

THE STATE OF ALABAMA)  
COUNTY OF SHELBY)

SECOND MORTGAGE AND SECURITY AGREEMENT

THIS INSTRUMENT is made and entered into on the 7th day of April, 1997, by **RAFIK HOTEENI, L.L.C.**, a limited liability company, party of the first part, as Mortgagor, (the "Borrower") in favor of **ALIANTE BANK**, a State banking corporation, organized and existing under the laws of the State of Alabama, having its principal place of business in Montgomery, Alabama, party of the second part, the Mortgagee, (the "Bank").

WITNESSETH: Whereas, the Borrower is justly indebted to the Bank in the amount of \$1,000,000.00, which debt has a maturity date of February 1, 1998. The Borrower, in consideration of the indebtedness herein recited, (including "future advances" as set forth in Paragraph 1.4 of Article I), does hereby grant, bargain, sell, convey, mortgage, assign, transfer, pledge, grant a security interest in and set over unto the Bank and the Bank's successors and assigns, with power of sale, all of the following described land, real property interest, building, improvements, fixtures, furniture and appliances and other personal property (herein collectively referred to as the "Premises"):

(a) All that tract or parcel of land and other real property interest in SHELBY County, Alabama, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Land"); and all minerals, oil, gas and other hydrocarbon substances on the Land, as well as all development rights, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever in anyway belonging, relating or appertaining to any of Borrowers interest in the Land, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law and/or in equity of the Borrower of, in and to the same, including but not limited to the other rights herein enumerated; and

(b) All buildings and improvements of every kind and description now or hereafter erected or placed on the aforesaid Land (the "Improvements") and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures and articles of personal property now or hereafter owned by the Borrower and attached to or contained in or used in connection with the aforesaid Land and Improvements including, but not limited to, all furniture, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning, and sprinkler equipment, telephone systems, televisions and television system, computer systems and fixtures and appurtenances thereto and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personalty");

(c) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issue and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to: (i) All rents, royalties, profits, issues and revenues of the Premises from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues and profits thereof; and, (ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender is hereby authorized on behalf and in the name of Borrower to execute and deliver valid acquittance for, and appeal from any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so receive may be released.

THIS MORTGAGE IS A SECOND MORTGAGE.

TO HAVE AND HOLD the same, together with all privileges, hereditaments, easements and appurtenances thereunto in any way belonging, to the use, benefit and behoof of the Bank, and its successors and assigns, in fee simple FOREVER.

As collateral and further security for the indebtedness, the Borrower does hereby assign to the Bank all of the right, title and the interest of the Borrower in and to any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, contracts for purchase of materials, architects' contracts, technical services agreements, all water stock relating to the Land, all shares of stock or evidence of ownership of any part of the Land that is owned by the Borrower in common with others or that may in the future be owned in common with other, and all documents of membership in any owners or members association or similar group having responsibility for managing or operating any part of the Land, licenses and permits now or hereafter affecting the Premises and warranties, trademarks, general intangibles and goodwill related thereto (the "Intangible Personalty") or any part thereof, and the Borrower agrees to execute and deliver to the Bank such additional instruments, in form and substance satisfactory to the Bank, as may hereafter be requested by the Bank to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by the Bank to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Bank any obligation with respect thereto.

All the Tangible Personalty shall, as far as permitted by law, be deemed to be affixed to the aforesaid Land and conveyed therewith. As to the balance of the Tangible Personalty and the Intangible Personalty (herein collectively referred to as the "Secured Personalty"), this instrument shall create a security interest in such items for the benefit of the Bank, as more particularly set forth in Section 2.18 hereof.

ARTICLE I: THE LOAN

1.1. **Indebtedness.** This instrument is given to secure the payment of the following described indebtedness (collectively, the "Indebtedness"): (a) the debt evidenced by that certain Real Estate Mortgage Note (the "Note") dated April 7, 1997, made by the Borrower to the order of the Bank in the principal amount of One Million and 00/100 Dollars (\$1,000,000.00) together with any and all renewals, modifications, consolidations, replacements and extensions of the Note; and (b) any and all additional advances made by the Bank to protect or preserve the Premises or the security interest created hereby, or for taxes, assessments or insurance premiums as hereinafter provided or for any other purpose provided herein (whether or not the original Borrower remains the owner of the Premises at the time of such advances); and (c) any and all other indebtedness now owing or which may hereafter be owing by the Borrower to the Bank pursuant to any one or more of the Loan Documents (as hereinbelow defined), and all renewals, modifications, consolidations, replacements and extensions thereof.

1.2. **Use of Loan Funds.** The loan evidenced by the Note (the "Loan") is made pursuant to a Loan Commitment Letter (the "Loan Commitment Letter") and Agreement Regarding Construction Loans and Term Loan dated April 7, 1997 (the "Construction Loan Agreement") for the purpose of construction of improvements on the Land. The Note, the Loan Commitment Letter, the Agreement Regarding Construction Loans and Term Loan, the Assignment of Rents and Leases, the separate Guaranties of the members of Borrower (the "Guaranty"), the Guarantors, this instrument, which secure the Loan are herein referred to as the "Loan Documents".

1.3. **Payment of Indebtedness.** The Borrower shall pay the Note according to the tenor thereof and the remainder of the indebtedness promptly as the same shall become due.

1.4. **Future Advances.** This Instrument is a future advance Mortgage and Security Agreement. The Loan shall be advanced from time to time in accordance with the provisions of the Loan Documents, and this Instrument shall secure all amounts so advanced, whether or not the full amount of the Loan is advanced, whether or not the amount of the Loan is over advanced, whether or not said advances are made to Borrower or to any successor in interest of Borrower as owner of all or any part of the Premises, including all extensions, renewals, and modifications of any Future Advances.

1.5. **Defeasance.** If (a) the Borrower shall pay in full all of the Indebtedness (including Future Advances as set forth in Paragraph 1.4 of this Article), and (b) the Borrower shall have kept and performed each and every material obligation, covenant, duty, condition and agreement imposed on or agreed to by the Borrower pursuant to the Loan Documents, and the Bank shall have no further obligation to extend credit to the Borrower, then this conveyance and the grants and covenants contained herein shall become null and void, and the Premises shall revert to the Borrower, and the entire estate, right, title and interest of the Bank will thereupon cease; and the Bank

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in such case shall, upon the request of the Borrower and at the Borrower's cost and expense, deliver to the Borrower proper instruments acknowledging satisfaction of this instrument; otherwise, this instrument shall remain in full force and effect.

## ARTICLE II: BORROWER'S COVENANTS, REPRESENTATIONS AND AGREEMENTS

2.1 Title to Property. The Borrower represents and warrants that it is seized and possessed of the Land, the Improvements (and any fixtures) in fee (and has title to any appurtenant easements) and has the right to convey the same, that title to such property is free and clear of all encumbrances except for matters disclosed to the Bank prior to closing as an encumbrance in the title insurance binder and permitted by the Bank after review of the same by proceeding with closing (the "Permitted Encumbrances"), and that it will warrant and defend the title to such property against the claims of all persons or parties except for the Permitted Encumbrances. As to the balance of the Premises, the Rents and Profits and the Intangible Personality, the Borrower represents and warrants that it has title to such property, that it has the right to convey such property and that it will warrant and defend such property against the claims of all persons or parties.

2.2 Payment of Loan. The Borrower will punctually pay the Loan principal and interest and all other sums secured hereby at the time and place and in the manner specified in the Note, the Loan Commitment Letter, Construction Loan Agreement, this Instrument or the other Loan Documents.

2.3 Taxes and Fees. The Borrower will pay on or before the due date thereof, all taxes, assessments, whether general or special, and other charges of every character imposed, levied, or assessed or to be imposed, levied, or assessed upon or against the premises or the tangible personality as well as water rates or charges, income taxes, assessments or other governmental charges levied and/or imposed by the United States of America, or any state, county, municipality or other taxing authority upon the Borrower or in respect to the premises or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the premises, and insurance premiums, permit fees, inspection fees, license fees, water and sewer and other utility charges, franchise fees and equipment rents against it or the Premises, and the Borrower, upon request of the Bank, will submit to the Bank, receipts, evidencing said payments. In lieu of payment, the Borrower may post an appropriate bond and contest the charge in good faith so long as the lien of the mortgage is not affected and no adverse action is eminent which would affect the position of the Bank.

2.4 Reimbursement. The Borrower agrees that if it shall fail to pay when due any tax, assessment or charge levied or assessed against the Premises or any utility charge, whether public or private, or any insurance premium or if it shall fail to procure the insurance coverage and the delivery of the insurance certificates required hereunder, or if it shall fail to pay any other charge or fee described in Sections 2.3, 2.7 or 2.16, then the Bank, at its option, may pay or procure the same. The Borrower will reimburse the Bank upon demand for any sums of money actually paid by the Bank pursuant to this Section, together with interest on each such payment at the rate set forth in the Note and all such sums and interest thereon shall be secured hereby.

2.5 Additional Documents. The Borrower agrees to execute and deliver to the Bank, concurrently with the execution of this Instrument and upon the request of the Bank from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. The Borrower hereby irrevocably (as long as the Loan remains unpaid) makes, constitutes and appoints the Bank as the true and lawful attorney of the Borrower to sign the name of the Borrower (after the Borrower has failed or refused to timely execute such documents upon request of the Bank) and any financing statement, continuation or financing statement or similar document required to perfect or continue such security interests. The security title of this Instrument and the security interest created hereby will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

2.6 Sale or Encumbrance.  
(a) Borrower will not sell, encumber or otherwise dispose of any of the "Premises" (the Land and/or "Secured Personality") except to incorporate such into the Improvements or replace such goods of quality and value at least equal to that replaced.

(b) Without the prior written consent of the Bank: (i) the Borrower shall not encumber any interest in the Premises or sell, contract to sell, lease with an option to purchase or otherwise transfer any interest in the Premises (the pending SBA loan has already been consented to by the Bank); (ii) nor any stockholder of Borrower contract to sell, lease with option to purchase or otherwise transfer any interest in said stock of Borrower. Bank shall not be obligated to consent to any encumbrance, sale, contract, lease or other transfer (all said encumbrances, sales, contracts, leases and other transfers described above being collectively referred to as a "prohibited transfer" except leases executed pursuant to Paragraph 2.8 of this Article shall not be a "prohibited transfer" and shall not violate this provision), and Bank's consent may be withheld regardless of whether any "prohibited transfer" may or may not impair Bank's security or whether or not it may or may not be reasonable (commercially or otherwise) for Bank to consent to any "prohibited transfer". Without limiting the foregoing, Bank's consent, may, if given in Bank's sole and unfettered discretion, be conditioned upon (by way of illustration only and not being limited to): an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee, or transferee, a management contract acceptable to Bank with a manager acceptable to Bank, an assignment to Bank of any security given to Borrower in connection with the transaction for which the consent is requested. Any "prohibited transfer" made without the express written consent of Bank shall be void.

2.7 Fees and Expenses. In the normal course of business and so long as it is acting in good faith, the Borrower will pay or reimburse the Bank for all actual attorneys' fees, costs and expenses incurred by the Bank in any action, legal proceeding or dispute of any kind which affects the Loan, the interest created herein, the Premises, the Rents and Profits or the Intangible Personality, including but not limited to, any foreclosure of this instrument, enforcement of payment of the Note, any condemnation action involving the Premises or any action to protect the security hereof. Any such amounts paid by the Bank shall be due and payable upon written demand and shall be secured hereby.

2.8 Leases and Other Agreements. The Borrower may enter into, cancel, surrender or modify or permit the cancellation of any lease or rental agreement now or hereafter affecting the Premises, or modify any of said instruments; however, Borrower shall not accept or permit to be made, any prepayment of any installment of rent or fees thereunder except to the extent permitted in Section 2.9 hereof. The Borrower shall faithfully keep and perform, or cause to be kept and performed, all of the material covenants, conditions and agreements contained in each of said instruments, now or hereafter existing, on the part of the Borrower to be kept and performed (including performance of all material covenants to be performed under any and all leases of the premises or any part thereof, whether said leases are presently executed or are executed at any future time prior to payment in full of the obligation) and shall at all times do all reasonable things necessary and appropriate to compel performance by each party to said instruments and/or leases of all obligations, covenants and agreements by such other party to be performed thereunder. The Borrower shall and does hereby authorize and direct each and every present and future tenant of all or any part of the Premises to pay all rental to the Bank upon Borrower's default hereunder and subsequent receipt of written demand from the Bank to so pay the same. The Borrower covenants to provide the Bank with a true, correct and complete copy of each lease or any other instrument described in this section at such times as the Bank shall request. Nothing herein contained shall render Bank liable under any existing or future lease, contract or agreement, regardless of the collection of rents or profits or other thing of value thereunder, for any of the covenants or agreements of Borrower under or made pursuant to such leases, contracts or agreements.

2.9 Prepayment of Rent. The borrower will not accept any prepayment of rent or installments of rent for more than two (2) months in advance without the prior written consent of the Bank.

2.10 Maintenance of Premises. The Borrower will abstain from and will not permit the commission of waste in or about the Premises and will maintain the Premises in good condition and repair, reasonable wear and tear excepted.

2.11 Identity of Borrower. The Borrower hereby acknowledges to the Bank that (i) the identity of the Borrower is and will continue to be a material circumstance upon which the Bank has relied in connection with this loan and which constitutes valuable consideration to the Bank for, the extending to the Borrower of the indebtedness evidenced by the Note and (ii) any change in said identity could materially impair or jeopardize the security for the payment of the Note granted to the Bank by this instrument.

2.12 Compliance with Law. The Borrower will do or cause to be done all things as may now or may in the future be required by law in order to fully protect the security and all rights of the Bank under this Instrument. The Borrower shall not cause or permit the lien of this Instrument to be impaired in any way.

2.13 Inspection. The Borrower will permit the Bank, or its agents, at all reasonable times during Borrower's business hours and upon reasonable prior notice to enter and pass through or over the Premises for the purpose of inspecting same.

2.14 Amount of Loan. The Borrower, upon ten (10) days' prior written notice, shall furnish to the Bank a written statement, duly acknowledged, setting forth or confirming the unpaid principal of, and interest on, the Loan and whether or not any offsets or defenses exist against such principal and interest.



2.15 Releases and Waivers. The Borrower agrees that no release by the Bank of any of the Borrower's successors in title from liability on the Loan, no release by the Bank of any portion of the Premises, the Rents and Profits or the Intangible or Tangible Personalty, no subordination of lien, no forbearance on the part of the Bank to collect on the Loan, or any part thereof, no waiver of any right granted or remedy available to the Bank and no action taken or not taken by the Bank shall in any way diminish the Borrower's obligation to the Bank or have the effect of releasing the Borrower, or any successor to the Borrower, from full responsibility to the Bank for the complete discharge of each and every one of the Borrower's obligations hereunder or under the Note, the Loan Agreement or any other Loan Document.

2.16 Insurance.

(a) Coverages Required. All coverages, policies and risks insured, including but not limited to public liability insurance, all risk casualty insurance, and any other type or kind of insurance required by the commitment letter in such amounts as may be reasonably required by the bank.

(b) Delivery of Policies and Renewals. The Borrower agrees to deliver to the Bank, as additional security hereto, the original (or certified copies) of policies of such insurance as is required by the Bank pursuant to subsection (a) hereof and of any additional insurance which shall be taken out upon the Premises while any part of the Loan shall remain unpaid. Renewals of such policies shall be so delivered at least ten (10) days before any such insurance shall expire. In the event the Borrower fails to maintain insurance as required hereunder following written notice from Bank and a 14 day cure period, the Bank has the right to procure such insurance whether or not the Borrower's failure to maintain such insurance constitutes an Event of Default (as defined in Article III) or an event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default. Any amounts paid by the Bank for insurance shall be due and payable to the Bank upon demand and shall be secured by this Instrument.

(c) Proof of Loss; Claims Settlement. In the event of loss, the Borrower shall, upon its actual notice thereof, give prompt notice thereof to the insurance carrier and the Bank, and the Bank may make proof of loss if not made promptly by the Borrower. The Bank is hereby authorized, in its sole discretion, and solely to the extent of its indebtedness, to adjust, compromise and collect the proceeds of any insurance claims; provided the Bank shall give written notice to the Borrower ten (10) days prior to adjusting or compromising any such insurance claims without the consent of the Borrower.

(d) Use of Proceeds. The Borrower hereby assigns the proceeds of any such insurance policies to the Bank and hereby directs and authorizes each insurance company to make payment for such loss directly to the Bank. The proceeds of any insurance or any part thereof are to be applied by the Bank to restoration or repair of the property damaged provided the following conditions are met: (i) there exists no Uncured Event of Default (as defined in Article III) or any event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default; (ii) the Borrower presents sufficient evidence to the Bank that there are sufficient funds from the insurance proceeds and from equity funds, if needed, to completely restore or repair the damaged property as well as to maintain relevant debt service coverages and other operating expenses; (iii) that Lessees, if any, agree in a manner reasonably satisfactory to the Bank that they will continue or extend their interests and arrangements for the contract terms then in effect following the restoration or repair; (iv) all parties having operating, management or franchise interests in, and arrangements concerning the Premises agree that they will continue their interests and arrangements for the contract terms then in effect following the restoration or repair; (v) the Borrower presents sufficient evidence to the Bank that the damaged property will be restored prior to the maturity date of the Loan; (vi) the Bank will not incur any liability to any other person as a result of such use or release of insurance proceeds; (vii) the insurance proceeds shall be held by the Bank and disbursed substantially in accordance with the disbursement procedures under the Loan Agreement as if such proceeds were Loan proceeds as repair or restoration progresses; provided, however, that insurance proceeds of \$25,000.00 or less will be disbursed directly to the Borrower for restoration or repair.

If the conditions of Section 2.16(d)(i), (iii), (iv) and (v) are not satisfied within ninety (90) days of loss, then the Bank may, at its option, apply any insurance proceeds to the outstanding balance of the Loan. Any remaining insurance proceeds shall be paid to the Borrower.

2.17 Eminent Domain.

(a) Participation in Proceedings. The Borrower shall promptly notify the Bank of any actual or known threatened initiation of any eminent domain proceeding as to any part of the Premises and shall deliver to the Bank copies of any and all papers served or received in connection with such proceedings, and the Bank shall have the right, at its option, to participate in such proceedings at the expense of the Borrower (including, without limitation, the Bank's reasonable attorneys' fees) and the Borrower will execute such documents and take such other steps as required to permit such participation.

(b) Right to Settle Claims. The Bank is hereby authorized to adjust, compromise and collect any eminent domain award or settle a claim for damages, to the extent of the Borrower's interest, and to apply the same to the outstanding balance of the Loan, subject to the provisions of subsection (c); provided that the bank shall give notice to the Borrower prior to adjusting or compromising any such award or claim for damages without the consent of Borrower. Any remaining settlement proceeds shall be paid to the Borrower.

(c) Use of Proceeds. To the extent of the indebtedness, the Borrower assigns to the Bank any proceeds or awards which may become due by reason of any condemnation or other taking for public use of the whole or any part of the Premises or any rights appurtenant thereto. The proceeds of any such condemnation award or proceeds or any part thereof may be applied by the Bank to the outstanding balance of the Loan; provided that, subject to the provisions of Section 2.17(d), such proceeds may be applied to restoration of the property taken if the following conditions are met: (i) there exists no Event of Default (as defined in Article III) or any event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default; (ii) the Borrower presents sufficient evidence to the Bank that (A) there are sufficient funds from the condemnation award or proceeds and from equity funds, if needed, to completely restore the Premises to an architectural whole as well as to maintain relevant debt service coverages and other operating expenses, and (B) the loss of the property taken will not materially diminish the value of the Premises; (iii) that Lessees, if any, agree in a manner reasonably satisfactory to the Bank that they will continue to extend their interests and arrangements for the contract terms then in effect following the restoration; (iv) all parties having operating, management or franchise interests in, and arrangements concerning, the Premises agree that they will continue their interests and arrangements for the contract terms then in effect following the restoration; (v) the Bank will not incur any liability to any other person as a result of such use or release of proceeds; (vi) the condemnation award or proceeds shall be held by the Bank and disbursed substantially in accordance with the disbursement procedures under the Loan Agreement as if such proceeds were Loan proceeds as restoration progresses.

(d) Further Assignments; Acceleration. The Borrower agrees to execute such further assignments and agreements as may be reasonably required by the Bank to assure the effectiveness of this Section. In the event any governmental agency or authority shall require or commence any proceedings for the demolition of any buildings or structures comprising a part of the Premises, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Premises, the Bank may, at its option, upon written notice to Borrower, declare the Loan to be immediately due and payable in full and apply any condemnation awards or proceeds to the outstanding balance of the Loan.

2.18 Security Agreement. This Instrument is hereby made and declared to be a security agreement encumbering each and every item of the Security Personalty, in compliance with the provisions of the Uniform Commercial Code as enacted in the jurisdiction applicable thereto (the "Code"). The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Instrument shall be as prescribed herein, or as prescribed by general law, or as prescribed by the Code, all at the Bank's election in the discretion of the Bank. Upon written request or demand by the Bank, the Borrower shall at its expense assemble all the Security Personalty with respect to which such request or demand is made, and make the same available to the Bank at a convenient place upon the Land (or within an improvement upon the Land, as may be appropriate for the protection of such Security Personalty) reasonably acceptable to the Bank. Any written notice of sale, disposition or other action by the Bank with respect to the Security Personalty sent to the Borrower in accordance with the provisions hereof relating to communications at least five (5) days prior to such action shall constitute adequate and reasonable notice to the Borrower of such action. The mention in any financing statement or statements of rights in and to (a) the proceeds of any insurance policy, or (b) any award in eminent domain proceedings for a taking or for loss of value, or the Borrower'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 a Lease or otherwise, shall not in any way limit any of the rights of the Bank as determined by this Instrument or affect the priority of the Bank's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of the Bank in the event any court shall at any time hold with respect thereto, that notice of the Bank's priority of interest, to be effective against all persons or against a particular class of persons, must be filed in the Code records. The names of the "Debtor" and the "Secured Party" (which are the Borrower and the Bank, respectively), the address of the "Secured Party" from which information concerning the security interest may be obtained, and the address of "Debtor", are as set forth in Section 5.2 hereof; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. The Borrower agrees to furnish the Bank with notice of any change in the name, identity, corporate structure, residence, principal place of business or mailing address of the Borrower within ten (10) days of the effective date of any such change.

### ARTICLE III: Events of Default

3.1 Events of Default. Subject to applicable cure periods, an "Event of Default" shall be the occurrence or existence of any of the events or conditions described in the subsequent sections of this Article III and the continuance thereof for either:

(a) the specific period of time, if any, herein specified with respect to such event or condition.

(b) a period of ten (10) days after written notice thereof to the Borrower from the Bank if no period is specified and the event or condition is a failure to pay money to the Bank as and when due; provided that the Bank shall not be required to give notice more than twice in any twelve (12) month period or at Loan maturity; or

(c) a period of fifteen (15) days after written notice thereof to the Borrower if no period is specified and the event or condition is not a failure to pay money (excepting, however, those events or conditions described below in this Section 3.1, as to which no right to notice or cure period shall exist); provided, however, that there shall be no obligation of the Bank to give notice and no right to the Borrower to cure if the event or condition is either the institution of a voluntary bankruptcy,



insolvency or receivership action, the intentional giving of any material false or fraudulent representation to the Bank, the failure to keep the Premises, Rents and Profits and Intangible Personalty free and clear of consensual liens not approved in writing in advance by the Bank or the death or legal incompetency of more than one of the guarantors of the Loan.

(d) Notwithstanding any provision to the contrary in this Agreement or any other Loan Document, upon any event of default under any of the Loan Documents (except for a "Monetary Default" described below), Bank shall mail a notice of default in the foregoing manner, specifying in reasonable detail the nature of the default, and Borrower shall have the right to cure the default within thirty (30) days after the date said notice was mailed, with respect to all defaults except for Monetary Defaults, and ten (10) days with respect to a Monetary Default. Notices shall be deemed given if and when personally delivered, or on the second business day after having been mailed as aforesaid. A "Monetary Default" is defined as a default by Borrower in payment of principal, interest, late charges, or other amounts of money due under the Note. Provided, however, that (i) Lender shall not be obligated to provide more than two (2) notices of Monetary Defaults in any one (1) calendar year, and (ii) no notice periods set forth in the Loan Documents shall be consecutive or duplicate, but to the extent any notice periods are contained in any Loan Documents, all of the same shall be deemed satisfied by the subject notice provision and shall run concurrently herewith.

3.2 Enumeration of Events. Failure to pay when due any installment of principal or of interest due on the Note or any of the other Loan Documents or any other amounts that become due and owing to the Bank under the Loan Documents.

(a) Loan Documents. Material breach or material failure to perform, observe or satisfy all material covenants, terms, conditions and agreements contained in this Instrument or any of the other Loan Documents. Copies of such Loan Documents are available for inspection at the offices of the Bank at the primary address for notices to the Bank as set forth in Section 5.2 hereof.

(b) Representations. The invalidity or inaccuracy of any material representation or opinion or the breach, withdrawal, cancellation, rescission, termination or alteration of any material agreement, approval, opinion or waiver submitted to the Bank.

(c) Equity Requirements. The failure to make an equity deposit or equity expenditure required by the Bank under the Loan Commitment within thirty (30) days after written notice to the Borrower from the Bank.

(d) Encroachments. The appearance on any survey required under the Loan Agreement of voluntary easements or encroachments which have occurred without the written approval of the Bank and which are not removed or corrected within twenty (20) business days after written notice thereof to the Borrower. Such correction may, in appropriate circumstances, be accomplished by the obtaining of or the commencing to obtain an easement satisfactory to the Bank, which easement must be a part of the Premises and conveyed by this Instrument.

(e) Permits. The Borrower neglects, fails, or refuses to keep in full force and effect (i) any permit or approval with respect to the construction, occupation or use of the Premises or (ii) the hazard and liability insurance required hereunder.

(f) Lawsuits. Any suit, or combination of suits, shall be filed against the Borrower, which in the reasonable judgment of the Bank has a substantial likelihood of being determined adversely, and which, if adversely determined, could reasonably be expected substantially to impair the ability of the Borrower to perform each and every one of their respective obligations under and by virtue of the Loan Documents.

(g) Financial Condition. Any representation or warranty submitted to the Bank concerning the financial condition or credit standing of the Borrower or the Guarantor of the Loan proves to be materially false and/or materially misleading.

(h) Liens and Encumbrances. The Borrower and/or Borrower's Tenant fails to keep the Premises free and clear of all material encumbrances, liens, security interests and subordinate financing, except as may be approved in writing by the Bank in its sole discretion, and in the case of any consensual encumbrances, liens, security interests or subordinate financing, such written approval to be obtained in advance. In the case of liens of mechanics or materialmen, the Borrower, at its own expense, after prior written notice to the Bank, by an appropriate proceeding conducted in good faith and with due diligence, may contest the amount or validity or application, in whole or in part, of any such lien against the Premises, provided that (i) such proceeding shall suspend the collection thereof from the Premises or any portion thereof nor any interest therein, and (ii) neither the Premises nor any portion thereof nor any interest therein would be in any danger of sale, forfeiture or loss by reason of such proceeding, and (iii) in no event could such lien be superior in priority to this Instrument and (iv) Borrower shall provide such security for the payment of all sums relating to such lien contested by Borrower as the Bank may reasonably require.

(i) Ownership. Any change in the ownership, membership, management or control of the Borrower, or any sale, transfer or conveyance, whether voluntary or involuntary, of the Premises or Rents and Profits or Intangible Personalty or any portion thereof, except as may be approved in writing in advance by the Bank in its sole discretion.

(j) Voluntary Bankruptcy. A voluntary petition is filed by the Borrower or the Guarantor of the Loan seeking the protection of the bankruptcy court under any chapter or section of the Bankruptcy Code, as amended, or of any state or federal court under state insolvency or receivership laws.

(k) Involuntary Bankruptcy. The Borrower or the Guarantor has an involuntary petition filed against it under any chapter or section of the Bankruptcy Code, as amended, or under any state insolvency laws and such petition is not dismissed within forty-five (45) days of its filing.

(l) Receivership. By the order of a court of competent jurisdiction, a trustee or receiver of the Premises, the Rents and Profits or the Intangible Personalty or any part thereof or of the Borrower shall be appointed and, if such order does not arise out of a voluntary receivership action instituted by the Borrower, such order shall not be discharged or dismissed within forty-five (45) days.

#### ARTICLE IV: Remedies of Bank Upon Events of Default

4.1 Rights Upon an Event of Default. If an Event of Default shall have occurred and any applicable cure period having expired without a cure having occurred, then the entire Indebtedness shall, at the option of the Bank, immediately become due and payable without notice or demand, time being of the essence, and the Bank, at its option, may do any one or more of the following, all without regard to the adequacy or value of the security for the Indebtedness.

(a) Without liability therefor to the Borrower, except for gross negligence or willful misconduct, do or cause to be done any or all of the following: (i) take physical possession of the Premises; (ii) exercise its right to collect the Rents and Profits; (iii) enter into commercially reasonable contracts for the completion, repair, maintenance and operation of the Improvements thereon; (iv) expend Loan funds and any rents, income and profits derived from the Premises; for payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the improvements, preservation of the lien of this Instrument and satisfaction and fulfillment of any liabilities or obligations of the Borrower arising out of or in any way connected with the construction of improvements on the Premises whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Instrument; (v) enter into commercially reasonable leases diminishing the Premises or any part thereof; (vi) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in the Note, this Instrument, the Loan Agreement, or the other Loan Documents, or to aid the execution of any power herein granted; and (vii) generally, supervise, manage and contract with reference to the Premises as if the Bank were equitable owner of the Premises. Notwithstanding the occurrence of an Event of Default or acceleration of the Loan, the Bank shall continue to have the right to pay money, whether or not Loan funds, for the purposes described in Sections 2.3, 2.7 and 2.16 hereof, and all such sums and interest thereon shall be secured hereby. The Borrower also agrees that any of the foregoing rights and remedies of the Bank may be exercised at any time independently of the exercise of any other such rights and remedies, and the Bank may continue to exercise any or all such rights and remedies until the Event(s) of Default of the Borrower are cured with the consent of the Bank or until foreclosure and the conveyance of the Premises to the high bidder or until the Loan is otherwise satisfied or paid in full.

(b) Apply, as a matter of strict right, without notice and without regard to the solvency of any party bound for its payment, for the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the Rents and Profits, all expenses of which shall be added to the Loan and secured hereby.

(c) Sell the Premises or any part of the Premises (together with the Rents and Profits and the Intangible Personalty) at one or more public sale or private sales as provided in the Alabama Uniform Commercial Code and/or exercise any other remedy available to Bank under said Uniform Commercial Code.

(d) Proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term, covenant, condition or agreement of this Instrument or any of the other Loan Documents or any other right or (ii) to pursue any other remedy available to the Bank.

(e) The Bank may apply any moneys and proceeds received by the Bank as a result of the exercise by the Bank of any right conferred under this Article IV in such order as the Bank in its discretion may elect upon reasonable notice to the Borrower against (i) all costs and expenses, including reasonable and actual attorneys' fees, incurred in connection with the operation of the Premises, the performance of the Borrower's obligations under the leases and the collection of the rents thereunder; (ii) all costs and expenses, including reasonable and actual attorneys' fees, incurred in the collection of any or all of the Indebtedness, including those incurred in seeking to realize on or to protect or preserve the Bank's interest in any other collateral securing any or all of the Indebtedness; (iv) any other amounts owing under the Loan Documents; and (v) accrued interest and charges on any or all of the foregoing. The remainder, if any, shall be paid to the Borrower or any person or entity lawfully entitled thereto.

(f) Sell the Premises or any part of the Premises (together with the Rents and Profits and the Intangible Personalty) at one or more public sale or sales before the door of the courthouse in the county in which the Land or any part of the Land is situated, to the highest bidder for cash, in order to pay the Indebtedness, 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 three (3) weeks preceding such sale (but without regard to the number of days) in some newspaper published in said county, all other notice being hereby waived by the Borrower. At any such public sale, the Bank, or any person conducting said sale for the Bank, may execute and deliver to the purchaser a deed and/or bill of sale conveying the Premises or any part of the Premises so sold in fee simple, with full warranties of title, and to this end the Borrower hereby constitutes and appoints the Bank the agent and attorney-in-fact of the Borrower to make such sale and conveyance, and thereby to divest the Borrower of all right, title and equity that the Borrower may have in and to the Premises and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact of the Borrower to make such sale and



conveyance, and thereby to divest the Borrower of all right, title and equity that the Borrower may have in and to the Premises and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed, and any recitals in said deed(s) or bill(s) of sale as to facts essential to a valid sale shall be binding upon the Borrower. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the Indebtedness. In the event of any sale under this Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Premises may be sold as an entirety or in separate parcels and in such manner or order as the Bank in its discretion may elect, and if the Bank so elects, the Bank may sell the personal property covered by this Instrument at one or more separate sales in any manner permitted by the Code, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Premises are sold or the Indebtedness is paid in full. The Bank may, at its option, sell the Premises subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any foreclosure proceedings and to foreclose their rights will not be asserted by the borrower to be a defense to any proceedings instituted by the Bank to collect the Indebtedness. If the Indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, the Bank may at its option exhaust the remedies granted under any of said security either concurrently or independently, and in such order as the Bank may determine in its discretion. The presence of any of the Premises at the place of sale is expressly waived. Upon any foreclosure sale, the Bank may bid for and purchase the Premises and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price. In the event of any such foreclosure sale by the Bank, the Borrower 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. In case the Bank shall have proceeded to enforce any right, power or remedy under this Instrument by foreclosure, entry or otherwise or in the event the Bank commences advertising of the intended exercise of the sale under power provided hereunder, and such proceeding or advertisement shall have been withdrawn, discontinued and abandoned for any reason, then in every such case (i) the Borrower and the Bank shall be restored to their former positions and rights, (ii) all rights, powers and remedies of the Bank shall continue as if no such proceeding had been taken, (iii) each and every Event of Default declared or occurring prior or subsequent to such withdrawal discontinuance or abandonment shall be deemed to be a continuing Event of Default, and (iv) neither this Instrument, nor the Note, nor the Indebtedness, nor any other Loan Document shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and the Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with this sentence.

4.2 Application of Foreclosure Proceeds. The proceeds of any foreclosure sale held pursuant to Article IV herein shall be applied as follows: First, to the expenses of making the sale, including a reasonable and actual attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage; Second, to the repayment of any money, with interest thereon, which Bank may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Loan Documents; Third, to the payment and satisfaction of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby with interest to date of sale whether or not all of such indebtedness be then due; and Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Premises at the time of the sale, after deducting any expense of ascertaining who is such owner, or as may otherwise be provided by law.

4.3 Waivers. Except for provisions requiring notice and giving rights to cure, no waiver of any Event of Default shall at any time thereafter be held to be a waiver of any rights of the Bank stated anywhere in the Note, this Instrument, the Loan Agreement or any of the other Loan Documents, nor shall any waiver of a prior Event of default operate to waive any subsequent Event(s) of Default. All remedies provided in this Instrument, in the Note, in the Loan Agreement and in the other Loan Documents are cumulative and may, at the election of the Bank, be exercised alternatively, successfully, or in any manner and are in addition to any other rights provided by law.

## ARTICLE V: General Conditions

5.1 Terms and Headings. The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, successors and assigns. The term "Bank" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Instrument nor the intent of any provision hereof.

5.2 Notices. All notices required to be given hereunder shall be in writing and shall be deemed served at the earlier of (i) receipt or (ii) two (2) business days after deposit in registered or certified United States mail, postage prepaid, and addressed to the parties at the following addresses, or such other addresses as may from time to time be designated by written notice given as herein required:

To the Borrower:  
RAFIKI HOTELS, L.L.C.  
Attn: Bill Harris  
Jackson Hospitality Services, Inc.  
#1 Office Park Circle, Suite 210  
Birmingham, AL 35223

cc: Bruce L. Gordon  
Suite 1400  
SouthTrust Tower  
Birmingham, AL 35203

To the Bank:  
ALANT BANK  
Attn: John J. Thomas  
Senior Vice President  
200 Aliant Parkway  
Alexander City, AL 35010

cc:  
George W. Thomas  
Kaufman & Rothfeder, P.C.  
P.O. Drawer 4540  
Montgomery, AL 36103

The parties hereto agree that any notice sent to the Borrower at its address set forth herein (or designated in accordance with this Section) shall be deemed notice to all partners of the Borrower in the event that the Borrower is a partnership. Personal delivery to a party or to any officer of such party at its address herein 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. Notwithstanding the foregoing, no notice of change of address shall be effective until the date of receipt thereof.

5.3 Greater Estate; No Merger. In the event that the Borrower is the owner of a leasehold estate with respect to any portion of the Premises and, prior to the satisfaction of the Indebtedness and the cancellation of this Instrument of record, the Borrower obtains a fee estate in such portion of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of the Borrower, be and become subject to the security lien of this Instrument. The Borrower shall take no action which will cause or permit the estate of any Tenant under any of the Leases to merge with the interest of the Borrower in the Premises or any portion thereof.

5.4 Imposition of Tax. Borrower shall pay, on or before the due date thereof, all taxes, assessments, and other charges of every character whatsoever, now or hereafter levied upon, assessed, placed or made against the Indebtedness, this Instrument or any other Loan Document or any interest of the Bank in the Indebtedness or the Loan Documents. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, in any manner changing or modifying the laws now in force governing the taxation of debts secured by security interests or the manner of collecting taxes so as to affect materially adversely the Bank, the Borrower will promptly pay any such tax on or before the due date thereof, and if the Borrower fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits the Borrower from making such payment or would penalize the Bank if the Borrower makes such payment, then the entire balance of the Loan shall become due and payable upon demand at the option of the Bank. In the event of such demand by Bank, the date of payment by Borrower shall be the earlier of (a) ninety (90) days after such demand, or (b) the date upon which such law, order, rule or regulation would become effective so as to adversely affect the Bank. In lieu of payment, the Borrower may post an appropriate bond and contest the charge in good faith so long as the lien of the mortgage is not affected and no adverse action is eminent which would affect the position of the Bank.

5.5 Invalidation of Provisions. Invalidation of any one or more of the provisions of this Instrument shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

5.6 Survival of Certain Agreements. Notwithstanding the repayment of the Indebtedness and the cancellation or transfer of the Loan Documents, or any foreclosure of, or sale under power contained in, this Instrument, or the acquisition by the Bank of title to the Premises in lieu of foreclosure, or any other realization upon collateral securing the Indebtedness, all agreements of the Borrower contained herein or in any of the other Loan Documents to pay the costs and expenses of the Bank in connection with the loan contemplated by the Loan Documents, all covenants, representations, warranties, and obligations of the Borrower relating to hazardous wastes, and

all agreements of the Borrower contained herein or in any of the other Loan Documents to indemnify and/or hold harmless the Bank shall continue in full force and effect so long as there exists any possibility of expense or liability on the part of the Bank.

5.7 Estoppel Affidavits. The Borrower within ten (10) days after written request from the Bank shall furnish a written, duly acknowledged affidavit, setting forth the unpaid principal of and interest on, the note and whether or not any offsets or defenses exist against such principal and interest, specifying the nature of same.

5.8 Waiver of Exemption. Borrower waives all rights of exemption, pertaining to real and/or personal property as to any indebtedness secured by or that may in the future be secured by this security interest and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Premises be set off against any part of the indebtedness secured hereby.

5.9 Remedies Cumulative. Subject to the notice provisions hereof, no right, power, or remedy conferred upon or reserved to the Bank by this security interest or by any of the other Loan Documents is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or at equity or by statute.

5.10 Miscellaneous. If more than one person or entity constitutes, collectively, the Borrower or any guarantor of the Loan, all of the provisions hereof referring to the Borrower or any guarantor of the Loan shall be construed to refer to each such person or entity individually as well as collectively; and if the Borrower is a partnership, all of the provisions hereof referring to the Borrower shall be construed to apply to each of the general partners thereof. When anything is described herein in general terms and one or more examples or components of what has been described generally is associated with that description (whether or not following the word "including"), the examples or components shall be deemed illustrative only and shall not be construed as limiting the generality of the description in any way. Time is of the essence with respect to each and every covenant, agreement and obligation of the Borrower under the Loan Documents. The Loan Documents contain the entire agreement between the Borrower and the Bank relating to the loan transaction contemplated thereby. Nothing contained in the Loan Documents shall be construed to create an agency, partnership or joint venture between the Borrower and the Bank. All exhibits referred to in the Loan Documents as if fully set forth therein. This security interest shall be deemed to have been made in the State of Alabama and its validity, its construction, interpretation and enforcement and the rights of the parties hereunder shall be determined under, governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the Borrower has executed this instrument under seal this the 7th day of April, 1997.

BORROWER:

RAFIKI HOTELS, L.L.C.,  
an Alabama limited liability company

By: Kirit F Patel  
Kirit F Patel  
Its Manager

STATE OF ALABAMA  
COUNTY OF SHELBY

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Kirit F. Patel whose name as Manager, of RAFIKI HOTELS, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as said Manager and with full authority executed the same on behalf of said limited liability company on the day same bears date.

Given under my hand and official seal of office this 7th day of April, 1997.

(S E A L)

Bernard A. Gilmore  
Notary Public  
My Commission Expires: 10/10/98

This instrument prepared by:  
George W. Thomas, Esquire  
KAUFMAN & ROTHFEDER, P.C.  
Post Office Drawer 4540  
Montgomery, Alabama 36103-4540  
(334) 244-1111 (FAX) 244-7995  
K&R File No. 0023.2005  
S:\GTHOMAS\RAFIKI\GSMORTGA.002

**EXHIBIT "A"**

Lot 2D-2, according to the Resurvey of Lot 2D, Meadow Brook Corporate Park-Phase I, as recorded in Map Book 21, at Page 92, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

S:\GTHOMAS\RAFIK\EXHIBIT.A

Inst # 1997-11665

04/16/1997-11665  
08:43 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
007 MCD 1524.50