

STATE OF ALABAMA
COUNTY OF Jefferson

Upon recording return to:

Catherine P. Powell, Esq.
Beskin Levine & Powell, LLP
1199 Oxford Road, N.E.
Atlanta, Georgia 30306

Shelby
Inst # 1997-41381

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of the 18th day of December, 1997, by and between APPLEBEE'S OF NORTH ALABAMA, INC., an Alabama corporation (hereinafter called "Mortgagor") and NATIONSBANK, N.A., a national banking association organized and existing under the laws of the United States of America, whose mailing address is Post Office Box 4899, Atlanta, Georgia 30302-4899 (hereinafter called "Mortgagee").

WITNESSETH:

FOR AND IN CONSIDERATION of the loan to Mortgagor by Mortgagee resulting in the indebtedness which is hereinafter more particularly described, and in order to secure that loan and payment of the note evidencing the same, Mortgagor hereby grants, bargains, conveys, transfers, assigns and sells unto Mortgagee:

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Madison, Etowah, and Shelby Counties, Alabama, and being more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (all of such tracts and parcels are hereinafter collectively called the "Property");

TOGETHER WITH: (i) all buildings, structures and other improvements now or hereafter located on the Property or on any part or parcel of the Property (hereinafter called the "Improvements"); (ii) all and singular the tenements, hereditaments, easements and appurtenances belonging to the Property or in anywise appertaining to the Property, and the reversion or reversions, remainder or remainders thereof; (iii) all leases, undertakings to lease, contracts to rent, usufructs and other agreements for use, occupancy or possession now or hereafter in force with respect to the Property or any part or parcel of the Property or any of the Improvements, and any and all other agreements, contracts, licenses, permits and arrangements now or hereafter affecting the Property or any part or parcel of the Property or any of the Improvements, whether written or oral and whether now or hereafter made or executed and delivered (hereinafter collectively called the "Leases"); (iv) all rents, issues, income, revenues and profits now or hereafter accruing from, and all those accounts specifically described in the Loan Documents (as such term is hereinafter defined) and contract rights now or hereafter arising in connection with, the Property or any part or parcel of the Property or any of the Improvements, including without limitation all rents, issues, income, revenues and profits

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accruing from, and all accounts and contract rights arising in connection with, the Leases, together with all monies and proceeds now or hereafter due or payable with respect thereto or on account thereof, and all security deposits, damage deposits and other funds paid by any lessee, sublessee, tenant, subtenant, licensee, permittee or other obligee under any of the Leases, whether paid in a lump sum or installments (all of which are hereinafter collectively called the "Rents"); (v) all minerals, flowers, crops, trees, timber, shrubbery and other emblements now or hereafter located on the Property or under the Property or on or under any part or parcel of the Property; (vi) all estates, rights, title and interest in the Property, or in any part or parcel of the Property; (vii) all equipment, machinery, apparatus, fittings, furniture, furnishings and personal property of every kind or description whatsoever now or hereafter located on the Property or on any part or parcel of the Property or in or on any of the Improvements, and used in connection with the operation or maintenance of the Property or any of the Improvements, all accessions and additions to and replacements of the foregoing and all proceeds (direct and remote) of the foregoing, including without limitation all plumbing, heating, lighting, ventilating, refrigerating, water-heating, incinerating, air-conditioning and heating, and sprinkling equipment and systems, and all screens, awnings and signs; (viii) all fixtures (including all trade, domestic and ornamental fixtures) now or hereafter on the Property or on any part or parcel of the Property or in or on any of the Improvements, whether actually or constructively attached or affixed, including without limitation all plumbing, heating, lighting, ventilating, refrigerating, water-heating, incinerating, air-conditioning and heating, and sprinkling fixtures, and all screens, awnings and signs which are fixtures; (ix) all building materials, supplies, goods, machinery and equipment delivered to the Property and placed on the Property for the purpose of being affixed to or installed or incorporated or otherwise used in or on the Property or any part or parcel of the Property or any of the Improvements, and all accessions and additions to and replacements of the foregoing and all proceeds (direct or remote) of the foregoing; (x) all payments, awards, judgments and settlements (including interest thereon) to which Mortgagor may be or become entitled as a result of the exercise of the right of eminent domain with respect to the Property or any part or parcel of the Property or any of the Improvements; and (xi) all policies of insurance which insure against loss or damage to any property described above and all proceeds from and payments under such policies. The Property and all of the foregoing are hereinafter sometimes collectively called the "Premises".

TO HAVE AND TO HOLD the Premises to the only proper use, benefit and behoof of Mortgagee, forever, in fee simple.

MORTGAGOR WARRANTS that Mortgagor has good and marketable fee simple title to the Premises, that Mortgagor is lawfully seized and possessed of the Premises, that Mortgagor has the right to convey the Premises, that the Premises are unencumbered except as set forth on Exhibit "B" attached hereto and made a part hereof, and that Mortgagor shall forever warrant and defend the title to the Premises unto Mortgagee against the claims of all persons whomsoever.

THIS INSTRUMENT IS A MORTGAGE pursuant to the laws of the State of Alabama governing such instruments, and is also a security agreement granting a present and continuing security interest and security title in the portion of the Premises constituting personal property or fixtures, and a financing statement filed as a fixture filing, pursuant to the Uniform Commercial Code of the State of Alabama. This Mortgage is made and intended to secure payment and performance of:

(i) an indebtedness of Mortgagor to Mortgagee evidenced by that certain Consolidated, Amended and Restated Real Estate Note of even date herewith, made by Mortgagor and payable to the order of Mortgagee, in the stated principal amount of Four Million Fifty Thousand and No/100 Dollars (\$4,050,000.00) bearing interest and default interest and payable as therein provided in installments, the final installment of which is due and payable on December 18, 2006, if not sooner paid (hereinafter called the "Note"); (ii) any and all renewals, extension or extensions, modification or modifications of the Note, and substitution or substitutions for the Note, either in whole or in part; (iii) all advances, if any, made by Mortgagee pursuant to the terms of this Mortgage; (iv) all expenses incident to the collection of the indebtedness secured by this Mortgage; (v) all duties and obligations of Mortgagor under this Mortgage; and (vi) all indebtedness now or hereafter owing by Mortgagor to Mortgagee, however or whenever created, incurred, arising or evidenced, whether direct or indirect, primary or secondary, joint or several, absolute or contingent, or due or to become due, and whether from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred, and any and all renewal or renewals, extension or extensions, modification or modifications of said indebtedness, and substitution or substitutions for said indebtedness, either in whole or in part. The obligations and indebtedness which this Mortgage is given to secure are hereinafter sometimes collectively called the "Indebtedness".

PROVIDED, ALWAYS, that if Mortgagor shall pay or cause to be paid the Indebtedness and shall pay or cause to be paid any amounts that the Mortgagee may have expended pursuant to the authorization of this Mortgage, including, without limitation, amounts spent for the payment of taxes, assessments and other liens, insurance and interest on all such sums, and shall perform or cause to be performed all other obligations on the part of Mortgagor contained herein, this conveyance shall be null and void; otherwise this Mortgage shall be and remain in full force and effect

MORTGAGEE HAS AGREED TO LEND, and has earmarked for the benefit of Mortgagor, the principal amount of \$4,050,000.00, which Mortgagee shall advance to Mortgagor to refinance certain loans encumbering the Property subject to the terms and conditions of this Agreement, that certain Loan and Security Agreement dated October 28, 1997, as amended from time to time (the "Loan Agreement"), and any and all other documents evidencing and/or securing the indebtedness secured hereby (collectively, the "Loan Documents").

ARTICLE I COVENANTS OF MORTGAGOR

Section 1.01. Junior Encumbrances. Without the prior written consent of Mortgagee, which consent Mortgagee may give, deny or condition in its reasonable discretion, Mortgagor shall not create or permit to exist any liens or encumbrances on the Premises which are junior and inferior in terms of priority to this Mortgage.

Section 1.02. Payments by Mortgagor. Mortgagor shall pay, when due and payable: (i) the Indebtedness in accordance with the terms and conditions of the instruments evidencing the same; (ii) all taxes, all assessments, general or special, and all other charges levied or imposed upon

or assessed or placed or made against the Premises, this Mortgage, the Note or the Indebtedness or any interest of Mortgagee in the Premises, this Mortgage, the Note or the Indebtedness; (iii) premiums on policies of fire and casualty insurance covering the Premises required by this Mortgage or now or hereafter required by Mortgagee; (iv) premiums on all life insurance policies now or hereafter pledged as collateral for the Indebtedness or any part thereof; (v) premiums on all liability, rental, rental value, business interruption mortgage and flood insurance policies required by this Mortgage or now or hereafter required by Mortgagee in connection with the Premises or the Indebtedness or any part of either; and (vi) all ground rents, lease rentals and other payments respecting the Premises payable by Mortgagor. Mortgagor shall promptly deliver to Mortgagee, upon request by Mortgagee, receipts showing payment in full of all of the foregoing items, other than the Indebtedness. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws in force governing the taxation of the Indebtedness or the manner of collecting such taxes so as to adversely affect Mortgagee, Mortgagor will promptly pay any such tax on or before the date it is due if, in the opinion of counsel for Mortgagee, Mortgagee is not prohibited by any such law, order, rule or regulation from requiring such payment by Mortgagor. If, in the opinion of counsel for Mortgagee, Mortgagee is prohibited by any such law, order, rule or regulation from requiring such payment by Mortgagor, then, at Mortgagee's option, Mortgagor shall be in default under this Mortgage as if an event of default had occurred, and Mortgagee may exercise any or all of the rights and remedies Mortgagee has upon the occurrence of a default under this Mortgage.

Section 1.03. Mortgagee's Acts on Behalf of Mortgagor. In the event Mortgagor shall either fail or refuse to pay or cause to be paid, as the same shall become due and payable, any item (including all items specified in Section 1.02 hereof) which Mortgagor is required to pay hereunder or which Mortgagor may pay to cure a default under this Mortgage, or in the event Mortgagor shall either fail or refuse to do or perform any act which Mortgagor is obligated to do or perform under this Mortgage or which Mortgagor may do or perform to cure a default under this Mortgage, or in the event Mortgagee shall be required, or shall find it necessary or desirable in Mortgagee's discretion, to defend, enforce or protect any of the rights and benefits accruing to Mortgagee under any provision of this Mortgage (including, without limitation, Mortgagee's interest in the Premises, insurance and condemnation proceeds and the Rents,) then Mortgagee, at Mortgagee's option, may make such payment or do or perform such act on behalf of Mortgagor, or proceed in any manner to defend, enforce or protect any such rights and benefits. All such payments made by Mortgagee and all reasonable costs and expenses incurred by Mortgagee in doing or performing all such acts shall be and shall become part of the Indebtedness and shall bear interest at the rate per annum two (2) percentage points in excess of the highest rate of interest then being charged with respect to any portion of the Indebtedness from the date paid or incurred by Mortgagee, and the interest thereon shall also be part of the Indebtedness.

Section 1.04. Further Assurances. Mortgagor shall at any time, and from time to time, upon request by Mortgagee, make, execute and deliver, or cause to be made, executed and delivered, any and all other and further instruments, documents, certificates, agreements, letters, representations and other writings as may be necessary or desirable, in the opinion of Mortgagee, in order to effectuate, complete, correct, perfect or continue and preserve the liability and obligation of

delivered, any and all other and further instruments, documents, certificates, agreements, letters, representations and other writings as may be necessary or desirable, in the opinion of Mortgagee, in order to effectuate, complete, correct, perfect or continue and preserve the liability and obligation of Mortgagor for payment of the Indebtedness and the lien, security interest and security title of Mortgagee under this Mortgage. Mortgagor shall, upon request by Mortgagee, certify in writing to Mortgagee, or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on the Indebtedness and whether or not any setoffs or defenses exist against all or any part of the Indebtedness.

Section 1.05. Rents and Leases. Mortgagor shall fully and faithfully perform all of the duties and obligations of the lessor, landlord or owner of the Premises under the Leases and observe, satisfy and comply with all of the terms, covenants, conditions, agreements, requirements, restrictions and provisions of the Leases, and do all acts otherwise necessary to maintain and preserve the Rents and prevent any diminishment or impairment of the value of the Leases or the Rents or the interest of Mortgagor or Mortgagee therein or thereunder. Without the prior written consent of Mortgagee, Mortgagor shall not further assign the Rents or the Leases, shall not terminate, alter, modify, or amend in any material respect, or accept the surrender of, any of the Leases, and shall not collect Rents for more than one (1) month in advance. Mortgagor shall procure and deliver to Mortgagee upon request estoppel letters or certificates from each lessee, tenant, occupant in possession and other user of the Premises or any part thereof, as required by and in form and substance satisfactory to Mortgagee, and shall deliver to Mortgagee a recordable assignment of all of Mortgagor's interest in all Leases, which assignment shall be in form and substance satisfactory to Mortgagee, together with proof of due service of a copy of such assignment on each lessee, tenant, occupant in possession or other user of the Premises or any part thereof. The foregoing provisions are cumulative of and in addition to the provisions of the Assignment of Leases and Rents of even date herewith from Mortgagor to Mortgagee (hereafter called the "Rent Assignment").

Section 1.06. Maintenance and Repair. Mortgagor shall maintain the Premises in good condition and repair, shall not commit or suffer any actual or threatened waste to the Premises, and shall comply with, or cause to be complied with, all statutes, ordinances, rules, regulations and directives of any governmental authority (hereinafter called "Laws") relating to the Premises or any part thereof or the use or occupancy of the Premises or any part thereof. No part of the Premises, including but not limited to any of the Improvements, shall be removed, demolished or materially altered without the prior written consent of Mortgagee; provided however, Mortgagor may make those changes required to be made under the Franchise Agreement (as such term is defined in the Loan Agreement) without Mortgagee's prior written consent so long as Mortgagor notifies Mortgagee of all of such proposed changes. If at any time during the continuance of the Indebtedness any addition, alteration, change, repair, reconstruction or other work on the Premises, of any nature, structural or otherwise, becomes necessary or desirable because of damage to or destruction of the Premises or any part thereof, the entire expense thereof, regardless of when the same shall be incurred or become due, shall be the sole obligation and responsibility of Mortgagor, and Mortgagor shall pay the entire expense thereof promptly when due. Mortgagor shall not initiate, join in, consent to or acquiesce in any change in any private restrictive covenant, zoning ordinance or other public or

Section 1.07. Insurance. Mortgagor shall keep the Premises insured against loss or damage by fire and such other casualties and risks as the Mortgagee may reasonably require from time to time. The insurance maintained by Mortgagor may, at Mortgagee's option, include rental, rental value and business interruption insurance. Such policies shall be written by such companies, in such amounts and under such forms of policies as Mortgagee may reasonably approve. Such policies shall insure Mortgagee's interest in the Premises, name Mortgagee as an insured party thereunder, provide that losses thereunder shall be payable to Mortgagee as its interest may appear pursuant to such forms of loss payable clauses as Mortgagee may approve and provide that no cancellation or reduction in coverage shall be effective unless the insurer first gives Mortgagee thirty (30) days prior written notice. Irrespective of the insurance required and reasonably approved by Mortgagee hereunder, the security interest of Mortgagee hereunder shall cover all policies of insurance which insure against loss or damage to the Premises, and the proceeds from any and all such policies. Mortgagor shall also procure and maintain general comprehensive public liability insurance coverage with such companies, in such amounts and under such forms of policies as Mortgagee may approve, naming Mortgagee as an additional insured thereunder and providing that no cancellation or reduction in coverage thereunder shall be effective unless the insurer first gives Mortgagee thirty (30) days prior written notice. Forthwith upon the issuance of all such policies, Mortgagor shall deliver duplicate originals or certificates of the same to Mortgagee together with evidence satisfactory to Mortgagee that the premiums have been paid. Within fifteen (15) days prior to the expiration date of each such policy, Mortgagor shall deliver to Mortgagee a renewal policy together with evidence satisfactory to Mortgagee that the premium therefor has been paid. In the event of a foreclosure and sale by Mortgagee of the Premises, the purchaser of the Premises shall succeed to all rights of Mortgagor in and to such policies, including the right to the refund of unearned premiums and to dividends thereunder, and Mortgagee may, at Mortgagee's election, assign and deliver the policies to such purchaser without any warranty or representation, express or implied, and without recourse. In the event of damage to or destruction of the Premises or any part thereof, Mortgagee may adjust, settle or compromise claims under such policies, and the proceeds therefrom shall be paid to Mortgagee. Mortgagee, at Mortgagee's option and in Mortgagee's sole discretion, may either (i) apply the proceeds or any part thereof to payment of the Indebtedness, in such order as Mortgagee may determine, or (ii) require Mortgagor to repair, replace or reconstruct the Premises or any part thereof and disburse the proceeds to Mortgagor to be applied against the reasonable costs and expenses thereof as incurred or paid by Mortgagor, pursuant to a disbursement procedure, and under such other terms and conditions, as shall be acceptable to Mortgagee; provided, however, if Borrower is not in default, or with notice, the passage of time or both would be in default, under this Mortgage or any other document or agreement with Mortgagor, then Mortgagee shall elect option (ii) above.

Section 1.08. Inventory of Personal Property. Upon the reasonable request of Mortgagee, Mortgagor shall deliver to Mortgagee an inventory describing and showing the make, model, serial number and location of all fixtures and personal property used in the management, maintenance and operation of the Premises with a certification by Mortgagor that said inventory is a true and complete schedule of such fixtures and personal property used in the management, maintenance and operation of the Premises and that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance and operation of the Premises, and that such items are owned by Mortgagor free and clear of any security interests, liens,

conditional sales contracts or title retention arrangements, other than the lien and security interest of this Mortgage.

Section 1.09. Condemnation. Notwithstanding any injury or damage to, or loss of, the Premises or any part thereof as a result of the exercise of the right of eminent domain, Mortgagor shall continue to pay the Indebtedness. All sums paid or payable to Mortgagor by reason of any injury or damage to, or loss of, the Premises or any part thereof as a result of the exercise of the right of eminent domain shall be delivered to Mortgagee and Mortgagee, at Mortgagee's option and at Mortgagee's sole discretion, may either (i) apply the sum or any part thereof to payment of the Indebtedness, in such order as Mortgagee may determine, or (ii) require Mortgagor to repair, replace or reconstruct the Premises or any part thereof and disburse such sums to Mortgagor to be applied against the reasonable costs and expenses thereof as incurred or paid by Mortgagor pursuant to a disbursement procedure, and under such other terms and conditions, as shall be acceptable to Mortgagee; provided, however, if (a) Borrower is not in default, or with notice, the passage of time or both would be in default, under this Mortgage or any other document or agreement with Mortgagor, and (b) only a portion of the Premises, and not the entire Premises, is condemned, then Mortgagee shall elect option (ii) above. In the event the entire Premises is condemned, all proceeds shall be applied to the payment of the Indebtedness as set forth above.

Section 1.10. Financial Information. Mortgagor shall comply in all respects with the terms and conditions governing the delivery of financial information set forth in the Loan Agreement, including, without limitation, Sections 7.3 and 7.4 thereof.

Section 1.11. Inspection. Upon reasonable notice by Mortgagee, Mortgagor shall permit any person designated by Mortgagee to visit and inspect the Premises, to examine the books of account and other records of Mortgagor with respect to the Premises, and to discuss the affairs, finances and accounts of Mortgagor with and to be advised as to the same by Mortgagor or a knowledgeable and duly authorized representative of Mortgagor, all at such reasonable times and intervals as Mortgagee may desire; provided, Mortgagee shall use reasonable efforts to minimize interference with Mortgagor's operations of the Premises during such inspections.

Section 1.12. Restriction on Transfer. Without the prior written consent of Mortgagee thereto (which consent may be granted or withheld at Mortgagee's sole and absolute discretion) and the recordation of such consent in the public deed records in the Offices of the Judge of the Probate Courts of the Counties in which the Premises or any part thereof are located, prior to the cancellation, satisfaction and release by Mortgagee of this Mortgage (and except as contemplated in the Loan Agreement), neither Mortgagor nor any party comprising Mortgagor shall grant, bargain, sell, convey, transfer, assign or exchange all or any portion of the Premises or the interest of Mortgagor or such other party in the Premises. For the purposes of this Section 1.12 (except as contemplated in the Loan Agreement), any of the following shall constitute a transfer or conveyance of the Premises proscribed hereby: (i) in the event Mortgagor or any party comprising Mortgagor shall be a corporation, if any amount of any class of stock in Mortgagor or such party comprising Mortgagor shall be granted, bargained, sold, conveyed, transferred, assigned or exchanged after the execution and delivery of this Mortgage and, after such transaction, more than fifty percent (50%) of

such class of stock shall be owned by a party or parties other than the party or parties owning such stock as of the date of the execution and delivery of this Mortgage; and (ii) in the event Mortgagor or any party comprising Mortgagor shall be a general partnership or a limited partnership, (A) if any general partnership interest in Mortgagor or such party comprising Mortgagor shall be granted, bargained, sold, conveyed, transferred, assigned or exchanged after the execution and delivery of this Mortgage, or (B) if any amount of any class of limited partnership interests in Mortgagor or such party comprising Mortgagor shall be granted, bargained, sold, conveyed, transferred, assigned or exchanged after the execution and delivery of this Mortgage and, after such transaction, more than fifty percent (50%) of such class of limited partnership interests shall be owned by a party or parties other than the party or parties owning such limited partnership interests as of the date of the execution and delivery of this Mortgage. The foregoing proscription shall apply to any such sale, conveyance, transfer, assignment or exchange, whether made with or without consideration, and whether arising voluntarily or involuntarily, by reason of merger, consolidation or reorganization, by operation of law, or otherwise.

Section 1.13. Escrow Deposit. If Mortgagor shall be in default hereunder and not cured after applicable notice and cure periods, in order to further secure the payment of the taxes, special assessments and insurance premiums payable with respect to the Premises, upon request therefor by Mortgagee, Mortgagor shall deposit with Mortgagee, on the due date of each monthly installment due under the Note, a sum which, in the estimation of Mortgagee, shall be equal to one-twelfth (1/12) of the amount of annual taxes, special assessments and casualty insurance premiums payable with respect to the Premises. The deposit shall be held by Mortgagee, free of interest, and free of any liens or claims on the part of creditors of Mortgagor and as part of the security of Mortgagee, and shall be used by Mortgagee to pay current taxes, special assessments and casualty insurance premiums on the Premises as the same accrue and are payable. The deposit shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee. If such deposits are insufficient to pay such taxes, special assessments and casualty insurance premiums in full as the same become payable, Mortgagor shall deposit with Mortgagee such additional sum or sums as may be required in order for Mortgagee to pay such taxes, special assessments and casualty insurance premiums in full. Upon any default hereunder, Mortgagee, at Mortgagee's option, may apply said deposit, or any part thereof, to the payment of the Indebtedness in such order as Mortgagee may determine. Upon the payment in full of the Indebtedness and the cancellation and satisfaction of record of this Mortgage, Mortgagee shall refund to Mortgagor any such sums then on deposit with Mortgagee. The term "taxes" as used in this paragraph shall include real property ad valorem taxes, sanitary taxes, personal property ad valorem taxes and any other tax which may or become a lien against the Premises.

Section 1.14. Subrogation. Mortgagee shall be subrogated to all right, title, equity, liens and claims of all persons to whom Mortgagee has paid or pays money in settlement of claims, liens, encumbrances or charges or in the acquisition of any right or title for Mortgagee's benefit under this Mortgage or for the benefit and account of Mortgagor.

Section 1.15. Flood Insurance. Mortgagor represents and certifies to Mortgagee that no part of the Premises lies within a "special flood hazard area" as defined and specified by the United

States Department of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973. In the event Mortgagee determines that the rules or regulations of the Federal Reserve Board, the Comptroller of the Currency or any other governing agency licensing or regulating the operations of Mortgagee require that flood insurance coverage be obtained for the Premises or any part thereof in order for Mortgagee to comply with such rules or regulations or with the Flood Disaster Protection Act of 1973 as then in effect, then Mortgagor, upon receiving written notice from Mortgagee of such determination: (i) shall promptly purchase and pay the premiums for such flood insurance policies as Mortgagee deems required by such agency or agencies and so that Mortgagee shall be deemed in compliance with the rules and regulations of such agency or agencies and with the Flood Disaster Protection Act of 1973 as then in effect; and (ii) shall deliver such policies to Mortgagee together with evidence satisfactory to Mortgagee that the premiums therefor have been paid. Such policies of flood insurance shall be in a form satisfactory to Mortgagee, shall name Mortgagee as an insured thereunder, shall provide that losses thereunder be payable to Mortgagee pursuant to such forms of loss payable clause as Mortgagee may approve, shall be for an amount at least equal to the Indebtedness or the maximum limit of coverage made available with respect to the Premises under the National Flood Insurance Act of 1968, as amended, whichever is less, and shall be noncancellable as to Mortgagee except upon thirty (30) days prior written notice given by the insurer to Mortgagee. Within fifteen (15) days prior to the expiration date of each such flood insurance policy, Mortgagor shall deliver to Mortgagee a renewal policy or endorsement together with evidence satisfactory to Mortgagee that the premium therefor has been paid.

Section 1.16. Hazardous Materials Covenants. (a) Mortgagor hereby represents and warrants to and for the benefit of Mortgagee that the Premises will not be used or operated in any manner that will result in the storage, use, treatment, manufacture or disposal of any Hazardous Materials (hereinafter defined) upon the Premises or any portion thereof or which will result in Hazardous Materials Contamination (hereinafter defined). For purposes hereof, the term "Hazardous Materials" shall mean and refer to (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder, or as defined by the applicable laws of the State of Alabama, as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any substance the presence of which on the Premises is prohibited by any Laws or by any other legal requirements affecting the Premises; (vi) petroleum based materials; and (vii) any other substance which is defined as hazardous, toxic, infectious or radioactive by any Laws or by any other legal requirements affecting the Premises, but shall exclude those hazardous items known as ordinary household cleaning items, such as 409, wisk and the like. The term "Hazardous Materials Contamination" shall mean and refer to the unlawful contamination of the Premises, soil, surface water, ground water, air, or other elements on, or of, the buildings, facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Premises.

(b) In addition to and without limiting the generality of any other provisions of this Mortgage, Mortgagor shall and hereby does indemnify and hold Mortgagee harmless from and

against any and all losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs, and liabilities, including, but not limited to, reasonable attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work and other clean up activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Mortgagor or Mortgagor's employees, agents, delegees, invitees, licensees, concessionaires, lessees, tenants, contractors or representatives, of any Hazardous Materials, or (ii) an occurrence of Hazardous Materials Contamination, arising out of or in any manner connected with the use or occupancy of the Premises; provided however, the Mortgagor shall not be obligated to indemnify the Mortgagee from claims or damages asserted against the Mortgagee if the circumstances giving rise to such claims arose subsequent to satisfaction in full of the Mortgagor's obligation under the Note. The provisions of this Section 1.16 shall survive any payment or satisfaction of the Indebtedness and any acquisition of the Premises by Mortgagee pursuant to the power of sale contained in this Mortgage, by conveyance in lieu of foreclosure or otherwise; and such provisions shall remain in full force and effect as long as the possibility exists that Mortgagee may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs and liabilities.

ARTICLE II **EVENTS OF DEFAULT**

The following shall constitute events of default by Mortgagor hereunder:

Section 2.01. Payment of Indebtedness. If Mortgagor should fail to pay the Indebtedness or any part thereof when and as the same shall become due and payable as provided in the Note and/or in the Loan Agreement, or if Mortgagor owed to Mortgagee when and as the same shall become due and payable, in either instance, whether at the due date thereof or at a date fixed for prepayment or at a date fixed by reason of acceleration of the due date thereof or otherwise, and such failure continues beyond the grace or cure periods, if any, provided for in the applicable instrument.

Section 2.02. Other Payments and Terms. If Mortgagor should fail to make any payment (other than on the Indebtedness) required hereunder, or if Mortgagor should fail fully and completely to perform its duties and obligations under, or should violate or breach or fail fully and completely to observe, satisfy or comply with any of the terms, covenants, conditions, agreements, requirements, restrictions or provisions set forth in, this Mortgage (and if such failure, breach or violation shall not have been cured within thirty (30) days after the giving of a written notice thereof by Mortgagee to Mortgagor, or, if such cannot be cured within such 30-day period and Mortgagor is diligently pursuing such cure, then within such longer period as is reasonable, but in no event longer than sixty (60) days following such notice), or any other instrument, document, agreement, letter or other writing now or hereafter evidencing or securing the Indebtedness or any portion thereof, or heretofore, concurrently herewith or in the future executed by Mortgagor in favor of Mortgagee in connection with any transaction which resulted in the Indebtedness or any part thereof, including, without limiting the generality of the foregoing, the Loan Agreement, the Note and the Rent

Assignment (and if such failure, breach or violation shall not have been cured within the periods, if any, provided therein).

Section 2.03. False Statements. If any certificate, representation, warranty, statement or other writing made herein or furnished to Mortgagee by or on behalf of Mortgagor in connection with any transaction which resulted in the Indebtedness or any part thereof should be false, untrue, incomplete or misleading in any material respect as of the date made; provided, however, Mortgagor shall be given thirty (30) days following written notice (or such longer period, up to sixty (60) days following notice, if Mortgagor is diligently pursuing such cure) to change such facts or circumstances so that the statements made shall be true, correct and complete.

Section 2.04. Adverse Change. Any material adverse change in the condition, financial or otherwise, of Mortgagor after the date of this agreement; or any damage to any part of the Premises which is not repaired promptly to the reasonable satisfaction of Mortgagee; or any taking of all of the Premises in any eminent domain, condemnation or similar proceeding or the misuse or misapplication of any condemnation or insurance proceedings, any of which, in Mortgagee's reasonable judgment, materially affects the value or intended use of the Premises; or any material adverse change in Mortgagor's ability to pay the Loan or in the Improvements as represented in the loan application to Mortgagee.

Section 2.05. Seizure or Levy. If the Premises or any part thereof should be seized or levied upon under legal process or a receiver should be appointed for the Premises or any part thereof.

Section 2.06. Liens. If any Federal tax lien or any claim of lien for labor or services performed or rendered or alleged to have been performed or rendered, or for materials supplied or furnished or alleged to have been supplied or furnished, or for architectural or engineering services performed or rendered or alleged to have been performed or rendered, in connection with the improvement of or with respect to the Premises should be filed of record against Mortgagor or the Premises and not be removed from record by payment or posting of bond within thirty (30) days from the date of such filing, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

Section 2.07. Priority Claim. If any claim of priority over this Mortgage should be asserted in any legal or equitable proceeding, and not be dismissed with prejudice within sixty (60) days after the filing thereof.

Section 2.08. Insolvency or Bankruptcy. If Mortgagor becomes insolvent as defined in the Alabama Uniform Commercial Code or makes an assignment for the benefit of creditors; or if any action is brought by Mortgagor seeking its dissolution or liquidation of its assets or seeking the appointment of a trustee, interim trustee, receiver or other custodian for any of its property; or if Mortgagor commences a voluntary proceeding under the Federal Bankruptcy Code; or if any reorganization or arrangement proceeding is instituted by Mortgagor for the settlement, readjustment, composition or extension of any of its debts upon any terms; or if any action or petition is otherwise brought by Mortgagor seeking similar relief or alleging that it is insolvent or unable to pay its debts as

they mature; or if any action is brought against Mortgagor seeking its dissolution or liquidation of any of its assets, or seeking the appointment of a trustee, interim trustee, receiver or other custodian for any of its property, and any such action is consented to or acquiesced in by Mortgagor or is not dismissed within sixty (60) days after the date upon which it was instituted; or if any proceeding under the Federal Bankruptcy Code is instituted against Mortgagor and (i) an order for relief is entered in such proceeding or (ii) such proceeding is consented to or acquiesced in by Mortgagor or is not dismissed within sixty (60) days after the date upon which it was instituted; or if any reorganization or arrangement proceeding is instituted against Mortgagor for the settlement, readjustment, composition or extension of any of its debts upon any terms, and such proceeding is consented to or acquiesced in by Mortgagor or is not dismissed within sixty (60) days after the date upon which it was instituted; or if any action or petition is otherwise brought against Mortgagor seeking similar relief or alleging that it is insolvent, unable to pay its debts as they mature or generally not paying its debts as they become due, and such action or petition is consented to or acquiesced in by Mortgagor or is not dismissed within sixty (60) days after the date upon which it was brought.

Section 2.09. Judgments. If any judgment should be rendered against Mortgagor which shall have, in Mortgagee's reasonable judgment, a material adverse affect on Mortgagor or on Mortgagor's ability to make payments of the Loan, and such judgment should not be paid in full and satisfied, or appealed from within the time allowed for appeals and be paid in full and satisfied when it becomes final.

Section 2.10. Dissolution or Liquidation. Except as otherwise permitted in the Loan Agreement, should Mortgagor, if a corporation, be liquidated or dissolved or its articles of incorporation expire or be revoked, or, if a partnership or business association, be dissolved or partitioned, or, if a trust, be terminated or expire.

For the purposes of the events of default specified in sections 2.03, 2.05, 2.07, 2.08 and 2.09, the word "Mortgagor" shall specifically include, without limitation: (i) any party comprising Mortgagor, should more than one person or entity execute this Mortgage as Mortgagor; (ii) any person or entity now or hereafter liable, whether primarily, secondarily or contingently, for the payment of the Indebtedness or any part thereof including without limitation any principal, maker, endorser, guarantor or surety and the heirs, legal representatives, successors and assigns thereof; (iii) if Mortgagor or any party comprising Mortgagor be a general partnership or a limited partnership, any general partner thereof; and (iv) if Mortgagor or any party comprising Mortgagor be a joint venture, any joint venturer thereof.

ARTICLE III

REMEDIES AND POWER OF SALE

Upon the occurrence of an event of default, Mortgagor shall be in default hereunder. If Mortgagor shall be in default hereunder, Mortgagee may, at its option and election and without notice to Mortgagor, do any one or more of the following:

Section 3.01. Acceleration of Indebtedness. Mortgagee may immediately declare all or any portion of the Indebtedness to be immediately due and payable, whereupon the same shall be and shall become due and payable forthwith without presentment, demand, protest or notice of any kind, unless expressly provided otherwise in the Loan Documents, all of which are expressly waived by Mortgagor.

Section 3.02. Entry and Possession. Mortgagee may enter upon the Premises or any part thereof and take possession thereof, excluding therefrom Mortgagor and all agents, employees and representatives of Mortgagor; employ a manager of the Premises or any part thereof; hold, store, use, operate, manage, control, maintain and lease the Premises or any part thereof; conduct business thereon; make all necessary and appropriate repairs, renewals and replacements; insure or keep the Premises insured; and carry out or enter into agreements of any kind with respect to the Premises.

Section 3.03. Collection of Rents. Mortgagee may collect and receive all Rents, and apply the same to the Indebtedness, after deducting therefrom all costs, charges and expenses of taking, holding, managing and operating the Premises, including the reasonable fees and expenses of Mortgagee's attorneys and agents.

Section 3.04. Payments. Mortgagee may pay any sum or sums deemed necessary or appropriate by Mortgagee to protect the Premises or any part thereof or Mortgagee's interest therein.

Section 3.05. Other Remedies. Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing now or hereafter evidencing or securing the Indebtedness or any part thereof, or heretofore, concurrently herewith or in the future executed by Mortgagor in favor of Mortgagee in connection with any transaction resulting in the Indebtedness or any part thereof, including, without limiting the generality of the foregoing, the Loan Agreement, the Note and the Rent Assignment.

Section 3.06. Appointment of Receiver. Mortgagee may make application to any court and be entitled to the appointment of a receiver to take charge of the Premises or any part thereof without alleging or proving, or having any consideration given to, the insolvency of Mortgagor, the value of the Premises as security for the Indebtedness or any other matter usually incident to the appointment of a receiver.

Section 3.07. UCC Remedies. With respect to the personal property and fixtures in which a security interest is herein granted, at Mortgagee's option, Mortgagee may exercise any or all of the rights accruing to a secured party under this instrument, the Uniform Commercial Code of the State of Alabama, and any other applicable law. Mortgagor shall, if Mortgagee requests, assemble all such personal property and make it available to Mortgagee at a place or places, to be designated by Mortgagee, which shall be reasonably convenient to Mortgagor and Mortgagee. Any notice required to be given by Mortgagee of a public or private sale, lease or other disposition of the personal property or any other intended action by Mortgagee may be personally delivered to Mortgagor or may be deposited in the United States mail with postage prepaid duly addressed to Mortgagor at the address shown in the paragraph herein captioned "Notices", or at any other address theretofore

designated by Mortgagor in writing to Mortgagee, at least five (5) business days prior to such proposed action, and shall constitute reasonable and fair notice to Mortgagor of any such action.

Section 3.08. Foreclosure. Mortgagee shall have the right to enter upon and take possession of the Premises and after, or without, taking such possession of the same, sell the Premises en masse or in parcels, as Mortgagee may deem best, at public outcry, in front of the courthouse door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon payment of the purchase money the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed, bill of sale or other appropriate instrument to the property so purchased in the name and on behalf of the Mortgagors, or either of them, and the certificate of the holder of the mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises, or the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages, and Mortgagee, or the then-holder of the indebtedness thereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor. The Mortgagee may conduct any number of sales from time to time, and the power of sale hereby granted, which power of sale is coupled with an interest, shall not be exhausted by any one or more such sales as to any part of the Premises remaining unsold, but shall continue unimpaired until all the Premises shall have been sold or all indebtedness secured hereby paid. Mortgagor hereby constitutes and appoints Mortgagee as Mortgagor's agent and attorney-in-fact to make such sale or sales, to execute and deliver such conveyance or conveyances, and to make such recitals, and Mortgagor hereby ratifies and confirms all of the acts and doings of Mortgagee as Mortgagor's agent and attorney-in-fact hereunder. Mortgagee's agency and power as attorney-in-fact hereunder are coupled with an interest, cannot be revoked by bankruptcy, insolvency, incompetency, death, dissolution or otherwise, and shall not be exhausted until the Indebtedness has been satisfied in full. The proceeds of each sale by Mortgagee hereunder shall be applied first to the costs and expenses of the sale and of all proceedings in connection therewith (including without limitation the actual fees and expenses of Mortgagee's attorneys in connection therewith) then to the payment of the balance of the Indebtedness, and the remainder, if any, shall be paid to Mortgagor or to the parties entitled thereto by law. If the proceeds of any sale are not sufficient to pay the Indebtedness in full, Mortgagee shall determine, at Mortgagee's option and in Mortgagee's discretion, the portions of the Indebtedness to which the proceeds (after deducting therefrom the costs and expenses of the sale and all proceedings in connection therewith) shall be applied and in what order the proceeds shall be so applied. Mortgagor covenants and agrees that, in the event of any sale pursuant to the agency and power herein granted, Mortgagor shall be and become a tenant holding over and shall deliver possession of the Premises, or the part thereof or interest therein sold, to the purchaser or purchasers at the sale or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over.

All of the foregoing rights and remedies are cumulative of and in addition to, and not restrictive of or in lieu of, any right or remedy provided for by statute, or now or hereafter existing at

law or in equity. Mortgagee may, at Mortgagee's election and at Mortgagee's sole discretion, exercise each and every such right and remedy concurrently or separately or in any combination.

ARTICLE IV ADDITIONAL PROVISIONS

The following terms and conditions shall constitute additional covenants and agreements by Mortgagor:

Section 4.01. Non-Residential Status of Premises. Mortgagor represents and warrants to Mortgagee that neither all of the Premises nor any part thereof is to be used as a dwelling place by Mortgagor at the time this Mortgage is entered into and, accordingly, the notice requirements of any applicable Alabama statute shall not be applicable to any exercise of the power of sale contained in this Mortgage.

Section 4.02. Commercial Transaction. The interest of Mortgagee under this Mortgage and the liability and obligation of Mortgagor for the payment of the Indebtedness arise from a "commercial transaction". Accordingly, and except as otherwise provided in this Agreement, Mortgagor waives any and all rights which Mortgagor may have to notice prior to seizure by Mortgagee of any interest in personal property of Mortgagor which constitutes part of the Premises, whether such seizure is by writ of possession or otherwise.

Section 4.03. Applicable Law. This agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Alabama.

Section 4.04. Forbearance. Mortgagee shall not be deemed to waive any of Mortgagee's rights or remedies under this Mortgage unless such waiver be express in writing and signed by or on behalf of Mortgagee. No delay, omission or forbearance by Mortgagee in exercising any of Mortgagee's rights or remedies shall operate as a waiver of such rights or remedies. A waiver in writing on one occasion shall not be construed as a waiver of any right or any remedy on any future occasion.

Section 4.05. Time. Time is and shall be the essence of this Mortgage and the covenants and agreements by Mortgagor.

Section 4.06. Captions. Any captions or headings preceding the text of separate sections, paragraphs and sub-paragraphs hereof are solely for reference purposes and shall not affect the meaning, construction, interpretation or effect of the text.

Section 4.07. Notices. All notices, requests, demands and other communications under this Mortgage or the Note or the Rent Assignment shall be in writing and shall be deemed to have been duly given: (i) to Mortgagor when personally delivered to any office of Mortgagor, (ii) to Mortgagee when personally delivered to an officer of Mortgagee authorized to receive such notices or

(iii) five (5) days after deposited in the United States Mail, certified mail with return receipt requested and with all postage prepaid, addressed as follows:

(a) To Mortgagee: NationsBank, N.A.
Franchise Banking Department
Post Office Box 4899
Atlanta, Georgia 30302-4899
Attention: Mr. John Huss

with a copy to: Catherine P. Powell, Esq.
Beskin Levine & Powell, LLP
1199 Oxford Road, N.E.
Atlanta, Georgia 30306

(b) To Mortgagor: Applebee's of North Alabama, Inc.
c/o Fred W. Gustin
822 Columbiana Road
Birmingham, Alabama 35209

with a copy to: Denise W. Killebrew, Esq.
Berkowitz, Lefkovits, Isom & Kushner
1600 SouthTrust Tower
Birmingham, Alabama 35203

Either party may, by written notice to the other, designate a different address for receiving notices hereunder; provided, however, that no change in Mortgagor's address for receiving notices hereunder shall be effective until Mortgagee has actually received notice thereof. The foregoing address of Mortgagor constitutes the mailing address of the debtor, and the foregoing address of Mortgagee constitutes an address of the secured party from which information concerning the security interest may be obtained.

Section 4.08. Severability. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

Section 4.09. Definitions. The word "Mortgagor" as used herein shall include the heirs, legal representatives, successors and assigns of Mortgagor as if so specified at length throughout this Mortgage, and all covenants, agreements, duties, obligations, liabilities and responsibilities of Mortgagor shall be binding upon and enforceable against the heirs, legal representatives, successors and assigns of Mortgagor. The word "Mortgagor" as used herein shall also include all parties executing this Mortgage as Mortgagor, and each of them, who shall be jointly and severally liable

under this Mortgage, should more than one Mortgagor execute this Mortgage; and shall include the masculine and feminine genders, regardless of the gender of Mortgagor or any of them, and shall include partnerships, corporations and other legal entities. The word "Mortgagee" as used herein shall include the transferees, successors, legal representatives and assigns of Mortgagee as if so specified at length throughout this Mortgage, and all rights of Mortgagee under this Mortgage shall inure to the benefit of the transferees, successors, legal representatives and assigns of Mortgagee.

Section 4.10. WAIVERS. MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE STATE OF ALABAMA OR THE CONSTITUTION OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED TO MORTGAGEE BY THIS MORTGAGE, AND WAIVES MORTGAGOR'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE UNDER POWER DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS MORTGAGE ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT PRIOR NOTICE OR JUDICIAL HEARING OR BOTH. MORTGAGOR FURTHER HEREBY EXPRESSLY WAIVES ALL HOMESTEAD EXEMPTION RIGHTS, IF ANY, WHICH MORTGAGOR OR MORTGAGOR'S FAMILY MAY HAVE PURSUANT TO THE CONSTITUTION OF THE UNITED STATES, THE STATE OF ALABAMA OR ANY OTHER STATE OF THE UNITED STATES, IN AND TO THE PREMISES AS AGAINST THE COLLECTION OF THE INDEBTEDNESS, OR ANY PART THEREOF. ALL WAIVERS BY MORTGAGOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY BY MORTGAGOR, AFTER MORTGAGOR HAS BEEN AFFORDED AN OPPORTUNITY TO BE INFORMED BY COUNSEL OF MORTGAGOR'S CHOICE AS TO POSSIBLE ALTERNATIVE RIGHTS. MORTGAGOR'S EXECUTION OF THIS MORTGAGE SHALL BE CONCLUSIVE EVIDENCE OF THE WAIVER AND THAT SUCH WAIVER HAS BEEN VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY MADE.



IN WITNESS WHEREOF, Mortgagor has executed this Mortgage under seal and Mortgagor has delivered this Mortgage to Mortgagee, all the day and year first written above.

MORTGAGOR:

APPLEBEE'S OF NORTH ALABAMA, INC., an
Alabama corporation

By: 


Fred W. Gustin, President

[CORPORATE SEAL]

STATE OF Alabama
COUNTY OF Jefferson

I, the undersigned Notary Public, in and for said County in said State, hereby certify that Fred W. Gustin whose name as President of Applebee's of North Alabama, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and Official seal this 12th day of December, 1997.


Notary Public
Commission Expiration: 10-27-2001

[NOTARY SEAL]

EXHIBIT "A"
LEGAL DESCRIPTIONS

SHELBY COUNTY PROPERTY:

Parcel I:

Part of the SE 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: From the southwest corner of the SW 1/4 of the SE 1/4 of said Section 31, run in a northerly direction along the west line of said 1/4-1/4 section for a distance of 872.72 feet; thence turn an angle to the right of 60 deg. 38 min. and run in a northeasterly direction for a distance of 747.35 feet; thence turn an angle to the right of 88 deg. 39 min. 40 sec. and run in a southeasterly direction for a distance of 99.7 feet to an existing iron pin being on the Southerly right of way line of Alabama Highway # 119 and being referred to a Point "A"; thence continue along last mentioned course for a distance of 360 feet, more or less, to the centerline of an existing creek being the point of beginning; thence turn an angle to the right of 180 deg. 00 min. and run in a northwesterly direction for a distance of 360 feet, more or less, to an existing iron pin being said Point "A"; thence turn an angle to the left of 88 deg. 36 min. 12 sec. and run in a southwesterly direction along the southerly right of way line of said Alabama Highway # 119 for a distance of 200.0 feet to an existing iron pin; thence turn an angle to the left of 91 deg. 23 min. 48 sec. and run in a southeasterly direction for a distance of 405 feet, more or less, to the centerline of an existing creek; thence turn an angle to the left and run in a northeasterly direction along the centerline of said creek for a distance of 205 feet, more or less, to the point of beginning; being situated in Shelby County, Alabama.

Parcel II:

The beneficial rights in and to the non-exclusive easement over the property described on Exhibit "B" (the "Kumar Property") as set out in the Mutual Reciprocal Easement Agreement for shared driveway dated May 29, 1997, recorded as Instrument No. 1997-17729 in the Probate Office; subject to the obligations and provisions in said instrument.

MADISON COUNTY PROPERTY:

Parcel I:

Lot C-2B according to the plat of a Resubdivision of Lot C-2 of a Resubdivision of Lot "C" of a Resubdivision of Lot 2 of a Resubdivision of Lot 2, Hughes Road Subdivision, as recorded in Plat Book 30 page 71 in the Probate Records of Madison County, Alabama.

Parcel II

A non-exclusive easement for ingress and egress and parking over, on, across and in a parking lot presently constructed on real estate described as follows:

Cahaba Title

Lot C-2A according to the plat of a Resubdivision of Lot C-2 of a Resubdivision of Lot "C" of a Resubdivision of Lot 2 of a Resubdivision of Lot 2, Hughes Road Subdivision, as recorded in Plat Book 30 page 71 in the Probate Records of Madison County, Alabama, as granted by the deed from PLAZA, Ltd. To Applebee's of North Alabama, Inc. dated August 16, 1994 and recorded in Deed Book 839 page 929 in the Probate Office.

SUBJECT TO: The reservations for use by the Grantor, its lessees, successors and assigns, and the obligations and limitations as set out in said Deed Book 839 page 929 in the Probate Office.

ETOWAH COUNTY PROPERTY:

Parcel One:

For a point of beginning to describe the lands herein, commence at a point where the southeast right of way line of Rainbow Drive, otherwise known as Federal Project No. 104(6) intersects the west line of the SE 1/4 of the NE 1/4 in Section 21, Township 12 South, Range 6 East, and from thence run North 52 deg. 40 min. 00 sec. East and along the southeast line of said right of way a distance of 1162.92 feet to a concrete monument marking the point of curve at Station 477+17.6 of said highway; thence leaving said right of way continue to run North 52 deg. 40 min. 00 sec. East in a direct line, crossing the west line of Section 22 a distance of 1029.4 feet to a point; thence run South 11 deg. 05 min. 00 sec. East a distance of 41.1 feet to a point in the Easterly or Northeasterly right of way line of the New Whorton's Bend, or Mint Springs Road, otherwise known as SACP Project 246-A; thence deflect 161 deg. 32 min. 00 sec. to the left and run a distance of 54.57 feet to a point; thence deflect 71 deg. 40 min. 00 sec. to the right and run a distance of 232.84 feet to a point; thence deflect 90 deg. 00 min. 00 sec. to the left and run a distance of 158.10 feet to a point; thence deflect 89 deg. 53 min. 00 sec. to the right and run a distance of 295.42 feet to a point on the 511 contour of the Alabama Power Company Reservoir; thence deflect 87 deg. 07 min. 42 sec. to the left and run along said contour a distance of 65.28 feet to a point; thence deflect 6 deg. 43 min. 32 sec. to the left and run along said present 511 foot contour line a distance of 134.87 feet to the point of beginning. From said point of beginning continue along said present 511 foot contour line a distance of 72.84 feet; thence deflect 4 deg. 20 min. 30 sec. to the right and run along said 511 foot contour line a distance of 99.45 feet; thence deflect 90 deg. 30 min. 00 sec. left and run a distance of 68.29 feet; thence deflect 23 deg. 43 min. 30 sec. right and run a distance of 142.47 feet to a point on the southeasterly right of way line of U. S. Highway No. 411 (Rainbow Drive); thence deflect 78 deg. 17 min. 00 sec. left and run along a curve to the right a chord distance of 89.61 feet to a State of Alabama Highway Department monument; thence deflect 87 deg. 00 min. 54 sec. left from said chord and run a distance of 10 feet to a State of Alabama Highway Department monument; thence deflect 90 deg. 49 sec. 25 sec. right and run along a curve to the right a chord distance of 78.07 feet; thence deflect 92 deg. 33 min. 20 sec. to the left from said chord and run a distance of 150.11 feet; thence deflect 36 deg. 39 min. 10 sec. to the left and run a distance of 175.84 feet to the point of beginning.

Said parcel of land embracing portions of the West 1/2 of the NW 1/4 of Section 22, Township 12 South, Range 6 East of the Huntsville Meridian in Etowah County, Alabama.

Parcel Two:

A non-exclusive easement for the purpose of ingress and egress to and from Parcel One hereinabove described, over the following property: For a point of beginning to describe the

lands herein, commence at a point where the southeast right of way line of Rainbow Drive, otherwise known as Federal Project No. 104(6) intersects the West line of the SE 1/4 of the NE 1/4 in Section 21, Township 12 South, Range 6 East, and from thence run North 52 deg. 40 min. 00 sec. East and along the southeast line of said right of way a distance of 1162.92 feet to a concrete monument marking the point of curve at Station 477+17.6 of said highway; thence leaving said right of way continue to run North 52 deg. 40 min. 00 sec. East in a direct line, crossing the West line of Section 22 a distance of 1029.4 feet to a point; thence run South 11 deg. 05 min. 00 sec. East a distance of 41.1 feet to a point in the Easterly or Northeasterly right of way line of the New Whorton's Bend, or Mint Springs Road, otherwise know as SACP Project 246-A; thence deflect 161 deg. 32 min. 00 sec. to the left and run a distance of 54.57 feet to a point; thence deflect 71 deg. 40 min. 00 sec. to the right and run a distance of 232.84 feet to a point; thence deflect 90 deg. 00 min. 00 sec. to the left and run a distance of 158.10 feet to a point; thence deflect 89 deg. 53 min. 00 sec. to the right and run a distance of 105.58 feet to a point; thence deflect 87 deg. 42 min. 15 sec. to the left and run a distance of 139.40 feet to the point of beginning. From said point of beginning deflect 55 deg. 40 min. 22 sec. to the left and run a distance of 207.15 feet to a point on the southeasterly right of way line of U.S. Highway No. 411 (Rainbow Drive); thence deflect to the right 94 deg. 11 min. 03 sec. and run along said right of way line a distance of 22.92 feet to a State of Alabama Highway Monument; thence deflect to the right 89 deg. 06 min. 22 sec. and run southeasterly along said right of way line a distance of 20.00 feet to a State of Alabama Highway Department right of way monument; thence deflect to the left 90 deg. 44 min. 05 sec. and run northeasterly along said right of way line a distance of 28.32 feet to a point; thence deflect to the right 87 deg. 26 min. 40 sec. and run a distance of 150.11 feet to a point; thence deflect to the right 55 deg. 40 min. 22 sec. and run a distance of 60.55 feet to the point of beginning, said parcel of land embracing portions of the West 1/2 of the NW 1/4 in Section 22, Township 12 South, Range 6 East of the Huntsville Meridian in Etowah County, Alabama.

Parcel Three:

For a point of beginning to describe the lands herein, commence at a point where the southeast right of way line of Rainbow Drive, otherwise known as Federal Project No. 104(6) intersects the West line of the SE 1/4 of the NE 1/4 in Section 21, Township 12 South, Range 6 East, and from thence run North 52 deg. 40 min. 00 sec. East and along the southeast line of said right of way a distance of 1162.92 feet to a concrete monument marking the point of curve at Station 477+17.6 of said highway; thence leaving said right of way continue to run North 52 deg. 40 min. 00 sec. East in a direct line, crossing the west line of Section 22 a distance of 1029.4 feet to a point; thence run South 11 deg. 05 min. 00 sec. East a distance of 41.1 feet to a point in the Easterly or Northeasterly right of way line of the New Whorton's Bend, or Mint Springs Road, otherwise know as SACP Project 246-A; thence deflect 161 deg. 32 min. 00 sec. to the left and run a distance of 54.57 feet to a point; thence deflect 71 deg. 40 min. 00 sec. to the right and run a distance of 232.84 feet to a point; thence deflect 90 deg. 00 min. 00 sec. to the left and run a distance of 158.10 feet to a point; thence deflect 89 deg. 53 min. 00 sec. to the right and run a distance of 295.42 feet to a point on the 511 contour of the H. Neely Henry Reservoir; thence deflect 87 deg. 07 min. 42 sec. left and run northerly along said 511 contour a distance of 65.28 feet; thence deflect 6 deg. 43 min. 32 sec. left and continue Northerly along said 511 contour a distance of 207.71 feet; thence deflect 4 deg. 20 min. 30 sec. right and continue Northerly along said 511 contour a distance of 99.45 feet to the point of beginning. From said point of beginning deflect 90 deg. 30 min. 00 sec. left and run a distance of 68.29 feet; thence deflect 23 deg. 43 min. 30 sec. right and run a distance of 142.47 feet to a point on the southeasterly right of way line of U. S. Highway # 411 (Rainbow Drive); thence deflect 101 deg. 43 min. 00 sec. right and run northeasterly along the southeasterly right of way line of said highway a distance of 20.45

feet; thence deflect 78 deg. 17 min. 00 sec. right and run a distance of 134.12 feet; thence deflect 23 deg. 43 min. 30 sec. left and run a distance of 64.27 feet to a point on the 511 contour of the H. Neely Henry Reservoir; thence deflect 90 deg. 30 min. 00 sec. right and run Southerly along said 511 contour a distance of 20.00 feet to the point of beginning, said parcel of land embracing portions of the West 1/2 of the NW 1/4 in Section 22, Township 12 South, Range 6 East of the Huntsville Meridian in Etowah County, Alabama.

EXHIBIT "B"
PERMITTED EXCEPTIONS

All Counties:

1. General and special taxes or assessments for 1998 and subsequent years not yet due and payable.

SHELBY COUNTY PROPERTY:

2. Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed Book 101 pages 502 and 504; Deed Book 121 page 258, Deed Book 145 page 378 in Probate Office.
3. Right(s)-of-Way(s) granted to Shelby County by instrument(s) recorded in Deed Book 135 page 2 in Probate Office. This covers Alabama Highway No. 119 as shown on survey of Laurence D. Weygand dated September 25, 1997.
4. Mutual Reciprocal Easement Agreement for Shared Driveway by and between Applebee's of North Alabama, Inc. and Bhavesh "Bob" V. Kumar dated May 23, 1997 and set out by Inst. No. 1997-17729 in the Probate Office, except as insured herein.
5. Rights of others in and to the use of asphalt roadway and bridge on the Easterly side of subject property as shown on the survey of Laurence D. Weygand dated September 25, 1997.
6. Riparian Rights, if any, in and to the use of Cahaba Valley Creek and rights of others to use said Creek.

MADISON COUNTY PROPERTY:

7. Restrictions of record in Book 755 page 191 and amended in Book 821 page 701 in the Office of the Judge of Probate of Madison County, Alabama.
8. Easement to the City of Huntsville as set out in Deed Book 868 page 147 in the Probate Records of Madison County, Alabama.
9. Reservations for use by the Grantor, its lessees, successors and assigns, and the obligations and limitations as set out in Deed Book 839 page 929 in Probate Office.
10. Memorandum of Lease (J. C. Penney Lease) recorded in Book 821 page 709 and amended by Book 821 page 715 in Probate Office, and the Lease (unrecorded) referenced in said Memorandum.
11. Encroachment of brick building on East on 60 feet minimum building setback line as shown by survey of McElroy Land Surveying Co. dated October 8, 1997.

ETOWAH COUNTY PROPERTY:

12. Right(s)-of-Way(s) granted to Southern Bell Telephone and Telegraph by instrument(s) recorded in Book 465 page 214 in Probate Office.
13. Right(s)-of-Way(s) granted to Alabama Power Company by instrument(s) recorded in Deed Book 759 page 443 and Deed Book 1663 page 269 in Probate Office.
14. Easement(s) to Gadsden Water Works and Sewer Board as shown by instrument recorded in Deed Book 1834 page 211 in Probate Office.
15. Easement(s) to Etowah Broadcasters, Inc. as shown by instrument recorded in Deed Book 1403 page 693 in Probate Office.
16. Right(s)-of-Way(s) granted to South Central Bell by instrument(s) recorded in Deed Book 1663 page 305 in Probate Office.

Cahaba Title

17. Rights of Alabama Gas Corporation by instrument recorded in Misc. Book 2 page 269 in Probate Office.
18. Rights of the Water Works and Sewer Board of the City of Gadsden by instrument(s) recorded in Deed Book 793 pages 81 and 546 and Misc. Book 39 page 290 in Probate Office.
19. The easements and reservations set out in the deed from E. Barry Loveman and James W. Keeling to Applebee's of North Alabama, Inc. dated January 12, 1993 and recorded in Record Book 1821 page 301 in the Probate Office.
20. The easements and reservations set out in the deed from E. Barry Loveman to Applebee's of North Alabama, Inc. dated January 12, 1993, and recorded in Record Book 1821 page 319 in the Probate Office.
21. Rights of others in and to the use of access easement as set out in Schedule C herein, and in Book 1821 page 301 and page 319 in Probate Office.
22. Sanitary Sewer, power lines and water lines as shown on survey of Jones, Blair, Waldrup & Tucker, Inc. dated September 30, 1997.

EXHIBIT "B"
PERMITTED EXCEPTIONS

All Counties:

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16. Right(s)-of-Way(s) granted to South Central Bell by instrument(s) recorded in Deed Book 1663 page 305 in Probate Office.

Cahaba Title

17. Rights of Alabama Gas Corporation by instrument recorded in Misc. Book 2 page 269 in Probate Office.
18. Rights of the Water Works and Sewer Board of the City of Gadsden by instrument(s) recorded in Deed Book 793 pages 81 and 546 and Misc. Book 39 page 290 in Probate Office.
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Inst # 1997-41381

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12/22/1997-41381
08:27 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
027 NCD 6148.50