

The document is 1 of 5 counterparts to be recorded
in the following counties:

Jackson County, AL
Jefferson County, AL
Madison County, AL
Shelby County, AL
Morgan County, AL

Prepared by and return to:
Sherry D. Olson, P.C.
2515 Kings Way
Cumming, Georgia 30040
Phone: 770-205-8858 ext 102

The three (3) loans secured by this Mortgage and Security Agreement are being allocated to the
properties as follows:

- (a) **Madison County, Alabama:** \$1,600,000.00 to purchase land and construct a new KFC
in Huntsville, Alabama. A separate mortgage will be recorded once the property has
been acquired.
- (b) **Jefferson County, Alabama:** \$1,700,000.00 which will be used for improvements in
Jefferson County, Alabama.
- (c) **Morgan County, Alabama:** \$1,500,000 to purchase existing KFC Restaurant and
contiguous parcel of land in Morgan County, Alabama.

Additional maximum principal indebtedness for Alabama recording tax purposes is: \$4,800,000.00.

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE, made this 8th day of August, 2006, between **AJS ASSOCIATES**, a Kentucky general partnership ("Mortgagor"), whose mailing address is 7604 State Highway 60, Sellersburg, IN 47172 and **BANK OF AMERICA, N.A.** (formerly known as NationsBank, N.A., NationsBank of Georgia, N.A. and The Citizens and Southern National Bank) (the "Beneficiary" or "Lender") ("Mortgagee"), whose mailing address is Bank of America, N.A., Restaurant Finance Group, 13th Floor, Bank of America Plaza, 600 Peachtree Street, N. E., Atlanta, GA 30308-2213.

W I T N E S S E T H :

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sums of:

- (a) \$1,600,000.00 as evidenced by that certain Promissory Note dated February 15, 2006;
- (b) \$1,700,000.00 as evidenced by that certain Promissory Note dated February 15, 2006;
- (c) \$1,500,000.00 as evidenced by that certain Promissory Note dated of even date herewith

(collectively, the "Note"), which by reference is made a part hereof to the same extent as though set out in full herein.

WHEREAS, Mortgagor and Mortgagee have entered into that certain Amended and Restated Loan Agreement, which has previously been amended by that certain First Addendum to Amended and Restated Loan Agreement dated December 17, 1993, Second Addendum to Amended and Restated Loan Agreement dated December 9, 1994, Third Addendum to Amended and Restated Loan Agreement dated April 5, 1995, Fourth Addendum to Amended and Restated Loan Agreement dated November 29, 1997, Fifth Addendum to Amended and Restated Loan Agreement dated December 4, 1998, Sixth Addendum to Amended and Restated Loan Agreement dated May 25, 1999, and Seventh Addendum to Amended and Restated Loan Agreement dated January 17, 2001, Eighth Addendum to Amended and Restated Loan Agreement dated April 30, 2001, Ninth Addendum to Amended and Restated Loan Agreement dated November 26, 2001, Tenth Addendum dated May 30, 2001, Eleventh Addendum to Amended and Restated Loan Agreement dated July 30, 2002, Twelfth Addendum to Amended and Restated Loan Agreement dated August 29, 2003, Thirteenth Addendum to Amended and Restated Loan Agreement dated November 30, 2004, Fourteenth Addendum to Amended and Restated Loan Agreement dated December 29, 2005, Fifteenth Addendum to Amended and Restated Loan Agreement dated February 15, 2006 and by the Addendum Sixteenth Addendum to Amended and Restated Loan Agreement dated of even date herewith (as amended, the "Loan Agreement");

NOW, THEREFORE, to secure the performance and observance by Mortgagor of all covenants and conditions in the Note and in this Mortgage and in all other instruments securing the Note, and to secure all other obligations owing by Mortgagor to Mortgagee, including, but not limited to all loans described in the Existing Collateral Documents listed on Exhibit "A" attached hereto and made a part hereof (the "Secured Indebtedness"); *provided, however, the Maximum Secured Indebtedness shall at no time exceed \$4,800,000.00*, and in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) paid by Mortgagee to Mortgagor this date, and for other valuable considerations, the receipt of which is acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its successors and assigns in fee simple forever:

THE MORTGAGED PROPERTY

(A) **The Land.** All of the Mortgagor's fee simple right, title and interest in the improved real property (the "Property") described on **Exhibit "A"** attached hereto and made a part hereof), subject to any matters set forth in any policy of title insurance issued to Mortgagee and insuring Mortgagee's interest in the Property which are acceptable to Mortgagee as of the date hereof (the "Permitted Encumbrances");

(B) **The Improvements.** **TOGETHER WITH** all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf (the "Improvements");

(C) **Easements or Other Interests.** 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, rights, titles, interests, 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 Mortgagor, and the reversion and revisions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part hereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof.

(D) **Assignment of Rents.** TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof to be applied against the indebtedness and other sums secured hereby, provided, however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of a default hereunder, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof whether or not Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such default hereunder, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permissions shall not be reinstated upon a cure of the default without Mortgagee's specific consent. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the Indebtedness and other sums secured hereby shall invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(E) **Assignment of Leases.** TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagee to collect the rentals under any such lease. The foregoing assignment of any lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease, and Mortgagor agrees to fully perform all obligations of the lessor under all such leases. Upon Mortgagee's request, Mortgagor agrees to send to Mortgagee a list of all leases covered by the foregoing assignment and as any such lease shall expire or terminate or as any new lease shall be made, Mortgagor shall so notify Mortgagee in order that all times Mortgagee shall have a current list of all leases affecting the property described in paragraphs (A), (B) and (C) hereof. Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the mortgaged property, together with all security therefor and all monies payable

thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. Mortgagor shall also execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such lease.

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property, subject, however, to the conditional permission given to Mortgagor to collect, receive, take, use and enjoy the same as provided hereinabove; provided, further, that the existence or exercise of such right to Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(F) **Fixtures and Personal Property.** TOGETHER WITH a security interest in (i) all property and fixtures affixed to or located on the property described in paragraphs (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property; (ii) all articles of personal property and all materials delivered to the property described in paragraphs (A), (B) and (C) hereof for use in any construction being conducted thereon, and owned by Mortgagor; (iii) all contract rights, general intangibles, actions and rights in action, including all rights to Insurance proceeds subject to the terms of this Mortgage; and (iv) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Mortgagor (Debtor) hereby grants to Mortgagee (Creditor) a security interest in all fixtures, rights in action and personal property described herein. This Mortgage is a self-operative security agreement with respect to such property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may request from time to time in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. Mortgagee shall have all the rights and remedies in addition to those specified herein of a secured party under the Uniform Commercial Code.

Everything referred to in paragraphs (A), (B), (C), (D), (E) and (F) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or intended to be so is herein referred to as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use and benefit in fee simple forever, subject, however, to the terms and conditions herein:

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Note, shall promptly pay when and as due all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever, due or to become due, and now existing or hereafter incurred, contracted or arising), all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other Instruments securing the Note, to be kept, performed or observed by Mortgagor, then this Mortgage, and all other properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

1.01 Performance of Note, Mortgage, etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to Mortgagee the principal with interest hereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by Mortgagor.

1.02 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple or leasehold (as designated on the cover page of this Mortgage) in the Land and real property hereby mortgaged, has good and absolute title to all existing personal property hereby mortgaged or made subject to the security interest hereby created and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Land and real property hereby mortgaged and every part hereof; that the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for property taxes not yet due and payable and those permitted encumbrances, if any, described in the title insurance policy to be issued in connection with this Mortgage. Mortgagor shall and will make such further assurances to perfect Mortgagee's fee simple title to the Land and the real property hereby mortgaged, and the title to the personal property hereby mortgaged or made subject to the security interest hereby created as may reasonably be required. Mortgagor fully warrants the title to the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created and every part thereof, and will forever defend the same against the claims of all persons whomsoever.

1.03 Zoning. Mortgagor covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Land permit the use and occupancy of the Improvements.

1.04 Taxes and Liens.

(a) Mortgagor shall pay promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of, all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever, excluding only the income taxes of the Mortgagee and taxes relating to the authority of Mortgagee to transact business as a national bank, now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part hereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attaches or any penalty is incurred.

(b) Mortgagor shall not permit or suffer any mechanics', laborer's, materialmen's, statutory or other lien which might or could be prior or equal to the lien of this Mortgage to be created or to remain a lien upon any of the Mortgaged Property. If any such lien

arises, Mortgagor shall cause such lien to be removed, bonded or discharged, by payment or otherwise, within thirty (30) days of Mortgagor's receipt of notice of the filing of such lien.

(c) If any state, federal, municipal or other governmental law, order, rule or regulation, passed subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes so as to adversely affect Mortgagee, the entire balance of the sums secured by the Mortgage and all interest accrued thereon shall with thirty (30) days notice become due and payable at the option of Mortgagee if Mortgagor has not reimbursed Mortgagee for said taxes within ten (10) days after notice from Mortgagee that reimbursement is due.

(d) Mortgagee may, at its option and provided Mortgagor has defaulted under a term of this Mortgage, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making any required payments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are required to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such taxes, assessments and similar charges. in the event of a default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph 1.04(d) of Article One remaining to Mortgagor's credit.

(e) Mortgagor shall not claim, demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other sums secured hereby, for so much of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part hereof as are applicable to the Secured Indebtedness hereby or to Mortgagee's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note, this Mortgage or any other Instrument securing the Note.

1.05 Insurance.

(a) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies in such amounts as Mortgagee may require, insuring the Mortgaged Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Mortgagee may reasonably require, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. The form of such policies and the companies issuing them shall be reasonably acceptable to Mortgagee. All such policies and renewals thereof shall be held by Mortgagee and shall contain a non-contributory mortgagee endorsement making losses payable to mortgagee. The coverage under such policies shall be limited to the improvements now or hereafter located on the Mortgaged Property. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all premiums on such insurance policies and renewals. Delivery of the

insurance policies and renewals thereof shall constitute an assignment to Mortgagee, as further security, of all unearned premiums. In the event of loss, Mortgagor will give immediate written notice to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee, if same is permitted by the insurer.

(b) Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies on the Mortgaged Property, and Mortgagee is hereby authorized and empowered at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Mortgagee alone, and not to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any reasonable expenses incurred by Mortgagee in the collection or handling of such funds, Mortgagee may apply the net proceeds, at its option, either toward restoring the Improvements or as a credit on any portion of the indebtedness and other sums secured hereby, whether then matured or to mature in the future, or at the option of Mortgagee such sums either wholly or in part may be paid over to Mortgagor to be used to repair such improvements or to build new improvements in their place or for any other purpose or object satisfactory to Mortgagee, without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, liability insurance policies relating to the Mortgaged Property, in such amounts, with such companies and in such form as may be required by Mortgagee. Mortgagee may require such policies to contain an endorsement, in form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

(d) Mortgagee may, at its option and provided Mortgagor has defaulted under a term of this Mortgage, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making payments of regular installments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for all insurance. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such premiums when due. In the event of a default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit and any return premium received from cancellation of any insurance policy by Mortgagee upon foreclosure of this Mortgage.

1.06 Condemnation. If all or a material part (which determination shall be made by Mortgagee in its sole and reasonable discretion) of the Mortgaged Property shall be damaged or taken through condemnation (which term when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the state where the Land

is located or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), on a permanent basis (agreed to be for a period of one hundred twenty (120) days or longer), the entire indebtedness and other sums secured hereby shall, at the option of Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Mortgagor to Mortgagee, who, after deducting therefrom all its expenses including reasonable attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as Mortgagee shall determine, to the reduction of the sums secured hereby and to any prepayment charge provided in the Note, this Mortgage or other instrument securing the Note. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Mortgagee may require.

1.07 Care of Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair. Mortgagor shall not remove or demolish, or alter or change the use of, any building, structure or other improvement presently or hereafter on the Land which will decrease the value of the Mortgaged Property without the prior written consent of Mortgagee. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise provided in this Mortgage, no fixture, personal property or other part of the Mortgaged Property shall be removed, demolished or altered, without the prior written consent of Mortgagee. Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable or obsolete only if they are replaced immediately with similar items of at least equal value which shall, without further action, become subject to the lien of this Mortgage.

(c) Mortgagee may enter upon and inspect the Mortgaged Property at any reasonable time during the life of this Mortgage.

(d) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be lost, damaged or destroyed by fire or any other cause, Mortgagor will give immediate written notice thereof to Mortgagee and shall promptly restore the Mortgaged Property to the equivalent of its original condition regardless of whether or not there shall be any insurance proceeds therefor; provided, however, if Mortgagee requires Mortgagor to rebuild the Improvements pursuant to the terms of this Mortgage, Mortgagee shall, after deducting its reasonable expenses therefrom, make the proceeds available to Mortgagor for said rebuilding. If a part of the Mortgage Property shall be lost,

physically damaged or destroyed through condemnation, Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to Mortgagee provided Mortgagee makes available to Mortgagor that portion of the award made for damage to the Improvements less the reasonable expenses incurred by Mortgagee in connection with said condemnation.

(f) If any work required to be performed under this paragraph involves an estimated expenditure of more than five percent (5%) of the amount of the Note, no such work shall be undertaken without first notifying Mortgagee of such intended improvements, and, if the estimated expenditure exceeds ten percent (10%) of the amount of the Note, no such work shall be undertaken until plans and specification therefor, prepared by an architect or engineer satisfactory to Mortgagee, have been submitted to and approved in writing by Mortgagee.

(g) Mortgagor represents and warrants to the best of its knowledge to Mortgagee that: (i) no petroleum, chemical liquids or solids, liquid or gaseous products, or hazardous or toxic substances, within the definition of any applicable federal, state or local statute or regulation other than substances normally and customarily used in the day-to-day operation of the Improvements as a restaurant, are now stored or otherwise located on the Land or on any adjacent and contiguous real property in which Mortgagor or any affiliate has an interest; (ii) no release of any such hazardous or toxic substance has occurred on the Land or on any adjacent and contiguous real property in which Mortgagor or any affiliate has an interest; (iii) no part of the Land or any adjacent and contiguous real property in which Mortgagor or any affiliate has an interest, including the groundwater located thereon, is presently contaminated by any hazardous or toxic substance; and (iv) Mortgagor has not received any notice from any governmental agency or authority or from any tenant under a lease of all or of any portion of the Land with respect to any release of hazardous or toxic materials onto the Land or adjacent and contiguous parcels of real property in which Mortgagor or any affiliate has an interest.

Mortgagor further covenants and agrees with Mortgagee that: (i) all hazardous or toxic substances, within the definition of any applicable statute or regulation, which may be used by any person for any purpose upon the Land shall be used or stored thereon only in a safe and approved manner, in accordance with all industrial standards and all laws, regulations and requirements for such storage promulgated by any federal, state or local governmental agency or authority; (ii) the Land will not be used for the principal purpose of storing such substances; and (iii) no such storage or use will otherwise be allowed on the Land which will cause, or increase the likelihood of causing, the release of such hazardous or toxic substances onto the Land or into the environment. Mortgagor hereby agrees to indemnify, defend and save and hold Mortgagee harmless of and from all loss, cost (including reasonable attorneys' fees, whether suit be brought or not and including an appeal, if any), liability and damage whatsoever incurred by Mortgagee arising out of or by reason of any violation of any applicable federal, state or local statute or regulation for the protection of the environment which occurs upon the Land, or by reason of the imposition of any governmental lien for the recovery of environmental clean-up costs expended by reason of such violation; provided that, to the extent that Mortgagee is strictly liable under any such statute or regulation, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee. The provisions of this Article 1.07(g) shall continue in effect after the satisfaction of the Note and any other Secured Indebtedness hereby (collectively, the "Indebtedness") whether by voluntary repayment of the Indebtedness or through the enforcement of the Note or security documents or otherwise, but shall not remain a lien on the Mortgaged Property after the satisfaction of this Mortgagee.

1.08 Transfer of Property. Mortgagor shall not sell, convey, transfer, lease or further encumber any interest in or any part of the Mortgaged Property, without the prior written consent of Mortgagee, which consent may be withheld for any or no reason, and any such sale, conveyance, transfer, lease or encumbrance made without Mortgagee's prior written consent shall be a default under this Mortgage. For purposes of this Mortgage, a transfer, sale, assignment, hypothecation or pledge of an interest in Mortgagor without the prior written consent of Mortgagee which would or could divest any person or entity now in control of Mortgagor, shall constitute a transfer prohibited by this Articles 1.08. If any person should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of Mortgagee, further assign the rents from the Mortgaged Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof, and any such assignment, agreement or act without the express written consent of Mortgagee shall be a default under this Mortgage.

1.09 Further Assurances. At any time and from time to time, upon Mortgagee's request Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or refiled at such time and in such offices and places as shall be deemed desirable by Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may reasonably consider necessary or desirable in order to effectuate, complete, enlarge or perfect, or to continue and preserve the obligations of Mortgagor under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.10 After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Mortgaged Property or any part hereof.

1.11 Leases Affecting Mortgaged Property. Mortgagor shall comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Mortgagor, if required by Mortgagee, shall furnish promptly to Mortgagee executed copies of all such leases now existing or hereafter created, all of which shall be in form and substance approved in advance by Mortgagee. Mortgagor shall not, without the express written consent of Mortgagee, which consent shall not be unreasonably withheld, modify, surrender, terminate or extend any such lease now existing or hereafter created, or permit or suffer an assignment or sub-lease. Mortgagor shall not accept payment of rent more than one (1) month in advance without the prior written consent of Mortgagee.

1.12 Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorneys' fees and disbursements and costs incurred or paid by Mortgagee in any threatened, pending or completed action, proceeding or dispute in which Mortgagee is a party or appears as a party plaintiff or party defendant and which affects or might affect the Note, this Mortgage or any other instrument securing the Note, or the Mortgaged Property

or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but limited to the foreclosure of this mortgage, condemnation involving all or part of the Mortgaged Property or any action to protect the security hereof. All costs, charges and expenses so incurred or paid by Mortgagee shall become due and payable within ten (10) days after notice from Mortgagee, whether or not there be attempt to collect or suit pending. The amounts so incurred or paid by Mortgagee, together with interest thereon at the rate specified in the Note from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

1.13 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance of observance of any other covenant, condition of term in this Mortgage or in any other Instrument securing the Note, Mortgagee may at its option perform or observe the same after any applicable grace or cure period has expired and without further notice, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately, upon notice from Mortgagee. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing contained herein shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or terms, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.14 Books and Records. Mortgagor shall keep and maintain at all times complete, true and accurate books of accounts and records reflecting the results of the operation of the Mortgaged property. Mortgagor shall provide the financial statements required by the Construction Loan Agreement entered into with Mortgagee of even date herewith.

1.15 Estoppel Affidavits. Mortgagor shall, within twenty (20) days after written request from Mortgagee, furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums. Mortgagee shall, within twenty (20) days after written request from Mortgagor, furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby.

1.16 Cross-Collateralization/Cross-Default.

(a) Cross Default. Mortgagor hereby agrees that an event of default under the Notes, or any of the Existing Collateral Documents shall be an event of default under each and every other one of the Notes and Existing Collateral Documents and any future mortgages or deeds of trust executed by Mortgagor in favor of Mortgagee. Mortgagor hereby also agrees that it is an event of default hereunder should Mortgagor fail to pay as and when due and payable any amounts owed by Mortgagor to Mortgagee under any of the Notes, any other note, contract, obligation or account and the failure to observe and perform any term, covenant, condition or agreement in any other document between Mortgagor and Mortgagee or from Mortgagor in favor of Mortgagee, and such failure shall not have been fully corrected within thirty (30) days after Mortgagee has given written notice thereof to the Mortgagor.

(b) Cross-Collateralization. Mortgagor acknowledges that this Mortgage and Existing Collateral Documents shall also secure the Notes, any and all other obligations or indebtedness of Mortgagor due to Mortgagee with interest thereon as specified, or of any one of the Mortgagors, whether direct or contingent, primary or secondary, sole, joint or several, now existing or hereafter arising at any time before cancellation of the Mortgages.

ARTICLE TWO

DEFAULTS

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

(a) Failure by Mortgagor to pay on the date same is due and payable, any installments of principal or interest due under the Note, or any deposits for taxes and assessments or insurance premiums due hereunder, or any other sums to be paid by Mortgagor hereunder or under any other instrument securing the Note.

(b) If Mortgagor breaches any of the covenants, agreements and conditions of Article 1.08 hereof.

(c) Failure by Mortgagor to keep, perform and observe any other covenant, condition or agreement in the Note, this Mortgage, any other instrument securing the Note or any other instrument collateral to the Note or executed in connection with the sums secured hereby for a period of ten (10) days after Mortgagee gives a written notice specifying the breach or such longer period if said breach cannot be cured within said ten (10) day period provided Mortgagor promptly commences the cure and diligently and continuously prosecutes the cure to completion.

(d) If either (A) Mortgagor, or any guarantor or endorser of the Note: (i) files a voluntary petition in bankruptcy, or (ii) is adjudicated as a bankrupt or insolvent, or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or (v) makes any general assignment for the benefit of creditors, or (vi) makes an admission in writing of its inability to pay its debts generally as they become due, or (vii) dissolves, reorganizes, dies or is adjudicated incompetent, as the case may be; or (B) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Mortgagor or any guarantor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or (C) any trustee, receiver or liquidator of Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

(e) The entry by any court of last resort of a decision that an undertaking by Mortgagor as herein provided to pay taxes, assessments, levies, liabilities, obligations and encumbrances is legally inoperative or cannot be enforced, or in the event of the passage of any law changing in any way or respect the laws now in force for the taxation of mortgages or debts secured thereby for any purpose, or the manner of collection of any such taxes, so as to affect adversely this Mortgage or the indebtedness or other sums secured hereby.

(f) Default by Mortgagor under any agreement or obligation of Mortgagor to Mortgagee (including, but not limited to, any other mortgage, security agreement or encumbrance upon any portion of the Mortgaged Property, or any other documents or instruments securing or evidencing any indebtedness of Mortgagor to Mortgagee), if such default is not cured within any grace period permitted therein and if such default permits the holder to cause such obligation to become due prior to its stated maturity. Mortgagor shall notify Mortgagee in writing of the occurrence of such default, specifying the nature of such default.

(g) Material breach of any warranty or material untruth of any representation of Mortgagor contained in the Note, this Mortgage or any other instrument securing the Note.

(h) The filing of record of any federal tax lien or claim of lien for labor or material, or both, which is not removed of record by an applicable bonding provision or otherwise within thirty (30) days from the date of recording.

(i) The occurrence of any event under any instrument, deed, mortgage, or agreement given or made by Mortgagor to or with any third party which would authorize the acceleration of any debt to any such third party, the acceleration of which would materially affect Mortgagor's ability to pay when due any amounts owed to Mortgagee.

(j) Any action by Mortgagor which would, in the reasonable and good faith opinion of Mortgagee, significantly endanger the security of the Note or any other indebtedness of Mortgagor to Mortgagee.

(k) The occurrence of a default which remains uncured beyond any grace period under those certain loans described in the Existing Collateral Documents or any instrument securing said obligation or executed in connection therewith which remains uncured beyond any applicable grace or cure period.

2.02 Acceleration of Maturity. If any Event of Default or Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

2.03 Mortgagee's Power of Enforcement. If an Event of Default or Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to

pursue any other remedy available to it all without relief from valuation and appraisal laws. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Mortgagee may determine.

2.03.1 **Foreclosure Sale.** Upon the occurrence of an Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving twenty-one days notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Debt secured hereby shall have been paid in full.

2.04 **Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.**
Mortgagor shall have the following rights to the extent permitted by law or equity:

(a) If an Event of Default or Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor relating to the Mortgaged Property.

(b) Mortgagor shall pay to Mortgagee, upon demand, all costs and expenses actually incurred in obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such incurred costs, expenses and reasonable compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

- (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

- (ii) insure or keep the Mortgaged Property insured;
- (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same;
- (iv) enter into agreements with others to exercise the powers herein granted Mortgagee;

all as Mortgagee from time to time may determine; and Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (1) the payment of accrued interest on the Note, (2) the deposits for taxes and assessments and insurance premiums due, (3) to the payment of overdue installments of principal, and (4) to the cost of insurance, taxes, assessments and other proper charges upon the Mortgaged Property or any part hereof; and (5) the reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Mortgagee.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this Mortgage, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default or Default shall occur and be continuing.

2.05 Leases. Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.06 Purchaser by Mortgagee. Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

2.07 Application of Indebtedness Toward Purchase Price. Upon any such foreclosure sale, Mortgagee may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Mortgagee under the Note, this Mortgage or any other Instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

2.08 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim

through or under it, hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety.

2.09 Receiver. If an Event of Default or Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the state where the Land is located and such other powers as the court making such appointment shall confer. The reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by laws, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee, whether received pursuant to this Paragraph or Paragraph 2.03. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

2.10 Suits to Protect the Mortgaged Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

2.11 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other document as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Note, this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

2.12 Mortgagor to Pay the Note on Any Default in Payment; Application of Monies by Mortgagee.

(a) If Default shall be made in the payment of any amount due under the Note, this Mortgage or any other instrument securing the Note beyond any applicable cure or grace period, then, upon Mortgagee's demand, Mortgagor will pay to mortgagee the whole amount due and payable under the Note and all other sums secured hereby; and if Mortgagor shall fail to pay the same forthwith upon such demand, Mortgagee shall be entitled to sue for and to recover judgment for

the whole amount so due and unpaid together with costs and expenses, including the reasonable compensation, expense and disbursements of Mortgagee's agents, attorneys and other representatives incurred in connection with such suit and any appeal in connection therewith, Mortgagee shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Mortgagee and no attachment or levy or any execution upon any of the Mortgaged Property or any other property shall in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof any lien, rights, powers or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by Mortgagee under this Paragraph 2.12 shall be applied as Mortgagee determines, in its sole discretion.

2.13 Delay or Omission No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

2.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default or Default hereunder shall extend to or affect any subsequent or any other Event of Default or Default then existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other instrument securing the Note; (e) consents to the filing of any map, plat or replat of the Land; (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor. No such action or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured Indebtedness hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original

NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HEREOF, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER MORTGAGOR NOR MORTGAGEE HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

ARTICLE FOUR

LENDING PROVISIONS

4.01 Breach of Loan Agreement and Other Documents. Notwithstanding anything to the contrary contained in this Mortgage or in the Note, or in any other instrument securing the loan evidenced by such Note, Mortgagee may at its option declare the entire Secured Indebtedness hereby, and all interest thereon and all advances made by Mortgagee hereunder, immediately due and payable and/or exercise all additional rights accruing to it under this Mortgage upon an Event of Default or in the event of breach by Mortgagor or any covenant contained in this Mortgage, the Note, the Loan and Security Agreement between Mortgagor and Mortgagee (as amended from time to time hereafter referred to as the "Loan Agreements") which Loan Agreements are, by this reference, herein incorporated to the same extent and effect as though it were set forth herein in full, if such breach or Event of Default is not cured within any applicable grace or cure period. The proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in the Loan Agreements. All advances and indebtedness arising and accruing under the Loan Agreements from time to time shall be secured hereby. A breach of a covenant in any of the documents referred to above shall be deemed an Event of Default hereunder and upon the occurrence of an Event of Default Mortgagee may, at its option, cease making advances to Mortgagor and take such other action as it may deem necessary to protect its security. In the event of a conflict between the terms hereof, the terms of the Note and the terms of the Loan Agreements, the terms of the document which shall enlarge the interest of the Mortgagee in the Mortgaged Property, grant to Mortgagee greater financial security in the Mortgaged Property and/or assure payment of the Note and all sums secured hereby in full, shall control.

4.02 Secured Indebtedness. Mortgagor hereby acknowledges and agrees that the Mortgage secures the following indebtedness of Mortgagor to Mortgagee, including but not limited to the Note and the other indebtedness described herein, all other indebtedness, liabilities, and obligations now owing or which may hereafter be owing by Mortgagor to Mortgagee, however incurred, including, but without limiting the generality of the foregoing: (a) any indebtedness, liability or obligation of the Mortgagor to Mortgagee under any loan or other financial arrangement made by Mortgagee to Mortgagor on or prior to the date hereof and any and all extensions, amendments, modifications, consolidations and renewal thereof in whole or in part, including the loans described in the Existing Collateral Documents, (b) any indebtedness, liability or obligation of Mortgagor to Mortgagee under any later or future advances made by Mortgagee to Mortgagor, and any and all extensions, amendments, modifications, consolidations and renewals thereof in whole or in part, and, (c) any and all future or additional indebtedness, liabilities or obligations of Mortgagor to Mortgagee whatsoever, however arising, whether existing as of the date hereof or hereafter arising, whether arising as a loan, lease, line of credit, letter of credit or other type of financing, and whether direct, indirect, absolute or contingent, as maker, endorser, guarantor, surety or otherwise, whether individually or jointly with any other third party or parties, and whether evidenced by, arising out of or relating to, a promissory note, bill of exchange, check, draft, bond, letter of credit, guaranty

parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.15 Discontinuance of Proceedings; Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

2.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other Instrument securing the Note is exclusive of any other 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 under the note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

ARTICLE THREE

MISCELLANEOUS

3.01 Heirs, Successors, and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not. Notwithstanding anything to the contrary set forth herein, this Article 3.01 shall not operate to negate the terms of Article 1.08 of this Mortgage.

3.02 Addressees for Notices, etc.

(a) Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be in writing and shall be deemed given or furnished when addressed to the party intended to receive the same, at the address of such party on the first page hereof, and personally delivered or sent certified mail, return receipt requested, postage paid, and received by the intended recipient, receipt is refused, or the letter is returned to the sender marked as undeliverable, or the like.

(b) Either party may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party in accordance with this Article 3.02, but no such notice of change shall be effective unless and until received by such other party.

3.03 Headings. The headings of the articles, sections, paragraph and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

3.04 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other Instrument

securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms of provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

3.05 Changes, etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

3.06 Governing Law. The performance required by this Instrument shall, insofar as is possible, be rendered to Mortgagee at its main office at Bank of America, N.A., Commercial Loan Service Center, P.O. Box 45247, Jacksonville, Florida 32232. Mortgagor and Mortgagee intend that the validity and construction of the obligations secured by this instrument be governed by the laws of the State of Alabama. Should any obligation or remedy under this instrument be invalid or unenforceable under the laws provided herein to govern, then the laws of another state whose laws can validate and apply to this instrument shall apply.

3.07 Default Rate. The Default Rate shall be at the Default Rate set forth in the Note. Mortgagee agrees to refund and Mortgagor agrees to accept the refund of any and all sums received by Mortgagee which are determined to be usurious by Mortgagee or a court of competent jurisdiction. It is the express intent hereof that the Mortgagor not pay and the Mortgagee not receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be legally paid by the Mortgagor under applicable law.

3.08 Loan for Business Purposes. Mortgagor represents and warrants to Mortgagee that the proceeds of the loan evidenced by the Note and secured by this Mortgage are to be used for "business purposes" as provided in Section 511 of Title V of the 1980 Deregulation and Monetary Control Act.

3.09 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Mortgagor of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Mortgagor or, in the case of any such mutilation, upon surrender and cancellation of the Note, Mortgagor will execute and deliver, in lieu thereof, a replacement of said Note, identical in form and substance to the said Note and dated as of the date of the Note and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note(s).

3.10 WAIVER OF JURY TRIAL. NEITHER MORTGAGOR NOR MORTGAGEE, OR ANY ASSIGNEE, SUCCESSOR, HEIR OR LEGAL REPRESENTATIVE OF MORTGAGOR OR MORTGAGEE, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THIS MORTGAGE, THE NOTE, ANY RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE SECURED INDEBTEDNESS HEREBY OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG MORTGAGOR OR MORTGAGEE, OR ANY OF THEM. NEITHER MORTGAGOR NOR MORTGAGEE WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS

agreement or otherwise, and any and all renewals, modifications, amendments, consolidations and extensions in whole or in part.

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IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year above first written.

AJS Associates, a Kentucky general partnership,
by its two (2) general partners

BY: OBERST CORPORATION, a Kentucky
corporation, its General Partner

By: *Norma V. Oberst*
Norma V. Oberst, President

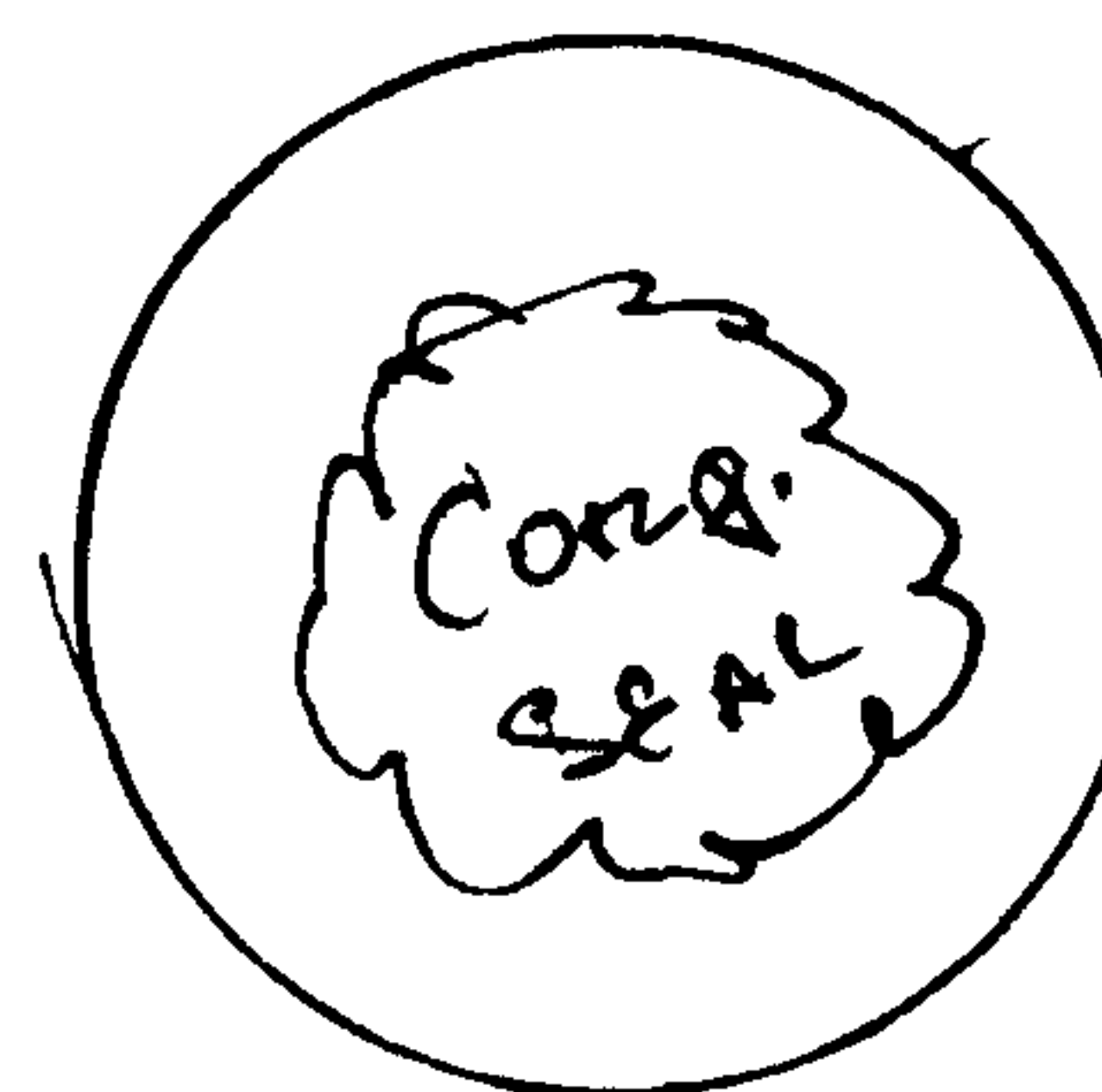
(Corporate Seal)



BY: ALICE J. SCHLEICHER HUNTSVILLE,
INC., an Indiana corporation, its General
Partner

By: *Alice J. Schleicher*
Alice J. Schleicher, President

(Corporate Seal)



STATE OF Tennessee
COUNTY OF Davidson

This day personally appeared before me, the undersigned authority in and for the State and County aforesaid, Norma V. Oberst, whose name as President of Oberst Corporation and Alice J. Schleicher, whose name as President of Alice J. Schleicher Huntsville, Inc. being the two general partners of AJS Associates, is signed to the foregoing Mortgage and Security Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such officers and with full authority, executed same voluntarily for and as the act of said corporation, acting in its capacity as President of their respective corporations, as aforesaid.

Given under my hand and official seal this the 17th day of August, 2006.

My Commission expires:

11-25-06

Louann A. Whitehead
Notary Public

[AFFIX NOTARY SEAL]

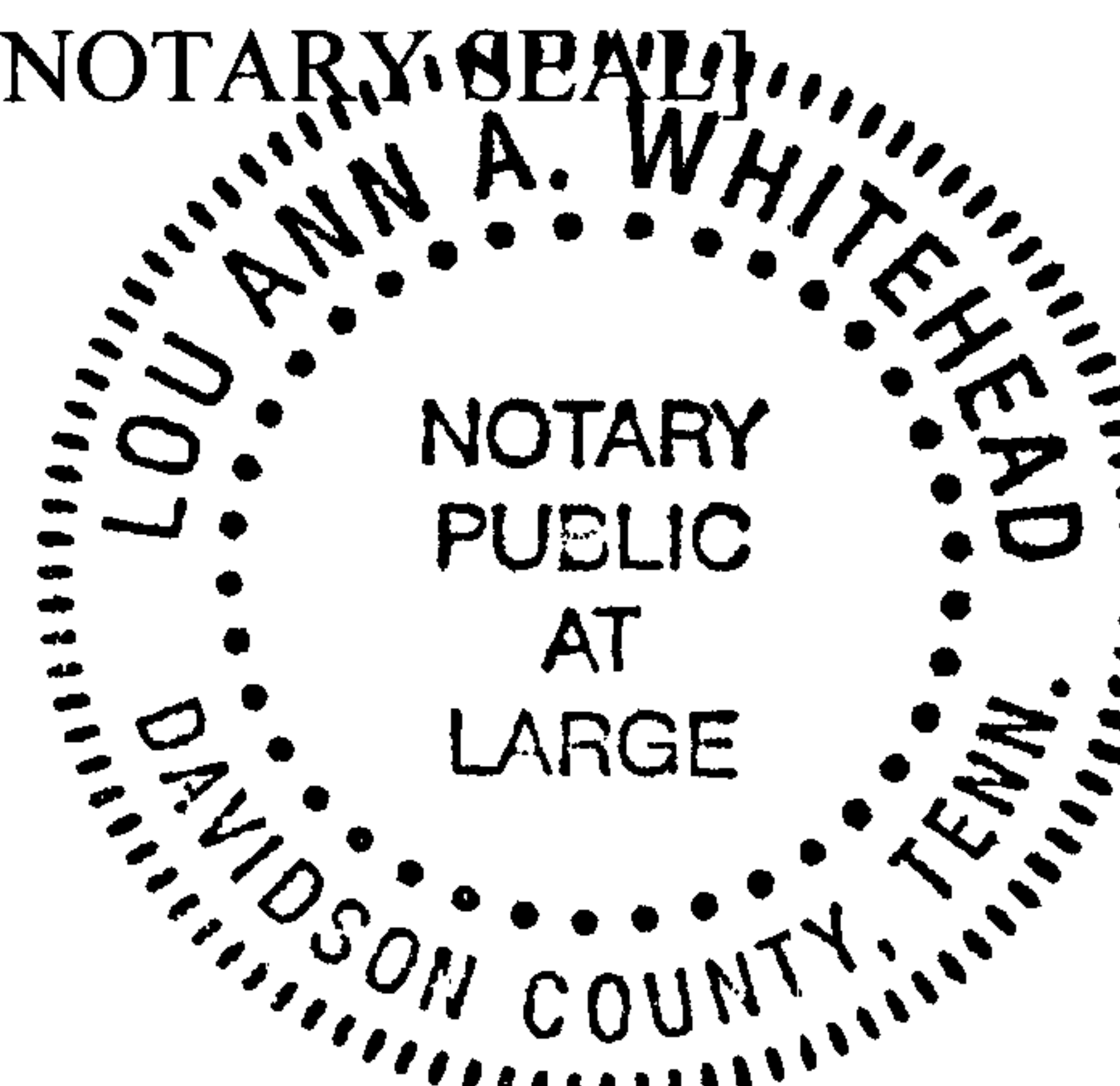


Exhibit "A"

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LEGAL DESCRIPTION

Beltline Property

Unit One
(2204 Beltline Road, SW, Decatur, Alabama 35603)

Beginning at the southeast corner of unit one, and more particularly described as the intersection of the easterly right-of way margin of Beltline Road, S.W. (AL. Hwy. No. 67, 250' ROW) with the northerly right-of-way margin of Kathy Lane, S.W. (50' ROW) and being part of Lots 9 and 10, Block D, Garth Heights, as recorded in the Morgan County Probate Judge's Office, in Map Book 1, at Page 38 and also being the true point of beginning of the tract herein described thence run N 39°39'00" W along the easterly right-of-way margin of said Beltline Road, S.W. a distance of 150.00 feet to an iron pin; thence N 50°21'00" E a distance of 188.00 feet to an "X" chiseled in concrete; thence S 39°39'00" E a distance of 150.00 feet to an "X" chiseled in concrete on the northerly right-of-way margin of Kathy Lane, S.W.; thence S 50°21'00" W along the northerly right-of-way margin of said Kathy Lane, S.W., a distance of 188.00 feet to the true point of beginning, lying and being in the SW-1/4 of the NE-1/4 of Section 26, Township 5 South, Range 5 West, Decatur, Morgan County, Alabama, and containing 0.674 acres more or less.

Unit Two
(2208 Beltline Road, SW, Decatur, Alabama 35603)

A tract or parcel of land containing 1.13 acres, more or less, being a part of Lots 9 and 10, Block D, Garth Heights, as shown by map or plat of said subdivision on file and of record in Map Book 1, at Page 38 in the Office of the Judge of Probate of Morgan County, Alabama, and being more particularly described as beginning at the intersection of the easterly margin of Beltline Road, SW, (Alabama Highway No. 67) with the northerly margin of Kathy Lane, SW, and running thence N 39°39' W along the northerly margin of said Beltline Road, SW, for 150.0 feet to the true point of beginning of the tract herein described; thence continuing along the last described line, if extended, for 150.00 feet; thence leaving said Beltline Road, SW, and running N 50°21' E parallel with Kathy Lane, SW, for 328.0 feet; thence S 39°39' E parallel with said Beltline Road, SW, for 150.0 feet; thence S 50°21' W parallel with said Kathy Lane, SW, for 328.0 feet to the true point of beginning; all situated, lying and being in the SW-1/4 of the NE-1/4 of Section 26, Township 5 South, Range 5 West; City of Decatur, Morgan County, Alabama.

EXHIBIT "A" CONTINUED


Each parcel of real estate previously pledged by and described in the following Mortgages and/or Deeds of Trust in favor of Lender (the "Existing Collateral Documents"):

County	State	Prior Recorded Documents
Jackson	AL	First Modification to Mortgages and Security Agreements executed by and between AJS Associates and NationsBank, N.A., dated September 19, 1997 and recorded October 16, 1997 at 11:14 a.m. in Book 97, page 15581 in the Probate Office of Jackson County, Alabama.
Jackson	AL	Modification of Mortgage filed in Book 98, page 21966, in the Probate Office of Jackson County, Alabama.
Jackson	AL	Mortgage and Security Agreement, dated May 10, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded at INSTRUMENT NO. 93-6408, Jackson County.
Jackson	AL	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 4, 2003 at Deed Book 2003, Page 27737, Register of Deeds of Jackson County, AL.
Jackson	AL	Third Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated September 7, 2004, recorded on September 21, 2004 at Deed Book 2004, Page 25983, Register of Deeds of Jackson County, AL.
Jackson	AL	Fourth Amendment to Mortgages and Cross-Collateralization and Cross-Default Agreement dated September 30, 2004, recorded on April 15, 2005, at Deed Book 2005, Page 9287, Register of Deeds of Jackson County, AL.
Jackson	AL	Fifth Amendment to Mortgages and Security Agreements and Deeds of Trust and Security Agreement dated October 29, 2004, recorded on May 16, 2005, at Deed Book 2005, Page 12118, Register of Deeds of Jackson County, AL.
Jefferson	AL	Amendment to Purchase Money Mortgage and Security Agreement, dated January 12, 1989, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3536, PAGE 259.
Jefferson	AL	First Amendment to Purchase Money Mortgage and Security Agreement, dated March 29, 1988, recorded in BESSEMER REAL VOLUME 694, Page 404, and recorded in REAL VOLUME 3357, PAGE 098.
Jefferson	AL	First Amendment to Purchase Money Mortgage and Security Agreement, dated February 1, 1991, recorded in REAL VOLUME 3970, PAGE 630.
Jefferson	AL	First Modification to Mortgages and Security Agreements executed by and between AJS Associates and NationsBank, N.A., dated September 19, 1997 and recorded October 10, 1997 at 15:37 p.m. in Instrument No. 9711-991 in the Probate Office of Jefferson County, Alabama.
Jefferson	AL	Leasehold Mortgage and Security Agreement executed by AJS Associates to Bank of America, N.A. dated November 26, 2001, filed for record December 11, 2001, at 10:34 am, record in Instrument Number 200115/5328, in the Office of the Judge of Probate of Jefferson County, AL.
Jefferson	AL	Leasehold Mortgage and Security Agreement, dated July 15, 1988, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3425, PAGE 468, Probate Office.
Jefferson	AL	Modification of Mortgage filed in Instrument 9816/1253, in the Probate Office of Jefferson County, Alabama.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated April 7, 1995, by AJS Associates to NationsBank of Georgia, N.A., recorded REAL VOLUME 1080, PAGE 451, Probate Office.

Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated December 17, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded in BESSEMER REAL VOLUME 995, PAGE 247, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated December 30, 1986, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3061, PAGE 093, Office of the Judge of Probate, re-filed in BESSEMER REAL VOLUME 634, PAGE 33.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated December 30, 1986, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3061, PAGE 093, Office of the Judge of Probate, re-filed in BESSEMER REAL VOLUME 634, PAGE 33.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated December 9, 1994, by AJS Associates to NationsBank of Georgia, N.A., recorded in INSTRUMENT NO. 9414-1898, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated June 16, 1988, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 703, PAGE 856, Probate Office, Bessemer Division.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated June 21, 1991, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 4050, PAGE 43, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated March 14, 1988, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3350, PAGE 944, Office of the Judge of Probate.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated March 29, 1988, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3357, PAGE 61, Office of the Judge of Probate
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated March 29, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded in REAL VOLUME 4509, PAGE 831, Probate Office.
Jefferson	AL	Purchase Money Mortgage and Security Agreement, dated March 31, 1989, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3581, PAGE 372, Probate Office.
Jefferson	AL	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 3, 2003 at Deed Book 200313, Page 6169, Register of Deeds of Jefferson County, AL.
Jefferson	AL	Second Mortgage and Security Agreement, dated June 13, 1989, by AJS Associates to The Citizens and Southern National Bank, recorded in REAL VOLUME 3623, PAGE 620, Probate Office of the Judge of Probate.
Jefferson	AL	Third Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated September 7, 2004, recorded on November 1, 2004 at Deed Book 200414, Page 7989, Probate Court of Jefferson County, AL.
Jefferson	AL	Fourth Amendment to Mortgages and Cross-Collateralization and Cross-Default Agreement dated September 30, 2004, recorded on March 9, 2005, at Deed Book 200504, Page 0656, Probate Court of Jefferson County, AL.
Jefferson	AL	Mortgage and Security Agreement dated December 29, 2005, recorded on December 29, 2005, at Deed Book 200517, Page 2025, Judge of Probate of Jefferson County, AL.
Jefferson	AL	Fifth Amendment to Mortgages and Security Agreements and Deeds of Trust and Security Agreement dated October 29, 2004, recorded on May 3, 2005, at Deed Book 200505, Page 7075, Judge of Probate of Jefferson County, AL.
Madison	AL	First Modification to Mortgages and Security Agreements executed by and between AJS Associates and NationsBank, N.A., dated September 19, 1997 and recorded October 17, 1997 at 1:33 p.m. in Book 2328, page 532 in the Probate Office of Madison County, Alabama.

Madison	AL	Future Advance Mortgage, dated May 10, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded in MORTGAGE BOOK 1909, PAGE 667, Judge of Probate, Madison County; and recorded at INSTRUMENT NO. 93-6408, Jackson County.
Madison	AL	Leasehold/Fee Mortgage and Security Agreement from AJS Associates to Bank of America, N.A. dated 1-17-01, filed for record 2-9-01 at 11:27 a.m., recorded in Mortgage Book 2751, Page 1084, in the Probate Office of Madison County, AL.
Madison	AL	Mortgage from AJS Associates to Bank of America, N.A., dated May 30, 2002 and recorded May 31, 2002 at 12:15 p.m. in Mortgage Book 3049, page 1112, in the office of the Judge of Probate for Madison County, AL, as amended by that certain Amendatory Agreement dated July 30, 2002 and recorded August 1, 2002 in Mortgage Book 3088, page 612.
Madison	AL	Second Modification to Mortgages and Security Agreement from AJS Associates to NationsBank, N.A. dated October 9, 1998, at 3:33 p.m., in Mortgage Book 2484, page 821, in the Office of the Probate Judge of Madison County, AL.
Madison	AL	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 8, 2003 at Deed Book 3488, Page 385, Register of Deeds of Madison County, AL.
Madison	AL	Third Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated September 7, 2004, recorded on October 7, 2004 at Deed Instrument No. 2004100 7000422580, Register of Deeds of Madison County, AL.
Madison	AL	Fourth Amendment to Mortgages and Cross-Collateralization and Cross-Default Agreement dated September 30, 2004, recorded on April 16, 2005, Instrument No. 20050406002-05810, Register of Deeds of Madison County, AL.
Madison	AL	Fifth Amendment to Mortgages and Security Agreements and Deeds of Trust and Security Agreement dated October 29, 2004, recorded on May 9, 2005, at Instrument No. 20050509000295950 Madison County Judge of Probate, AL.
Shelby	AL	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 4, 2003 at Document # 20030904000588090, Register of Deeds of Shelby County, AL.
Shelby	AL	Third Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated September 7, 2004, recorded on October 4, 2004 at Instrument No. 2004100-400547-720, Judge of Probate of Shelby County, AL.
Shelby	AL	Fourth Amendment to Mortgages and Cross-Collateralization and Cross-Default Agreement dated September 30, 2004, recorded on March 10, 2005, at Instrument No. 2005031-0000108690, Judge of Probate of Shelby County, AL.
Shelby	AL	Fifth Amendment to Mortgages and Security Agreements and Deeds of Trust and Security Agreement dated October 29, 2004, recorded on May 19, 2005, at Instrument No. 20050519000241930, Register of Deeds of Shelby County, AL.
Davidson	TN	Deed of Trust dated January 20, 2000, executed by AJS Associates in favor of Bank of America, N.A. filed for record January 21, 2000 at 4:03 PM as Instrument No. 200001210007428, in the Register of Deeds for Davidson County, TN
Davidson	TN	Deed of Trust executed by AJS Associates to Stuart Jones, Trustee in favor of NationsBank, N.A. dated 5/25/99 and recorded 05/27/99 at 2:03 P.M. in Book 11497, Page 327, Register of Deeds for Davidson County, TN.
Davidson	TN	Leasehold Deed of Trust by AJS Associates to NationsBank, N.A. dated May 24, 1999 and recorded May 27, 1999 at Deed Book 11497, page 407, Register of Deeds for Davidson County, TN.
Davidson	TN	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 4, 2003 at Deed Book 20030904, Page 0128543, Register of Deeds of Davidson County, TN.

Davidson	TN	Third Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated September 7, 2004, recorded on September 20, 2004 at Instrument No. 20040920-0112990, Register of Deeds of Davidson County, TN.
Davidson	TN	Fourth Amendment to Mortgages and Cross-Collateralization and Cross-Default Agreement dated September 30, 2004, recorded on October 17, 2004, at Instrument No. 2004-1007-0121403, Register of Deeds of Davidson County, TN.
Davidson	TN	Fifth Amendment to Mortgages and Security Agreements and Deeds of Trust and Security Agreement dated October 29, 2004, recorded on November 30, 2004, at Instrument No. 20041130-0142615, Register of Deeds of Davidson County, TN.
Lincoln	TN	Deed of Trust and Security Agreement, dated May 10, 1993, by AJS Associates to NationsBank of Georgia, N.A., recorded in TRUST DEED BOOK 319, PAGE 446, Register of Deeds, Lincoln County, TN.
Lincoln	TN	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 5, 2003 at Document #03028634, Register of Deeds of Lincoln County, TN.
Lincoln	TN	Third Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated September 7, 2004, recorded on September 23, 2004 at Deed Book TD524, Page 99, Register of Deeds of Lincoln County, TN.
Lincoln	TN	Fourth Amendment to Mortgages and Cross-Collateralization and Cross-Default Agreement dated September 30, 2004, recorded on November 8, 2004, at Deed Book TD526, Page 864, Register of Deeds of Lincoln County, TN.
Lincoln	TN	Fifth Amendment to Mortgages and Security Agreements and Deeds of Trust and Security Agreement dated October 29, 2004, recorded on December 3, 2004, at Deed Book TD528, Page 479, Register of Deeds of Lincoln County, TN.
Robertson	TN	Deed of Trust, executed by AJS Associates to Larry D. Craig, Trustee for Bank of America, N.A., dated August 8, 2000 and recorded August 19, 2000 at 10:30 a.m. in Book 628, Page 530, Register of Deeds for Robertson County, TN.
Robertson	TN	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 5, 2003 at Deed Book 886, Page 629, Register of Deeds of Robertson County, TN.
Robertson	TN	Third Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated September 7, 2004, recorded on September 17, 2004 at Deed Book 972, Page 710, Register of Deeds of Robertson County, AL.
Robertson	TN	Fourth Amendment to Mortgages and Cross-Collateralization and Cross-Default Agreement dated September 30, 2004, recorded on November 4, 2004, at Deed Book 982, Page 623, Register of Deeds of Robertson County, TN.
Robertson	TN	Fifth Amendment to Mortgages and Security Agreements and Deeds of Trust and Security Agreement dated October 29, 2004, recorded on December 3, 2004, at Deed Book 988, Page 516, Register of Deeds of Robertson County, TN.
Sumner	TN	Leasehold Deed of Trust by AJS Associates to NationsBank, N.A. dated May 24, 1999 and recorded May 28, 1999 at Deed Book 979, page 247, Register of Deeds for Sumner County, TN.
Sumner	TN	Second Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated August 27, 2003 with an effective date of August 29, 2003, recorded on September 5, 2003 at Deed Book 1839, Page 779, Register of Deeds of Sumner County, TN.
Sumner	TN	Third Modification to Mortgages and Security Agreements and Deed of Trust and Security Agreement dated September 7, 2004, recorded on September 20, 2004 at Deed Book 2097, Page 531, Register of Deeds of Sumner County, AL.
Sumner	TN	Fourth Amendment to Mortgages and Cross-Collateralization and Cross-Default Agreement dated September 30, 2004, recorded on October 8, 2004, at Deed Book 2111, Page 127, Register of Deeds of Sumner County, TN.


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Sumner	TN	Fifth Amendment to Mortgages and Security Agreements and Deeds of Trust and Security Agreement dated October 29, 2004, recorded on December 3, 2004, at Deed Book 2146, Page 250, Register of Deeds of Sumner County, TN.
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