

This Instrument Prepared By:


Signature

Susan C. Shumaker, Esq.
Jones, Day, Reavis & Pogue
3500 One Peachtree Center
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3242

Inst # 1992-22085

10/02/1992-22085
02:32 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE

074 KJS 4915.80

MASTER MORTGAGE INDENTURE, DEED TO SECURE DEBT
AND DEED OF TRUST WITH ASSIGNMENT OF LEASES
AND RENTS AND SECURITY AGREEMENT

MASTER MORTGAGE INDENTURE, DEED TO SECURE DEBT AND DEED OF TRUST WITH ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (the "Mortgage"), dated as of (but as to the Louisiana Premises, as herein defined, dated and passed as an authentic act on) September 23, 1992 and September 23, 1992, from SHONEY'S, INC., a Tennessee corporation having its principal office and place of business in Davidson County, Tennessee, at 1727 Elm Hill Pike, P.O. Box 1260, Nashville, Tennessee 37202 (the "Mortgagor") to CIBC, INC., a Delaware corporation, having an address at Two Paces West, 2727 Paces Ferry Road, Suite 1200, Atlanta, Cobb County, Georgia 30339, Attn: Ms. Katherine Sax (the "Lender"), with respect to the

THIS INSTRUMENT IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS AS A FIXTURE FILING IN ACCORDANCE WITH THE UNIFORM COMMERCIAL CODE AND CROSS-INDEXED IN THE REAL ESTATE RECORDS.

THE NAMES OF THE DEBTOR AND THE SECURED PARTY, THE MAILING ADDRESS OF THE SECURED PARTY FROM WHICH INFORMATION CONCERNING THE SECURITY INSTRUMENTS MAY BE OBTAINED, THE MAILING ADDRESS OF THE DEBTOR AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING THE ITEMS, OF COLLATERAL, ARE AS DESCRIBED IN SUBSECTION 1.22(c) HEREOF.

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

South Carolina Legend. NOTE: INTEREST OR DISCOUNT MAY BE DEFERRED, ACCRUED OR CAPITALIZED, BUT ONLY AT THE OPTION OF THE LENDER.

Tennessee Legend. THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS \$1,436,619.00.

4163T
SCA

Land Title

Collateral (as hereinafter defined) located in the States of Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Ohio, Oklahoma and South Carolina; and to TRUSTEE (as hereinafter defined), for the benefit of the Lender and the holder of the Note (as hereinafter defined) from time to time, and to such separate co-trustees appointed herein to act as trustees with respect to certain of the Collateral, for the benefit of the Lender and the holder of the Note from time to time, with respect to the Collateral located in the States of Mississippi, Tennessee, Texas and West Virginia.

RECITALS

A. The Mortgagor has issued its Term Note, dated September 24, 1992, in the original principal amount of TWENTY MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$20,800,000.00) with a final maturity date of September 22, 1995 (together with any and all amendments, modifications, renewals, consolidations and extensions thereof, the "Note"), the proceeds of which will be used to reimburse the Mortgagor for the costs of acquiring and constructing the Collateral.

B. The Mortgagor and the Lender have entered into that certain Loan Agreement dated September 24, 1992 providing for, among other matters, the making of the term loan evidenced by the Note by the Lender and the acceptance of such term loan by the Mortgagor (together with any and all amendments, modifications, renewals, consolidations and extensions thereof, the "Loan Agreement").

C. To secure the repayment of the Note and the performance of certain obligations, the Mortgagor desires to convey, mortgage, grant and assign liens, security titles, security interests and collateral assignments in certain property.

D. In certain states the Trustee desires to serve as trustee to hold in trust such liens, security titles, security interests and collateral assignments for the benefit of the Lender.

E. All things necessary to make this Mortgage a valid and binding agreement securing the payment of the Mortgagor's obligations under the Loan Agreement and the Note have been done and performed and the execution and delivery of this Mortgage, subject to the terms hereof, have in all respects been duly authorized.

F. 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 the tenements, rights, easements, hereditaments, rights of way or uses, 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, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land; 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; whether now owned or hereafter acquired by the Mortgagor (the Land and all of the foregoing are herein referred to collectively as the "Real Estate");

(ii) Improvements and Fixtures. All buildings, structures, other constructions, replacements, fixtures, component parts and improvements of every nature whatsoever now or hereafter located or erected on the Real Estate and owned or purported to be owned by the Mortgagor or in which the Mortgagor now or hereafter has rights (to the full extent of such rights), together with all building or construction materials, fixtures and other articles of any kind or nature whatsoever now or hereafter affixed to, incorporated in or attached to any of the foregoing or the Real Estate and constituting real property under applicable law 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 and all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions or proceeds from a sale of any of the foregoing, and all personal property constituting proceeds hereafter acquired with cash proceeds of any of the foregoing (all of the foregoing is herein referred to collectively as the "Improvements");

(iii) 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 (as hereinafter defined) into cash or liquidated claims (all of the foregoing is herein referred to collectively as the "Rents");

(iv) Occupancy Leases. All rights of the Mortgagor under all leases, tenant contracts, licenses, occupancy agreements, warehouse 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, the Improvements or the After Acquired Property (as defined herein) 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");

(v) After Acquired Property. Any and all additional estates in the Real Estate, the Rents or the Occupancy Leases 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), (iii) and (iv) 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 Lender, to be fixtures and accessions to the Land (all of the foregoing is herein referred to collectively as the "After Acquired Property"); and

(vi) Other Property. All other property or rights of the Mortgagor of any kind or character related to the Real Estate, the Improvements, the Rents, the Occupancy Leases, the After Acquired Property and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing, refunded insurance premiums and all rights under and to all payments and deposits required by the provisions of Section 1.21 hereof. (The Collateral is also sometimes herein referred to as the "Premises.") Whenever the terms "Collateral" and "Premises" are preceded by the name of a State, County, Parish or City, such term shall mean and refer only to the Collateral or Premises, as the case may be, located in or arising out of or from the Collateral or Premises located in such State, County, Parish or City.

G. For purposes of this Mortgage, the term "Trustee" means, collectively or separately, as the context shall require, the following individuals as to the Premises listed beside their respective names, together with any successor Trustee appointed as provided pursuant to the provisions of this Mortgage:

Trustee - Mississippi Premises:
Jack V. Mackmull, Jr., Two Paces West
2727 Paces Ferry Road
Suite 1200
Atlanta, Georgia 30339

Trustee - Tennessee Premises:
Mark Turner, a resident of
Williamson County, Tennessee

Trustee - Texas Premises:
Jack V. Mackmull, Jr., Two Paces West
2727 Paces Ferry Road
Suite 1200
Atlanta, Georgia 30339

Trustee - West Virginia Premises:
Michael Albert, a 1600 Laidley Tower
resident of Kanawha Charleston, West Virginia 25322
County

Each of the above-named individuals serves as Trustee only as to that portion of the Premises specified beside their names.

H. Capitalized terms used herein without other definition have the respective meanings specified in the Loan Agreement.

GRANT

NOW THEREFORE, for and in consideration of the Lender's making any loan, advance or other financial accommodation to or for the benefit of the Mortgagor, including sums advanced under the Loan Agreement and the Note, and in consideration of the various agreements contained herein, in the Note and the Loan Agreement 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 "Liabilities" (as hereinbelow defined), the Mortgagor hereby grants, bargains, sells, conveys, assigns, pledges, transfers and mortgages the Premises to the Lender, or to the Trustee for the benefit of the Lender, as appropriate, as more specifically set forth in this Grant:

Section A. WITH RESPECT TO THE ALABAMA PREMISES, the following provisions of this Section A shall apply:

"Alabama Premises". The Mortgagor does hereby, subject to the terms and conditions set forth in this Mortgage, grant, bargain, sell, assign and convey to the Lender, its successors and assigns, and does hereby grant to the Lender, its successors and assigns, a security interest in and to, all of the Mortgagor's interest and estate, whether now owned or hereafter acquired (whether fee, leasehold, legal or equitable), in and to the Alabama Premises, in fee simple, to have and to hold, together with all the rights, privileges and appurtenances thereunto belonging, unto the Lender, its successors and assigns, forever. Notwithstanding anything to the contrary in this Mortgage, the Alabama Premises shall secure the full and prompt payment when due, whether by acceleration or otherwise, and full and prompt performance of the Liabilities. As to the Alabama Premises, this Mortgage shall constitute and shall be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section B. WITH RESPECT TO THE FLORIDA PREMISES, the following provisions of this Section B shall apply:

"Florida Premises". The Mortgagor does hereby grant, bargain, sell, alien, remise, release, mortgage, transfer, pledge and assign to the Lender the portion of the Premises located in the State of Florida (the "Florida Premises"). TO HAVE AND TO HOLD the same, together with all the improvements now or hereafter erected on such property and all fixtures now or hereafter attached thereto, together with all tenements, hereditaments, easements, rights, powers, privileges, immunities and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, and also all the estate, right, title, interest, homestead, right of dower, separate estate, property, possession and claim whatsoever in law as well as in equity of the Mortgagor of, in and to the same in every part and parcel thereof unto Lender in fee simple. Notwithstanding anything to the contrary in this Mortgage, recovery from the Florida Premises for application against the Note by Lender shall not exceed Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00). As to the Florida Premises, this Mortgage shall constitute and be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section C. WITH RESPECT TO THE GEORGIA PREMISES, the following provisions of this Section C apply:

Mortgagor hereby grants, bargains, sells, warrants, conveys, aliens, sets over and confirms to the Lender the Georgia Premises. TO HAVE AND TO HOLD the Georgia Premises, and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of the Lender, its successors and assigns, IN FEE SIMPLE forever. As to the Georgia Premises, this Mortgage is intended to operate and is to be construed as a deed passing title to the Georgia Premises to the Lender as made under those provisions of the existing laws of the State of Georgia relating to deeds to secure debt, and not as a mortgage.

Section D. WITH RESPECT TO THE ILLINOIS PREMISES, the following provisions of this Section D shall apply:

"Illinois Premises". The Mortgagor does hereby grant, remise, release, alien, convey, mortgage and warrant to the Lender, its successors and assigns, all of the Mortgagor's interests, whether now owned or hereafter acquired (whether fee, leasehold, legal or equitable) in and to the Illinois Premises, to have and to hold forever for the uses and purposes herein set forth. As to the Illinois Premises, this Mortgage shall constitute and shall be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section E. WITH RESPECT TO THE INDIANA PREMISES, the following provisions of this Section E shall apply:

"Indiana Premises". The Mortgagor does hereby grant, assign, mortgage and warrant unto the Lender, the successors, successors-in-title and assigns of the Lender, the Indiana Premises. As to the Indiana Premises, this Mortgage shall constitute and shall be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section F. WITH RESPECT TO THE IOWA PREMISES, the following provisions of this Section F shall apply:

"Iowa Premises". The Mortgagor does hereby grant, bargain, sell, mortgage, warranty, convey, alien, remise, release, assign, transfer, set over, deliver and confirm unto the Lender, the successors, successors-in-title and assigns of the Lender, upon the terms and conditions of this Mortgage, with power of sale and right of entry as provided herein below, the Iowa Premises, to have and to hold for uses and purposes herein stated. As to the Iowa Premises, this Mortgage shall constitute and shall be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section G. WITH RESPECT TO THE KENTUCKY PREMISES, the following provisions of this Section G shall apply:

"Kentucky Premises". The Mortgagor does hereby grant, bargain, sell, mortgage, transfer, convey, pledge, assign, transfer and set over to the Lender and the successors and assigns of the Lender the Kentucky Premises, to have and to hold the Kentucky Premises and all parts, rights, members and appurtenances thereof to the use, benefit and behoof of the Lender and the successors and assigns of the Lender, in fee simple forever. As to the Kentucky Premises, this Mortgage shall constitute and be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section H. WITH RESPECT TO THE LOUISIANA PREMISES, the following provisions of this Section H shall apply:

"Louisiana Premises". The Mortgagor does hereby specially mortgage unto the Lender the Louisiana Premises, which Louisiana Premises shall remain mortgaged until the full payment and performance of all of the Liabilities and extinguishment of this Mortgage. As to the Louisiana Premises, this Mortgage shall constitute and be enforceable as a real estate mortgage, assignment of leases and rents and security agreement. To the extent this Mortgage constitutes a real estate mortgage, it is granted by Mortgagor and accepted by Lender under all of the terms and conditions of Louisiana Civil Code articles 3278 through 3298, as amended by Act No. 652 of 1991, and La.R.S. 9:5555 through 9:5557, and it is intended by Mortgagor and Lender that this Mortgage shall secure not only the Note, in principal and interest, but also all other obligations of Mortgagor to Lender that may arise in the future, until such time as this Mortgage is terminated by the Mortgagor or its successor in the manner provided in Louisiana Civil Code article 3298(C) or until this Mortgage is extinguished in some other lawful manner. For all purposes of the foregoing statutes, Lender shall be the mortgagee of record.

Section I. WITH RESPECT TO THE MISSISSIPPI PREMISES, the following provisions of this Section I shall apply:

"Mississippi Premises". The Mortgagor has conveyed and warranted, and does hereby convey and warrant unto the Trustee, its successors and assigns and substitutes, the Mississippi Premises in trust for the benefit of the Lender, to have and to hold, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, in fee simple forever. As to the Mississippi Premises, this Mortgage shall constitute and be enforceable as a deed of trust, assignment of leases and rents and security agreement.

Section J. WITH RESPECT TO THE OHIO PREMISES, the following provisions of this Section J shall apply:

"Ohio Premises". The Mortgagor does hereby grant, bargain, sell, assign and convey unto the Lender, the successors, successors-in-title and assigns of the Lender, the Ohio Premises, to have and to hold in fee simple forever. As to the Ohio Premises, this Mortgage shall constitute and shall be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section K. WITH RESPECT TO THE OKLAHOMA PREMISES, the following provisions of this Section K shall apply:

"Oklahoma Premises". The Mortgagor does hereby grant the Lender a first mortgage and security interest in and to the Oklahoma Premises, all and singular, and warrants title to the same, and further irrevocably assigns, transfers and sets over unto the Lender all Rents and Occupancy Leases thereof, absolutely and not collaterally, to have and to hold unto the Lender, its successors and assigns, forever. The Mortgagor further grants, acknowledges and confirms unto the Lender, as mortgagee, the full power of sale of the Oklahoma Premises to the extent of all real or mixed property thereof, as authorized by the Oklahoma Power of Sale Mortgage Foreclosure Act (46 Okla. Stat. §§ 40 et seq.), as said Act is now or may hereafter be amended, from time to time, in addition to and not by way of limitation of any and all other remedies allowed at law or in equity. As to the Oklahoma Premises, this Mortgage shall constitute and be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section L. WITH RESPECT TO THE SOUTH CAROLINA PREMISES, the following provisions of this Section L shall apply:

"South Carolina Premises". The Mortgagor does mortgage, grant, bargain, sell, assign and release unto the Lender, and its successors and assigns, the South Carolina Premises, to have and to hold in fee simple forever, together with all and singular the rights, members, hereditaments and appurtenances to the South Carolina Premises belonging and in anywise appertaining thereto. As to the South Carolina Premises, this Mortgage shall constitute and be enforceable as a mortgage, assignment of leases and rents and security agreement.

Section M. WITH RESPECT TO THE TENNESSEE PREMISES, the following provisions of this Section M shall apply:

"Tennessee Premises". The Mortgagor has bargained and sold, and does hereby bargain, sell, convey and confirm unto the Trustee, its successors and assigns, in trust for the benefit of the Lender, the successors, successors-in-title and assigns of the Lender, the Tennessee Premises, TO HAVE AND TO HOLD, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining unto the Trustee, its successors and assigns, in fee simple forever. As to the Tennessee Premises, this Mortgage shall constitute and shall be enforceable as a deed of trust, assignment of leases and rents and security agreement.

Section N. WITH RESPECT TO THE TEXAS PREMISES, the following provisions of this Section N shall apply:

"Texas Premises". The Mortgagor, for and in consideration of the premises and of the debts and trusts hereinafter mentioned, does hereby GRANT, BARGAIN, SELL, ASSIGN and CONVEY unto the Trustee, its substitutes or successors, for the use and benefit of the Lender, its successors, successors-in-title and assigns, the Texas Premises, TO HAVE AND TO HOLD the Texas Premises, together with the rights, privileges, and appurtenances thereto belonging, unto the Trustee, its substitutes or successors, forever, and the Mortgagor hereby binds itself and its successors and assigns to warrant and forever defend the Texas Premises unto the Trustee, its substitutes or successors and assigns, forever against the claim or claims of all persons claiming or to claim the same or any part thereof, except for the Permitted Exceptions (as hereinafter defined). As to the Texas Premises, this Mortgage shall constitute and shall be enforceable as a deed of trust, assignment of leases and rents and security agreement.

Section O. WITH RESPECT TO THE WEST VIRGINIA PREMISES, the following provisions of this Section O shall apply:

"West Virginia Premises". The Mortgagor does hereby grant to the Trustee and his successors in the trust forever the West Virginia Premises in trust to secure the Liabilities. As to the West Virginia Premises, this Mortgage shall constitute and be enforceable as a deed of trust, assignment of leases and security agreement.

Section P. AND the Mortgagor covenants and agrees with the Lender as follows:

The Mortgagor hereby covenants with and warrants to the Lender and the Trustee, for the benefit of the Trustee, the Lender and the purchaser at any foreclosure sale, that: at the

execution and delivery hereof it is well seized of the Collateral, and of a good, indefeasible fee simple estate therein; the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than the lien and security interest granted to the Lender and/or the Trustee herein and the encumbrances set forth on Exhibit B attached hereto (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 unto the Lender and the Trustee, his successors or substitutes in the trust and his or their assigns, as the case may be, against all claims and demands whatsoever with the exception of the Permitted Exceptions.

This Mortgage is given to secure the following described indebtedness, obligations and liabilities (herein collectively referred to as the "Liabilities"):

(a) The Note, with the final payment being due September 22, 1995; TOGETHER WITH any and all renewal or renewals and extension or extensions of the indebtedness evidenced by the Note;

(b) Any and all additional advances made by the Lender to protect or preserve the Collateral or the lien hereof on the Collateral, or to pay taxes, to pay premiums on insurance on the Collateral or to repair or maintain the Collateral, or to complete improvements on the Collateral (whether or not the original Mortgagor remains the owner of the Collateral at the time of such advances and whether or not the original Lender remains the owner of the indebtedness secured by this Mortgage);

(c) Any and all expenses incident to the collection of the Liabilities and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained;

(d) The full and prompt payment and performance of any and all obligations or covenants of the Mortgagor to the Lender and the Trustee under this Mortgage, the Loan Agreement, the terms of any other agreements, assignments or other instruments now or hereafter evidencing, securing or otherwise relating to the Liabilities; and

(e) Any and all other indebtedness now owing or which may hereafter be owing by the Mortgagor to the Lender, however and whenever incurred or evidenced, whether direct

or indirect, absolute or contingent, due or to become due, together with any and all renewal or renewals and extension or extensions of such other indebtedness, it being contemplated that the Mortgagor may hereafter become indebted to the Lender in further sums; provided, however, that, with respect to the Alabama Premises, this Mortgage does not secure any indebtedness described in this clause (e).

Should the Liabilities be paid according to the tenor and effect thereof, when the same shall become due and payable, and should the Mortgagor perform all covenants herein contained in a timely manner, then, as to all states other than Georgia, this Mortgage and the conveyance effected hereby shall be released by the Lender, or the Trustee, as appropriate, and as to Georgia, this Mortgage shall be cancelled and surrendered.

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 Trustee and his substitutes and successors in the trust and his or their assigns for the use and benefit of the Lender, and the Lender as follows:

1.1. Interpretation. In each instance where the terms and conditions of this instrument affect the Premises located in the State of Georgia or the obligations of any party conveying such Premises to secure the Liabilities, any reference to this "Mortgage" shall be deemed to refer to this "Instrument", any reference to the "lien of this Mortgage" shall be deemed to refer to the "security title of this Instrument" and any reference to the "Mortgagor" shall be deemed to refer to the "Grantor". In each instance where the terms and conditions of this instrument affect the Premises located in the States of Mississippi, Tennessee, West Virginia and Texas or the obligations of any party conveying such Premises to secure the Liabilities, any reference to the "Mortgage" shall be deemed to refer to the "Deed of Trust", any reference to the "Mortgagor" shall be deemed to refer to the "Grantor" and any reference to the "Lender" shall be deemed to refer to the "Beneficiary" in all such states.

1.2. Payment and Performance by the Mortgagor. The Mortgagor agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, all

amounts due under this Mortgage, the Loan Agreement and the Note and all other Liabilities (including attorneys' fees and other fees and charges). All sums payable by the Mortgagor hereunder shall be paid without demand, counterclaim, offset, deduction or defense and without relief from valuation and appraisal laws. The Mortgagor waives, to the extent permitted by applicable law, all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense. The Mortgagor further agrees that it will fully, timely and properly pay and perform in the manner required in this Mortgage or at law all of the Liabilities and other covenants, agreements and obligations of the Mortgagor to be performed under this Mortgage.

1.3. Payment of Taxes. The Mortgagor will pay or cause to be paid before any thereof become delinquent all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or nongovernmental, 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 the Collateral created or represented by this Mortgage, whether levied against the Mortgagor or the Trustee or otherwise, and will submit to the Lender upon written request therefor copies of 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 by Mortgagor at its expense in good faith and by appropriate proceedings and/or 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 1.21 shall not relieve the Mortgagor of, or diminish in any way, its obligations as set out in this Section 1.3.

1.4. 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 permanently remove or demolish any of the Improvements; subject to Section 1.11, 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 or insurance requirement or as otherwise approved in writing by the Lender, which approval shall not be unreasonably withheld, delayed or conditioned; at its sole cost and expense, maintain, preserve and keep 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; not commit, suffer or permit waste of any part of the Premises; and maintain all grounds in good and neat order and repair. Lender or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours provided that Lender will not unreasonably interfere with the business operations of Mortgagor. Notwithstanding any provision of this Mortgage to the contrary, the Mortgagor shall be entitled to convey portions of the Premises which do not exceed in aggregate value the sum of One Hundred Thousand Dollars (\$100,000.00) during any twelve (12) month period to State or local governmental entities or agencies at the request of such State or local governmental entities or agencies provided that such conveyances are in lieu of condemnation and the Lender and/or the Trustee shall provide appropriate releases of this Mortgage with respect to the property so conveyed in accordance with this Section 1.4.

1.5. Sales; Liens. Except as otherwise permitted under this Mortgage or the Loan Agreement, 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 Collateral or any part thereof 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' and materialmen's liens being diligently contested in good faith and otherwise in accordance with Section 1.11. The 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 hereof), and any such lien created without the prior written consent of the Lender, 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.

1.6. Access by the Trustee and the Lender. The Mortgagor will at all times: deliver to the Lender certified copies of all documents which are, or which evidence, govern or create, the Collateral; permit access to the Lender and/or the Trustee (with no less than 24 hours prior notice if no Default [as defined below] 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 which relate to any or all of the Collateral for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as the Lender may reasonably request.

1.7. Stamp and Other Taxes. If the federal or any state, county, parish, local, municipal or other government or any subdivision of any thereof having jurisdiction shall now or hereafter levy, assess or charge any tax including, without limitation, an intangibles recording tax (excepting therefrom any income tax on the Lender's receipt of interest payments on the principal portion of the Note, and further excepting therefrom the Oklahoma Mortgage Tax imposed by 68 Okla. Stat. §§ 1901 et seq., assessment or imposition upon this Mortgage, the Loan Agreement or the Note, any other Liabilities, the interest of the Lender and/or the Trustee in the Collateral, or any of the foregoing, or upon the Lender and/or the Trustee 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 Loan Agreement or the Note, the Mortgagor shall pay all such taxes and stamps to or for the Lender and/or the Trustee 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 Lender and/or the Trustee, then any such sums advanced by the Lender and/or the Trustee for such taxes, assessment, stamps or impositions shall be added to the sums hereby secured and shall become immediately due and payable at the option of the Lender. Thereafter, if the Mortgagor fails to make payment of all such sums within five (5) days after the Lender's written demand therefor, such failure shall constitute a Default hereunder.

1.8. Insurance. The Mortgagor will at all times maintain or cause to be maintained on the Improvements and on all other Collateral, all insurance as provided for in the Loan Agreement.

1.9. Eminent Domain. In case the Collateral, or any part or interest in any thereof, is taken by condemnation or eminent domain proceedings or a transfer in lieu thereof, the Mortgagor shall immediately give written notice thereof to the Lender. The Lender is hereby empowered to collect and receive all compensation and awards of any kind whatsoever (herein referred to collectively as "Condemnation Awards") which may be paid for any property taken or transferred in lieu of such taking or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Lender), and all Condemnation Awards so received shall be forthwith applied by the Lender, as it may elect in its sole and unreviewable discretion, to the prepayment of the Note or the Liabilities, or to the repair and restoration of any property not so taken or damaged, provided, however, that no election made by the Lender under this Section 1.9 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, if at all, to the extent required, as determined by the Lender in its reasonable discretion, for the repair or restoration of any Collateral not so taken only under the conditions set forth in the Loan Agreement. The Mortgagor hereby empowers the Lender, in its 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 \$500,000.00, 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 \$500,000.00 jointly with the Lender.

1.10. 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, parish, 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 Lender 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 Lender's 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 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.

1.11. 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, it shall not be deemed in Default with respect to the provisions

of this Section 1.11 if the Mortgagor provides the Lender 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 Lender, the Mortgagor furnishes to the Lender either a bond, in form and with sureties reasonably satisfactory to the Lender, or an updated title insurance policy or endorsement to the Lender's existing policy acceptable to the Lender indemnifying the Lender against any loss, cost, damage or attorneys' fees or expenses on account of any such lien or claim. The Mortgagor agrees to promptly deliver to the Lender 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 LIENS 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.

1.12. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, and execute and file immediately upon the Lender's request (at the Mortgagor's expense) such financing statements and other documents (and appropriate continuation statements with respect thereto), obtain such acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as the 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, or to establish title to, 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 principal place of business address; keep all tangible Collateral on the Real Estate except as the Lender may otherwise consent in writing, except as otherwise provided in Section 1.4; make notations on its books and records sufficient to enable the Lender, as well as third parties, to determine the interest of the Lender hereunder; and not collect any rents or the proceeds of any of the Occupancy Leases more than thirty (30) days before the same

shall be due and payable except as the Lender may otherwise consent in writing.

1.13. 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.

1.14. Contract Maintenance; Other Agreements; Leases. The Mortgagor will, for the benefit of the Lender, 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 the Mortgagor or a predecessor in title to the Mortgagor and a third party relating to the Collateral or the Liabilities secured hereby, including, without limitation, the Occupancy Leases (herein referred to collectively as 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 Lender; 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 Lender, the Mortgagor shall not (a) make or permit any termination, modification or amendment of any Third Party Agreement (provided, however, that the Lender agrees not to unreasonably withhold, delay or condition its consent to any termination or amendment of a Third Party Agreement); (b) collect rents or the proceeds of any Occupancy Leases more than thirty (30) days before the same shall be due and payable; (c) modify or amend any Occupancy Leases (provided, however, that the Lender agrees not to unreasonably withhold, delay or condition its 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 Third Party Agreement; or (f) in any other manner impair the Lender's rights and interest with respect to the Rents. The Mortgagor

shall promptly deliver to the Lender copies of any demands or notices of default received by the Mortgagor in connection with any Third Party Agreement and allow the Lender the right, but not the obligation, to cure any such default. 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 Lender and in compliance with the laws of the state where the Premises are located and with an institution reasonably satisfactory to the Lender. The provisions of clauses (a) and (c) of this Section 1.14 to the contrary notwithstanding, the Lender's 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.

1.15. Notify the Lender of Default. The Mortgagor shall notify the Lender 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.

1.16. No Assignments; Future Leases. The Mortgagor will not cause or permit any Rents, Occupancy Leases, other Third Party Agreements or other contracts relating to the Premises to be assigned, transferred, conveyed, pledged or disposed of to any party other than the Lender without first obtaining the express written consent of the Lender 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 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 Lender and, if granted, under Occupancy Leases approved in writing by the Lender. The Lender shall not unreasonably withhold its consent to a lease of all or any portion of the Premises to a franchisee of the Mortgagor operating under the name of Shoney's, Captain D's, Lee's, Pargo's or Fifth Quarter.

1.17. Assignment of Leases and Rents and Collections.

(a) The Mortgagor shall not assign its interest in the Occupancy Leases without the prior written consent of the Lender. All of the Mortgagor's interest in and rights under the Occupancy 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 Lender to be applied by the Lender in payment of the Liabilities and all other sums payable under this Mortgage, the Loan Agreement and the Note. The foregoing is intended to be a present and absolute assignment and not merely the passing of a security interest or a collateral assignment. 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 Lender, 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 Lender nor the exercise by the Lender of any of its rights or remedies under Article III shall be deemed to make the Lender 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 Lender, in person or by agent, assumes actual possession thereof, nor shall appointment of a receiver for the Collateral by any court at the request of the Lender 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 Lender 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 by Mortgagor 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 Lender 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 Lender for the payment to the Lender 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 and payment of the Liabilities secured hereby and otherwise in compliance with the provisions of this Mortgage, the Loan Agreement and the Note.

(c) The Mortgagor shall at all times fully perform the obligations of the lessor under all Occupancy Leases. The Lender does not assume and shall not be liable in respect of any obligation of the lessor under any of such Occupancy Leases. The Mortgagor shall at any time or from time to time, upon request of the Lender, transfer and assign to the Lender in such form as may be satisfactory to the Lender, 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 Occupancy Leases upon accrual, but not prior thereto, as set forth in paragraph (a) above.

(d) The Lender shall have the right to assign the Lender's right, title and interest in any Occupancy 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 Lender. Upon the occurrence of any Default, the Lender shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Mortgage. Upon the occurrence of any Default, the Lender 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.

(e) Mortgagor shall furnish to Lender, within twenty (20) days after receipt of a request by Lender to do so, such information as Lender from time to time may reasonably request concerning the Occupancy Leases and other agreements pertaining to the use of the Premises.

1.18. The Lender's Performance. If the Mortgagor fails to fully, timely and properly pay or perform any of its obligations or Liabilities herein contained (including payment of attorneys' fees, expenses of foreclosure and court costs), the Lender may (but need not), as agent or attorney-in-fact of the Mortgagor, such authority being coupled with an interest and irrevocable, sign the name of the Mortgagor and bind the Mortgagor on all papers and documents relating to the Liabilities and make any payment or perform (or cause to be performed) any obligation or Liability of the Mortgagor hereunder, in any form and manner deemed expedient by the Lender, and any amount so paid or expended (plus reasonable

compensation to the Lender and the Trustee for their attorneys' fees and 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 Liabilities hereby secured and shall be repaid to such person upon demand. By way of illustration and not in limitation of the foregoing, the Lender 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 the Rents and any other 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; purchase insurance; make payments or perform other obligations of the Mortgagor under Third Party Agreements; or redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any Liabilities hereunder, the Lender 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 Lender shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default.

1.19. Subrogation. To the extent that the Lender, on or after the date hereof, pays 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 any of the Collateral, the Lender shall have and be entitled to a lien or other interest on the Collateral equal in dignity and priority to the lien or other interest discharged and the Lender 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 Lender in securing the Liabilities. Foreclosure hereunder shall constitute foreclosure of all such subrogated liens.

1.20. Hazardous Material.

(a) Mortgagor shall comply with the provisions of the Loan Agreement regarding Hazardous Materials.

(b) The Mortgagor represents and warrants to the Lender that, to the best of the Mortgagor's knowledge, the Mortgagor is not required to deliver to the Lender, record or file any disclosure certificates or documents either under the

Illinois Responsible Property Transfer Act of 1988 (Ill. Rev. Stat. Ch. 50, par. 901 et. seq.) or under the Indiana Responsible Property Transfer Law (IC 13-7-22.5). The Mortgagor hereby agrees to indemnify, defend and hold the Lender harmless from and against any and all liability, loss, costs, damage, liens, fines, penalties and claims asserted against or incurred by the Lender (including, without limitation, attorneys' fees, consultants' fees and expert witness fees, and all costs of litigation, through and including post-judgment and appellate proceedings, if any) as a result of the Mortgagor's failure to deliver, record or file any such disclosure certificates or documents. This representation and warranty shall survive any foreclosure, release or termination of this Mortgage.

1.21. Reserve for Taxes, Assessments, Insurance. Except as otherwise provided in the last paragraph of this Section 1.21, the Mortgagor covenants and agrees to pay to the Lender monthly until the Liabilities have been paid in full and otherwise fully performed, a sum equal to taxes and assessments next due upon the Collateral (all as estimated by the Lender) and the premiums that will next become due and payable on policies of fire, rental value and other insurance covering the Collateral 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 Lender without interest accruing thereon, to pay each of such items.

All payments described above in this Section 1.21 shall be paid by the Mortgagor each month in a single payment to be applied by the Lender to the foregoing items in such order as the Lender shall elect in its sole discretion.

Except as otherwise provided in the last paragraph of this Section 1.21, the Mortgagor shall also pay to the Lender, at least 30 days prior to the due date of any taxes, assessments or insurance premiums levied on, against or with respect to the Collateral, such additional amount as may be necessary to provide the Lender with sufficient funds to pay any such tax, assessment and insurance premiums under this Section 1.21 at least fifteen (15) days in advance of the due date thereof. The Mortgagor's failure timely to make any payments required under this Section 1.21 shall be a Default under this Mortgage.

Except as otherwise provided in the last paragraph of this Section 1.21, the Lender shall, within fifteen (15) days of receipt from the Mortgagor of a written request therefor

together with such supporting documentation as the Lender may reasonably require (including, without limitation, official tax bills or, as applicable, statements for insurance premiums), cause proper amounts to be withdrawn from such account and paid directly to the appropriate tax collecting authority or insurer. Even though the Mortgagor may have made all appropriate payments to the Lender as required by this Mortgage, the Mortgagor shall nevertheless have full and sole responsibility at all times to cause all taxes, assessments and insurance premiums to be fully and timely paid, and the Lender 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 Lender has 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 fifteen (15) days prior to the deadline for any such payment. If at any time the funds so held by the Lender shall be insufficient to cover the full amount of all taxes, assessments and insurance premiums then accrued (as estimated by the Lender) with respect to the then-current twelve-month period, the Mortgagor shall, within ten (10) days after receipt of notice thereof from the Lender, deposit with the Lender such additional funds as may be necessary to remove the deficiency. Failure to do so within such ten-day period shall be a Default hereunder. If the Collateral described herein is sold under foreclosure or is otherwise acquired by the Lender, accumulations under this Section 1.21 may be applied to the Liabilities in such order of applications as the Lender may elect in its sole discretion.

Anything contained in this Section 1.21 to the contrary notwithstanding, the Lender hereby (by acceptance of this Mortgage and without the necessity of any written waiver, consent or acknowledgment from the Mortgagor) waives the requirement of all deposits described in this Section 1.21; provided, however, that the Lender shall have the right, in its 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.

1.22 Security Agreement.

(a) PARTS OF THE COLLATERAL ARE OR ARE TO BECOME FIXTURES ON THE LAND. Insofar as the Improvements, Rents, Occupancy Leases and After Acquired Property are concerned, this Mortgage is hereby made and declared to be a security agreement, and a security interest is hereby granted by

Mortgagor to the Lender encumbering each and every item of Improvements, Rents, Occupancy Leases and After Acquired Property in compliance with the provisions of the applicable Uniform Commercial Code. A financing statement or statements reciting this Mortgage to be a security agreement, affecting all of the property aforementioned, if requested by Lender, shall be executed by the Mortgagor and the Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code as enacted in the relevant state, all at the Lender's sole election. The Mortgagor and the Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and the intention of the Mortgagor and the Lender that everything which is described or reflected in this Mortgage as part of the Collateral, is, and at all times and for all purposes (other than with respect to defining "Improvements") and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (aa) the proceeds of any fire and/or hazard insurance policy, or (bb) any award in eminent domain proceedings for a taking or for loss of value, or (cc) the Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall never be construed as altering any of the rights of the Lender or the Mortgagor as determined by this Mortgage or impugning the priority of the Lender's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of the Lender in the event any court shall at any time hold with respect to the foregoing (aa), (bb) or (cc), that notice of the Lender's priority of interest to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

(b) The Mortgagor warrants that (i) the Mortgagor's (that is, "Debtor's") name, identity or corporate structure,

federal employer identification number and residence or principal place of business are as set forth in Exhibit C hereto; (ii) that the Mortgagor is duly qualified to do business in each state in which the Real Estate is located; and (iii) the location of the Improvements is and shall be upon the Land. The Mortgagor covenants and agrees that: (x) the Mortgagor will furnish the Lender with notice of any change in the matters addressed by clauses (i) or (ii) of this Section 1.22(b) within thirty (30) days preceding the effective date of any such change; (y) the Mortgagor will promptly execute any financing statements or other instruments deemed necessary by the Lender to prevent any filed financing statement from becoming misleading or losing its perfected status; and (z) and that the Mortgagor will remain qualified to do business in each state in which the Premises are located.

(c) Upon execution by the Lender (where local practice requires or allows the same), this Mortgage shall constitute a financing statement filed as a fixture filing under the Uniform Commercial Code in the real estate or other appropriate records of the county or parish in which the Premises is located with respect to all Improvements which are a part of the Premises and with respect to any goods or other personal property that may now be or hereafter become an Improvement on the Premises. The information contained in this Section 1.22(c) is provided in order that this Mortgage shall comply with the requirements of the applicable state Uniform Commercial Code for instruments to be filed as financing statements to perfect the security interests with respect to Improvements. The names of the "Debtor" and the "Secured Party", the identity or corporate structure, federal employer identification number and residence or principal place of business of "Debtor" are as set forth in Exhibit C, attached hereto and by this reference made a part hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of the Mortgagor (that is, "Debtor"), are as set forth in Exhibit C attached hereto; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove.

1.23. Changes in Ownership. The Mortgagor hereby acknowledges to the Lender that (i) the identity and expertise of the Mortgagor were and continue to be material circumstances upon which the Lender has relied in connection with, and which constitute valuable consideration to the Lender for, the extending to the Mortgagor of the indebtedness evidenced by the Note and (ii) any change in such identity or expertise could

materially impair or jeopardize the security for the payment of and performance of the Liabilities, granted to the Lender by this Mortgage. The Mortgagor therefore covenants and agrees with Lender that the Mortgagor may not sell, transfer, assign, grant a security interest in, pledge or encumber, without the prior written consent of the Lender, all or any part of the Collateral or any interest therein; provided, however, that notwithstanding the foregoing, the Lender agrees that in the event the Mortgagor desires to convey any portion of the Premises, the Lender shall, upon the payment by the Mortgagor to the Lender of the total value of such Premises (or portion thereof) to be conveyed as shown on Exhibit "I" attached to the Loan Agreement, execute appropriate releases of this Mortgage with respect to the Premises (or portion thereof) to be conveyed.

II. DEFAULT

Each of the following shall constitute a default (referred to herein as a "Default") hereunder:

2.1. Liabilities. Failure of the Mortgagor to pay any of the Liabilities as and when due in accordance with the respective terms thereof; or

2.2. Loan Agreement. The occurrence of any Event of Default under the Loan Agreement; or

2.3 Provisions of this Mortgage. Non-compliance by the Mortgagor with, or failure by the Mortgagor to perform, any representation, covenant, agreement or warranty contained in this Mortgage or any of the Liabilities (other than any non-compliance or failure which constitutes a Default under Sections 2.1, 2.2 or 2.4) with respect to the payment of any amounts required to be paid under this Mortgage or for thirty (30) days after notice thereof to the Mortgagor from the Lender with respect to all other defaults under this Mortgage; or

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

III. REMEDIES

3.1. Acceleration. Upon the occurrence of any Acceleration Event (as hereinafter defined), Lender may declare the entire indebtedness evidenced by the Note and all other Liabilities to be immediately due and payable. An "Acceleration Event" shall mean one of the following events: (i) prior to a Credit Termination (as defined in the Loan Agreement), (1) the Mortgagor defaults in the due and punctual payment of any interest or principal required to be paid under the terms of the Note or the Loan Agreement, (2) an Event of Default shall have occurred under Section 9.6 or 9.7 of the Loan Agreement and the indebtedness described in the Loan Agreement shall have become immediately due and payable, or (3) the debt evidenced by the Credit Agreement is accelerated, and (ii) at any time after a Credit Termination occurs, a Default has occurred hereunder. With respect to Collateral located in the States of Mississippi, West Virginia and Texas, upon the occurrence of any Acceleration Event or at any time thereafter while the Liabilities or any part thereof remains unpaid or unperformed, it shall be the duty of the Trustee and of his successors in the trusts, at the request of the Lender, to enforce the trust by selling the Collateral, including the Real Estate as hereinafter provided. Notwithstanding any provision of this Mortgage to the contrary, with respect to Collateral located in any other state, upon and only upon the occurrence of any Acceleration Event or at any time thereafter while the Liabilities or any part thereof remains unpaid or unperformed, the Lender shall have the rights and remedies provided herein.

3.2. Remedies Cumulative. No remedy or right of the Lender hereunder or under the Note or the Loan Agreement, or otherwise, or available under applicable law (including, without limitation, the Oklahoma Power of Sale Mortgage Foreclosure Act, 46 Okla. Stat. §§ 40-48) 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 Acceleration Event shall impair any such remedy or right or be construed to be a waiver of any Acceleration Event or an acquiescence therein, nor shall it affect any subsequent Acceleration Event 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 Lender. All obligations of the Mortgagor, and all rights, powers and remedies of the Lender expressed herein

shall be in addition to, and not in limitation of, those provided by law or in equity or in this Mortgage, the Note or the Loan Agreement, or any other written agreement or instrument relating to any of the Liabilities or any security therefor.

3.3. Possession of Collateral; Remedies under Mortgage, Note and Agreement. The Mortgagor hereby waives all right to the possession, income and Rents of the Collateral from and after the occurrence of any Acceleration Event. If an Acceleration Event shall have occurred and shall not have been expressly waived in writing by the Lender, then the Mortgagor, upon demand of the Lender, shall forthwith deliver to the Lender the actual possession of the Collateral, and the Lender and/or the Trustee is hereby expressly authorized and empowered, to the extent permitted by applicable law, at and following any such occurrence, to enter into and upon and take possession of the Collateral or any part thereof without the appointment of a receiver, and may exclude the Mortgagor and its agents and employees wholly therefrom and shall have the right to joint access with the Mortgagor to the books, records and accounts of the Mortgagor, to complete any construction in progress thereon at the expense of the Mortgagor, to lease and/or sell the same, to collect and receive all Rents and income and proceeds thereof and to apply the same, less the necessary or appropriate attorneys' fees and expenses of collection thereof, either for the care, operation, sale, lease and preservation of the Collateral and/or, at the election of the Lender in its sole discretion, to a reduction of such of the Liabilities in such order as the Lender may from time to time elect. The Mortgagor hereby waives the posting of any bond in the event the Lender elects to take possession. The Lender and/or the Trustee, in addition to the rights provided under the Note and the Loan Agreement, is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the 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 its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of the Mortgagor. All such expenditures by the Lender and/or the Trustee shall be Liabilities hereunder. Upon the occurrence of any Acceleration Event, the Lender and/or the Trustee may also exercise any or all rights or remedies under the law of the state in which the Collateral is located.

3.4. Foreclosure; Receiver. Except as specifically limited or prohibited by applicable state law, the Lender and the Trustee, as appropriate, shall have the rights and remedies set forth in this Section 3.4. Upon the occurrence of any Acceleration Event, the Lender and/or the Trustee shall also have the right immediately to foreclose this Mortgage or to exercise any right of sale contained in the Mortgage. Upon the filing of any complaint for that purpose, or at any other time for any reason if permitted under applicable law, the court in which such complaint is filed may, upon application of the Lender and/or the Trustee 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 Collateral 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 Lender, with power to take possession, charge and control of the Collateral, to lease the same, to keep the Collateral 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. In furtherance of the foregoing, where permitted under applicable law, the Mortgagor hereby consents to the appointment of a receiver and waives any notice required with respect thereto.

The court may, from time to time, authorize such 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 Lender may elect: (i) amounts due under the Note and the Loan Agreement, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Collateral, (iv) insurance premiums, repairs, taxes, special assessments, water and sewer charges and interest, penalties and costs, in connection with the Collateral, (v) any other lien or charge upon the Collateral that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same, (vi) all moneys advanced by the Lender to cure or attempt to cure any Default by the Mortgagor in the performance of or payment of any Liabilities or to protect the security hereof provided in this Mortgage, the Loan Agreement or the Note with interest on

such advances at the Default Rate and (vii) any amounts due under the Third Party Agreements. Excess proceeds of the 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, to the extent permitted by applicable law, of the Collateral, as the Lender may elect, until all of the Collateral and the Premises have been foreclosed against and sold. In the case of any sale of the Collateral pursuant to any judgment or decree of any court at public auction or otherwise, the Lender and/or the Trustee, 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 Note and the Loan Agreement and any claims for the Liabilities in order that there may be credited as paid on the purchase price the amount of the Liabilities. In case of any foreclosure of this Mortgage or exercise of power of sale (or the commencement of or preparation therefor) the Liabilities and/or all expenses of every kind paid or incurred by the Lender and/or the Trustee for the enforcement, protection or collection of the Collateral, including court costs, attorneys fees (to the extent permitted by applicable law), stenographers' fees, costs of advertising and costs of title insurance (to the extent permitted by applicable law) and any other documentary evidence of title, shall be paid by the Mortgagor. To the extent allowed by applicable law, the Lender and/or the Trustee may in its 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. Enforcement. If an Acceleration Event shall have occurred and be continuing, the Lender shall have the following rights, remedies and options in addition to, and not in lieu of, all other rights, remedies and options set forth in this Mortgage:

3.5.A. "Alabama Premises". With respect to the Alabama Premises, the power of sale and remedies hereunder shall be exercised as follows: Upon the occurrence of any Acceleration Event, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Alabama Premises is taken, 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 Alabama Premises or any part thereof is located, to sell the Alabama Premises (or such part or parts thereof as the Lender 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 Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Alabama Premises, 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 Alabama Premises, 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, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Alabama Premises 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 Alabama Premises not previously sold shall have been sold or all the Liabilities secured hereby have been paid in full.

3.5.B. "Florida Premises". With respect to the Florida Premises, the remedies hereunder shall be exercised as follows: If an Acceleration Event shall have occurred, Lender may proceed by suit or suits at law or in equity or by any other appropriate proceedings or remedy: (a) to enforce payment of the Note and the other Liabilities or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Florida Premises, under the judgment or decree of a court or courts of competent jurisdiction; (c) to appoint a receiver as provided in this Mortgage; and (d) to pursue any other remedy available to it. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Lender may determine, and may recover the costs of its attorneys' fees and court costs in all such events. Lender may bid at any foreclosure sale.

3.5.C. "Georgia Premises". With respect to the Georgia Premises, the power of sale and remedies hereunder shall be exercised as follows: The Lender, upon the occurrence of an Acceleration Event, may sell the Georgia Premises, or any part thereof, at one or more public sale or sales before the door of

the courthouse of the county in which such Georgia Premises or any part of such Georgia Premises is situated, to the highest bidder for cash, in order to pay and perform the Liabilities secured hereby, and accrued interest thereon and insurance premiums, liens, assessments, taxes and charges, including utility charges, if any, with accrued interest thereon and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys fees, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale. (but without regard to the number of days) in a newspaper in which the Sheriff's sales are advertised in such county. At any such public sale, the Lender may execute and deliver to the purchaser a conveyance of the affected portion of such Georgia Premises in fee simple with full warranties of title, and to this end the Mortgagor hereby constitutes and appoints the Lender the attorney-in-fact of the Mortgagor to make such sale and conveyance, and thereby to divest the Mortgagor of all right, title and equity that the Mortgagor may have in and to such Georgia Premises and to vest the same in the purchaser or purchasers at such sale or sales, and all other acts and doings of the Lender as attorney-in-fact are hereby ratified and confirmed and any recitals in such conveyance or conveyances as to the facts essential to a valid sale shall be binding upon the Mortgagor. The aforesaid powers of sale and agency hereby granted are coupled with an interest and are irrevocable by death, dissolution, insolvency or otherwise, are granted as cumulative of the other remedies provided hereby or by law for collection of the Liabilities secured hereby, and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the Liabilities secured hereby. In the event of any such foreclosure sale or sales, the Mortgagor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over. Upon any sale made under or by virtue of this Article III (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Lender may bid for and acquire the Georgia Premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by deducting therefrom the expenses of the sale and the costs for the action and any other sums which the Lender is authorized to deduct under this Mortgage.

3.5.D. "Illinois Premises". With respect to the Illinois Premises, the power of sale and remedies hereunder shall be

exercised as follows: Upon the occurrence of an Acceleration Event, the Lender may foreclose this Mortgage in accordance with the statutes and laws of the State of Illinois governing foreclosures and have all of the Mortgagor's right, title and interest in the Illinois Premises, in whole or in part, sold under the judgment or decree of a court of competent jurisdiction. The Mortgagor releases and waives all rights to retain possession of the Illinois Premises after any default in payment or breach of any of the obligations, covenants, undertakings or agreements herein, in the Note or in the Loan Agreement; the Mortgagor hereby releases and waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every person, except decree and judgment creditors of the Mortgagor, including any and all persons acquiring any interest in or title to the Illinois Premises. The Mortgagor shall not, and will not, apply for or avail itself of any appraisement, valuation, stay, extension or exemption law, or so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. The Mortgagor, for itself and all who may claim through or under the Mortgagor, waives any and all right to have the Illinois Premises, and any estates comprising the Illinois Premises, marshalled upon any foreclosure of the lien hereon and agrees that any court having jurisdiction to foreclose such lien may order the Illinois Premises sold as an entirety. No provision of this paragraph or of this Mortgage shall prevent the Mortgagor from bidding at any foreclosure sale of the Illinois Premises.

3.5.E. "Indiana Premises". With respect to the Indiana Premises, the power of sale and remedies hereunder shall be exercised as follows: Upon the occurrence of an Acceleration Event, the Lender, at its option, may proceed by suit or suits at law or in equity or by other appropriate proceedings or remedy to foreclose this Mortgage and, after complying with the statutory notice requirements applicable to such sales, to sell, as an entirety or in separate lots or parcels, the Indiana Premises under the judgment or decree of a court or courts of competent jurisdiction; provided however, that any rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable law.

3.5.F. "Iowa Premises". With respect to the Iowa Premises, the remedies hereunder shall be exercised as follows: Upon the occurrence of an Acceleration Event, the

Lender, at its option, may proceed by suit or suits in equity or by other appropriate proceedings or remedy to foreclose this Mortgage and, after complying with the statutory notice requirements applicable to such proceedings, to sell, as an entirety or in separate lots or parcels, the Iowa Premises under the judgment or decree of a court or courts of competent jurisdiction. It is agreed that the Iowa Premises are not used for agricultural purposes, as defined in Section 535.13 of the Code of Iowa 1985, and are not the residence of the Mortgagor.

3.5.G. "Kentucky Premises". With respect to the Kentucky Premises, the power of sale and remedies hereunder shall be exercised as follows: Upon the occurrence of an Acceleration Event, the Lender, at its option, may proceed by suit or suits at law or in equity or by other appropriate proceedings or remedy to foreclose this Mortgage and, after complying with the statutory notice requirements applicable to such sales, to sell, as an entirety or in separate lots or parcels, the Kentucky Premises under the judgment or decree of a court or courts of competent jurisdiction.

3.5.H. "Louisiana Premises". With respect to the Louisiana Premises, anything herein to the contrary notwithstanding, Mortgagor, for itself, its successors and assigns, does by these presents stipulate that, upon the occurrence of an Acceleration Event, it shall be lawful for Lender, and Mortgagor hereby authorizes Lender, in addition to all other rights and remedies available at law, to cause all and singular the Louisiana Premises to be seized and sold by executory or other legal process, with or without appraisal, either in its entirety or in lots or parcels as Lender may determine, to the highest bidder for cash, or on such terms as Lender may direct; and Mortgagor, for itself, its successors and assigns, hereby acknowledges the Liabilities secured hereby, whether now existing or to arise hereafter, and does, by these presents, CONFESS JUDGMENT for the full amount thereof in principal, interest, costs, attorneys' fees and all other charges herein referred to as being secured hereby. To the fullest extent allowed by law, Mortgagor hereby waives: the benefit of appraisal, as provided in Articles 2332, 2336, 2723 and 2724 of the Louisiana Code of Civil Procedure, and all other laws conferring the same; the demand and three days' delay accorded by Articles 2639 and 2721 of the Louisiana Code of Civil Procedure; the three days' delay provided by Articles 2331 and 2722 of the Louisiana Code of Civil Procedure; the benefit of the other provisions of Articles 2331, 2722 and 2723 of the Louisiana Code of Civil Procedure; and the benefit of any other articles and laws not specifically mentioned above

conferring rights of appraisement, notice, delay or demand; and Mortgagor expressly agrees to the immediate seizure of the Louisiana Premises in the event of suit hereon. Upon the occurrence of any Acceleration Event, Lender may proceed by a suit or suits at law, whether for a foreclosure hereunder, or for the sale of the Louisiana Premises, or for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for the appointment of a keeper pending any foreclosure hereunder and the sale of the Louisiana Premises, or for the enforcement of any other appropriate legal remedy. Lender shall have the right to become the purchaser at any sale held by any court, receiver or public officer. Mortgagor hereby appoints Lender, or any person, firm or corporation designated by Lender, as keeper of the Louisiana Premises pursuant to the terms and provisions of Louisiana Revised Statutes 9:5136, et seq., after the seizure thereof. The keeper of the Louisiana Premises may operate the same without any liability to Mortgagor in connection with such operations, except to use ordinary care in the operation of said properties, and Lender, or any person, firm or corporation designated by it, shall have the right to enter into and upon and take possession of the Louisiana Premises, to lease the same and collect and receive all rents, issues and profits thereof, and to advance costs for the care, operation and preservation of the Louisiana Premises, including without limitation, the payment of fees, insurance premiums, cost of operation of the Louisiana Premises, taxes, assessments, interest, penalties and all other charges, and to exercise every power, right and privilege of Mortgagor with respect to the Louisiana Premises. The keeper shall be entitled to reasonable compensation for its or his services, which compensation shall not exceed five percent (5%) of the Liabilities. For all purposes of this Mortgage, as it affects the Louisiana Premises, all references herein to a "receiver" shall be deemed to be references to a keeper as appointed as aforesaid. Mortgagor further agrees with respect to the Louisiana Premises that, in the event any proceedings are taken under this Mortgage by way of executory process or otherwise, any and all declarations of the facts made by authentic act before a notary public and in the presence of two witnesses by a person declaring that such facts lie within his knowledge shall constitute authentic evidence of such facts for the purpose of executory process.

3.5.I. "Mississippi Premises". With respect to the Mississippi Premises, the power of sale and remedies hereunder shall be exercised as follows: The Trustee, upon the occurrence of an Acceleration Event, shall sell the Mississippi

Premises, or any part thereof, at public outcry to the highest bidder for cash. Sale of the Mississippi Premises shall be advertised for three (3) consecutive weeks preceding the sale in a newspaper published in the county where the Mississippi Premises 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. The Mortgagor hereby waives the provisions of Section 89-1-55 of the Mississippi Code of 1972 as amended, as far as this Section restricts the right of the Trustee to offer at sale more than 160 acres at a time, and the Trustee may offer the Mississippi Premises herein conveyed as a whole, regardless of how it is described.

3.5.J. "Ohio Premises". With respect to the Ohio Premises, the power of sale and remedies hereunder shall be exercised as follows: Upon the occurrence of an Acceleration Event, the Lender, at its option, may proceed by suit or suits at law or in equity or by other appropriate proceedings or remedy to foreclose this Mortgage and, after complying with the statutory notice requirements applicable to such sales, to sell, as an entirety or in separate lots or parcels, the Ohio Premises under the judgment or decree of a court or courts of competent jurisdiction. In any suit to foreclose the lien created by this Mortgage, there shall be allowed and included as part of the Liabilities in the decree of sale, to the extent permitted by law, all expenditures and expenses that may be paid or incurred by or on behalf of the Lender, or the holder of the Loan Agreement, for attorneys' fees, court costs, appraisers' fees, sheriff's fees, documentary and expert evidence, stenographers' charges, publication costs and such other costs and expenses as Lender or the holder of the Loan Agreement may deem reasonably necessary to prosecute such suit or to evidence to bidders at any sale that may be had pursuant to such decree the true condition of the title to or the value of the Ohio Premises. To the extent permitted by law, all such expenditures and expenses shall become part of the Liabilities secured hereby and shall be due and payable on demand with interest thereon from the date of expenditure at the Default Rate and in addition shall include expenditures and expenses incurred by the Lender in connection with (a) a foreclosure proceeding; (b) any proceeding to which the Lender shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any of the Liabilities; (c) preparations for the commencement of any suit for foreclosure hereby after accrual of such right to foreclose, whether or not actually commenced; or (d) preparation for the defense of or

investigation of any threatened suit, claim or proceeding that might affect the Ohio Premises, whether or not actually commenced.

3.5.K. "Oklahoma Premises". With respect to the Oklahoma Premises, the power of sale and remedies hereunder shall be exercised as follows: In addition to any other remedy provided herein or allowed by law, and pursuant to the grant of the power of sale as provided hereinabove, the Lender shall, upon the occurrence of an Acceleration Event, be entitled to exercise the provisions providing for a foreclosure by power of sale pursuant to the Oklahoma Power of Sale Mortgage Foreclosure Act, 46 Okla. Stat. §§ 40 et seq. (the "Oklahoma Act"), PROVIDED, HOWEVER, that in connection with such election, the Lender shall first give the Mortgagor a written notice of the Lender's intention to foreclose by power of sale addressed to the Mortgagor at the address hereinafter set forth (the "Notice"). Such Notice shall (i) state with reasonable specificity the nature of the Acceleration Events hereunder, (ii) advise the Mortgagor that the Mortgagor has the right to cure such default for a period of thirty-five (35) days from the date the Notice is sent and thereby reinstate this Mortgage, (iii) advise the Mortgagor of the amount of money or action necessary to effect a cure, and (iv) advise the Mortgagor that the indebtedness secured hereby may be accelerated and the Mortgage foreclosed through power of sale if such Acceleration Event is not so cured within such thirty-five day period. If the Mortgagor fails to cure within such thirty-five day period, the Lender at its option may then proceed to exercise the power of sale granted herein, including all statutory notice and sale provisions contained in the Oklahoma Act.

3.5.L. "South Carolina Premises". With respect to the South Carolina Premises, the remedies hereunder shall be exercised as follows: If an Acceleration Event shall have occurred, the Lender may, either with or without entry or taking possession as hereinbelow provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment of the Note and the other Liabilities or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and the Lender's equity of redemption hereunder and to sell, as an entirety or in separate lots or parcels, the South Carolina Premises, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Lender shall take action either by such proceedings or by the exercise of its powers with respect to

entry or taking possession, or both, as the Lender may determine. Upon any such foreclosure sale, the Lender may bid for and purchase the South Carolina Premises and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability. Upon any such foreclosure sale, the Lender may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of all Liabilities, this Mortgage or any other instrument securing the Liabilities, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

3.5.M. "Tennessee Premises". With respect to the Tennessee Premises, the power of sale remedy hereunder shall be exercised as follows: Upon the occurrence of an Acceleration Event, the Trustee hereunder, or his agent or successors, at the request of the Lender, or the representatives or assigns of the Lender, after giving notice of the time and place of sale by publication of such at least three (3) different times in some newspaper published in the county in which the Premises located in Tennessee to be sold are primarily situated, the first of which publications shall be at least twenty (20) days previous to such sale, shall, at the date and time stated in the notice, and at the door of the county courthouse in such county at which foreclosure sales are customarily held or, at the election of the Lender, at the Tennessee Premises to be sold, proceed to sell such Tennessee Premises at public auction for cash (or for credit against the Liabilities if the Lender is the highest bidder) or upon such other terms that are satisfactory to the Trustee and the Lender, and in bar of the equity of redemption and all rights of redemption, statutory or otherwise (including, without limitation, those rights of redemption contained in Tennessee Code Annotated Sections 66-8-101, et seq.), homestead, dower, elective share, rights of appraisement or valuation, and all other rights and exemptions of every kind, all of which are hereby waived. The foreclosure sale may be adjourned from time to time by the Trustee, or his agent or successors, at the place of sale on the date the sale is originally set, or on the date of any adjournment thereof, and may be reset at a later date or dates, by announcement without any additional publication. The Lender or a designee of the Lender may purchase the Tennessee Premises at any sale. In the event the Lender purchases the Tennessee Premises at the Trustee's sale, to the extent the Lender's bid price exceeds the Liabilities, the Lender shall pay the Trustee cash equal to

such excess. The Tennessee Premises or any part thereof may be sold in one parcel, or in such parcels, manner or order as the Lender in its sole discretion may elect, and one or more exercises of the power herein granted shall not extinguish or exhaust the power unless the entire Tennessee Premises are sold or the Liabilities paid in full. Following a Trustee's sale of the Tennessee Premises, the Trustee shall deliver to the purchaser a Trustee's Deed conveying the property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's Deed shall be prima facie evidence of the truth of the statements made therein. The Mortgagor further agrees that in case of any sale hereunder, it will at once surrender possession of the Tennessee Premises, and will from that moment become and be the tenant at will of the purchaser, and removable by process as upon a forcible and unlawful detainer suit, hereby agreeing to pay such purchaser the reasonable rental value of the Tennessee Premises after such sale plus all expenses, including legal fees, incurred by the purchaser.

3.5.N. "Texas Premises". With respect to the Texas Premises, the power of sale and remedies hereunder shall be exercised as follows:

(a) The sale shall be made in the county in which the Texas Premises are situated. If the Texas Premises are situated in more than one county, then notices as hereinafter provided shall be given in both or all of such counties, the Texas Premises may be sold in any such county, and such notices shall designate the county where the Texas Premises will be sold. Notice of such sale shall be given by posting written notice of the sale at the courthouse door, and by filing a copy of the notice in the office of the county clerk in the county in which the sale is to be made, at least twenty-one (21) days preceding the date of sale. If the Texas Premises are in more than one county, one notice shall be posted at the courthouse door of each county in which the Texas Premises are situated, and filed with the county clerk of each county. In addition, the holder of the debt evidenced by the Note and/or any of the Liabilities (or any part thereof) shall at least twenty-one (21) days preceding the date of such sale serve written notice of the proposed sale by certified mail on each debtor obligated to pay the debt evidenced by the Note and/or any of the Liabilities (or any part thereof) according to the records of such holder. Service of such notice upon each debtor shall be completed upon deposit of the notice, enclosed in a postpaid wrapper,

properly addressed to such debtor at his, her or its most recent address as shown by the records of such holder of the debt evidenced by the Note and/or any of the Liabilities (or any part thereof) 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. After such written notice shall have been posted and filed, as aforesaid, and such notice shall have been served upon such debtor or debtors, as aforesaid, the Trustee acting shall perform his duty to enforce the trusts by selling the Texas Premises, either as an entirety or in parcels as the Trustee acting may elect (all rights to a marshaling of assets or sale in inverse order of alienation being waived, as aforesaid) at public vendue, at the area at the courthouse in the county designated in such notice which the Commissioners' Court of such county has designated as the place where such sales are to take place by designation recorded in the real property records of that county, or if no area is so designated, then the notice of sale shall designate the area at the courthouse where the sale covered by that notice is to take place, and the sale shall occur in that area on the first Tuesday in any month within a three hour period between the hours of 10:00 A.M. and 4:00 P.M. designated in such written notice, to the highest bidder or bidders for cash, and make due conveyance to the purchaser or purchasers, with general warranty, and the title to such purchaser or purchasers, when so made by the Trustee acting, the Mortgagor binds itself, its heirs, legal representatives, successors and assigns, to warrant and forever defend against the claims and demands of every person whosoever lawfully claiming or to claim the same or any part thereof. The provisions hereof with respect to posting and giving notices of sale are intended to comply with the provisions of Section 51.002 of the Texas Property Code as in force and effect on January 1, 1991, and in the event the requirement for any notice under such Section 51.002 shall be eliminated or the prescribed manner of giving same modified by future amendment to, or adoption of any statute superseding, such Section 51.002, the requirement for such particular notice shall be deemed stricken from or modified in this instrument in conformity with such amendment or superseding statute, effective as of the effective date of same. The manner herein prescribed for serving or giving any notice, other than that to be posted or caused to be posted by the

Trustee, shall not be deemed exclusive but such notice or notices may be given in any other manner which may be permitted by applicable law.

(b) If foreclosure should be commenced by the Trustee, the Lender may at any time before the sale direct the Trustee to abandon the sale, and may at any time or times thereafter direct the Trustee to commence again foreclosure; or, irrespective of whether foreclosure is commenced by the Trustee, the Lender may at any time after an Acceleration Event hereunder institute suit for collection of the Note and/or the Liabilities or foreclosure of the lien of this Mortgage. If the Lender should institute suit for collection of the Note and/or the Liabilities or foreclosure of the lien of this Mortgage, the Lender or such other holder may at any time before the entry of final judgment dismiss the same, and require the Trustee to sell the Texas Premises in accordance with the provisions of this Mortgage.

(c) No single sale or series of sales by the Trustee or by any substitute or successor Trustee under this Mortgage, and no judicial foreclosure shall extinguish the lien or exhaust the power of sale under this Mortgage except with respect to the items of property sold, but such lien and power shall exist for so long as, and may be exercised in any manner by law or in this Mortgage provided as often as the circumstances require to give the Lender full relief hereunder.

(d) The Lender shall have the right to become the purchaser at any sale made hereunder, being the highest bidder, and credit upon all or any part of the Note and/or the Liabilities shall be deemed cash paid for the purposes of this Section 3.5.N.

(e) In case of absence, death, inability, refusal or failure of the Trustee herein named to act, or in case he should resign (and he is hereby authorized to resign without notice to the Mortgagor), or if the holder shall desire, with or without cause, to replace the Trustee herein named, a successor and substitute trustee may be named, constituted and appointed by the holder of the Note and/or the Liabilities, without other formality than an appointment and designation in writing; and this conveyance shall vest in such substitute trustee, as trustee, the estate in and title to all of the Texas Premises, and such substitute trustee so appointed and designated shall thereupon hold, possess and exercise all the title, rights,

powers and duties herein conferred on the Trustee named and any previous successor or substitute trustee, and his conveyance to the purchaser at any such sale shall be equally valid and effective as if made by the Trustee named herein, and such right to appoint a substitute trustee shall exist and may be exercised as often and whenever from any of said causes, or without cause, as aforesaid, any trustee, original or substitute, cannot or will not act.

(f) If, following the occurrence of an Acceleration Event under this Mortgage and an acceleration of the Note and/or the Liabilities but prior to a sale of the Texas Premises, the Mortgagor shall tender to the Lender payment of an amount sufficient to satisfy the entire Note and the Liabilities, such tender shall be deemed to be a voluntary prepayment under the Note and the Liabilities and, accordingly, the Mortgagor shall also pay to the Lender the premium (if any) then required under the Note and the Liabilities in order to exercise the prepayment privilege contained therein.

(g) The Mortgagor agrees for itself and its heirs, legal representatives, successors and assigns, that if either of them shall hold possession of the Texas Premises or any part thereof subsequent to foreclosure hereunder, the Mortgagor, or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for rental on the Texas Premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

(h) The Lender shall be entitled to exercise the rights of setoff and/or banker's lien against the interest of Mortgagor and any guarantor in and to each and every account and other property of the Mortgagor or any guarantor which are in the possession of the Lender to the extent of the full amount of the Liabilities.

3.5.0. "West Virginia Premises". With respect to the West Virginia Premises, the power of sale and remedies hereunder shall be exercised as follows: Upon the occurrence of an Acceleration Event and the exercise by the Lender of the option to declare the Liabilities to be immediately due and payable,

the Trustee, upon the written request of the Lender, shall foreclose upon and sell the West Virginia Premises to satisfy the Liabilities at public auction at the front door of the courthouse of the county in which the West Virginia Premises are situate, for cash in hand on the day of sale, after first giving notice of such sale by publishing such notice in some newspaper of general circulation in said county, once a week for two successive weeks preceding the day of sale and after giving notice to the Mortgagor and to any subordinate lienholder who has previously notified the Lender of the existence of a subordinate lien, at least 20 days prior to the sale, and no other notice of such sale shall be required. Out of the proceeds of such sale the Trustee shall pay, first, the costs and expenses of executing the trust; second, to the Lender and the Trustee all money which they or either of them may have paid for taxes, assessments or other governmental charges or fees, insurance, repairs, court costs, and all other costs and expenses incurred or paid under the provisions of this instrument, together with interest thereon from the date of payment; third, to the Lender the full amount due and unpaid on the Note and all other indebtedness hereby secured, together with all interest accrued thereon to date of payment; and fourth, the balance, if any to the Mortgagor, its successors or assigns, upon delivery of and surrender to the purchaser or purchasers of possession of the West Virginia Premises, less the expense, if any, of obtaining such possession.

The Mortgagor agrees that any sale made 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 at the time and place of the adjourned sale.

In the event that foreclosure proceedings are instituted hereunder but are not completed, the Trustee shall be reimbursed for all costs and expenses incurred by him in commencing such proceedings; and all costs and expenses so incurred by the Trustee, together with interest thereon until paid, shall be payable to the Mortgagor on demand, and shall be and become a part of the indebtedness secured hereby and shall be collectible as such.

The Trustee is hereby authorized to act by agent or attorney in the execution of his trust. It shall not be necessary for the Trustee or any successor trustee to be present in person at any foreclosure sale hereunder.

It is hereby expressly covenanted and agreed by all parties hereto that the Lender may, at any time and from time

to time hereafter, without notice, appoint and substitute another trustee or trustees, corporations or persons, in place of the Trustee herein named to execute the trust herein created. Upon such appointment, either with or without a conveyance to said substituted trustee or trustees by the Trustee herein named, or by any substituted trustee in case the said right of appointment is exercised more than once, the new and substituted trustee or trustees in each instance shall be vested with all the rights, titles, interest, powers, duties and trusts in the West Virginia Premises which are vested in and conferred upon the Trustee herein named; and such new and substituted trustee or trustees shall be considered the successors and assigns of the Trustee who is named herein within the meaning of this Mortgage, and substituted in his place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Mortgage, and the description of the Land herein described, which instrument, executed and acknowledged by Lender and recorded in the office of the Clerk of the County Commission of the County wherein the West Virginia Premises are situate, shall be conclusive proof of the proper substitution and appointment of such successor trustee or trustees, and notice of such proper substitution and appointment to all parties in interest.

A copy of any notice of trustee's sale under this Mortgage shall be served on the Mortgagor by certified mail, return receipt requested, directed to the Mortgagor at the address stated in section 4.5 hereinafter set forth or such other address given to Lender in writing by the Mortgagor, subsequent to the execution and delivery of this Mortgage.

3.6. Remedies for Leases and Rents. If any Acceleration Event shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale hereunder, the Lender shall be entitled, to the extent permitted by applicable law, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Occupancy Leases, other Third Party Agreements 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, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating to the Collateral; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises,

the Rents, the Occupancy Leases, other Third Party Agreements and other Collateral and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Occupancy Leases, other Third Party Agreements and other Collateral (including actions for the recovery of rent, actions in forceable detainer and actions in distress of rent); (iv) cancel or terminate any Occupancy Lease or Third Party Agreement or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Third Party Agreement, Occupancy 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 Collateral that it, in its discretion, may deem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to the Lender's 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 Lender in its discretion may deem proper, the Mortgagor hereby granting the Lender 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 Acceleration Event without notice to the Mortgagor or any other person; provided, however, that, notwithstanding the foregoing, in the event of a foreclosure, the Lender shall have no right to operate the Collateral under the name presently used by the Mortgagor without the assignment to the Lender of the appropriate trademarks and service marks by the holder thereof. The Lender, in the exercise of the rights and powers conferred upon it 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 Lender and its 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 Lender, make it readily rentable; and (c) to the payment of any Liabilities. The entering upon the Premises and taking possession of the Collateral, 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 Collateral or any part thereof by the Lender or a receiver, and the collection, receipt and application of the Rents, the Lender shall be entitled to exercise every right provided for in this Mortgage, the Loan Agreement or the Note or by law or in equity upon or after the occurrence of an Acceleration Event. Any of the actions referred to in this Section 3.6 may be taken by the Lender without regard to the adequacy of the security for the Liabilities hereby secured.

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

3.8. 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 maximum extent permitted by applicable law, forever be a perpetual bar against the Mortgagor.

3.9. Remedies With Respect to Collateral that is Personal Property. To the extent any of the Collateral constitutes personal property under applicable law, the Lender and/or the Trustee may proceed, upon the occurrence of an Acceleration Event, to enforce and realize all remedies available to a secured party under applicable law, including, without limitation, the Uniform Commercial Code, against such Collateral. To the extent permitted under applicable law, the Lender and/or the Trustee may exercise any power of sale remedy or may foreclose against such Collateral in conjunction with or independently and separately from the exercise of such power of sale or foreclosure against the Premises.

3.10. Proceeds of Sale. The proceeds of any sale of, and any Rents and other amounts generated by the holding, leasing, operation or other use of, the Premises shall be applied by the Lender (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following order of priority:

(1) first, to the payment of the costs and expenses of taking possession of the Premises and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (i) the Trustee's and receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, (iv) costs of advertisement, and (v) the payment of any and all taxes, liens, security interests or other rights, titles or interests superior to the lien and security interest of this Mortgage (except those to which the Premises have been sold subject to and without in any way implying the Lender's prior consent to the creation thereof);

(2) second, to the payment of all amounts, other than the principal balance and accrued but unpaid interest, which may be due to the Lender under the Note or any documents or instruments securing payment or performance of the Note or any of the Liabilities, together with interest thereon as provided therein;

(3) third, to the payment of all accrued but unpaid interest due on the Liabilities;

(4) fourth, to the payment of the principal balance on the Liabilities and any documents or instruments securing payment of the Liabilities, irrespective of whether then matured;

(5) fifth, to the extent funds are available therefor out of the sale proceeds or any Rents and, to the extent known by the Lender, to the payment of any indebtedness or obligation secured by a subordinate deed of trust on or security interest in the Premises; and

(6) sixth, to the Mortgagor, its legal representatives, successors and assigns.

3.11 Performance by the Lender of Defaults by the Mortgagor. If the Mortgagor shall default in the payment, performance or observance of any term, covenant or condition of this Mortgage and shall fail to cure such default within any

applicable notice and cure period, the Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Lender with interest thereon at the rate provided in the Loan Agreement. The Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor.

3.12 The Mortgagor as Tenant Holding Over. In the event of any foreclosure sale or sale under power by the Lender or the Trustee as provided in this Article III, the Mortgagor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

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 Lender) 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 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 this Mortgage, the Loan Agreement or the Note or any 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 this Mortgage, the Loan Agreement or the Note or any 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 Note or any other Liabilities or any guaranty given in connection therewith; release any Collateral or other property securing this Mortgage, the Loan Agreement or the Note or any 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; exercise or refrain from exercising, or waive, any right the Lender may have; and remove any Trustee and appoint one or more successor trustees at the Lender's discretion, without the necessity of notice to the Mortgagor or the Mortgagor's consent.

4.2. Legal Expenses. The Mortgagor agrees to indemnify, defend and hold harmless the Lender and the Trustee from all losses, damages, liabilities, costs, demands, judgments, causes of actions, suits and expenses, including (without limitation) reasonable attorneys' and other professionals' fees, incurred in connection with any suit or proceeding in or to which the Lender and the Trustee or any of them, may be made or become a party in connection with the Liabilities and/or this Mortgage, the Note or the Loan Agreement, other than as a result of the negligence (including, without limitation, ordinary negligence) or willful misconduct of the Lender, all of which shall be due and payable upon demand therefor by the Lender.

The Lender waives the statutory definition of "reasonable attorneys' fees" set forth in Official Code of Georgia Annotated, Section 13-1-11, as amended. The Lender and the Mortgagor agree that wherever the phrase "reasonable attorneys' fees", "reasonable attorneys' fees actually incurred", or phrase of similar meaning, appears in this Instrument, the Loan Agreement, or the Note, it shall mean actual attorneys' fees reasonably incurred, whether greater or lesser than statutory attorneys' fees pursuant to O.C.G.A. Section 13-1-11, as amended (but not statutory attorneys' fees pursuant thereto).

4.3. 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. Defeasance. Except with respect to Collateral located in the State of Georgia, upon full payment and satisfaction of all the Liabilities in accordance with their respective terms and at the time and in the manner provided, and when the Lender has no further obligation to make any advance, or extend any credit hereunder or under the Note or the Loan Agreement, this Mortgage shall terminate, and

thereafter, upon demand therefor by Mortgagor (which, to the extent this Mortgage affects the Louisiana or Mississippi Premises, shall be a demand of not less than thirty (30) days) an appropriate instrument of reconveyance or release shall promptly be made, at the expense of the Mortgagor, by the Lender and/or the Trustee to the Mortgagor.

4.5. 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, except as otherwise expressly provided in this Mortgage, addressed to it at its address shown above with a copy to:

Farris, Warfield & Kanaday
Third National Financial Center
424 Church Street - Suite 1900
Nashville, Tennessee 37219
Attn: David J. White, Esq.;

(ii) if to the Lender, addressed to it at the address shown above with a copy to:

Jones, Day, Reavis & Pogue
3500 One Peachtree Center
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3242
Attn: Karen S. Gilbert, Esq.;

(iii) If to a Trustee, addressed to it at the address shown below:

Re: Mississippi Premises:
Jack V. Mackmull, Jr., Trustee
c/o CIBC, Inc.
Two Paces West
2727 Paces Ferry Road
Suite 1200
Atlanta, Georgia 30339;

Re: Tennessee Premises:
Mark Turner, Trustee
A Williamson County, Tennessee Resident
c/o CIBC, Inc.
Two Paces West
2727 Paces Ferry Road
Suite 1200
Atlanta, Georgia 30339;

Re: Texas Premises:
Jack V. Mackmull, Jr., Trustee
c/o CIBC, Inc.
Two Paces West
2727 Paces Ferry Road
Suite 1200
Atlanta, Georgia 30339;

Re: West Virginia Premises:
Michael Albert, Trustee
c/o CIBC, Inc.
Two Paces West
2727 Paces Ferry Road
Suite 1200
Atlanta, Georgia 30339;

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 telegraph or telex shall be deemed to have been given when sent if addressed to the party to whom sent, at its address as aforesaid. Notice of other liens given pursuant to W.Va. Code § 38-1-4 shall be given to Lender at the above address and shall be effective upon receipt by Lender.

4.6. Successors; Mortgagor; Gender. All provisions hereof shall bind the Mortgagor, the Lender, the Trustee and their respective successors, vendees and assigns and shall inure to the benefit of the Lender and the Trustee and 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 Note, the Loan Agreement 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.

4.7. Care by Lender and Trustee. The Lender and the Trustee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral assigned by the Mortgagor to the Lender and/or the Trustee or in the possession of the Lender and/or the Trustee if they take such action for that purpose as the Mortgagor requests in writing,

but failure of the Lender or the Trustee to comply with any such request shall not be deemed to be a failure to exercise reasonable care, and no failure of the Lender or the Trustee 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.

4.8. No Obligation on Lender or Trustee. 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 Lender or the Trustee shall have no obligation or liability under or with respect to the Collateral by reason or arising out of this Mortgage and (iii) the Lender or the Trustee 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.

4.9. No Waiver; Writing. No delay on the part of the Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Lender 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 the Lender 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.

4.10. Governing Law; Submission to Jurisdiction. THIS MORTGAGE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE LAWS OF THE STATE OF GEORGIA. THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF GEORGIA AND ACCEPTED BY LENDER IN THE STATE OF GEORGIA AND THE PROCEEDS OF THE LOANS SECURED HEREBY WERE DISBURSED IN THE STATE OF GEORGIA, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. THIS MORTGAGE, TOGETHER WITH THE NOTE AND THE LOAN AGREEMENT, SHALL BE CONTRACTS MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF GEORGIA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WITHIN THE STATE OF GEORGIA: PROVIDED, HOWEVER THAT WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO THE CREATION, PERFECTION, PRIORITY OR ENFORCEMENT OF LIENS ON REAL PROPERTY AND IMPROVEMENTS, OR THE APPOINTMENT OF A RECEIVER WITH RESPECT

THERETO, 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 LAW OF SUCH STATE, THE LAWS OF THE STATE OF GEORGIA 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. THE LENDER MAY ENFORCE ANY CLAIM ARISING OUT OF THIS MORTGAGE OR THE NOTE OR THE LOAN AGREEMENT IN ANY STATE OR FEDERAL COURT HAVING SUBJECT MATTER JURISDICTION AND LOCATED IN ATLANTA, GEORGIA. For the purpose of any action or proceeding instituted with respect to any such claim, the Mortgagor irrevocably submits to the jurisdiction of such courts and irrevocably consents to the service of process out of such 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 Lender or the Trustee to serve process in any other manner permitted by law or preclude the Lender or the Trustee 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 Atlanta, Georgia, and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

4.11. Waiver. THE MORTGAGOR, ON BEHALF OF ITSELF AND ALL PERSONS NOW OR HEREAFTER INTERESTED IN THE COLLATERAL, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY WAIVES ALL RIGHTS UNDER ALL APPRAISEMENT, REDEMPTION, HOMESTEAD, MORATORIUM, VALUATION, EXEMPTION, STAY, EXTENSION, LAWS OR EQUITIES NOW OR HEREAFTER EXISTING, AND 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 THE 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 LIABILITIES OR PERFORMANCE SECURED HEREBY MARSHALLED UPON ANY FORECLOSURE OF THIS MORTGAGE OR OF ANY OTHER SECURITY FOR ANY OF THE LIABILITIES OR PERFORMANCE SECURED HEREBY. 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 LENDER OF ANY DEFICIENCY JUDGMENT AGAINST THE MORTGAGOR. THE MORTGAGOR HEREBY EXPRESSLY WAIVES THE BENEFITS OF ANY OTHER RIGHTS AVAILABLE AT LAW OR IN EQUITY WHICH MIGHT OTHERWISE PROVIDE THAT IN THE EVENT OF ANY SUCH SALE THE COLLATERAL MIGHT BE SOLD AT THE OPTION OF THE LENDER AND/OR THE TRUSTEE EITHER AS A WHOLE OR IN SUCH LOTS AND PARCELS AS THE LENDER AND/OR THE TRUSTEE MAY ELECT.

INITIALED BY MORTGAGOR:

SHONEY'S, INC.

BY: WLB

4.12. JURY TRIAL. THE MORTGAGOR HEREBY EXPRESSLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE 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 AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

4.12A. WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE AND BY INITIALING THIS SECTION 4.12A, THE MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE LIABILITIES AND THE POWER OF ATTORNEY GIVEN HEREIN TO THE LENDER TO SELL THE COLLATERAL BY NON-JUDICIAL FORECLOSURE UPON AN ACCELERATION EVENT BY THE MORTGAGOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE (EXCEPT AS OTHERWISE PROVIDED HEREIN); (B) EXCEPT TO THE EXTENT PROVIDED OTHERWISE HEREIN,

WAIVES ANY AND ALL RIGHTS WHICH THE MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY THE LENDER OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO THE LENDER; (C) ACKNOWLEDGES THAT THE MORTGAGOR HAS READ THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO THE MORTGAGOR AND THE MORTGAGOR HAS CONSULTED WITH COUNSEL OF THE MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF THE MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR TRANSACTION:

INITIALED BY MORTGAGOR:

SHONEY'S, INC.

By: WJZ

4.13. 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 Collateral, it is hereby understood and agreed that should the Lender and/or the Trustee acquire an additional or other interests in or to the Collateral or the ownership thereof, then, unless a contrary intent is manifested by the Lender and/or the Trustee 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 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 Collateral, 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 Lender and/or the Trustee 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 Section 4.13 shall not apply in the event the Lender and/or the Trustee acquire the fee of the Collateral except if the Lender and/or the Trustee shall so elect.

4.14. Lender and Trustee Not Joint Venturers or Partners. The Mortgagor, the Lender and the Trustee acknowledge and agree

that in no event shall the Lender and the Trustee be deemed to be partners or joint venturers with the Mortgagor. Without limitation of the foregoing, the Lender and the Trustee shall not be deemed to be such partners or joint venturers on account of their 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.

4.15. Time of Essence. Time is declared to be of the essence in this Mortgage, the Note and the Loan Agreement and of every part hereof and thereof.

4.16. No Third Party Benefits. This Mortgage, the Note and the Loan Agreement are made for the sole benefit of the Mortgagor, the Trustee and the Lender and, subject to the provisions of Section 4.6, 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 Lender or the Trustee elect to employ any or all the rights, powers or remedies available to them under any of the foregoing, the Lender and the Trustee shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of the Lender's or the Trustee's actions or omissions pursuant thereto or otherwise in connection with this transaction.

4.17. Future Advances. Except as provided in Section 4.17.A with respect to the Alabama Premises, this Mortgage secures all present and future liabilities of the Mortgagor to the Lender and the Trustee, including the Liabilities, and it is contemplated that the Lender may lend additional sums to the Mortgagor, but shall not be obligated to do so. Except as set forth specifically herein with respect to Collateral located in or the laws of certain states, the maximum amount, including present and future liabilities, which may be secured hereby at any one time is \$20,800,000.00 plus interest, plus any disbursements and taxes and insurance on the Collateral, plus interest thereon, and any other sums advanced in accordance with the terms of this Mortgage, the Loan Agreement or the Note.

The total amount of the indebtedness referred to in the second sentence of the preceding paragraph that may be secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance of such indebtedness secured at any one time by this Mortgage shall not exceed a maximum principal amount of TWENTY MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$20,800,000.00), plus interest thereon and any

disbursements made by the Lender and/or the Trustee for the payment of taxes, levies, or insurance on the Collateral encumbered by this Mortgage, with interest on such disbursements. The lien of this Mortgage shall be valid as to all indebtedness secured hereby to the same extent as if the future advances made hereunder were made on the date of the execution of this Mortgage.

4.17.A Alabama Future Advances. With respect to the Alabama Premises, this Mortgage does not secure future or further advances except those included in clauses (a)-(d) of the definition of "Liabilities" above.

4.17.B Florida Future Advances. With respect to the Florida Premises, this Mortgage secures any and all future or further advances as shall be made by Lender, or its successors and assigns, to or for the benefit of Borrower or Borrower's successors or assigns within twenty (20) years from and after the date hereof, all such further and future advances to be secured hereby as if made on the date hereof; provided, however, that the aggregate amount at any one time of the principal amount outstanding under the Note and the principal amount outstanding under any such future or further advance shall not exceed \$41,600,000.00. Notwithstanding the foregoing provision of this Section 4.17.B, recovery by Lender from the Florida Premises for application against the Note shall not exceed \$2,500,000.00.

4.17.C Iowa Future Advances. With respect to the Iowa Premises, this Subsection shall apply. NOTICE: This Mortgage secures credit in the amount of \$41,600,000.00. Loans and advances up to the amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

4.17.D Kentucky Future Advances. With respect to the Kentucky Premises, this Mortgage secures any and all future or further advances as are made pursuant to the terms hereof and of the Loan Agreement, to the same extent as if such future advances were made on the date hereof. The total amount of the indebtedness that may be so secured may decrease or increase from time to time, but the maximum amount so secured at any time shall not exceed Forty-one Million Six Hundred Thousand and No/100 Dollars (\$41,600,000.00), plus interest thereon, attorneys' fees and court costs.

4.17.E Louisiana Future Advances. With respect to the Louisiana Premises, this Mortgage is given to secure not only

existing indebtedness, but also such future advances as are made pursuant to the terms hereof and of the Loan Agreement and within the terms hereof and of the Loan Agreement, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of the indebtedness that may be so secured may decrease or increase from time to time, but the maximum amount so secured at any time shall not exceed Forty-one Million Six Hundred Thousand and No/100 Dollars (\$41,600,000.00), plus interest thereon, attorneys' fees and court costs.

4.17.F South Carolina Future Advances. With respect to the South Carolina Premises, this Mortgage is given to secure not only existing indebtedness, but also such future advances as are made pursuant to the terms hereof and within the term hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of the indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed Forty-one Million Six Hundred Thousand and No/100 Dollars (\$41,600,000.00), plus interest thereon, and any disbursements made for the payment of taxes, assessments, levies, or insurance, plus interest thereon, reasonable, actual attorneys' fees and court costs.

4.17.G Other Jurisdictions. With respect to the Premises located in Georgia, Illinois, Indiana and Texas, this Subsection shall apply. This Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of the Lender, or otherwise, as are made by the Lender, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid principal balance so secured at any one time shall not exceed Forty-One Million Six Hundred Thousand and No/100 Dollars (\$41,600,000.00) (plus interest thereon and any advances made for taxes, liens, assessments, insurance premiums or costs and other sums due under the Mortgage and the Loan Agreement).

4.18. Counterparts. Except with respect to the Louisiana Premises, this Mortgage may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

4.19. Maximum Interest. If any of the terms or provisions of this instrument or of the Note or other evidence of the Liabilities secured hereby is susceptible of being construed as binding or obligating the Mortgagor or any other persons or concerns obligated, either primarily, secondarily or conditionally, for the payment of any debt, whether or not secured hereby, under any circumstances or contingencies whatsoever, to pay interest in excess of the maximum rate of interest permitted by whichever of applicable federal or state law from time to time permits the higher maximum non-usurious rate (the "Highest Lawful Rate"), it is agreed that such terms or provisions are a mistake in calculation or wording and, notwithstanding the same, it is expressly agreed that neither the Mortgagor, nor any other person or concern obligated in any manner on any such debt shall ever be required or obligated under the terms hereof, or under the terms of the Note or other evidence of the Liabilities or otherwise, to pay interest in excess of the Highest Lawful Rate, and if, for any reason whatever, the interest paid on the Note and/or the Liabilities shall exceed the Highest Lawful Rate, the holder of the Note and/or the Liabilities receiving such excess shall either (at the option of such holder) refund to the payor or credit against the principal of the Note and/or the Liabilities such portion of said interest as may be necessary to cause the interest paid on the Note and/or the Liabilities to equal the Highest Lawful Rate, and no more. At all times, if any, as Chapter One of the Texas Credit Code, as now in effect, shall establish the Highest Lawful Rate, the Highest Lawful Rate shall be the "indicated rate ceiling" (as defined in Chapter One of the Texas Credit Code) from time to time in effect. Without notice to the Mortgagor or any other person or entity, the Highest Lawful Rate shall automatically fluctuate upward and downward as and in the amount by which said maximum non-usurious rate of interest shall fluctuate.

4.20. Exhibits. To facilitate recordation, there are omitted from certain counterparts of this Mortgage those descriptions in Exhibit A which contain descriptions of the Premises (as defined herein) located in recording jurisdictions other than the jurisdiction in which the particular counterpart is to be recorded and those descriptions in Exhibit B which contain Permitted Exceptions to the warranties set forth herein applicable to jurisdictions other than the jurisdiction in which the particular counterpart is to be recorded. There are copies of the Loan Agreement, the Note, the cover page, Exhibit E, a complete description of all the Premises subject to the security interest and lien of this Mortgage and all Permitted Exceptions in the counterparts of this Mortgage

located on file at the principal offices of the Mortgagor and the Lender set forth in Section 4.5. The complete legal description of all the Premises now or hereafter subject to the security interest and lien of this Mortgage as contained in such counterparts and the complete list of all Permitted Exceptions is incorporated herein by reference. Each counterpart of this Mortgage shall be deemed an original and of equal dignity, priority and effect for all pertinent purposes. Notwithstanding the fact that the descriptions of all of the Collateral subject to the security interest and lien of this Mortgage and all Permitted Exceptions are not included in each counterpart of this Mortgage, any reference to the "Premises", the "Collateral" or the "Permitted Exceptions" in any counterpart of this Mortgage shall be deemed to include all of the Collateral and the Permitted Exceptions described in all counterparts of this Mortgage.

4.21 Substitution of Trustee. The Lender has the power and shall be entitled, in its sole discretion and without cause, successively to remove the Trustee, or any successor trustee, and to appoint another trustee or trustees in the place and stead of the Trustee or any successor trustee, by written instrument duly recorded in the appropriate public records of the county wherein in the Mississippi Premises, the Tennessee Premises, the West Virginia Premises or the Texas Premises are situated, as the case may be, and any such successor shall have the same title, authority and power as the original Trustee herein named.

4.22. Indemnification of the Trustee. Except for willful misconduct, the Trustee shall not be liable for any act or omission or error in judgment. The Trustee may rely on any document believed by him in good faith to be genuine. All money received by the Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and the Trustee shall not be liable for interest thereon. The Mortgagor shall indemnify the Trustee against all liability and expenses which the Trustee may incur in the performance of his duties hereunder.

4.23 Suits to Protect the Premises. The Lender shall have power to institute and maintain such suits and proceedings as it may reasonably deem expedient (a) to prevent any impairment of the Premises by any acts which may be unlawful or in violation of this Mortgage, (b) to preserve or protect its interest in the Premises and in the rents, issues, profits and revenues arising therefrom, and (c) to restrain the enforcement

of or compliance with any legislation or other governmental enactment, rule or order that the Lender, in the Lender's reasonable judgment, believes to be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender. In any such suit or proceeding, the Lender may sue in the name of the Mortgagor and/or may name the Mortgagor as a party.

4.24 Severability. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

4.25 No Obligation to Marshal Assets. Notice is hereby given that no holder of any mortgage, deed of trust, deed to secure debt, lien, security interest or other encumbrance affecting all or any portion of the Premises, which is inferior to the lien, security interest and security title of this Mortgage shall have the right or privilege to require the Lender to marshal assets. The Mortgagor hereby expressly waives and relinquishes any right or remedy which the Mortgagor may have or be able to assert by reason of the provisions of Chapter 34 of the Business and Commerce Code of the State of Texas, pertaining to the rights and remedies of sureties.

4.26 Intervention by Lender. And now to these presents comes and intervenes the Lender, appearing herein through its undersigned, duly authorized representative, which hereby accepts all of the terms and provisions of this Mortgage.

4.27 Louisiana Authentic Act. Notwithstanding the various Acknowledgements attached hereto, this Mortgage has been executed and delivered by the Mortgagor and the Lender appearing before the respective Notaries and two witnesses whose signatures appear on the following pages and, insofar as this Mortgage affects the Louisiana Premises, it constitutes an authentic act. The Notary before whom the Mortgagor has appeared has paraphed the Note "Ne Varietur" for identification with this Mortgage.

4.28 Business Loan. Mortgagor warrants and represents that the proceeds of the Note will be used for the purposes specified in Illinois Revised Statutes, Chapter 17, Section 6404, and that the principal obligations secured hereby constitutes "business loans" coming within the definition and purview of said section.

4.29 Board Resolution. For executory process purposes with respect to Louisiana, a certified resolution of the Board of Directors of Mortgagor is attached hereto as Exhibit "E" and made a part hereof by this reference.

[Signatures begin on following page]

IN WITNESS WHEREOF, the Mortgagor has executed and delivered this Mortgage under seal and before me, the undersigned Notary, and the two undersigned competent witnesses, in Atlanta, Georgia, on the 23rd day of September, 1992.

Signed, sealed and delivered in the presence of:

[Signature]
Witness

Susan C. Shumaker
(Typed or Printed Name)

Karen Gilbert
Witness

Karen Gilbert
(Typed or Printed Name)

SHONEY'S, INC., a Tennessee corporation

By: W. Craig Barber
W CRAIG BARBER
(Typed or Printed Name)

Title: TREASURER

Attest: F. E. McDaniel, Jr.

F. E. McDaniel, Jr.
(Typed or Printed Name)

Title: Secretary

[CORPORATE SEAL]

With an address at:

1727 Elm Hill Pike
Post Office Box 1260
Nashville, Tennessee 37202

Elizabeth M. Hesmer
Notary Public

Elizabeth M. Hesmer
(Typed or Printed Name)

My commission expires:

[NOTARIAL SEAL]

ELIZABETH M. HESMER
Notary Public, Cobb County, Georgia
My Commission Expires Oct. 7, 1994

ALABAMA
ACKNOWLEDGMENT

STATE OF GEORGIA

COUNTY OF FULTON

I, Elizabeth M. Hesmer, a notary public in
and for said county in said state, hereby certify that W. Craig
Dickes and F.E. McDaniel, Jr., whose names as
Treasurer and Secretary, respectively, of
Shoney's, Inc., a Tennessee corporation, are signed to the
foregoing instrument, and who are known to me, acknowledged
before me on this day that, being informed as to the contents
of the instrument, they, as such officers and with full
authority, executed the same voluntarily for and as the act of
said corporation.

Given under my hand and seal of office this 23rd day
of September, 1992.

Elizabeth M. Hesmer
Name: Elizabeth M. Hesmer
Notary Public,
State of Georgia-at-Large

My Commission Expires:

[AFFIX SEAL] ELIZABETH M. HESMER
Notary Public, Cobb County, Georgia
My Commission Expires Oct. 7, 1994

IN WITNESS WHEREOF, the Lender has executed and delivered this Mortgage under seal and before me, the undersigned Notary, and the two undersigned competent witnesses, in Atlanta, Georgia, on the 23rd day of September, 1992.

Signed, sealed and delivered in the presence of:

[Signature]

Witness

Susan C. Shumaker
(Typed or Printed Name)

[Signature]

Witness

Karen Gilbert
(Typed or Printed Name)

CIBC, INC., a Delaware Corporation

By: [Signature]

KATHRYN W. SAX
(Typed or Printed Name)

Title: VICE PRESIDENT

[CORPORATE SEAL]

Federal Employer

Identification Number:

15-17603541

[Signature]
Notary Public

Elizabeth M. Hesmer
(Typed or Printed Name)

My commission expires:

[NOTARIAL SEAL]

ELIZABETH M. HESMER
Notary Public, Cobb County, Georgia
My Commission Expires Oct. 7, 1994

ALABAMA
ACKNOWLEDGMENT

STATE OF GEORGIA

COUNTY OF FULTON

I, Elizabeth M. Hesmer, a notary public in and for said county in said state, hereby certify that Kathryn W. Sax, whose name as Vice President of CIBC, Inc., a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed as to the contents of the instrument, they, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 23rd day of September, 1992.

Elizabeth M. Hesmer
Name: Elizabeth M. Hesmer
Notary Public,
State of Georgia-at-Large

My Commission Expires:

[AFFIX SEAL]

ELIZABETH M. HESMER
Notary Public, Cobb County, Georgia
My Commission Expires Oct. 7, 1994

This Instrument prepared by:

Susan C. Shumaker
Jones, Day, Reavis & Pogue
3500 One Peachtree Center
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3242

3411U/Ackn.

EXHIBIT A

Store No. 3753

PROPERTY DESCRIPTION PELHAM, ALABAMA

A parcel of land lying in the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence Easterly along the South line of said 1/4 Section 1,826.71 feet to a point; thence turn a right interior angle of $57^{\circ}00'07''$ and run Northwesterly 1,620.77 feet to a point on the Southeast right of way line of Alabama Highway #119, being 100 feet Southeasterly of the centerline of said highway; thence turn a left interior angle of $88^{\circ}41'21''$ and run Northeasterly and parallel to said highway centerline 160.62 feet to the point of beginning of said parcel; thence continue on last described course a distance of 92.45 feet to a point that is 100 feet Southeasterly of and at right angles to the centerline of said highway at Station 37+00; thence turn a left interior angle of $165^{\circ}57'50''$ and run Northeasterly 9.51 feet; thence turn a left interior angle of $149^{\circ}02'10''$ and run Southeasterly 62.56 feet; thence turn a left interior angle of $135^{\circ}00'00''$ and run in a Southeasterly direction a distance of 167.00 feet; thence turn a left interior angle of $90^{\circ}00'$ and run in a Southwesterly direction a distance of 145.83 feet; thence turn a left interior angle of 90° and run in a Northwesterly direction a distance of 213.46 feet to the point of beginning.

Situated in Shelby County, Alabama

EXHIBIT "B"

Permitted Exceptions

1. Taxes and assessments for the year 1992, and subsequent years which are not yet due and payable.
2. Limitation of access and abutters rights as conveyed to State of Alabama in Deed Book 302, page 370 and Deed Book 302, page 13 in the Probate Office of Shelby County, Alabama.
3. Transmission line permit to Alabama Power Company recorded in Deed Book 145, page 378 in the Probate Office of the Shelby County, Alabama.
4. Right of way to Shelby County, recorded in Deed Book 135, page 2, in the Probate Office of Shelby County, Alabama.
5. Right of Way granted to Alabama Power Company by instrument recorded in 1992-8440, in the Probate Office of Shelby County, Alabama.
6. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the Premises made subsequent to February 3, 1989.

EXHIBIT C

(Description of "Debtor" and "Secured Party")

1. Name of Debtor: Shoney's, Inc.
State of Incorporation: Tennessee
Principal Place of
Business and Location
of Chief Executive Office: 1727 Elm Hill Pike
P. O. Box 1260
Nashville, Tennessee 37202
2. Inquiries should be addressed to Debtor at:

1727 Elm Hill Pike
P. O. Box 1260
Nashville, Tennessee 37202
3. Debtor has been using or operating under the above
corporate structure without change since: November 1, 1968.
4. Name and identity of Secured Party:

CIBC, Inc.
5. Inquiries should be addressed to Secured Party at:

Two Paces West
2727 Paces Ferry Road
Suite 1200
Atlanta, Georgia 30339
Attn: Ms. Katherine Sax
6. Federal Employer Identification Number of Debtor:

[REDACTED]

EXHIBIT "D"

COUNTY OF FULTON

STATE OF GEORGIA

September 24, 1992

TERM NOTE

1. FOR VALUE RECEIVED, the undersigned, SHONEY'S, INC., a Tennessee corporation ("Borrower") promises to pay to the order of CIBC, INC. ("Lender"), at Two Paces West, 2727 Paces Ferry Road, Suite 1200, Atlanta, Georgia 30339, or at such other place as Lender hereafter may direct in writing, in legal tender of the United States of America, the principal sum of \$20,800,000, or so much thereof as may remain outstanding from time to time hereafter of that certain Term Loan made by Lender to Borrower pursuant to the terms of that certain Loan Agreement between Lender and Borrower of even date herewith (hereinafter, as it may be amended or supplemented from time to time, the "Agreement"), the terms and provisions of which are hereby incorporated herein by reference and made a part hereof (capitalized terms which are defined in the Agreement and which are used herein and not otherwise defined herein shall have the same meanings when used herein as ascribed thereto in the Agreement), on the Termination Date, with interest thereon from date hereof until paid in full at the rate or rates established from time to time pursuant to the Agreement as the Rate of Borrowing, calculated pursuant to Section 4.5 of the Agreement. Accrued interest on the unpaid principal balance hereof from time to time outstanding shall be due and payable on each Interest Payment Date, and on the Termination Date, when all outstanding principal shall be paid in full.

2. Each payment made on account of principal, and each Rate of Borrowing in effect from time to time, shall be recorded by Lender, and such information so recorded shall be conclusive with respect to such matters absent manifest error.

3. Upon an Event of Default, the rate of interest on amounts then outstanding hereunder shall increase automatically and without notice to the Default Rate and such interest shall be payable on demand.

4. Borrower agrees, in the event that this Term Note or any portion hereof is collected by law or through an attorney at law, to pay all costs of collection, including, without limitation, reasonable attorneys' fees.

5. This Term Note evidences borrowing under, is subject to, and shall be paid, matured and enforced in accordance with, the terms of the Agreement, and is the "Term Note" defined in Section 1.1 thereof.

6. Nothing herein shall limit any right granted Lender by any other instrument or by law.

7. Borrower hereby waives demand, protest, notice of demand, protest and nonpayment and any other notice required by law relative hereto, except to the extent as otherwise may be provided for in the Agreement.

IN WITNESS WHEREOF, Borrower has caused this Term Note to be signed and sealed as of the day and year first above written.

"BORROWER"

SHONEY'S, INC.

By: _____
Title:

Attest: _____
Title:

[CORPORATE SEAL]

"NE VARIETUR"

For identification with Master Mortgage Indenture, Deed to Secure Debt and Deed of Trust with Assignment of Leases and Rents and Security Agreement passed before me by Shoney's, Inc. this 24th day of September, 1992:

_____(SEAL)
Notary Public in and for
Fulton County, Georgia

My Commission Expires:

EXHIBIT E

[Intentionally Omitted]

79050/Ex.E

Inst # 1992-22085

10/02/1992-22085
02:32 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
074 MJS 4915.80