

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT, made and entered into as of the 25 day of March, 1994 by and between KI CHON CHOI and SEUNG WOO CHOI (hereinafter referred to as the "Borrower"), and THE CITIZENS BANK (hereinafter referred to as the "Lender"):

W I T N E S S E T H :

THAT FOR AND IN CONSIDERATION of the sum of Ten and No/100ths Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower does hereby grant, transfer and assign to Lender, its successors, successors-in-title and assigns, all of Borrower's right, title and interest in, to and under all existing and/or future leases and rental agreements, including any and all extensions, renewals and modifications thereof and guaranties of performance or obligations of any tenants or lessees thereunder (said leases and agreements are hereinafter referred to collectively as the "Leases", and said tenants and lessees are hereinafter referred to collectively as "Tenants" or individually as "Tenant" as the context requires), which Leases cover portions of certain properties located in Shelby County and Madison County, Alabama, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Premises"); together with all of Borrower's right, title and interest in and to all rents, issues and profits from the Leases and from the Premises.

TO HAVE AND TO HOLD unto Lender, its successors and assigns forever, subject to and upon the terms and conditions set forth herein.

This Assignment is made for the purpose of securing (a) the full and prompt payment when due, whether by acceleration or otherwise, with such interest as may accrue thereon, either before or after maturity thereof, of that certain promissory note dated of even date herewith, made by Borrower and SHOGUN JAPANESE STEAKHOUSE, Inc., an Alabama corporation, to the order of Lender in the principal face amount of EIGHT HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$880,000.00) (hereinafter referred to as the "Note"), together with any renewals, modifications, consolidations and extensions thereof, (b) the full and prompt payment and performance of any and all obligations of Borrower to Lender under the terms of any and all deeds to secure debt, mortgages, deeds of trust, and security agreements securing the indebtedness evidenced by the Note (hereinafter referred to collectively, if more than one, as the "Security Instrument"), (c) the full and prompt payment and performance of all obligations of Borrower to Lender under the terms of that certain construction loan agreement relating to the

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LAWSON AND DAVIS
2200 PEACHTREE CENTER TOWER
230 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30303

Inst # 1994-11273

loan evidenced by the Note (hereinafter referred to as the "Loan Agreement"), including without limitation, the obligation to complete the improvements described in the Loan Agreement, fully paid for and free and clear of all mechanics' and materialmen's liens, and (d) the full and prompt payment and performance of any and all other obligations of Borrower to Lender under any other instruments now or hereafter evidencing, securing, or otherwise relating to the indebtedness evidenced by said Note (the Security Instrument, the Loan Agreement, and said other instruments are hereinafter referred to collectively as the "Loan Documents", and said indebtedness is hereinafter referred to as the "Indebtedness").

ARTICLE I

WARRANTIES AND COVENANTS

1.01 Warranties of Borrower. Borrower hereby warrants and represents as follows:

(a) Borrower is the sole holder of the landlord's interest under the Leases, is entitled to receive the rents, issues and profits from the Leases and from the Premises, and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interests, powers and authorities herein granted and conferred;

(b) Borrower has made no assignment other than this Assignment of any of the rights of Borrower under any of the Leases or with respect to any of said rents, issues or profits;

(c) Borrower has neither done any act nor failed to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Agreement;

(d) All Leases provide for rental to be paid monthly, in advance, and Borrower has not accepted payment of rental under any of the Leases for more than one (1) month in advance of the due date thereof;

(e) So far as is known to Borrower, there exists no default or event of default or any state of facts which would, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of Borrower or by any Tenant under the terms of any of the Leases;

(f) The execution and delivery of this Assignment and any of the Leases, the performance of each and every covenant of Borrower under this Assignment and the Leases, and the meeting of

each and every condition contained in this Assignment, does not conflict with, or constitutes a breach or default under any agreement, indenture or other instrument to which Borrower is a party, or an law, ordinance, administrative regulation or court decree which is applicable to Borrower;

(g) No action has been brought or, so far as is known to Borrower, is threatened, which would interfere in any way with the right of Borrower to execute this Assignment and perform all of Borrower's obligations contained in this Assignment and in the Leases; and

(h) The Leases are valid, enforceable and in full force an effect, and have not been modified or amended.

1.02 Covenants of Borrower. Borrower hereby covenants and agrees as follows:

(a) Borrower shall (i) fulfill, perform and observe each and every condition and covenant of landlord or lessor contained in each of the Leases; (ii) give prompt notice to Lender of any claim of default under any of the Leases, whether given by the Tenant to Borrower, or given by Borrower to the Tenant, together with a complete copy of any such notice; (iii) at no cost or expense to Lender, enforce, short of termination, the performance and observance of each and every covenant and condition of each of the Leases to be performed or observed by the Tenant thereunder; and (iv) appear in and defend any action arising out of, or in any manner connected with, any of the Leases, or the obligations or liabilities of Borrower as the landlord thereunder, or of the Tenant or any guarantor thereunder;

(b) Borrower shall not, without the prior written consent of Lender, (i) modify any of the Leases; (ii) terminate the term or accept the surrender of any of the Leases; (iii) waive or release the Tenant from the performance or observance by the Tenant of any obligation or condition of any of the Leases; (iv) permit the prepayment of any rents under any of the Leases for more than one (1) month prior to the accrual thereof; (v) give any consent to any assignment or sublease by the Tenant under any of the Leases; or (vi) assign its interest in, to or under the Leases or the rents, issues and profits from the Leases and from the Premises to any person or entity other than Lender;

(c) Borrower shall take no action which will cause or permit the estate of the Tenant under any of the Leases to merge with the interest of Borrower in the Premises or any portion thereof;

(d) Borrower shall protect, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (includ-

ing, without limitation, attorneys' fees and expenses) imposed upon or incurred by Lender by reason of this Assignment and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Assignment. In the event Lender incurs any liability, loss or damage by reason of this Assignment, or in the defense of any claim or demand arising out of or in connection with this Assignment, the amount of such liability, loss or damage shall be added to the Indebtedness, shall bear interest at the interest specified in the Note from the date incurred until paid and shall be payable on demand.

(e) Borrower shall authorize and direct, and does hereby authorize and direct each and every present and future Tenant of the whole or any part of the Premises to pay all rental to Lender upon written receipt of written demand from Lender to so pay the same.

1.03 Covenants of Lender. Lender hereby covenants and agrees with Borrower as follows:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits from the Premises, so long as there shall exist no Event of Default, as defined in Paragraph 2.01, below, on the part of Borrower, Lender shall not demand that such rents, issues and profits be paid directly to Lender, and Borrower shall have the right to collect, but not more than one (1) month prior to accrual, all such rents, issues and profits from the Premises (including, but not by way of limitation, all rental payments under the Leases); and

(b) Upon payment in full of the Indebtedness, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Security Instrument without the recording of another security instrument in favor of Lender affecting the Premises, this Assignment shall terminate and be of no further force and effect, and Lender shall at the request of Borrower deliver to Borrower a recordable instrument evidencing such termination.

ARTICLE II

DEFAULT

2.01 Event of Default. The term, "Event of Default", wherever used in this Assignment, shall mean any one or more of the following events:

(a) The occurrence of any default or event of default under any of the Loan Documents;

(b) The failure by Borrower duly and fully to comply with any covenant, condition or agreement of this Assignment; or

(c) The breach of any warranty by Borrower contained in this Assignment.

2.02 Remedies. Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind, exercise any or all of the following remedies:

(a) Declare any part or all of the Indebtedness to be due and payable, whereupon the same shall become immediately due and payable;

(b) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower himself could do, including, without limiting the generality of the foregoing; enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new leases on the Premises on any terms and conditions deemed desirable by Lender, and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a part of the Indebtedness, shall bear interest from the incurring thereof at the interest rate specified in the Note, and shall be due and payable on demand;

(c) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein;

(d) Collect the rents, issues and profits and any other sums due under the Leases and with respect to the Premises, and apply the same in such order as lender in its sole discretion may elect against (i) all costs and expenses, including reasonable attorneys' fees, incurred in connection with the operation of the Premises, the performance of Borrower's obligations under the Leases and collection of the rents thereunder; (ii) all the costs and expenses, including reasonable attorneys' fees, incurred in the collection of any or all of the Indebtedness, including all costs, expenses and attorneys' fees incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Indebtedness; and (iii) any or all unpaid principal and interest on the Indebtedness.

Lender shall have full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for

any or all of the Indebtedness, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall full right to enter upon, take possession of, use and operate all or any portion of the Premises which Lender in its sole discretion deems desirable to effectuate any or all of the foregoing remedies.

ARTICLE III

GENERAL PROVISIONS

3.01 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender", such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

3.02 Terminology. All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of articles are for convenience only and neither limit nor amplify the provisions of this Assignment.

3.03 Severability. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment 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.

3.04 Applicable Law. This Assignment shall be interpreted, construed and enforced according to the laws of the state in which the Premises are situated.

3.05 No Third-Party Beneficiaries. This Assignment is made solely for the benefit of Lender and its assigns. No Tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.06 No Oral Modifications. Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing assigned by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.07 Cumulative Remedies. The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the Indebtedness shall have been paid in full.

3.08 Cross-Default. An Event of Default by Borrower under this Assignment shall constitute an Event of Default under all other Loan Documents.

3.09 Counterparts. This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Assignment by signing any such counterpart.

3.10 Further Assurances. At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the rents, issues and profits from the Premises. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Borrower and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

3.11 Notices. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Assignment shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally

delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response, if given to Lender, shall be addressed as follows:

402 WASHINGTON STREET
GAINESVILLE, GEORGIA 30501

and, if given to Borrower, shall be addressed as follows:

4618 U.S. HIGHWAY 280 SOUTH
BIRMINGHAM, ALABAMA 35242

3.12 Modifications, Etc. Borrower hereby consents and agrees that Lender may at any time, and from time to time, without notice to or further consent from Borrower, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account, securing the Indebtedness; substitute for any collateral so held by it, other collateral of like kind, or of any kind; agree to modifications of the terms of the Note or the Loan Documents; extend or renew the Note or any of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Note or the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note, the Security Instrument, the Loan Agreement, or any other Loan Document; or take or fail to take any action of any type whatsoever; and no such action which Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the Indebtedness or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations or modifications thereof.

IN WITNESS WHEREOF, Borrower and Lender have executed this Assignment under seal, as of the day and year first above written.

LENDER:

THE CITIZENS BANK

BY: William Delaney

TITLE: President CEO

Sworn to and subscribed
before me this 25 day
of March, 1994.

Randi Dunn
Witness

Carol Shuler
Notary Public

Notary Public, Habersham County, Ga.
My Commission Expires Mar. 22, 1997

BORROWER:

Sworn to and subscribed
before me this 25th day
of March, 1994.

Randi Dunn
Witness

Pamela B. Byrle
Notary Public

Notary Public, Fulton, Georgia
My Commission Expires December 6, 1994

Ki Chon Choi
KI CHON CHOI

Sworn to and subscribed
before me this 25th day
of March, 1994.

Randi Dunn
Witness

Pamela B. Byrle
Notary Public

Notary Public, Fulton, Georgia
My Commission Expires December 6, 1994

Seung Woo Choi
SEUNG WOO CHOI

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

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 and conveyance, he and she executed the same voluntarily on the day the same bears date.

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

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

Commission Expiration Date

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.

Exhibit A

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Tract I: All that part of the Northwest Quarter of Section 34, Township 3 South, Range 1 West, in the City of Huntsville, Madison County, Alabama, particularly described as beginning at a point on the North Margin of University Drive, said point being located North 0 degrees 48 minutes West 138.4 feet and due East 1,527.2 feet from the center of the West boundary of said Section 34; thence from the point of true beginning North 1 degree 25 minutes East 291.84 feet to a point on the South margin of a 15-foot right of way and utilities and drainage easement; thence along and with the South Margin of said right of way and utilities and drainage easement South 89 degrees 31 minutes East 135.00 feet to a point; thence South 1 degree 25 minutes West 290.72 feet to a point on the North Margin of University Drive; thence along and with North Margin of University Drive due West 135.0 feet to the point of true beginning, and containing 3.07 acres, or 133,798.13 square feet.

ALSO:

Tract II: All that part of the Northwest Quarter of Section 34, Township 3 South, Range 1 West, in the City of Huntsville, Madison County, Alabama, particularly described as beginning at a point which is located North 0 degrees 48 minutes West 138.4 feet, due East 499.20 feet, North 1 degree 25 minutes East 490.08 feet, South 89 degrees 31 minutes East 7.5 feet, due North 585.0 feet and South 89 degrees 31 minutes East 1060.40 feet, from the center of the West boundary of said Section 34; thence from the true point of beginning South 1 degree 25 minutes West 78 feet; thence South 89 degrees 31 minutes East 135 feet along the North boundary of that certain 3.07 acre tract as described in that certain deed recorded in Dood Book 7528, at Page 6922 in the Office of the Judge of Probate of Madison County, Alabama; thence North 1 degree 25 minutes East 74.43 feet; thence North 89 degrees 31 minutes West 132.17 feet to the true point of beginning and containing .23 acres, more or less.

Together herewith all its improvements and hereditaments thereon.

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SHELBY COUNTY JUDGE OF PROBATE
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