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MORTGAGE

(Participation)

This mortgage made and entered into this 25th day of March 1994, by and between KI CHON CHOI and SEUNG WOO CHOI, husband and wife, 4618 U.S. Highway 280 South, Birmingham, Alabama (hereinafter referred to as mortgagor) and THE CITIZENS BANK

(hereinafter referred to as

mortgagee), who maintains an office and place of business at 402 Washington Street
Gainesville, Georgia 30501 Gainesville, Georgia 30501

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign, and convey unto the mortgagee, his successors and assigns, all of the following described property situated and being in the County of Shelby State of Alabama

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

ADDITIONAL TERMS AND CONDITIONS ARE MORE PARTICULARLY DESCRIBED IN EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Inst # 1994-10438

03/30/1994-10438
04:06 PM CERTIFIED

This property does not constitute the homestead of the mortgagors.

Together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues, and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein.

The mortgagor covenants that he is lawfully seized and possessed of and has the right to sell and convey said property; that the same is free from all encumbrances except as hereinabove recited; and that he hereby binds himself and his successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever.

This instrument is given to secure the payment of a promissory note dated of even date herewith in the principal sum of \$880,000.00 signed by KI CHON CHOI, President and SEUNG WOO CHOI, Secretary in behalf of SHOGUN JAPANESE STEAKHOUSE, INC., an Alabama corporation, and by KI CHON CHOI and SEUNG WOO CHOI, individually in behalf of THE CITIZENS BANK

This instrument was prepared by: LAWSON AND DAVIS
230 Peachtree Street, N.W.
Suite 2200
Atlanta, Georgia 30303

Land Title

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S.W. Choi

Inst # 1994-10438

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Said promissory note was given to secure a loan in which the Small Business Administration, an agency of the United States of America, has participated. In compliance with section 101.1(d) of the Rules and Regulations of the Small Business Administration [13 C.F.R. 101.1(d)], this instrument is to be construed and enforced in accordance with applicable Federal law.

1. The mortgagor covenants and agrees as follows:

a. He will promptly pay the indebtedness evidenced by said promissory note at the times and in the manner therein provided.

b. He will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the said mortgagee.

c. He will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the fees of any attorney employed by the mortgagee for the collection of any or all of the indebtedness hereby secured, or foreclosure by mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way shall be paid by the mortgagor.

d. For better security of the indebtedness hereby secured, upon the request of the mortgagee, its successors or assigns, he shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the property hereinabove described and all property acquired by it after the date hereof (all in form satisfactory to mortgagee). Furthermore, should mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, mortgagor hereby agrees to permit mortgagee to cure such default, but mortgagee is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the indebtedness evidenced by said promissory note or any part thereof secured hereby.

f. He will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the mortgagee. In event of loss, mortgagor will give immediate notice in writing to mortgagee, and mortgagee may make proof of loss if not made promptly by mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to mortgagee instead of to mortgagor and mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or mortgagee or, at the option of the mortgagee, may be surrendered for a refund.

g. He will keep all buildings and other improvements on said property in good repair and condition; will permit, commit, or suffer no waste, impairment, deterioration of said property or any part thereof; in the event of failure of the mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.

h. He will not voluntarily create or permit to be created against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage without the written consent of the mortgagee; and further, that he will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises.

i. He will not rent or assign any part of the rent of said mortgaged property or demolish, or remove, or substantially alter any building without the written consent of the mortgagee.

j. All awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage are hereby assigned and shall be paid to mortgagee, who may apply the same to payment of the installments last due under said note, and mortgagee is hereby authorized, in the name of the mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

k. The mortgagee shall have the right to inspect the mortgaged premises at any reasonable time.

2. Default in any of the covenants or conditions of this instrument or of the note or loan agreement secured hereby shall terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or his assigns (it being agreed that the mortgagor shall have such right until default). Upon any such default, the mortgagee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits. This instrument shall operate as an assignment of any rentals on said property to that extent.

3. The mortgagor covenants and agrees that if he shall fail to pay said indebtedness or any part thereof when due, or shall fail to perform any covenant or agreement of this instrument or the promissory note secured hereby, the entire indebtedness hereby secured shall immediately become due, payable, and collectible without notice, at the option of the mortgagee or assigns, regardless of maturity, and the mortgagee or his assigns may before or after entry sell said property without appraisal (the mortgagor having waived and assigned to the mortgagee all rights of appraisal):

(I) at judicial sale pursuant to the provisions of 28 U.S.C. 2001 (a); or

(II) at the option of the mortgagee, either by auction or by solicitation of sealed bids, for the highest and best bid complying with the terms of sale and manner of payment specified in the published notice of sale, first giving four weeks' notice of the time, terms, and place of such sale, by advertisement not less than once during each of said four weeks in a newspaper published or distributed in the county in which said property is situated, all other notice being hereby waived by the mortgagor (and said mortgagee, or any person on behalf of said mortgagee, may bid with the unpaid indebtedness evidenced by said note). Said sale shall be held at or on the property to be sold or at the Federal, county, or city courthouse for the county in which the property is located. The mortgagee is hereby authorized to execute for and on behalf of the mortgagor and to deliver to the purchaser at such sale a sufficient conveyance of said property, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends; and the said mortgagor hereby constitutes and appoints the mortgagee or any agent or attorney of the mortgagee, the agent and attorney in fact of said mortgagor to make such recitals and to execute said conveyance and hereby covenants and agrees that the recitals so made shall be effectual to bar all equity or right of redemption, homestead, dower, and all other exemptions of the mortgagor, all of which are hereby expressly waived and conveyed to the mortgagee; or

(III) take any other appropriate action pursuant to state or Federal statute either in state or Federal court or otherwise for the disposition of the property.

In the event of a sale as hereinbefore provided, the mortgagor or any persons in possession under the mortgagor shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

4. The proceeds of any sale of said property in accordance with the preceding paragraphs shall be applied first to pay the costs and expenses of said sale, the expenses incurred by the mortgagee for the purpose of protecting or maintaining said property, and reasonable attorneys' fees; secondly, to pay the indebtedness secured hereby; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale or pursuant to the power of sale hereinabove granted, and the proceeds are not sufficient to pay the total indebtedness secured by this instrument and evidenced by said promissory note, the mortgagee will be entitled to a deficiency judgment for the amount of the *deficiency without regard to appraisal*.

6. In the event the mortgagor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property the mortgagee is hereby authorized at his option to pay the same. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the indebtedness evidenced by said note, subject to the same terms and conditions. If the mortgagor shall pay and discharge the indebtedness evidenced by said promissory note, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing, and executing this mortgage, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order, or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at 4618 U.S. Highway 280 South, Birmingham, Alabama and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at 402 Washington Street, Gainesville, Georgia 30501

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IN WITNESS WHEREOF, the mortgagor has executed this instrument and the mortgagee has accepted delivery of this instrument as of the day and year aforesaid.

Ki Chon Choi
KI CHON CHOI (L.S.)
Seung Woo Choi
SEUNG WOO CHOI (L.S.)

Executed and delivered in the presence of the following witnesses:

Alison Nicholls
Nancy L. Houston

(Add Appropriate Acknowledgment)

STATE OF Georgia
COUNTY OF Fulton

I, the undersigned authority, a Notary Public, in said County and said State, hereby certify that KI CHON CHOI and SEUNG WOO CHOI, whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, he and she executed the same voluntarily on the day same bears date.

Given under my hand and seal, this 25th day of March, 1994.

Pamela B. Byrley
NOTARY PUBLIC
Notary Public, Fulton, Georgia.
My Commission Expires December 6, 1994
Commission Expiration

MORTGAGE

TO

RECORDING DATA

RETURN TO:

Name
Address
.....

EXHIBIT "A"

Lot 3 of Key Pointe Shopping Center also a part of Lot 4, of Key Pointe Shopping Center as recorded in Map Book 13, page 61, in the Probate Office of Shelby County, Alabama. A part of Lot 4 more particularly described as follows:

Begin at the Northwest corner of Lot 4 of Key Pointe Shopping Center for a point of beginning, thence run South $50^{\circ}48'25''$ East along the Northeast line of said Lot 4 for a distance of 114.27 feet to the Southerly corner of Lot 3 for Key Pointe Shopping Center; thence run South $39^{\circ}11'35''$ West for a distance of 38.21 feet; thence run North $51^{\circ}07'16''$ West for a distance of 83.06 feet to the West line of said Lot 4; thence run North $00^{\circ}17'00''$ East along the West line of said Lot 4 for a distance of 49.69 feet to the point of beginning.

This is the same property as hereinafter described:

Commence at the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 36, Township 18 South, Range 2 West; thence run north along the west line of said quarter-quarter section North $00^{\circ}17'00''$ East a distance of 289.28 feet to the point of beginning; thence continue along last described course a distance of 327.48 feet to the southerly right of way of Highway 280; thence run South $61^{\circ}47'04''$ east along said right of way a distance of 67.24 feet; thence run North $28^{\circ}12'56''$ East, a distance of 10.00 feet to a point of a curve to the right having a radius of 2230.00 feet and a central angle of $05^{\circ}49'54''$ East, thence run south $58^{\circ}52'09''$ East along the chord of said curve a chord distance of 226.89 feet; thence leaving said right of way run south $39^{\circ}11'35''$ west a distance of 308.81 feet; thence run North $51^{\circ}07'16''$ West a distance of 83.06 feet to the point of beginning.

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EXHIBIT "B"

The terms, conditions, covenants, agreements and provisions set forth in Exhibit "B" attached hereto are hereby made a part of this Mortgage. In the event of any conflict between such further stipulations contained in Exhibit "B" and any of the printed provisions of this Mortgage, such further stipulations contained in Exhibit "B" shall be deemed to control.

1. Mortgagor also hereby irrevocably assigns and conveys unto the Mortgagee, and grants the Mortgagee a security interest in, all leases now or hereafter existing on any part of the Property and any guaranties thereof and all rents from the Property to secure the payment of all obligations secured hereunder. Mortgagor hereby irrevocably appoints the Mortgagee as its attorney-in-fact to do all things which Mortgagor might otherwise do with respect to the Property and the leases therein, including, without limitation, (i) collecting said rents with or without suit and applying the same, less expenses of collection to any of the obligations secured hereunder in such manner as may be determined by the Mortgagee, or at the option of the Mortgagee, holding the same as security for the payment of all obligations secured hereunder, (ii) leasing, in the name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services; provided, however, that until there be a default under the terms of the Note or this Mortgage, Mortgagor may continue to collect and enjoy said rents without accountability to the Mortgagee. The curing of any default, however, shall not entitle Mortgagor to again collect said rents unless consented to in writing by the Mortgagee. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for in event of default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon the Mortgagee to exercise any power or right granted in this paragraph or to assume any liability under any lease of any part of the Property and no liability shall attach to the Mortgagee for failure or inability to collect any rents under any such lease. Mortgagor covenants and warrants that (a) it will comply with all terms and conditions of all leases now existing or that may hereafter come into existence in respect of the Property or any part thereof; (b) all leases with respect to the Property now or hereafter in effect are and shall be valid and subsisting leases; (c) it has not sold, assigned, transferred, mortgaged or pledged, and will not sell, assign, transfer, mortgage or pledge, without Mortgagee's prior written consent, the rents, issues or profits from the Property and leases thereof to any firm, person or corporation other than Mortgagee; (d) no rents, issues or profits derived from the Property and leases, and becoming due subsequent to the date hereof, have been collected or anticipated in advance of their due date by more than thirty (30) days; (e) it will not reduce the

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rental due under any lease of all or any part of the Property without Mortgagee's prior written consent; and (f) upon request of Mortgagee, it will serve such written notice upon the tenant(s) under such leases or occupant(s) of the Property or any part thereof, it will execute and deliver to Mortgagee such other instruments or documents reasonably requested by Mortgagee for the purpose of securing or exercising its rights herein and it will provide Mortgagee with true copies or originals of such leases and all amendments, supplements, renewal or correspondence related thereto.

2. Mortgagor will not, without the prior written consent of the Mortgagee, (a) change, or permit any changes in, the use for which all or any part of the Property was intended at the time of the execution of this Mortgage, or (b) initiate or acquiesce in a change in the zoning classification of the Property.

3. In the event (a) Mortgagor fails to perform any of its covenants or agreements herein contained, or (b) any action or proceeding is commenced or threatened which affects the Property or title thereto or the interest of the Mortgagee therein, including, without limitation, eminent domain, insolvency, arrangements or proceedings involving a bankrupt or decedent, then, in any of such events, the Mortgagee may, at its option, make such appearances, disburse such sums and take such action as the Mortgagee deems necessary, in its sole discretion, to protect its interest, including, without limitation, (i) the employment of attorneys and disbursement of attorneys' fees, (ii) the entry upon the Property to make repairs or to complete the construction of improvements in accordance with the provisions of any building and loan agreement between the Mortgagee and Mortgagor, (iii) the procurement of insurance as provided in Paragraph 12 hereof, (iv) if this Mortgage is a lien on a leasehold estate, the exercise of any option to renew or extend the ground lease on behalf of Mortgagor and the curing of any default of Mortgagor in the performance of the terms and conditions of the ground lease, and (v) if the Property is subject to another Mortgage or lien, whether inferior or superior hereto, the curing of any default in the performances of any of the terms and provisions thereof, or if the indebtedness thereby secured is accelerated, the purchase or payment in full of such indebtedness, all on such terms as Mortgagee shall, in its sole discretion, deem necessary or advisable. Any amounts disbursed by the Mortgagee pursuant to the provisions of this Paragraph 3 shall be added to, and deemed a part of, the indebtedness secured hereby, shall be secured in the same manner as the Note is secured, shall bear interest from the date of the disbursement thereof at the same rate of interest as set forth in the Note or at the highest interest rate permitted to be charged by contract on loans to individuals, whichever is higher, and shall, together with the interest thereon, be repayable by Mortgagor on demand.

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4. The Mortgagor covenants and agrees as follows:

- (a) Mortgagor warrants and represents that it has investigated or caused to be investigated the previous ownership and uses of the Property, in a manner consistent with good commercial practices, to determine whether activities have been conducted which might involve the use, manufacturing, storage or disposal of Hazardous Wastes (as defined herein) or Toxic Substances (as defined herein), and this investigation has revealed no fact which would indicate that the Property has been involved in the use, manufacturing, storage or disposal of Hazardous Wastes or Toxic Substances. This investigation has taken into account, among other factors, (i) the relationship of the purchase price to the value of the Property if uncontaminated when originally purchased by Mortgagor, (ii) commonly known or reasonably ascertainable information about the Property, and (iii) the obviousness of the presence or likely presence of contamination at the Property.

As used in this Mortgage: (a) Hazardous Wastes means all waste materials subject to regulation under the Comprehensive Environmental Response Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., or applicable state law and any other applicable federal, state or local laws and their regulations now in force or hereafter enacted relating to hazardous waste disposal; and (b) "Toxic Substances" means and includes any materials present on the Property which have been shown to have significant adverse effect on human health or which are subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., applicable state law, or any other applicable federal, state or local laws now in force or hereafter enacted relating to toxic substances. "Toxic Substances" includes, but is not limited to, asbestos, polychlorinated biphenyls (PCBs), petroleum products, and lead-based paints. All such laws relating to hazardous waste disposal and toxic substances are collectively referred to herein as "Environmental Laws."

- (b) Mortgagor warrants and represents that it has disclosed to the Mortgagee all pending or threatened litigation and orders, rulings, notices, permits or investigations regarding Hazardous Wastes and Toxic Substances on the Property.

- (c) Mortgagor and any other parties, including, but not limited to, tenants, licensees and occupants, will not be involved in any activity at or near the Property, which activity could involve or lead to (i) the use, manufacture, storage or disposal of Hazardous Wastes or Toxic Substances, or (ii) the imposition of liability on the Mortgagor or any other subsequent or former owner of the Property or the creation of a lien on the Property under any Environmental Laws.
- (d) Mortgagor will comply strictly and in all respects with the requirements of all Environmental Laws and shall promptly notify the Mortgagee in the event of discovery of Hazardous Wastes or Toxic Substances at the Property. Further, Mortgagor will promptly forward to the Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge, spillage, use or the discovery of Hazardous Wastes and Toxic Substances or any other matters relating to the Environmental Laws as the may affect the Property.
- (e) Mortgagor agrees that if at any time the Mortgagee has reasonable cause to believe there is Hazardous Wastes or Toxic Substances upon the Property, Mortgagee may obtain, at Mortgagor's cost, an environmental site assessment or environmental audit report from a firm acceptable to the Mortgagee, to assess with a reasonable degree of certainty (i) the presence of any Hazardous Wastes or Toxic Substances and (ii) the cost in connection with the abatement, cleanup or removal of such.
- (f) Mortgagor agrees that in the event of the presence of any Hazardous Waste or Toxic Substance upon the Property, whether or not the same originates or emanates from the Property, or if Mortgagor shall fail to comply with any of the requirements of the Environmental Laws, the Mortgagee may at its election, but without the obligation to do so, (i) give such notices (ii) cause such work to be performed at the Property or (iii) take any and all other actions as the other actions as the Mortgagee shall deem necessary or advisable in order to abate, remove and clean up the Hazardous Waste or Toxic Substance or otherwise cure the Mortgagor's non-compliance.
- (g) Mortgagor acknowledges that the Mortgagee has made certain loans and other advances secured by this

Mortgage in reliance upon Mortgagor's representations, warranties and covenants in this Paragraph 4. Accordingly, the Mortgagor and the Mortgagee agree that the provisions of this subparagraph 4.(g) shall supersede any provisions in the Note or any commitment letter, building and loan agreement, application and agreement for standby letter of credit, reimbursement agreement, guaranty, or other agreements executed by Mortgagor (or any of them) or any other persons liable for the payment of the indebtedness hereby secured, which in any way limited the personal liability of the Mortgagor for the payment of the indebtedness secured hereby. Further, the Mortgagor shall be personally liable for all costs and expenses incurred by or asserted against Mortgagee arising under this paragraph even if said costs and expenses exceed the amount of the loan secured by this Mortgage.

- (h) Any amounts disbursed by the Mortgagee pursuant to the provisions of this Paragraph 4 shall be added to, and deemed a part of, the indebtedness secured hereby, shall be secured in the same manner as the Note is secured, shall bear interest from the date of the disbursement thereof at the same rate of interest as set forth in the Note or at the highest interest rate permitted to be charged by contract on loans to individuals, whichever is higher, and shall, together with the interest thereon, be repayable by Mortgagor on demand.

5. No delay, act of failure to act, by the Mortgagee, or any of them, however long continued, shall be construed as a waiver of any of their rights hereunder or of any default by Mortgagor.

6. Nothing in this Mortgage shall be construed to impose any obligation upon the Mortgagee to expend any money or to take any other discretionary act herein permitted, and the Mortgagee shall not have any liability or obligation for any delay or failure to take any discretionary act.

7. It is understood and agreed that the proceeds of the indebtedness evidenced by the Note may be advanced by the Mortgagee at one time, or from time to time, and the Mortgagee reserves the right to make additional advances of proceeds, from time to time, including the readvance of any sums previously repaid on the Note, provided, and so long as, the unpaid principal balance of the Note, including the additional advances or readvanced of proceeds, does not exceed the original principal amount of the Note. In the event of the readvance by the Mortgagee of any sums previously repaid on the Note, then, in such event, the Note shall be deemed to

evidence, and this Mortgage shall be deemed to secure the repayment of, the proceeds last advanced under the Note by the Mortgagee.

8. The Mortgagor shall protect and indemnify the Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Mortgagee or the directors, officers, agents or employees of the Mortgagee by reason of (a) ownership of the Property or any interest therein, or receipt of any rent or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or damage to property occurring on or about the Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of the Mortgagor to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Mortgage, the Note, or any commitment letter, building and loan agreement, application and agreement for standby letter of credit, reimbursement agreement, guaranty, or any other agreements executed by Mortgagor (or any of them) or any other persons liable for the payment of the indebtedness hereby secured, (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part hereof for construction or maintenance or otherwise, (e) any action brought against the Mortgagee attacking the validity, priority or enforceability of this Mortgage, the Note, or any commitment letter, building and loan agreement, application and agreement for standby letter of credit, reimbursement agreement, guaranty, or any other agreements executed by Mortgagor (or any of them) or any other persons liable for the payment of the indebtedness hereby secured, and/or (f) the presence of Hazardous Wastes (as defined herein) or Toxic Substances (as defined herein) on the Property. An amounts payable to the Mortgagee under this Paragraph 8 which are not paid within ten (10) days after written demand therefore by the Mortgagee shall bear interest at the maximum rate per annum then permitted by law from the date of such demand and shall be secured by this Mortgage. In the event any action, suit or proceeding is brought against the Mortgagee or the directors, officers, agents or employees of the Mortgagee by reason of any such occurrence, the Mortgagor, upon the request of the Mortgagee and at the Mortgagor's expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Mortgagor and approved by the Mortgagee. Such obligations under this Paragraph 8 shall survive the termination, satisfaction or release of this Mortgage.

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

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expertise could materially impair or jeopardize the security for the payment of the Note granted to Mortgagee by this Mortgage. Mortgagor therefor covenants and agrees with Mortgagee, as part of the consideration for the extending to Mortgagor of the indebtedness evidenced by the Note, that Mortgagor shall not encumber, pledge, convey, transfer or assign any or all of its interest in the Premises (or any interest in or all of the interest in Mortgagor if Mortgagor is a corporation, partnership or some other entity) without the prior written consent of Mortgagee. If Mortgagor does so encumber, pledge, convey, transfer or assign any or all of its interest in the Premises (or in Mortgagor) without the prior written consent of Mortgagee, then Mortgagee may, at Mortgagee's option, declare the Indebtedness to be immediately due and payable.

10. So long as any of the indebtedness secured hereby shall remain unpaid, Mortgagor hereby covenants and agrees that any life insurance policies which have been assigned to the Mortgagee by any such policy owners as additional collateral for the payment of the Indebtedness secured hereby will be kept in full force and effect and all premiums required to keep such policies in full force will be paid. In the event that such policies are not kept in full force and effect, then such failure shall be considered a default under the terms of this Mortgage, and Mortgagee on account of such default shall have the right to accelerate the maturity of the debt hereby secured.

11. With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Premises, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Mortgagor hereby grants to Mortgagee a security interest in said personal property. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by Mortgagor and Mortgagee and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunto shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the provision of said Uniform Commercial Code in effect from time to time, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Mortgagor and Mortgagee that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all

proceedings, both legal and equitable, shall be, regarded as part of the real estate conveyed hereby regardless 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 an exhibit to this Mortgage, 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) 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 not in any way alter any of the rights of Mortgagee as determined by this instrument or affect the priority of Mortgagee's security interest granted hereby or by any other recorded document. It being understood and agreed that such mention in such financing statement(s) is solely for the protection of Mortgagee in the event any court shall at any time hold, with respect to the foregoing items (aa), (bb) or (cc) that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

12. Mortgagor will maintain fire insurance, with extended coverage, and such other insurance as the Mortgagee may from time to time require, on the Property, with such insurance companies and in such amounts as shall, at all times, be satisfactory to the Mortgagee, with loss payable to the Mortgagee, as the Mortgagee shall direct without contribution; and will deliver to the Mortgagee the original policy or policies, and, at least ten (10) days before the expiration of any policy, the renewal thereof. The Mortgagee shall have the right, exercisable at any time during the continuance of this Mortgage, to require Mortgagor to deposit with the Mortgagee, at such time or times as the Mortgagee directs, such amount as are necessary, in the sole discretion of the Mortgagee, to enable to Mortgagee to make timely payment of the premiums on said policy or policies. Such amounts so deposited shall bear no interest and may be commingled with other funds held by the Mortgagee. As to such insurance, the Mortgagee may, after ten (10) days' written notice mailed to Mortgagor at their last known address, change any or all of the coverages, terms, amounts or insurers, cause any policy to name the Mortgagee as an insured as its interest may appear, surrender existing policies for cancellation, obtain any cancellation, obtain any additional insurance it so desires, pay any required premiums and receive premium refunds, and in any such event any premium adjustment shall be charged against or credited to the debt secured hereby. In the event any claim for loss covered by such insurance is not settled within sixty (60) days after the occurrence of such loss, the Mortgagee may negotiate with any insurance companies involved and make a reasonable settlement of said claim and the Mortgagee and such insurance companies, upon such settlement being made, shall not be

liable in any manner to Mortgagor with respect to such claim and settlement. Any insurance proceeds shall be applied to the payment of the indebtedness hereby secured (but without any prepayment penalty) except that if, pursuant to the provisions of the next paragraph, the Mortgagee directs Mortgagor to restore the damaged portion of the Property, then, to the extent necessary, such proceeds shall (but only to the extent necessary) be applied to the cost of such restoration, and the Mortgagee, may, without paying interest thereon, retain all or any part thereof until the Property has been restored by the satisfaction of the Mortgagee.

13. Mortgagor will keep the Property (including any private roads on or over which the Mortgagor has an easement or right appurtenant to the Property) in good order and repair, including the making of such replacements as may be necessary for that purpose, and, if the Mortgagee so directs, the prompt restoration of any part of the Property which may be damaged by fire or other casualty, irrespective of the availability of adequate insurance proceeds for that purpose.

14. Mortgagor will not, without the prior written consent of the Mortgagee, lease, bargain, sell, transfer, assign or convey the Property, or any portion thereof, or any legal or equitable interest therein. If Mortgagor (or any of them) are not natural persons but is a corporation, partnership, trust or other legal entity, then the bargain, sale, transfer or assignment of any beneficial interest in Mortgagor (except for transfers of any beneficial interest by devise or by operation of law) without the prior written consent of the Mortgagee shall be deemed to be in contravention of the provisions of the next preceding sentence. If Mortgagor (or any of them are not natural persons but are a corporation, then the bargain, sale, transfer or assignment of all or a substantial portion of the voting stock of Mortgagor (including, without limitation, transfers resulting from mergers, consolidations or liquidations) without the prior written consent of Mortgagee shall be deemed to be in contravention of the provisions of the first sentence of this Paragraph 14.

15. This Mortgage shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, and any descriptive term used herein shall include such heirs, personal representatives, successors and assigns.

Inst # 1994-10438

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03/30/1994-10438
04:06 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
014 MCD 1361.00