruction or obsolescence (provided that such property has been maintained by the Mortgagor in the condition required pursuant to the terms of this Mortgage) is less than \$10,000.00 (and the aggregate fair market value of all such property which will not be replaced by the Mortgagor during any calendar year is less than \$1,000,000.00), and (b) the terms of the Primary Lease do not require such replacement.

1.4. Sales; Liens. Except as permitted under the Loan Agreement (unless prohibited under the terms of the Primary Lease, if any), the Mortgagor will not: sell, contract to sell, assign, transfer or convey, or permit to be transferred or conveyed, the Collateral or any part thereof or any interest or estate in any thereof (including any conveyance into a trust or any conveyance of the beneficial interest in any trust that may be holding title to the Premises) or remove any of the Collateral from the Premises or from the state in which the Real Estate is located; or create, suffer or permit to be created or to exist any mortgage, lien, claim, security interest, charge, encumbrance or other right or claim of any kind whatsoever (a "Lien") upon the Collateral or any part thereof, except those of current taxes not then due and payable, the Permitted Exceptions and mechanics' liens being diligently contested in good faith and otherwise in accordance with Section 1.10. Mortgagor shall have no power or authority to create any Lien on any Premises or any part thereof (other than this Mortgage and any extension or renewal thereof), and any such Lien created without the prior written consent of the Corporate Trustee, whether created by the affirmative act of the Mortgagor or otherwise, and whether or not created by any further advance by a prior lienholder after the date of this Mortgage, shall be subject and subordinate to this Mortgage.

1.5. Access by Trustees. The Mortgagor will at all times: deliver to the Trustees either all of its executed originals (in the case of chattel paper or instruments) or certified copies (in all other cases) of all Occupancy Leases, Primary Leases, agreements creating or evidencing Intangibles, Plans, Contracts for Construction, Contracts for Sale, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral; permit access by the Trustees, any Lender, and any Noteholder upon not less than 24 hours prior notice if no Default (hereinafter defined) or event which with the giving of notice or lapse of time, or both, has occurred which would constitute a Default (in either of which cases no notice need be given) to its books and

records, construction progress reports, tenant registers, sales records, offices, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as the Trustees or any Lender may reasonably request; and permit the Trustees, any Lender and their agents and designees, at all times, to enter on and inspect the Premises.

1.6. Stamp and Other Taxes. If the Federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax on the Lenders' receipt of interest payments on the principal portion of the Loan Amounts), assessment or imposition upon this Mortgage, the Notes, any of the other Liabilities, or any of the Related Documents, the interest of the Trustees in the Collateral, or any of the foregoing, or upon the Trustees by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to this Mortgage, the Notes, or any of the Related Documents, the Mortgagor shall pay all such taxes and stamps to or for the Trustees as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Mortgagor from paying any material tax, assessment, stamp, or imposition to or for the Trustees, then all sums hereby secured shall become immediately due and payable at the option of the Required Lenders. Thereafter, if the Mortgagor fails to make payment of all such sums within 5 days of the Trustees' demand therefor, such failure shall constitute a Default hereunder. Notwithstanding the foregoing, to the extent that this Mortgage relates to any property located in the State of Oklahoma, the Trustees will pay or cause to be paid any real estate mortgage tax, and any other tax required by Oklahoma law to be paid by them.

1.7. Insurance. The Mortgagor will at all times maintain or cause to be maintained on the Goods, the Improvements and on all other Collateral, all insurance reasonably required at any time or from time to time by the Trustees or any Lender, and the Primary Leases, if any, and in any event: (a) all-risk property insurance covering fire, extended coverage, vandalism and malicious mischief and such other insurance coverage customarily obtained from time to time by prudent owners of properties of similar character and use as the Premises, in an amount which is not less than (or such greater amount if required to avoid the effects of any co-insurance provisions contained in the policy) the replacement cost from time to time (which replacement cost shall be subject to the Corporate Trustee's reasonable approval) of the Improvements and Goods without consideration for

depreciation; (b) insurance against business interruption and loss of rentals with respect to the Mike Rose Foods Plant in Nashville, Tennessee for such occurrences and in such amounts as the Trustees may reasonably require; (c) insurance against flood if required by the Federal Flood Disaster Protection Act of 1973 and regulations issued thereunder; (d) comprehensive general public liability insurance, protecting the Mortgagor in an amount reasonably acceptable to the Corporate Trustee; (e) during construction, builder's completed value risk insurance against "all risks of physical loss" (including collapse and transit coverage); and (f) all other insurance commonly or, in the reasonable judgment of the Trustees or any Lender, prudently maintained by those whose business, improvement to, and use of real estate is similar to that of the Mortgagor, including (without limitation), if applicable, boiler explosion, sprinkler leakage, dram shop, employer's liability and worker's compensation insurance, all in amounts satisfactory to the Trustees, but in any event with a single limit of not less than \$1,000,000, in respect of personal injury or death to any one person, of not less than \$1,000,000 in respect of any one occurrence, of not less than \$2,000,000 in respect of any one location for personal injury and property damage, and an umbrella policy or policies in an amount not less than \$20,000,000, each such coverage to be subject to a deductible, if any, not to exceed \$250,000 per occurrence, provided Mortgagor shall maintain adequate reserves therefor, and, provided, further that Mortgagor may self insure with respect to workers compensation in each state where Mortgagor is qualified to do so and if Mortgagor maintains adequate reserves therefore. All of such insurance shall be maintained in such form and with such companies as shall be approved by the Trustees, and to deliver to, and keep deposited with the Trustees original certificates and certified copies of all policies of such insurance and renewals thereof, indexed to the Premises in the order established on Exhibit A, with premiums paid prior to the deadline for payment thereof and with clauses, attached thereto in favor of the Trustees, and their successors and assigns, that (1) name the Trustees and each Lender as additional insured parties thereunder, as their interests may appear; (2) any losses shall be payable notwithstanding (i) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any Person other than the Person claiming, (ii) the occupation or use of the Premises for purposes more hazardous than permitted by the terms of the policy, or (iii) any foreclosure or other proceedings or notice of sale relating to the Premises, or any change in title to or ownership of any of the Premises; (3) include effective waivers by the insurer of all claims for insurance premiums and rights of subrogation against the Trustees and each Noteholder; (4) provide that each policy shall be primary without right of contribution from any other insurance that may be carried; and

(5) not less than 30 days' prior written notice to the Corporate Trustees shall be given of cancellation (including, without limitation, cancellation for non-payment or expiration of the term of such policy) or material modification of such policies or any portion thereof. The Mortgagor's making any payments and deposits required by the provisions of Section 1.20 of this Article I shall not relieve the Mortgagor of, or diminish in any way, its obligations as set out in this Section 1.7. All of the above-mentioned original insurance policies or certified copies of such policies and certificates of such insurance reasonably satisfactory to the Trustees, together with receipts for the payment of premiums thereon, shall be delivered to and held by the Trustees, which delivery shall constitute assignment to the Trustees of all return premiums to be held as additional security hereunder; provided, however, that prior to any Default any such premiums may be retained by the Mortgagor, subject to the provisions of the Loan Agreement. Certificates (or binders covering the time periods and with the renewal and cancellation provisions set forth in the following sentence) evidencing all renewal and replacement policies indexed to the Premises in the order established on Exhibit A, shall be delivered to the Trustees prior to the expiration of the expiring policies followed by certified copies of all such replacement policies promptly after the issuance thereof. All binders provided in accordance with the provisions of the preceding sentence shall be for a term of not less than 90 days which term shall be deemed extended until written notice of cancellation thereof is given to the Trustees not less than 30 days prior to the effective date of such cancellation or expiration; provided, however, that in no event shall any insurance binder expire less than 90 days after the issuance thereof. If the Mortgagor is unable to deliver to the Trustees the evidence described herein of renewal or replacement insurance policies not less than 15 days prior to the expiration date of the expiring policies, the Mortgagor shall, not less than 15 days nor more than 30 days prior to such expiration date, deliver to the Trustees a certificate from an officer of the Mortgagor, stating (a) the Mortgagor's progress in obtaining renewal or replacement policies and the anticipated date of issuance thereof; (b) that the Mortgagor has received no notice of non-renewal or cancellation of any existing policy of insurance; and (c) that the Mortgagor has no knowledge of the cancellation or non-renewal of such policies of insurance or of any facts or circumstances which, if known to an insurer, would cause it to cancel or refuse renewal or issuance of any policy of insurance. Nothing contained in the preceding sentence or elsewhere in this Mortgage shall excuse the Mortgagor from continuously maintaining in full force and effect during the term of this Mortgage all insurance required under the provisions hereof. The Mortgagor shall not obtain nor permit the lessee under any Occupancy Lease to obtain or carry policies of

insurance concurrent in form or contributing in the event of loss with those required to be maintained under this Section 1.7 unless the Trustees and each Lender are included therein as named insureds and otherwise in accordance with this Section.

Mortgagor will promptly give the Trustees written notice of any casualty to the Premises reasonably anticipated to result in damage over \$250,000. Subject to the rights of the lessor or landlord under the Primary Lease, if any, the Mortgagor agrees that any loss paid to the Trustees under any of such policies shall be applied, at the option of the Required Lenders, toward pre-payment of the Notes or any of the Liabilities, or to the rebuilding or repairing of the damaged or destroyed Improvements or other Collateral, as the Required Lenders in their sole and unreviewable discretion may elect (which election shall not relieve the Mortgagor of the duty to rebuild or repair); provided, however, that any proceeds of insurance shall be made available to the extent required, as determined by the Trustees in their reasonable discretion, for the rebuilding or repairing of the damaged or destroyed Improvements or other Collateral under the following conditions:

(i) no Default or event which, with the lapse of time, the giving of notice, or both, would constitute a Default, under this Mortgage or the Related Documents shall have occurred or be continuing (and if such an event shall occur during restoration, the Trustees may, at their election, apply any insurance proceeds then remaining in their hands to the reduction of the indebtedness evidenced by the Notes and the other Liabilities);

(ii) the Mortgagor shall have submitted to the Trustees plans and specifications for the restoration which shall be reasonably satisfactory to it, which plans and specifications shall not be substantially modified, changed or revised without the Trustees' prior written consent which consent shall not be unreasonably withheld, delayed or conditioned, and shall be in conformity with all governmental regulations, including, without limitation, building, zoning, land use and environmental regulations provided, however, that so long as no Default has occurred and is continuing, the provisions of this clause shall not apply if the value of the premises which has suffered a casualty is less than \$1,000,000;

(iii) the Mortgagor, if so requested by the Trustees, shall have submitted to the Trustees fixed price contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration and providing for a total completion price not

in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, the Mortgagor shall have deposited the amount of such deficiency with the Trustees unless the Mortgagor has made other arrangements or furnished other evidence which is satisfactory to the Trustees of the Mortgagor's ability to pay such deficiency in full provided, however, that so long as no Default has occurred and is continuing, the provisions of this clause shall not apply if the value of the premises which has suffered a casualty is less than \$1,000,000;

(iv) any insurance proceeds in excess of \$250,000 to be released pursuant to the foregoing provisions may, at the option of the Trustees, be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements may, at the Trustees' option, be made directly to the Mortgagor or to or through any contractor or materialman to whom payment is due or to or through a construction escrow to be maintained by a title insurer reasonably acceptable to the Trustees;

(v) the Trustees may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien;

(vi) all title insurance charges and other costs and expenses paid to or for the account of the Mortgagor in connection with the release of such insurance proceeds shall constitute so much additional indebtedness hereby secured to be payable upon demand with interest thereafter at the post maturity rate determined with respect to Tranche B Loans pursuant to Section 3.4.2 of the Loan Agreement (or such lower maximum rate as shall be legal under applicable law) (the "Default Rate"), and any such costs and expenses may be deducted by the Trustees from insurance proceeds at any time standing in their hands;

(vii) if the Mortgagor fails to complete restoration as promptly as possible under the circumstances, but in all cases in compliance with any time period provided under applicable requirements of governmental authorities and insurance underwriters and, if this is a leasehold mortgage, the applicable Primary Lease, the Trustees shall have the right, but not the obligation, to restore or rebuild the Improvements and the other Collateral, or any part thereof, for or on behalf of the Mortgagor in lieu of applying said proceeds to the indebtedness hereby secured and for such purpose may do all necessary acts, including using funds

deposited by the Mortgagor as aforesaid and advancing additional funds for the purpose of restoration, all such additional funds to constitute part of the indebtedness hereby secured payable upon demand with interest at the Default Rate.

The Mortgagor hereby empowers the Trustees, in their discretion, to settle, compromise and adjust any and all claims or rights under any insurance policy maintained by the Mortgagor relating to the Collateral; provided, however, that prior to the occurrence of any Default, (i) the Mortgagor shall have the right to settle, adjust and compromise claims which are reasonably anticipated to result in proceeds in an amount less than \$500,000, and (ii) the Mortgagor shall have the right to settle, adjust and compromise claims which are reasonably anticipated to result in proceeds in an amount equal to or more than \$500,000, jointly with the Trustees. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. Nothing contained in this Mortgage shall create any responsibility or obligation on the Trustees to collect any amounts owing on any insurance policy or resulting from any condemnation, to rebuild or replace any damaged or destroyed Improvements or other Collateral or to perform any other act hereunder. The Trustees shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

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1.8. Eminent Domain. The rights of the Trustees under this Section 1.8 are subject to the rights of the lessor or landlord set forth in the Primary Lease, if any. In case the Collateral, or any part or interest in any thereof, is taken by condemnation or eminent domain proceedings, Mortgagor shall promptly give written notice thereof to the Trustees. The Trustees are hereby empowered to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "Condemnation Awards") which may be paid for any property taken or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Trustees), and all Condemnation Awards so received shall be forthwith applied by the Trustees, as they may elect in their sole and unreviewable discretion, to the prepayment of the Notes or any of the Liabilities, or to the repair and restoration of any property not so taken or damaged;

provided, however, that no election made by the Trustees under this Section shall relieve the Mortgagor of the duty to repair and restore; provided, further, that any Condemnation Awards payable by reason of the taking of less than all of the Collateral shall be made available to the extent required, as determined by the Trustees in their reasonable discretion, for the repair or restoration of any Collateral not so taken under the conditions set forth in Section 1.7 hereof. The Mortgagor hereby empowers the Trustees, in the Trustees' absolute discretion, to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof; provided, however, that prior to the occurrence of any Default, (i) the Mortgagor shall have the right to settle, compromise and adjust claims which are reasonably anticipated to result in proceeds in an amount less than \$500,000, and (ii) the Mortgagor shall have the right to settle, adjust and compromise claims which are reasonably anticipated to result in proceeds in an amount equal to or more than \$500,000, jointly with the Trustees.

1.9. Governmental Requirements. The Mortgagor will at all times fully comply with, and cause the Collateral and the use and condition thereof fully to comply with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders, codes and decrees of any kind whatsoever that apply or relate to the Mortgagor or the Collateral, any of the adjoining sidewalks, streets or ways, vaults or vault space, if any, or the use thereof, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights and use, noise and pollution) which are applicable to the Mortgagor or have been granted for the Collateral, any of the adjoining sidewalks, streets or ways, vaults or vault space, if any, or the use thereof. Unless required by applicable law, or unless the Corporate Trustee has otherwise first agreed in writing, the Mortgagor shall not make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was delivered. The Mortgagor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and materially adversely affecting the Premises or any part thereof without in each case obtaining the Trustees' prior written consent thereto. Notwithstanding the foregoing, the Mortgagor shall have the right to diligently contest any such governmental requirement so long as (a) the contest is conducted in good faith and by appropriate proceedings; (b) reserves are being maintained

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in accordance with generally accepted accounting principles; (c) forfeiture of any part of the Collateral will not result from the Mortgagor's failure to comply with such governmental requirement during the period of such contest; and (d) no criminal penalties will result from the Mortgagor's failure to comply with such governmental requirement during the period of such contest.

1.10. No Mechanics' Liens. The Mortgagor will not suffer any mechanic's, laborer's or materialmen's lien to be created or remain outstanding upon the Collateral or any part thereof. Anything herein contained to the contrary notwithstanding, the Mortgagor shall not be deemed in Default with respect to the provisions of this Section if the Mortgagor provides the Trustees with written notice of the Mortgagor's good faith intention to diligently contest such claim or lien by appropriate proceedings (and the Mortgagor does so contest such claim or lien) at the Mortgagor's sole expense and, if requested by the Trustees, the Mortgagor furnishes to the Trustees either a bond, in form and with sureties reasonably satisfactory to the Trustees, or an updated title insurance policy or endorsement to the Trustees' existing policy acceptable to the Trustees indemnifying Trustees against any loss, cost, damage or expenses on account of any such lien or claim. The Mortgagor agrees to promptly deliver to the Trustees a copy of any notices that the Mortgagor receives with respect to any pending or threatened lien or the foreclosure thereof. **IT IS FURTHER EXPRESSLY MADE A COVENANT AND CONDITION HEREOF THAT THE LIEN OF THIS MORTGAGE SHALL EXTEND TO ALL RIGHT, TITLE AND INTEREST OF THE MORTGAGOR IN ANY AND ALL IMPROVEMENTS AND FIXTURES NOW OR HEREAFTER ON THE PREMISES, PRIOR TO ANY OTHER LIEN THEREON THAT MAY BE CLAIMED BY ANY PERSON, SO THAT SUBSEQUENTLY ACCRUING CLAIMS FOR LIEN ON THE PREMISES SHALL BE JUNIOR AND SUBORDINATE TO THIS MORTGAGE. ALL CONTRACTORS, SUBCONTRACTORS, AND OTHER PARTIES DEALING WITH THE PREMISES, OR WITH ANY PARTIES INTERESTED THEREIN, ARE HEREBY REQUIRED TO TAKE NOTICE OF THE ABOVE PROVISIONS.**

1.11. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, execute and file (at the Mortgagor's expense) such financing statements, (and appropriate continuation statements with respect thereto), obtain such acknowledgements or consents, notify such obligors or providers of services and materials and do all such other acts and things as the Trustees or any Lender may from time to time request to establish and maintain a valid and perfected first and prior lien on and a first priority perfected security interest in the Collateral (including, without limitation, any Collateral acquired after the execution hereof); maintain its office and principal place of business at all times at the address shown above except as otherwise provided in the Loan Agreement; keep all of its books and records relating to the Collateral on the Premises or at such

address; keep all tangible Collateral on the Real Estate except as the Trustees may otherwise consent in writing, except as otherwise provided in Section 1.3; make notations on its books and records sufficient to enable the Trustees, as well as third parties, to determine the interest of the Trustees hereunder; and not collect any rents or the proceeds of any of the Occupancy Leases or Intangibles more than 30 days before the same shall be due and payable except as the Trustees may otherwise consent in writing. Within 90 days after the end of each Fiscal Year, and promptly upon request by the Trustees, but not more than once in each Fiscal Year, the Mortgagor, at its sole cost and expense, will furnish to the Trustees, an opinion (or opinions), satisfactory in scope and form to the Trustees, of independent counsel satisfactory to the Trustees, stating that the Mortgagor has taken all action then or theretofore required by this Section, setting forth the particulars of all such action not set forth in an opinion previously furnished pursuant to this Section and specifying the particulars of all action required by this Section during the period from the date of such opinion to and including the 90th day after the end of the then current calendar year.

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

1.13. Contract Maintenance; Other Agreements; Leases. The Mortgagor will, for the benefit of the Trustees, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and restriction of the Mortgagor affecting the Premises or imposed on it under any agreement between Mortgagor and a third party relating to the Collateral or the Liabilities secured hereby, including, without limitation, the Occupancy Leases, the Primary Leases, the Contracts for Sale, Contracts for Construction and the Intangibles (collectively, the "Third Party Agreements"), so that there will be no default thereunder that is not cured within any applicable cure period provided therefor in the Third Party Agreements and so that the persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Trustees; and the Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance. Without the prior written consent of the Trustees, the Mortgagor shall not (a) make or permit any termination or amendment of the rights of the Mortgagor under any Third Party Agreement (provided, however, that the Trustees agree not to unreasonably withhold, delay or condition their consent to any termination or amendment of

any Third Party Agreement, with the exception of any Primary Lease); (b) collect rents or the proceeds of any Occupancy Leases or Intangibles more than 30 days before the same shall be due and payable; (c) modify or amend any Occupancy Leases or any Primary Lease (provided, however, that the Trustees agree not to unreasonably withhold, delay or condition their consent to any modification or amendment of any Occupancy Leases), or, except where the lessee is in default, cancel or terminate the same or accept a surrender of the leased premises; (d) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any Occupancy Lease, or grant any options to renew (provided, however, that the consent required under this clause (d) shall not be unreasonably withheld, conditioned or delayed with respect to the assignment, subletting or granting of options to renew any Occupancy Leases); (e) create or permit any lien or encumbrance which, upon foreclosure, would be superior to any Occupancy Lease or Primary Lease; or (f) in any other manner impair Trustees' rights and interest with respect to the Rents or the Primary Leases, if any. The Mortgagor shall promptly deliver to the Trustees copies of any demands or notices of default received by the Mortgagor in connection with any Third Party Agreement and allow the Trustees the right, but not the obligation, to cure any such default. In addition, if this Mortgage is a leasehold mortgage, the Mortgagor shall give, concurrently with the giving thereof or promptly upon receipt, as the case may be, copies of all notices that the Mortgagor sends or receives with respect to the Primary Lease. All security or other deposits, if any, received from tenants under the Occupancy Leases shall be segregated and maintained in an account reasonably satisfactory to the Trustees and in compliance with the law of the state where the Premises are located and with an institution reasonably satisfactory to the Trustees. If this is a leasehold mortgage, the Mortgagor's making any payments and deposits required by the provisions of Section 1.20 of this Article I shall not relieve the Mortgagor of, or diminish in any way, its obligations with respect to payment of all amounts due under the Primary Leases as set out in this Section 1.13. The provisions of clauses (a) and (c) of this Section 1.13 to the contrary notwithstanding, the Trustees' consent shall not be required for any amendment or other modification of any Occupancy Lease if the amendment or modification does not substantially reduce the rent payable thereunder or increase any risk or liability of the Mortgagor. [Reference is hereby made, with respect to the Premises located in the State of New York, to Section 291-f of the Real Property Law.]

1.14. Notify the Trustees of Default. The Mortgagor shall notify the Trustees in writing forthwith upon learning of the occurrence of any Default hereunder or other event which, upon the giving of notice or the passage of time or both, would

constitute a Default hereunder, which notice shall describe such Default or other event that could mature into a Default and the steps being taken by the Mortgagor with respect thereto.

1.15. No Assignments; Future Leases. The Mortgagor will not cause or permit any Rents, Occupancy Leases, Primary Leases, Contracts for Sale, or other contracts relating to the Premises to be assigned, transferred, conveyed, pledged or disposed of to any party other than the Trustees without first obtaining the express written consent of the Trustees to any such assignment or permit any such assignment to occur by operation of law. In addition, the Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any person, except with the prior written consent of the Trustees and, if granted, under Occupancy Leases approved in writing by the Trustees.

1.16. Assignment of Leases and Rents and Collections.

(a) All of the Mortgagor's interest in and rights under the Occupancy Leases and Primary Leases now existing or hereafter entered into, and all of the Rents, whether now due, past due, or to become due, and including all prepaid rents and security deposits, and all other amounts due with respect to any of the other Collateral, are hereby absolutely, presently and unconditionally assigned and conveyed to the Trustees to be applied by the Trustees in payment of all sums due under the Notes, the Liabilities and all other sums payable under this Mortgage. Prior to the occurrence of any Default, the Mortgagor shall have a license to collect and receive all Rents and other amounts, which license shall be terminated at the sole option of the Trustees, without regard to the adequacy of its security hereunder and without notice to or demand upon the Mortgagor, upon the occurrence of any Default. It is understood and agreed that neither the foregoing assignment to the Trustees nor the exercise by the Trustees of any of their rights or remedies under Article IV hereof shall be deemed to make the Trustees a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until the Trustees, in person or by agent, assume actual possession thereof, nor shall appointment of a receiver for the Collateral by any court at the request of the Trustees or by agreement with the Mortgagor, or the entering into possession of any part of the Collateral by such receiver, be deemed to make the Trustees a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion

thereof. Upon the occurrence of any Default, this shall constitute a direction to and full authority to each lessee under any Occupancy Lease, each guarantor of any of the Occupancy Leases and any other person obligated under any of the Collateral to pay all Rents and other amounts to the Trustees without proof of the Default relied upon. The Mortgagor hereby irrevocably authorizes each such person to rely upon and comply with any notice or demand by the Trustees for the payment to the Trustees of any Rents and other amounts due or to become due.

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

(c) The Mortgagor shall at all times fully perform the obligations of the lessor under all Occupancy Leases. The Mortgagor shall at any time or from time to time, upon request of the Trustees, transfer and assign to the Trustees in such form as may be satisfactory to the Trustees, the Mortgagor's interest in the Occupancy Leases, subject to and upon the condition, however, that prior to the occurrence of any Default hereunder the Mortgagor shall have a license to collect and receive all Rents under such Leases upon accrual, but not prior thereto, as set forth in paragraph (a) above.

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

1.17. The Trustees' Performance. If the Mortgagor fails to pay or perform any of its obligations herein contained (including payment of expenses of foreclosure and court costs), the Trustees may (but need not), as agent or attorney-in-fact of the Mortgagor, make any payment or perform (or cause to be performed) any obligation of the Mortgagor hereunder, in any form and manner deemed expedient by the Trustees, and any amount so paid or

expended (plus reasonable compensation to the Trustees for their out-of-pocket and other expenses for each matter for which they act under this Mortgage), with interest thereon at the Default Rate, shall be added to the principal debt hereby secured and shall be repaid to the Trustees upon demand. By way of illustration and not in limitation of the foregoing, the Trustees may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any Lien on any of the Collateral; complete construction; make repairs; collect rents; prosecute collection of the Collateral or proceeds thereof; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; redeem from any tax sale or forfeiture affecting the Premises; and, if this is a leasehold mortgage, pay any amount due, or perform any covenant, agreement, or other undertaking of the Mortgagor under, the Primary Lease. In making any payment or securing any performance relating to any obligation of the Mortgagor hereunder, the Trustees shall be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of the Trustees shall ever be considered as a waiver of any right accruing to them, or any of them, on account of the occurrence of any matter which constitutes a Default.

1.18. Subrogation. To the extent that the Trustees, on or after the date hereof, pay any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or the Mortgagor or any other person pays any such sum with the proceeds of the loan secured hereby, the Trustees shall have and be entitled to a lien or other interest on the Collateral equal in priority to the lien or other interest discharged and the Trustees shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit the Trustees in securing the Liabilities.

1.19. Hazardous Material. Except as disclosed pursuant to Section 6.20 of the Loan Agreement, neither the Mortgagor nor any Subsidiary thereof nor, to the Mortgagor's knowledge, any other Person has ever caused or permitted any Hazardous Material (hereinafter defined) to be disposed of (in any manner which might result in any liability to the Mortgagor, the Mortgagor's Subsidiaries, the Agent or the Lenders) on, under or at any real property legally or beneficially owned (or any interest or estate in which any real property is owned) or operated by the Mortgagor or any Subsidiary of the Mortgagor (including, without limitation, any property owned by a land trust the beneficial interest in which is owned in whole or in part, by the Mortgagor

or any Subsidiary of the Mortgagor), and no such real property has ever been used (either by the Mortgagor or, to the Mortgagor's knowledge, by any other Person) as (i) a dump site or permanent storage site for any Hazardous Material or (ii) a temporary storage site for any Hazardous Material. The Mortgagor and the Subsidiaries have been issued and are in compliance with all permits, certificates, licenses, approvals and other authorizations relating to environmental matters, and have filed all notifications and reports, relating to chemical substances, air emissions, effluent discharges and Hazardous Material waste storage, treatment and disposal required in connection with the operation of their businesses the failure to have or comply with would, individually or in the aggregate, have a Materially Adverse Effect. All Hazardous Materials used or generated by the Mortgagor and its Subsidiaries or any business merged into or otherwise acquired by the Mortgagor and its Subsidiaries have been generated, accumulated, stored, transported, treated, recycled and disposed of in compliance with all applicable laws and regulations the violation of which has any reasonable likelihood of having a Materially Adverse Effect. The Mortgagor and the Subsidiaries have no liabilities with respect to Hazardous Materials, and no facts or circumstances exist which could give rise to liabilities with respect to Hazardous Materials, which could have any reasonable likelihood of having a Materially Adverse Effect.

The Mortgagor hereby indemnifies the Trustees and agrees to hold the Trustees and the Lenders and all parties related to, employed by or affiliated with the Lenders (collectively, the "Lender Parties" and individually, a "Lender Party") harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses, and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Trustees or any Lender Party for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises or the Real Estate or any other real property legally or beneficially owned (or any interest or estate in which is owned) or operated by the Mortgagor or any Subsidiary thereof, including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Mortgagor or any Subsidiary thereof of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards on conduct concerning, any Hazardous Material and in connection with any of the conditions

disclosed pursuant to Section 6.20 of the Loan Agreement), regardless of whether or not caused by, or within the control of, the Mortgagor or any Subsidiary.

For purposes of this Mortgage, "Hazardous Material" means and includes (i) any asbestos or insulation or other material composed of or containing asbestos, or (ii) any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material as now or as any time hereafter in effect. This definition refers to the amounts of such waste, substance or material, present at a particular facility, in excess of the reportable quantity or threshold planning quantity, if applicable, for such waste, substance or material as may be listed in such Act, statute, law, ordinance, code, rule, regulation, order or decree described in the foregoing sentence.

1.20. Reserve for Taxes, Assessments, Insurance and Rents. Except as otherwise provided in the last paragraph of this Section 1.20 the Mortgagor covenants and agrees to pay to the Trustees monthly until the Notes and all of the Liabilities have been paid in full, in addition to the payments of principal and interest under the terms of the Notes until the said Notes are fully paid, the following sums:

(i) A sum equal to taxes and assessments next due upon the Premises (all as estimated by the Trustees) and the premiums that will next become due and payable on policies of fire, rental value and other insurance covering the Premises required under the terms of this Mortgage, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and insurance premiums will become due and payable, such sums to be held by the Trustees without interest accruing thereon, to pay each of the said items; and

(ii) If this is a leasehold mortgage, a sum equal to the monthly rental and additional rental, if any, due and payable under the terms of the Primary Lease on the first day of the month next succeeding, such sum to be held by the Trustees without interest accruing thereon, to pay said monthly rental and additional rental.

All payments described above in this Section shall be paid by the Mortgagor each month in a single payment to be applied by

the Trustees to the foregoing items in such order as the Trustees shall elect in their sole discretion.

Except as otherwise provided in the last paragraph of this Section 1.20 the Mortgagor shall also pay to the Trustees, at least thirty (30) days prior to the due date of any taxes, assessments or insurance premiums levied on, against or with respect to the Premises, and prior to the date for payment of any rent or additional rent under any Primary Lease, such additional amount as may be necessary to provide the Trustees with sufficient funds to pay any such tax, assessment, insurance premiums, rent and additional rent under this Section 1.20 at least 15 days in advance of the due date thereof. The Mortgagor's failure timely to make any payments required under this Section 1.20 shall be a Default under this Mortgage.

Except as otherwise provided in the last paragraph of this Section 1.20 the Trustees shall, within 15 days of receipt from the Mortgagor of a written request therefor together with such supporting documentation as the Trustees may reasonably require (including, without limitation, official tax bills or, as applicable, statements for insurance premiums or rent and additional rent), cause proper amounts to be withdrawn from such account and paid directly to the appropriate tax collecting authority, insurer or the lessor or landlord under the Primary Lease. Even though the Mortgagor may have made all appropriate payments to the Trustees as required by this Mortgage, the Mortgagor shall nevertheless have full and sole responsibility at all times to cause all taxes, assessments, insurance premiums and rent and additional rent to be fully and timely paid, and the Trustees shall have no responsibility or obligation of any kind with respect thereto except with respect to payments required to be made by the Mortgagor hereunder for which the Trustees have received funds to cover such payments in full and all statements, invoices, reports or other materials necessary to make such payments, all not less than 15 days prior to the deadline for any such payment. If at any time the funds so held by the Trustees shall be insufficient to cover the full amount of all taxes, assessments, insurance premiums, rent and additional rent then accrued (as estimated by the Trustees) with respect to the then-current twelve-month period, the Mortgagor shall, within 10 days after receipt of notice thereof from the Trustees deposit with the Trustees such additional funds as may be necessary to remove the deficiency. Failure to do so within such 10-day period shall be a Default hereunder and all sums hereby secured shall immediately become due and payable at the option of the Required Lenders. If the Premises described herein are sold under foreclosure or are otherwise acquired by the Trustees, accumulations under this Section 1.20 may be applied to the Liabilities in such order of applications as the Trustees may elect in their sole discretion.

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Anything contained in this Section 1.20 to the contrary notwithstanding, the Trustees hereby (by acceptance of this Mortgage and without the necessity of any written waiver, consent or acknowledgment from the Mortgagor) waive the requirement of all deposits described in this Section 1.20; provided, however, that the Trustees shall have the right, in their sole discretion, to rescind such waiver from and after the occurrence of any Default hereunder or the occurrence of any event or condition which, with the giving of notice or lapse of time, or both, would constitute a Default hereunder.

1.21. Certification of Notes in Case of Premises Located in Missouri. In case any Premises are located in any county, city or other political subdivision of the State of Missouri subject to the provisions of Section 443.050, Revised Statutes of Missouri, 1959, as at the time amended and in effect, and the recording officer for such county, city or other political subdivision shall require, as a condition of the recording or filing for record of this Mortgage or any supplement hereto, that any Note be presented to such officer or certified by a bank or trust company, then such Note shall, for the purpose of complying with the provisions of the aforesaid Section 443.050, be so presented or certified by a bank or trust company acting as or appointed by the Trustees by an endorsement thereon in the following form, and shall not be valid unless so presented or certified:

"For the purpose only of complying with the provisions of Section 443.050, Revised Statutes of Missouri, 1959, as amended, the undersigned (being a bank or trust company duly authorized to do a trust business), hereby certifies that this Note is one of the Tranche A Notes due July 31, 1996 [Tranche B Notes due July 31, 1998] described in and secured by the Mortgage Indenture and Deed of Trust dated as of _____, 1988, from Shoney's, Inc. to Canadian Imperial Bank of Commerce, New York Agency and _____, Trustees.

(Name of Lender or Trust Company)

By _____
(Title)

1.22. Occupant's Equipment. Any Occupant's Equipment not removed from any Premises by the owner thereof at its expense within 30 days after any repossession of such Premises pursuant to the Occupancy Lease for such Premises, shall be considered abandoned and may be appropriated, sold, destroyed, or otherwise

disposed of by the Trustees without notice to the Mortgagor or such owner and without obligation to account therefor, and the Mortgagor will pay the Trustees, upon demand, all costs and expenses incurred by the Trustees in removing, storing, or disposing of any Occupant's Equipment. The Mortgagor will immediately repair, at its sole cost and expense, all damage to any Premises caused by any removal of any Occupant's Equipment therefrom, whether effected by the Mortgagor or by the Trustees. The Trustees shall not be responsible for any loss of or damage to any Occupant's Equipment or any of the Premises.

II. D E F A U L T

Each of the following shall constitute a default ("Default") hereunder:

2.1. The Loan Agreement. The occurrence of an Event of Default (as such term is defined in the Loan Agreement) under the terms and provisions of the Loan Agreement; or

2.2. Provisions of this Mortgage. Non-compliance by the Mortgagor with, or failure by the Mortgagor to perform, any agreement contained herein (other than any non-compliance or failure which constitutes a Default under Sections 2.1 or 2.3) and continuance of such non-compliance or failure for five days with respect to the payment of any amounts required to be paid under this Mortgage or for 30 days after notice thereof to the Mortgagor from the Corporate Trustee with respect to all other Defaults under this Mortgage; or

2.3. Default Under Third Party Agreements. A default by the Mortgagor occurs under the terms of any Occupancy Lease, Primary Lease or under any other Third Party Agreements and any such default continues for more than the applicable period of grace, if any, therein set forth.

III. R E M E D I E S

3.1. Acceleration. Upon the occurrence of any Default, the entire indebtedness evidenced by the Notes and all other Liabilities together with interest thereon at the Default Rate shall, notwithstanding any provisions of the Notes or the Related Documents and without demand or notice of any kind to the Mortgagor or to any other person, (a) automatically become immediately due and payable in the event of the occurrence of any of the Events of Default described in Section 8.1.4 of the Loan Agreement and (b) at the option of the Required Lenders, become immediately due and payable in the event of the occurrence of any other Default.

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

3.3. Possession of Premises; Remedies under Notes and Related Documents. The Mortgagor hereby waives all right to the possession, income, and rents of the Premises from and after the occurrence of any Default, and the Trustees are hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof, to complete any construction in progress thereon at the expense of the Mortgagor, to lease the same, to collect and receive all Rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Premises or, at the election of the Trustees in their sole discretion, to a reduction of such of the Liabilities in such order as the Trustees may from time to time elect. The Trustees, in addition to the rights provided under the Notes and any Related Documents are also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the Goods and Improvements from depredation or injury and to preserve and protect the Collateral, and to continue any and all outstanding contracts for the erection and completion of improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in their own names, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of the Mortgagor. All such expenditures by the Trustees shall be Liabilities hereunder. Upon the occurrence of any Default, the Trustees may also exercise any or all rights or remedies under the law of the State in which the Premises are located. With respect to the Premises located in the State of Missouri, the Trustees hereby let such Premises to Mortgagor until a Default under the provisions of this Mortgage upon the following terms

and conditions, to wit: the Mortgagor and all Persons claiming or possessing such Premises by, through or under the Mortgagor shall pay rent therefor during such term at a rate of one percent of debt secured per month, payable monthly upon demand, and shall surrender immediate peaceable possession of such Premises upon an Event of Default under the terms of this Mortgage.

3.4. Foreclosure; Receiver. Upon the occurrence of any Default, the Trustees shall also have the right immediately to foreclose this Mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of the Trustees or at any time thereafter, either before or after foreclosure sale, and without notice to the Mortgagor or to any party claiming under the Mortgagor and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Liabilities, without regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, appoint a receiver for the benefit of the Trustees, with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all Rents during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption.

The court may, from time to time, authorize said receiver to apply the net amounts remaining in its hands, after deducting reasonable compensation for the receiver and its counsel as allowed by the court, in payment (in whole or, in part) of any or all of the Liabilities, including without limitation the following, in such order of application as the Trustees may elect: (i) amounts due under the Notes, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises, (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all moneys advanced by the Trustees to cure or attempt to cure any Default by the Mortgagor in the performance of any obligation or condition contained in any Related Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any Related Documents, with interest on such advances at the Default Rate. The overplus of the proceeds of sale, if any, shall then be paid to the Mortgagor, upon reasonable request. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as the Trustees may elect, until all

of the Premises have been foreclosed against and sold. In the case of any sale of the Premises pursuant to any judgment or decree of any court at public auction or otherwise, the Trustees, if allowed by applicable law, may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Notes and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by the Trustees for the enforcement, protection or collection of this security, including court costs, attorneys' fees (to the extent permitted by applicable law), stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by the Mortgagor. To the extent allowed by applicable law the Trustees may in their discretion deem all or any portion of the Collateral to be, and such Collateral may be foreclosed upon as, real estate under the law of the State in which the Premises are located.

3.5. Appointment of Keeper or Receiver for Premises in Louisiana. For purposes of the Premises located in the State of Louisiana, pursuant to the authority contained in Louisiana Revised Statutes 9:5136 through 9:5140.1 (La. Act No. 315 of 1976), the parties to this Mortgage do hereby expressly designate, at this time, the Trustees or their designees to be keeper or receiver for the benefit of the Noteholders, at their option to take effect immediately upon any seizure as an incident to an action that may be brought by the Trustees for enforcement of this Mortgage. From the date of the order of court appointing the keeper or receiver, the keeper or receiver shall be entitled to compensation, which compensation is hereby fixed at the rate of ten (10%) percent of the gross revenues and other amounts received, payable on a monthly basis. All revenues and other amounts received by the keeper or receiver during its administration shall be first applied to costs and expenses incurred by the keeper or receiver in its administration, such compensation of the keeper or receiver being stipulated here, as a part of this provision, as a cost, and the balance then to the debt secured by this act.

3.6. Power of Sale.

(a) In General. If the entire unpaid principal amount of and the premium, if any, and interest on the Notes at the time outstanding shall have become due and payable (whether at maturity or on a date fixed for any prepayment or by declaration or otherwise) and shall not have been paid, the Trustees, or any one of them, may, and if the Required Lenders deliver to the Trustees a written declaration of Default and demand for sale and

a written notice of Default and of election to cause the Premises to be sold, which notice the Trustees shall cause to be filed for record to the extent required by applicable law, will, sell, assign, transfer and deliver the whole or, from time to time, any part of the Collateral, or any interest in any part thereof, at any private sale or at public auction, with or without demand, advertisement or notice of the time or place of sale or adjournment thereof or otherwise, for cash, on credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Trustees may determine; provided, however that such sale or sales shall be held subject to and in accordance with the requirements of applicable law of the state in which the Premises are located at the time in effect. This Mortgage is made upon the statutory condition for the breach of which or of any other conditions, agreements or obligations of the Mortgagor hereunder, the Trustee shall have the statutory power of sale. The power of sale hereunder shall not be exhausted by any one or more such sales (or attempts to sell) as to all or any portion of the Collateral remaining unsold, but shall continue unimpaired until all of such Collateral has been sold or the Notes and all other indebtedness secured hereby shall have been paid in full.

(b) Power of Sale with respect to Collateral located in the State of Texas. With respect to Collateral located in the State of Texas, the power of sale and remedies hereunder shall be exercised as follows: The Trustees shall sell such Collateral at public auction to the highest bidder for cash, between the hours of ten o'clock A.M. and four o'clock P.M. on the first Tuesday in any month, at the door of the Court House in the County in which the Collateral, or any part thereof, is situated, after advertising the time, place and terms of said sale and the Collateral to be sold by posting, or causing to be posted, at least twenty-one (21) consecutive days prior to the date of said sale, written or printed notice thereof at the Court House door and filing a copy of such notice with the County Clerk of each of the Counties in which the Collateral is situated (such notice shall designate the County where the Collateral will be sold). In addition, at least twenty-one (21) days preceding the date of sale written notice of the proposed sale shall be served by Certified Mail on each debtor obligated to pay the debt evidenced by the Notes, according to the records of the Noteholders. Service of such Notice shall be completed upon deposit of the Notice enclosed in a prepaid wrapper, properly addressed to such debtor at the most recent address designated hereunder for notice, in a Post Office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. The provisions of this section with respect to

posting, serving, filing, and giving notices of sale are intended to comply with the provisions of section 51.002 of the Property Code of the State of Texas (in this Section 3.06 such section 51.001 is called the "Subject Statute"). In the event the requirement for any notice, or the posting, serving, filing, or giving thereof, under the Subject Statute shall be eliminated or the prescribed manner of posting, serving, filing, or giving same is modified by future amendment to the Subject Statute, the requirement for such particular notice shall be stricken from, or the manner of posting, serving, filing, or giving any notice hereunder modified in, this Mortgage in conformity with such amendment. The manner herein prescribed for posting, serving, filing, or giving any notice, other than that to be posted and filed or caused to be posted and filed by the Trustees, shall not be deemed exclusive but such notice or notices may be posted, served, filed, or given in any other manner which may be permitted by applicable law. Without limiting any of the powers or remedies provided elsewhere, Mortgagor agrees that, in the event the amounts secured hereby are payable in installments or include, at any time, items of matured as well as unmatured indebtedness, the holder of the matured installments or items of indebtedness, as the case may be, shall have the right to have the Premises sold, subject to the part of the Notes which are unmatured at the time the Trustees are requested to make such sale, at Trustee's sale to satisfy the lien and security interest hereof securing the then matured portion of said indebtedness and the Trustees are expressly authorized and empowered to conduct such sale which is called in this Section 3.07 "Installment Foreclosure." Any Installment Foreclosure made under this Section 3.07 shall not affect the liens, assignments, and security interest of this Mortgage existing to secure that portion of the obligations secured hereby to which the sale is to be made subject. No Installment Foreclosure shall exhaust the power of the Trustees to conduct future Installment Foreclosures nor in anywise limit the powers of sale provided elsewhere in this Mortgage. The provisions elsewhere in this Mortgage relating to manner of conducting Trustee's sales, including the posting, filing, and giving of notices thereof, shall also apply to any Installment Foreclosure and the same presumptions shall be applicable to any Trustee's deed or recital therein contained in connection with an Installment Foreclosure and to any other affidavit as hereinabove provided.

(c) Power of Sale with Respect to Collateral Located in the State of West Virginia. With respect to collateral located in the State of West Virginia, the power of sale and remedies hereunder shall be exercised as follows: the Individual Trustee shall, at the request of the Lenders as aforesaid, proceed to sell the Premises as described hereinabove and a copy of a notice of foreclosure sale shall be served on the Mortgagor by certified

mail, return receipt requested, directed to the address set forth in Section 4.6 of Article IV hereof or such other address given to the Lenders in writing. A notice shall be deemed complete when such notice is mailed to the aforesaid address, notwithstanding the fact that such mail may be returned as refused or undeliverable. A copy of such notice shall be served by certified mail, at least twenty (20) days prior to the sale, upon any subordinate lien holder who has previously notified the Lenders by certified mail of the existence of a subordinate lien. Mortgagor waives the posting of notice of sale at the courthouse and agrees that any sale hereunder may be adjourned from time to time without notice other than oral proclamation of such adjournment at the time and place of sale, or the time and place of any adjourned sale.

(d) Power of Sale with Respect to Collateral Located in the State of Mississippi. With respect to Collateral located in the State of Mississippi, the power of sale and remedies hereunder shall be exercised as follows: the Trustees shall sell that portion of the Collateral located in the State of Mississippi, or any part thereof, situated in the State of Mississippi at public outcry to the highest bidder for cash. Sale of the property shall be advertised for three consecutive weeks preceding the sale in a newspaper published in the county where the property is situated, or if none is so published, then in some newspaper having general circulation therein, and by posting a notice for the same time at the courthouse of the same county. The notice and advertisement shall disclose the names of the original debtors in this Mortgage. Mortgagor hereby waives the provisions of Section 89155 of the Mississippi Code of 1972 as amended, as far as this Section restricts the right of the Trustees to offer at sale more than 160 acres at a time, and Trustees may offer the property herein conveyed as a whole, regardless of how it is described.

(e) Power of Sale with Respect to Collateral Located in the State of Alabama. With respect to Collateral located in the State of Alabama, the power of sale and remedies hereunder shall be exercised as follows: The Trustees shall sell such collateral, after giving 21 days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Collateral or any part thereof is located, to sell the Collateral (or such part or parts thereof as the Trustees may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Trustees their successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Collateral, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall

be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Collateral, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Trustees, in the exercise of the power of sale herein given, elect to sell the collateral in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Collateral not previously sold shall have been sold or all the Liabilities secured hereby shall have been paid in full.

3.7. Remedies for Leases and Rents. If any Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Trustees shall be entitled, in their discretion, to do all or any of the following: (i) to the extent lawful under applicable law, enter and take actual possession of the Premises, the Rents, the Occupancy Leases, the Primary Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law (unless required under applicable law), enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in their own names as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Occupancy Leases, the Primary Leases and other Collateral relating thereto and conduct the business, if any, thereof either personally or by their agents, contractors or nominees, with full power to use such measures, legal or equitable, as in their discretion or in the discretion of their successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Occupancy Leases, the Primary Leases, and other Collateral relating thereto (including actions for the recovery of rent, actions in forceable detainer and actions in distress of rent); (iv) cancel or terminate any Occupancy Lease, any Primary Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Occupancy Lease, any Primary Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsurance the Collateral for all risks incidental to the Trustees' possession, operation and management thereof; and

(viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Trustees in their discretion may deem proper, the Mortgagor hereby granting the Trustees full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Default without notice to the Mortgagor or any other person. The Trustees, in the exercise of the rights and powers conferred upon them hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Trustees and their agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Trustees, make it readily rentable; and (c) to the payment of any Liabilities. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Default theretofore or thereafter occurring or affect any notice or Default hereunder or invalidate any act done pursuant to any such Default or notice, and, Notwithstanding continuance in possession of the Premises or any part thereof by the Trustees or a receiver, and the collection, receipt and application of the Rents, the Trustees shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of a Default. Any of the actions referred to in this Section 3.7 may be taken by the Trustees without regard to the adequacy of the security for the indebtedness hereby secured.

3.8. Personal Property. If any Default shall occur, the Trustees may exercise from time to time any rights and remedies available to them under applicable law upon default in payment of indebtedness. The Mortgagor shall, after any Default, promptly upon request by the Trustees, assemble the Collateral and make it available to the Trustees at such place or places, reasonably convenient for both the Trustees and the Mortgagor, as the Trustees shall designate. The Mortgagor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings, or process of law in

connection with the exercise by the Trustees of any of their rights and remedies after a Default occurs. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed by registered or certified mail, return receipt requested, at least 5 business days before such disposition, postage prepaid, addressed to the Mortgagor either at the address shown above or at any other address of the Mortgagor appearing on the records of the Trustees. Without limiting the foregoing, whenever there exists a Default hereunder, the Trustees may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (a) notify any person obligated on the Collateral to perform directly for the Trustees its obligations thereunder, (b) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (c) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Collateral, (d) take control of any proceeds of the Collateral, (e) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral and render all or any part of the Collateral unusable, all without being responsible for loss or damage, (f) sell any or all of the Collateral, free of all rights and claims of the Mortgagor therein and thereto, at any lawful public or private sale, and (g) bid for and purchase any or all of the Collateral at any such public or private sale. Any proceeds of any disposition by the Trustees of any of the Collateral may be applied by the Trustees to the payment of expenses in connection with the Collateral, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by the Trustees toward the payment of such of the Liabilities and in such order of application as the Trustees may from time to time elect. Without limiting the foregoing, the Trustees may exercise from time to time any rights and remedies available to them under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Notes and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Trustees of any of their rights and remedies hereunder. The Mortgagor hereby constitutes the Trustees its attorneys-in-fact with full power of substitution to take possession of the Collateral upon any Default and, as the

Trustees in their sole discretion deem necessary or proper, to execute and deliver all instruments required by the Trustees to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities are outstanding.

3.9. Performance of Third Party Agreements. The Trustees may, in their sole discretion at any time after the occurrence of a Default (or prior thereto if so provided in Section 1.17), notify any person obligated to the Mortgagor under or with respect to any Third Party Agreements of the existence of a Default, require that performance be made directly to the Trustees at the Mortgagor's expense, advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder and exercise, on behalf of the Mortgagor, any and all rights of the Mortgagor under the Third Party Agreements (including, without limitation, any options to renew, options to purchase and rights of first refusal under a Primary Lease) as the Trustees, in their sole discretion, deem necessary or appropriate; and the Mortgagor agrees to cooperate with the Trustees in all ways reasonably requested by the Trustees (including the giving of any notices requested by, or joining in any notices given by, the Trustees) to accomplish the foregoing.

3.10. No Liability on Trustees. Notwithstanding anything contained herein, the Trustees shall not be obligated to perform or discharge, and do not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the Third Party Agreements or otherwise, and the Mortgagor shall and does hereby agree to indemnify against and hold the Trustees harmless of and from: any and all liabilities, losses or damages which the Trustees may incur or pay under or with respect to any of the Collateral or under or by reason of its exercise of rights hereunder with the exception of any exercise of such rights by the Trustees in a manner so as to constitute gross negligence or willful misconduct; and any and all claims and demands whatsoever which may be asserted against the Trustees by reason of any alleged obligations or undertakings on their part to perform or discharge any of the terms, covenants or agreements contained in any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral. The Trustees shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Trustees in their exercise of the powers granted to them under this Mortgage, and the Mortgagor expressly waives and releases any such

liability. Should the Trustees incur any such liability, loss or damage under any of the Third Party Agreements or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Trustees immediately upon demand for the full amount thereof, including costs, expenses and reasonable attorneys' fees.

3.11. Prepayment Charge. If this Mortgage or any obligation secured hereby provides for any charge for prepayment of any indebtedness secured hereby, the Mortgagor agrees to pay said charge if for any reason any of said indebtedness shall be paid prior to the stated maturity date thereof, including, without limitation, any payment resulting from acceleration of the indebtedness secured hereby as the result of a Default, and whether or not said payment is made prior to or at any sale held under or by virtue of this Article III.

3.12. Sale a Bar Against the Mortgagor. Any sale of the Collateral or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise hereunder, shall, to the extent permitted by applicable law, forever be a perpetual bar against the Mortgagor.

IV. GENERAL

4.1. Permitted Acts. The Mortgagor agrees that, without affecting or diminishing in any way the liability of the Mortgagor or any other person (except any person expressly released in writing by the Trustees) for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, the Trustees or any Lender may at any time and from time to time, without notice to or the consent of any person, release any person liable for the payment or performance of the Notes or any of the other Liabilities or any guaranty given in connection therewith; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Notes or any of the other Liabilities or any guaranty given in connection therewith; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind for repayment of the Notes or the other Liabilities or any guaranty given in connection therewith; release any Collateral or other property securing any or all of the Notes or the other Liabilities or any guaranty given in connection therewith; make releases of any portion of the Premises; consent to the making of any map or plat of the Premises; consent to the creation of a condominium regime on all or any part of the Premises or the submission of all or any part of the Premises to the provisions of any condominium act or any

similar provisions of law of the state where the Premises are located, or to the creation of any easements on the Premises or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right the Trustees or the Lenders may have.

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

4.3. Related Documents. The Mortgagor covenants that it will timely and fully perform and satisfy all the terms, covenants and conditions of any and all Related Documents. If there shall be any inconsistency between the provisions of this Mortgage and the Loan Agreement, the terms and provisions of the Loan Agreement shall prevail.

4.4. Security Agreement; Fixture Filing. This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the Premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Premises are located with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures. For purposes of the foregoing, the Mortgagor is the debtor (with its address as set forth above), the Trustees are the secured party (with their address as set forth above) and, if this is a leasehold mortgage, the name of the record owner of the Premises is the lessor or landlord named on Exhibit A hereto. If any item of Collateral hereunder also constitutes collateral granted to the Corporate Trustee under any other mortgage or security agreement, in the event of any conflict between the provisions of this Mortgage and the provisions of such other mortgage or security agreement, relating to the Collateral, the provision or provisions contained in this Mortgage shall control with respect to the Collateral. Pursuant to the Texas Business and Commerce Code, this Mortgage will be effective as a financing statement filed as a fixture filing from the date of its filing for record covering the fixtures and personality described herein.

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

4.6. Notices. Each notice, demand or other communication in connection with this Mortgage shall be in writing. Notices forwarded by mail shall be deemed to have been given when sent if sent by registered or certified mail, postage paid, and:

(i) if to the Mortgagor, addressed to it at its address shown above;

(ii) if to the Trustees, addressed to it at the address shown above; or

at such other address as such party may, by written notice received by the other parties to this Mortgage, have designated as its address for notices. Notices given by telegram or telex shall be deemed to have been given when sent if addressed to the party to whom sent, at its address as aforesaid.

4.7. Successors; The Mortgagor; Gender. All provisions hereof shall bind the Mortgagor and the Trustees and their respective successors, vendees and assigns and shall inure to the benefit of the Trustees, their successors and assigns, and the Mortgagor and its permitted successors and assigns. The Mortgagor shall not have any right to assign any of its rights hereunder. Except as limited by the preceding sentence, the word "Mortgagor" shall include all persons claiming under or through the Mortgagor and all persons liable for the payment or performance by the Mortgagor of any of the Liabilities whether or not such persons shall have executed the Notes or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

4.8. Care by the Trustees. The Trustees shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral assigned by the Mortgagor to the Trustees or in the Trustees' possession if they take such action for that purpose as the Mortgagor requests in writing, but failure of the Trustees to comply with any such request shall not be deemed to be a failure to exercise reasonable care, and no failure of the Trustees to preserve or protect any rights with

respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by the Mortgagor, shall of itself be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

4.9. No Obligation on Trustees. This Mortgage is intended only as security for the Liabilities. Anything herein to the contrary notwithstanding (i) the Mortgagor shall be and remain liable under and with respect to the Collateral to perform all of the obligations assumed by it under or with respect to each thereof, (ii) the Trustees shall have no obligation or liability under or with respect to the Collateral by reason or arising out of this Mortgage and (iii) the Trustees shall not be required or obligated in any manner to perform or fulfill any of the obligations of the Mortgagor under, pursuant to or with respect to any of the Collateral.

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

4.11. Governing Law, Submission to Jurisdiction. THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK AND ACCEPTED BY THE CORPORATE TRUSTEE IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOANS SECURED HEREBY WERE DISBURSED IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. THIS MORTGAGE, TOGETHER WITH THE NOTES AND THE RELATED DOCUMENTS, SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WITHIN THE STATE OF NEW YORK; PROVIDED, HOWEVER, THAT WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO THE CREATION, PERFECTION, PRIORITY OR ENFORCEMENT OF LIENS ON REAL PROPERTY, THIS MORTGAGE SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PREMISES ARE LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF THIS MORTGAGE. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the

extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage. EXCEPT AS PROVIDED HEREIN WITH RESPECT TO LOCAL LAW, THE TRUSTEES MAY ENFORCE ANY CLAIM ARISING OUT OF THIS MORTGAGE, THE NOTES OR THE RELATED DOCUMENTS IN ANY STATE OR FEDERAL COURT HAVING SUBJECT MATTER JURISDICTION AND LOCATED IN NEW YORK, NEW YORK. For the purpose of any action or proceeding instituted with respect to any such claim, the Mortgagor has, pursuant to the terms of the Loan Agreement, irrevocably submitted to the jurisdiction of such courts and has irrevocably consented to the service of process out of said courts by mailing a copy thereof, by registered mail, postage prepaid, to the Mortgagor at its address for notices as set forth in the Loan Agreement, and agrees that such service, to the fullest extent permitted by law (a) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding, and (b) shall be taken and held to be valid personal service upon and personal delivery to it. Nothing herein contained shall affect the right of the Trustees to serve process in any other manner permitted by law or preclude the Trustees from bringing an action or proceeding in respect hereof in any other country, state or place having jurisdiction over such action. The Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any court located in New York, New York, and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

4.12. Waiver. The Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises or the Collateral, to the fullest extent permitted by applicable law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, laws or equities now or hereafter existing, including the statutory right of redemption, hereby further waives the pleading of any statute of limitations as a defense to any and all Liabilities secured by this Mortgage, and the Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Collateral. The Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness. The Mortgagor's waiver of its right of redemption

contained herein, if any, shall be null and void if the consideration of such waiver, whether or not expressed by its terms, shall be the waiver and release by the Trustees of any deficiency judgment against the Mortgagor.

4.13. JURY TRIAL. THE MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY RELATED DOCUMENTS TO WHICH IT IS A PARTY, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

4.14. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Trustees acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Trustees as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title. If this is a leasehold mortgage, the Mortgagor further agrees that so long as any of the indebtedness secured by this Mortgage shall remain unpaid, then, unless a contrary intent is manifested by the Trustees as evidenced by an express statement to that effect in an appropriate document duly recorded, the fee title and the leasehold estate in the Premises shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third party, by purchase or otherwise; and the Mortgagor further covenants and agrees that, in case it shall acquire the fee title, or any other estate, title or interest in the Premises, this Mortgage shall attach to and cover and be a first lien upon such fee title or other estate so acquired, and such fee title or other estate so acquired by the Mortgagor shall be considered as mortgaged, assigned or conveyed to the Trustees and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread. The provisions of this paragraph shall not apply in the event the Noteholders acquire the fee of the Premises except if the Trustees shall so elect.

4.15. Trustees Not Joint Venturers or Partners. The Mortgagor and the Trustees acknowledge and agree that in no event shall the Trustees be deemed to be partners or joint venturers with the Mortgagor. Without limitation of the foregoing, the

Trustees shall not be deemed to be such partners or joint venturers on account of them becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Liabilities secured hereby, or otherwise.

4.16. Time of Essence. Time is declared to be of the essence in this Mortgage, the Notes and the Related Documents and of every part hereof and thereof.

4.17. No Third Party Benefits. This Mortgage, the Notes and the Related Agreements are made for sole benefit of the Mortgagor, the Trustees and the Noteholders and, subject to the provisions of Section 4.7, their successors and assigns, and no other party shall have any legal interest of any kind under or by reason of any of the foregoing. Whether or not the Trustees elect to employ any or all the rights, powers or remedies available to them under any of the foregoing, the Trustees shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of the Trustees' actions or omissions pursuant thereto or otherwise in connection with this transaction.

4.18. Future Advances. This Mortgage secures all present and future Liabilities of the Mortgagor to the Trustees and the Noteholders. The amount of present Liabilities secured hereby is \$585,000,000; the maximum amount, including present and future Liabilities, which may be secured hereby at any one time is \$877,500,000, plus interest, plus any disbursements and taxes and insurance on the Premises, plus interest thereon, and any other sums advanced in accordance with the terms hereof or any of the Related Documents to protect the security of this Mortgage or any of the Related Documents.

V. THE TRUSTEES

5.1. Concerning the Trustees. Acceptance of the trusts hereunder and performance of the same by the Trustees shall not constitute a representation by them as to the legality, genuineness or sufficiency of the Notes and shall be only upon the terms and conditions hereof, including the following, to all of which the Mortgagor and the respective Noteholders at any time outstanding by their acceptance thereof agree:

5.2. Duties of the Trustees. The Trustees, and each of them, undertake by such acceptance, for the pro rata benefit of the Noteholders, to take such action from time to time for the protection and enforcement of their rights under this Mortgage as may be necessary or appropriate in the interests of the Noteholders, provided that:

(a) the duties and obligations of the Trustees shall be determined solely by the provisions of this Mortgage, and the Trustees shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and, further, the Trustees, or either of them, shall not be obligated to take any action hereunder which might in their reasonable judgment involve either of them in any expense or liability unless they shall have been furnished with reasonable indemnity;

(b) unless and until a Default shall have occurred and be continuing, the Trustees, or either of them, shall not be obligated to take any action hereunder except for the performance of such duties as are specifically set forth in this Mortgage and except as may be requested from time to time by the holders of a majority of then aggregate unpaid principal amount of the Notes at the time outstanding (or if no such principal amount is then outstanding, Lenders whose Commitments (as defined in the Loan Agreement) aggregate more than 50% of the aggregate Commitments) ("Required Lenders") (to the extent such request does not conflict with any rule of law or this Mortgage);

(c) the Trustees, or either of them, in the absence of actual knowledge, shall not be deemed to have knowledge of the existence of any Default unless notified thereof in writing by the Mortgagor or by any Noteholder;

(d) if and so long as a Default shall have occurred and be continuing, the Trustees, and each of them, shall exercise such rights, powers and remedies (whether vested in them by this Mortgage or at law or in equity or by statute or otherwise) for the protection and enforcement of their rights under this Mortgage as they may, in the absence of written instructions from the Required Lenders determine to be in the best interests of the Noteholders, or as they may be directed in writing to exercise by the Required Lenders (in either case to the extent the exercise of such rights, powers and remedies do not conflict with any rule of law or this Mortgage), and shall use the same degree of care and skill in the exercise of those rights, powers and remedies as a prudent person would use under the circumstances in the conduct of his own affairs;

(e) the Trustees, and each of them, may at any time request written instructions from the Noteholders with respect to the interpretation of this Mortgage or action to be taken or suffered or not taken hereunder and may withhold action under this Mortgage until they shall have received such written instructions from the Required Lenders;

(f) the Trustees, and each of them, may at any time consult with counsel, and any opinion of counsel (an opinion in writing signed by counsel who shall be satisfactory to the Trustees and the Required Lenders, but who shall in no event be counsel for the Mortgagor) shall be full and complete authorization and protection in respect of any action taken or suffered or not taken by the Trustees, or either of them, in accordance with such opinion of counsel; and

(g) the Trustees are hereby authorized to act by agent or attorney in the execution of this Trust and it shall not be necessary for the Trustee to be present in person at any foreclosure sale unless required by applicable law.

5.3. Limitation on Trustees' Liability Subject to Section 5.4 and notwithstanding any other term hereof, the Trustees, or either of them, shall be under no liability with respect to any action taken or suffered or not taken (a) in accordance with the written request or instructions of the Required Lenders, or (b) in reliance in good faith on an opinion of counsel pursuant to subdivision (f) of Section 5.2. The Trustees shall be fully protected in acting and relying upon in good faith any written notice, direction, request, waiver, consent, receipt or other paper or document which the Trustees in good faith believe to be genuine and duly authorized and to have been signed or presented by the proper party or parties. The Trustees shall not be liable for any error of judgment, or for any act done or step taken or omitted by them, or either of them, in good faith, or for any mistake in fact or law, or for anything which they may do or refrain from doing in connection herewith, except that nothing contained herein shall relieve any Trustee from liability for its or his gross negligence, bad faith or willful misconduct. The Trustees shall not be responsible in any manner whatsoever for any failure or inability of any other Person to perform or comply with any of the provisions of this Mortgage.

5.4. Reliance on Photostats and Certificates. In making any payment in respect of any Note or in taking any other action hereunder, the Trustees, and each of them, may conclusively rely upon any photostatic copy of such Note and any certificate covering the same delivered to them by the Mortgagor pursuant to Section 5.5, unless they shall have received notice of a transfer of such Notes, and the Trustees, and each of them, shall be protected in making any payment in respect of any Note believed by them in good faith to be genuine.

5.5. Certificate as to Issue of Notes. At the time of acceptance of the trusts hereunder by the Trustees, or thereafter upon the issue of any Note upon any exchange or replacement of a

Note, the Mortgagor will deliver to the Trustees (a) an Officers' Certificate of the Mortgagor satisfactory to the Trustees specifying the date and principal amount of each Note issued by it and the name and address of the payee thereof and stating, in the case of any such exchange or replacement, whether such Note is being issued in exchange for or in replacement of a previously issued Note or Notes (which shall be identified by reference to the prior certificate covering the same), and that such Note is entitled to the benefits of this Mortgage, and (b) a copy of such Note, certified as a true copy by the Persons signing such certificate. The Mortgagor will also deliver to the Trustees, upon request, an Officers' Certificate of the Mortgagor satisfactory to the Trustees confirming such data as to all Notes issued by it at the time outstanding and that such Notes are entitled to the benefits of this Mortgage.

5.6. Amendments, Consents, etc. The provisions of this Mortgage may from time to time be amended, modified, or waived, if such amendment, modification or waiver is in writing and consented to by the Mortgagor and the Required Lenders; provided, however, that no such amendment, modification, or waiver:

(a) which would modify any requirement hereunder that any particular action be taken by all the Lenders or by the Required Lenders shall be effective unless consented to by each Lender;

(b) which modify this Section, change the definition of "Required Lenders", release any Collateral under this Mortgage in a manner other than as provided therein unless consented to by each Lender;

(c) which would extend the due date for, or reduce the amount of, any payment or prepayment of principal of, or interest on, any Note (or reduce the principal amount of or rate of interest thereon) shall be made without the consent of the holder of such Note; or

(d) which would affect adversely the interests, rights or obligations of the Trustees, or any of them, qua the Trustees, or any of them, shall be made without the consent of the Trustees.

5.7. Notices, etc., under Mortgage. The Trustees shall deliver to each Noteholder, promptly upon receipt thereof, duplicate originals or copies of all notices, requests, instructions and other instruments or communications received by them in connection with any Collateral, or under or pursuant to this Mortgage to the extent that the same shall not have been furnished pursuant hereto or thereto to such holders.

5.8. Trustees' Compensation, Expenses, etc. The Mortgagor, from time to time upon request, will pay the Trustees reasonable compensation for their services hereunder and will pay or reimburse the Trustees for all their reasonable expenses and disbursements hereunder, including, without limitation, the reasonable compensation and expenses and disbursements of their counsel and of agents not regularly in their employ. The Mortgagor hereby indemnifies the Trustees against any liability or obligation with respect to the payment, failure to pay or delay in payment of any stamp or other taxes (including interest and penalties) in respect of the issue of any Notes, such indemnity to survive payment of the Notes and any resignation, removal or replacement of the Trustees. The Mortgagor will reimburse and indemnify the Trustees for, and hold each of them harmless against, any loss, liability or expense (including but not limited to, the extent permitted by applicable law, reasonable attorneys' fees) incurred without bad faith or willful misconduct arising out of or in connection with their acceptance of and performance of duties and obligations hereunder (including the reasonable costs and expenses of defending against any claim or liability arising out of or relating to their performance of duties and obligations hereunder).

5.9. Resignation, Removal and Replacement of Trustees. The Trustees, or either of them, or any successor Trustee may resign at any time by giving 30 days' prior notice of resignation to the Mortgagor, each other Trustee, and each Noteholder, such resignation to be effective on the date specified in such notice. The Required Lenders may at any time remove the Individual Trustee for or without cause by an instrument or instruments in writing in recordable form delivered to the Trustee or Trustees to be removed, each other Trustee, and the Mortgagor. In case at any time the Trustees, or either of them, at any time acting hereunder shall resign or shall be removed or, in the case of the Individual Trustee, shall die or otherwise shall become incapable of acting, the Required Lenders may appoint a successor Trustee by an instrument or instruments in writing in recordable form delivered to such successor Trustee, the retiring Trustee, and the Mortgagor, whereupon such successor Trustee shall succeed to all the rights and obligations of the retiring Trustee hereunder as if originally named herein. Any retiring Trustee, at the sole cost and expense of the Mortgagor, shall duly assign, transfer and deliver to its successor Trustee all the rights and moneys at the time held by the retiring Trustee hereunder and shall execute and deliver such proper instruments as may be reasonably requested to evidence such assignment, transfer and delivery.

5.10. Appointment of Separate or Co-Trustee. The Trustees may, and, upon the request of the Required Lenders, the Trustees shall, by an instrument in writing in recordable form delivered to the Mortgagor and to each Noteholder, appoint a bank or trust company or an individual to act as separate trustee or co-trustee (who shall be reasonably satisfactory to the Mortgagor if no Default shall have occurred and be continuing at the time of such appointment), with respect to any property included in the Collateral, in a jurisdiction where the Trustees are, or either of them is, disqualified from acting or for any other purpose deemed by the Trustees or such holders to be advantageous to their respective interests, such separate trustee or co-trustee to exercise only such rights and to have only such duties as shall be specified in the instrument of appointment, provided that such instrument of appointment may specify that such separate trustee or co-trustee shall not exercise any of such rights except jointly with, or with the prior consent of, the Trustees. The Mortgagor will pay the reasonable compensation and expenses of any such separate trustee or co-trustee and, if requested by the Trustees or such separate trustee or co-trustee or by the Required Lenders, the Mortgagor will enter into an amendment to this Mortgage, satisfactory in substance and form to the Trustees, such separate trustee or co-trustee and each Noteholder, confirming the rights and duties of such separate trustee or co-trustee. Any notice, request or other writing given to the Trustees shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them.

5.11. Eligibility of Corporate Trustee. The Corporate Trustee shall always be a state or national bank or trust company in good standing, organized under the laws of the United States of America or Canada or one of the states thereof, having capital, surplus and undivided profits (as shown by its latest financial statement published to its shareholders) aggregating at least \$100,000,000, if there be such a bank or trust company willing and able to accept such trust upon reasonable and customary terms. In case at any time the Corporate Trustee shall cease to be eligible in accordance with the provisions of this Section 5.12, the Corporate Trustee shall resign immediately in the manner and with the effect specified in Section 5.9.

5.12. Successor Corporate Trustee by Merger, Consolidation, etc. Any corporation into which the Corporate Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Corporate Trustee is a party, or any state or national bank or trust company in any manner succeeding to all or substantially all of the corporate trust business of the Corporate Trustee, shall automatically succeed to all of the rights and obligations of the

Corporate Trustee hereunder without further action on the part of any of the parties hereto.

5.13. Corporate Trustee May Act Alone. Anything to the contrary herein notwithstanding, the Corporate Trustee, acting singly, may take all actions and make all decisions pursuant or related to this Mortgage, the Mortgagor or the Collateral unless action by the Individual Trustee or a co-trustee is required by applicable law, and provided that the Corporate Trustee shall not act in any jurisdiction in which it must qualify to act as a fiduciary unless it is so qualified. The Individual Trustee may act alone in the execution of this Trust where required by applicable law and the authority and power of the Individual Trustee so acting shall be as full and complete as if the powers and authority granted to the Individual Trustee had been granted to such Individual Trustee alone.

IN WITNESS WHEREOF, the undersigned have executed this Mortgage on the date and year first above written.

SHONEY'S, INC.,

By W. Craig Barber
Name: W. Craig Barber
Treasurer

(SEAL)

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency, as Collateral
Agent and Corporate Trustee

By Kathryn Sax
Name: Kathryn Sax
Assistant General Manager


Richard T. Kortright
as Individual Trustee

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, Karl W. Butterer a Notary Public in and for said County in said State, hereby certify that W. Craig Barber, whose name as Treasurer of SHONEY'S INC., a Tennessee corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 11 day of July, 1990.

Karl W. Butterer
Notary Public

AFFIX SEAL

My commission expires:

KARL W. BUTTERER
NOTARY PUBLIC State of New York
No. 4963458
Qualified in Kings County
Commission Expires March 12, 1992

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BOOK

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

I, Debra A. Corry, a Notary Public in and for said County in said State, hereby certify that Kathryn Sax, whose name as Assistant General Manager of Canadian Imperial Bank of Commerce, a Canadian chartered bank, acting through its New York Agency, as Collateral Agent and Corporate trustee, is signed to the foregoing instrument and who is known to me, acknowledged before me this day that, being informed of the contents of said instrument, Kathryn Sax, as such officer and with full authority, executed the same voluntarily for and as the act of said bank as Collateral Agent and Corporate Trustee.

Given under my hand and official seal this 26th day of June, 1990.

Debra A. Corry
Notary Public

AFFIX SEAL

My commission expires:

DEBRA A. CORRY
Notary Public, State of New York
No. 4980141
Qualified in Nassau County
Term Expires Dec. 18, 1991

300 PAGE 825
BOOK

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, a Notary Public in and for said County and said State, hereby certify that Richard T. Kortright, whose name as Individual Trustee is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, in his capacity as such Individual Trustee, executed the same voluntarily on the day the same bears date.

Andrew R. Kyzik
Notary Public

ANDREW R KYZIK
Notary Public, State of New York
No. 408-2086
Qualified in New York County
Certificates Filed in New York County
Commission Expires April 20, 1991

AFFIX SEAL

My commission expires:

BOOK 300 PAGE 826

EXHIBIT A

Description of Land

BOOK 300 PAGE 827

EXHIBIT "A"

All of Mortgagors leasehold interest in the following described property:
Land in Shelby County, Alabama described as follows:

Commence at the Northwest corner of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West, and run in an Easterly direction along the Northerly line of said Quarter-Quarter section a distance of 669.20 feet to the point of beginning; thence continue along the last stated course a distance of 112.30 feet to a point, thence 117 degrees 04 minutes to the right in a Southwesterly direction a distance of 273.05 feet to a point on the Northeasterly right of way line of U. S. Highway No. 280; thence 89 degrees 59 minutes to the right in a Northwesterly direction along the Northeasterly right of way line of U.S. Highway No. 280 a distance of 100.00 feet to a point; thence 90 degrees 01 minutes to the right in a Northeasterly direction a distance of 221.98 feet to the point of beginning.

Record Owner - Andress Company, Inc.

BOOK 300 PAGE 828

EXHIBIT "A"
STORE #5737

(3701)

EXHIBIT "A"

The Mortgagor's leasehold interest in the following described property:

PARCEL I:

A parcel of land situated in the Northwest quarter of the Southeast quarter of Section 36, Township 18 South, Range 2 West, being more particularly described as follows:

Commence at the Northwest corner of the Northwest quarter of the Southeast quarter of Section 36, Township 18 South, Range 2 West, and run in an Easterly direction along the Northerly line of said quarter-quarter section a distance of 556.90 feet to the point of beginning; thence continue along the last stated course a distance of 112.30 feet to a point; thence 117 degrees 04 minutes to the right in a Southwesterly direction a distance of 221.98 feet to a point of the Northeasterly right of way line of U. S. Highway No. 280; thence 89 degrees 59 minutes to the right in a Northwesterly direction along the Northeasterly right of way line of U. S. Highway No. 280 a distance of 100.00 feet to a point; thence 90 degrees 01 minutes to the right in a Northeasterly direction a distance of 170.91 feet to the point of beginning.

Situated in Shelby County, Alabama.

PARCEL II:

A part of the Northwest quarter of the Southeast quarter of Section 36, Township 18 South, Range 2 West, being more particularly described as follows:

Commence at the Northwest corner of said quarter-quarter section and run Easterly along the North line of said quarter-quarter section a distance of 523.21 feet to the point of beginning; thence continue along last stated course a distance of 33.69 feet to a point; thence 117 degrees 04 minutes to the right in a Southwesterly direction a distance of 170.91 feet to a point on the Northeasterly Right-of-Way line of U. S. Highway No. 280; thence 89 degrees 59 minutes to the right in a Northwesterly direction along said Right-of-Way line a distance of 30.0 feet to a point; thence 90 degrees 01 minutes to the right in a Northeasterly direction a distance of 155.59 feet to the point of beginning.

Situated in Shelby County, Alabama.

Record Owner: Andress Company, Inc.

EXHIBIT "A"
STORE #3701

5737

EXHIBIT B

TRANCHE A NOTE

\$ _____

July __, 1988

FOR VALUE RECEIVED, the undersigned, SHONEY'S, INC., a Tennessee corporation (the "Borrower"), unconditionally promises to pay to the order of _____ (the "Lender") the principal sum of (\$ _____), payable in twenty-four installments on the dates, and in the Lender's Tranche A Percentage (such capitalized term and all other capitalized terms used herein without definition to have the meanings assigned to such terms in Section 1.1 of the Credit Agreement hereinafter referred to) of the amounts, set forth in Section 3.3.1.A(a) of the Credit Agreement, dated as of July 13, 1988 (together with all amendments, supplements, amendment and restatements and other modifications, if any, hereafter from time to time made thereto, the "Credit Agreement"), among the Borrower, various financial institutions now or hereafter parties thereto (including the Lender), and Canadian Imperial Bank of Commerce, New York Agency, as Agent. The Borrower hereby irrevocably authorizes the Lender to make (or cause to be made) appropriate notations on the grid attached to this Tranche A Note (or on a continuation of such grid attached to this Tranche A Note and made a part hereof), which notations, if made, shall evidence, among other things, the date of, the outstanding principal of, payments on and the interest rate (including any conversions thereof pursuant to Section 4.1 of the Credit Agreement) and Interest Period applicable from time to time to, the Tranche A Loan evidenced hereby. Any such notations on any such grid (and on any such continuation) indicating the outstanding principal amount of the Lender's Tranche A Loan shall be rebuttable presumptive evidence of the principal amount thereof owing and unpaid, but the failure to record any such information on such grid (or on such continuation) shall not, however, limit or otherwise affect the obligations of the Borrower hereunder or under the Credit Agreement to make payments of principal of or interest on this Tranche A Note when due.

The Borrower agrees to pay interest on the principal amount of this Tranche A Note, from time to time unpaid, prior to and at maturity (whether by required prepayment, declaration or otherwise) and thereafter as provided in Section 3.4 of the Credit Agreement.

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BOOK

All payments by the Borrower of principal of, or interest on, this Tranche A Note shall be made to the Agent for the account of the Lender without set-off, deduction, or counterclaim not later than 12:00 noon, New York City time, on the date due, in same day or immediately available funds, to such account as the Agent shall specify from time to time by notice to the Borrower. Funds received after that time shall be deemed to have been received by the Agent on the next following Business Day. All interest shall be computed on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such interest is payable over a year comprised of 360 days. Whenever any payment to be made shall otherwise be due on a day which is not a Business Day, such payment shall (except as otherwise required by clause (d) of the definition of the term "Interest Period" with respect to payments then due of principal of, or interest on, any Loan being maintained as a LIBO Rate Loan) be made on the next succeeding Business Day and such extension of time shall be included in computing interest, if any, in connection with such payment.

This promissory note is one of the Tranche A Notes referred to in, and evidences indebtedness incurred under, the Credit Agreement, to which reference is made for a description of the security for and guarantees applicable to this Tranche A Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make payments and prepayments of principal of the indebtedness evidenced by this Tranche A Note and on which such indebtedness may be declared to be, or shall become, immediately due and payable.

This Tranche A Note shall be governed by and construed in accordance with the internal laws of the State of New York.

SHONEY'S, INC.

By _____
Title: _____

EXHIBIT C

TRANCHE B NOTE

\$ _____

July __, 1988

FOR VALUE RECEIVED, the undersigned, SHONEY'S, INC., a Tennessee corporation (the "Borrower"), unconditionally promises to pay to the order of _____ (the "Lender") the principal sum of _____ (\$ _____), payable in four installments on the dates, and in the Lender's Tranche B Percentage (such capitalized term and all other capitalized terms used herein without definition to have the meanings assigned to such terms in Section 1.1 of the Credit Agreement hereinafter referred to) of the amounts, set forth in Section 3.3.1.A(b) of the Credit Agreement, dated as of July __, 1988 (together with all amendments, supplements, amendment and restatements and other modifications, if any, hereafter from time to time made thereto, the "Credit Agreement"), among the Borrower, various financial institutions now or hereafter parties thereto (including the Lender), and Canadian Imperial Bank of Commerce, New York Agency, as Agent. The Borrower hereby irrevocably authorizes the Lender to make (or cause to be made) appropriate notations on the grid attached to this Tranche B Note (or on a continuation of such grid attached to this Tranche B Note and made a part thereof), which notations, if made, shall evidence, among other things, the date of, the outstanding principal of, payments on and the interest rate (including any conversions thereof pursuant to Section 4.1 of the Credit Agreement) and Interest Period applicable from time to time to, the Tranche B Loan evidenced hereby. Any such notations on any such grid (and on any such continuation) indicating the outstanding principal amount of the Lender's Tranche B Loan shall be rebuttable presumptive evidence of the principal amount thereof owing and unpaid, but the failure to record any such information on such grid (or on such continuation) shall not, however, limit or otherwise affect the obligations of the Borrower hereunder or under the Credit Agreement to make payments of principal of or interest on this Tranche B Note when due.

The Borrower agrees to pay interest on the principal amount of this Tranche B Note, from time to time unpaid, prior to and at maturity (whether by required prepayment, declaration or otherwise) and thereafter as provided in Section 3.4 of the Credit Agreement.

All payments by the Borrower of principal of, or interest on, this Tranche B Note shall be made to the Agent for the account of the Lender without set-off, deduction, or counterclaim

not later than 12:00 noon, New York City time, on the date due, in same day or immediately available funds, to such account as the Agent shall specify from time to time by notice to the Borrower. Funds received after that time shall be deemed to have been received by the Agent on the next following Business Day. All interest shall be computed on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such interest is payable over a year comprised of 360 days. Whenever any payment to be made shall otherwise be due on a day which is not a Business Day, such payment shall (except as otherwise required by clause (d) of the definition of the term "Interest Period" with respect to payments then due of principal of, or interest on, any Loan being maintained as a LIBO Rate Loan) be made on the next succeeding Business Day and such extension of time shall be included in computing interest, if any, in connection with such payment.

This promissory note is one of the Tranche B Notes referred to in, and evidences indebtedness incurred under, the Credit Agreement, to which reference is made for a description of the security for and guarantees applicable to this Tranche B Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make payments and prepayments of principal of the indebtedness evidenced by this Tranche B Note and on which such indebtedness may be declared to be, or shall become, immediately due and payable.

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This Tranche B Note shall be governed by and construed in accordance with the internal laws of the State of New York.

SHONEY'S, INC.

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

90 JUL 17 PM 4:19

By _____
Title: _____

CLERK OF COURT
CLERK OF CLERKATE

1. Paid Tax _____
2. _____
3. _____
4. _____
5. _____
6. _____
Total _____ \$ 150.00