

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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COMMERCIAL/AGRICULTURAL MORTGAGE

(Without reference to specific note)

THIS INSTRUMENT ("Mortgage") WITNESSES: that BR Associates, Inc.

(Mortgagor), in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby MORTGAGE(S) and WARRANT(S) to GERMAN AMERICAN BANK, an Indiana banking association, having its principal office at 711 MAIN STREET, Jasper, Indiana (Mortgagee), the real estate ("Real Estate") and property located in Lake \_\_\_\_\_ County, State of Indiana, more particularly described as follows: Lot 2, Shultz's Addition, Unit No. 2, to the Town of Schererville, as shown in Plat Book 49, page 119, in Lake County, Indiana.

Document is  
NOT OFFICIAL!

together with all rights, title and interests of Mortgagor in and to: (i) all rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter pertaining to the Real Estate ("Easements"); (ii) all buildings and other improvements of every kind and description now or hereafter placed on the Real Estate, together with all fixtures, machinery and other articles of personal property now or hereafter attached to or regularly used in connection with the Real Estate, and all replacements thereof ("Improvements"); (iii) all extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the Easements or Improvements ("Additions"); (iv) all rents, issues, proceeds, income and profits of the Real Estate, Easements, Improvements and Additions, including all payments made in connection with leases, subleases and other agreements affecting the Real Estate, Easements and Appurtenances, Improvements or Additions ("Rents"); and (v) all awards, payments or proceeds of conversion, whether voluntary or involuntary, of any of the foregoing, including, without limitation, all insurance, condemnation and tort claims ("Proceeds"). (Hereinafter, the Real Estate, Easements, Improvements, Additions, Rents, and Proceeds are referred to together as the "Mortgaged Property").

This Mortgage is given to secure performance by Mortgagor of the covenants and agreements contained in this Mortgage and to secure payment of: (i) all indebtedness, obligations and liabilities of BR Associates, Inc. f/k/a Wharfside Restaurant, Inc. (hereinafter referred to jointly and severally as "Borrower") to Mortgagee, now existing or hereafter arising, whether fixed or contingent, direct or indirect, primary or secondary, joint or several, and regardless of how created or evidenced, and all extensions or renewals of any of the foregoing ("Primary Debt"); (ii) all sums advanced and costs and expenses incurred by Mortgagee which are made or incurred pursuant to, or allowed by, the terms of this Mortgage, plus interest thereon until fully paid or reimbursed by Mortgagor at a rate ("Default Rate") equal to the highest per annum rate of interest in effect and accruing on any of the Primary Debt from the date paid or incurred until full reimbursement ("Advancements"); and (iii) all costs of repossession, collection, disposition and reasonable attorneys' fees incurred by Mortgagee ("Costs"). (Hereinafter, the Primary Debt, Advancements and Costs are referred together as the "Indebtedness.")

Mortgagor hereby acknowledges and agrees that the Indebtedness includes, and that this Mortgage is given to secure, advances that may be made by Mortgagee and obligations that may be incurred by Mortgagor (if Mortgagor is the Borrower) in addition and subsequent to the advances evidenced by the Note that are made or are outstanding on the date of this Mortgage ("future advances") and that this Mortgage shall secure all future advances of every nature and kind, provided however, that the aggregate principal amount of future advances outstanding at any time shall not exceed \$1,250,000.00, such maximum amount being stated herein pursuant to and in accordance with Indiana Code §32-8-11-9 and not being a commitment by Mortgagee to make future advances, and provided, further, that the aggregate principal amount of the Indebtedness secured by this Mortgage in all events shall not exceed \$1,250,000.00.

Mortgagor hereby further covenants with the Mortgagee as follows:

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1. **Payment of Sums Due.** If Mortgagor is the Borrower (or one of them, if more than one), Mortgagor covefiants and agrees to promptly pay the principal of and interest on the Primary Debt and the other Indebtedness, as and when the payment(s) thereof become due, all without relief from valuation and appraisal laws and with attorneys' fees.

2. **Care and Condition of Mortgaged Property.** Mortgagor shall (a) promptly repair, restore or rebuild the Mortgaged Property, or any portion thereof, which is damaged or destroyed; (b) keep the Mortgaged Property in good condition and repair, without waste, and free from encroachments and from mechanic's or materialman's lien or claims for lien not expressly subordinated to this Mortgage; (c) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property, whether or not superior to the lien of this Mortgage; (d) comply with all requirements of law and covenants and restrictions of record applicable to the Mortgaged Property or its use; (e) permit no change in or alteration of the design, structural character or general nature of the Real Estate and the Improvements without Mortgagee's prior written consent (which consent shall not be withheld unreasonably); and (f) permit Mortgagee to enter upon and inspect the Mortgaged Property at all reasonable times.

3. **Warranties.** Mortgagor covenants and warrants that: (a) Mortgagor is lawfully seized of the Real Estate in fee simple, has valid and indefeasible title to the Mortgaged Property and has a good and legal right to convey and mortgage the Mortgaged Property; and (b) the Mortgaged Property is and will remain free from all liens and encumbrances except only mortgages and liens in favor of Mortgagee and any unreleased mortgage lien which is of record on the date this Mortgage is signed by Mortgagor that covers all or any part of the Real Estate and has been recorded in the county where the Real Estate is located (a "Prior Mortgage Lien"), and Mortgagor will warrant and defend title to the Mortgaged Property against all claims made thereon.

4. **Insurance/Taxes.** Mortgagor will keep the Mortgaged Property insured against loss by fire, extended casualty, vandalism, malicious mischief and such other hazards as reasonably may be required from time to time by Mortgagee for the benefit and protection of Mortgagee, including comprehensive and contractual liability insurance (together, the "Required Insurance"). The Required Insurance shall be written in forms, amounts, and by companies reasonably satisfactory to Mortgagee, and losses thereunder shall be payable to Mortgagee pursuant to standard noncontributing mortgage endorsements in favor of Mortgagee. Unless otherwise agreed by Mortgagee, all policies of Required Insurance, including additional and renewal policies, shall be deposited with and held by Mortgagee. Any monies received as payment for any loss under any of the Required Insurance paid over to Mortgagee may be applied, at the option of Mortgagee, either to the prepayment of any portion, as Mortgagee may select, of the Indebtedness, without premium, or to the reimbursement of Mortgagor for expenses incurred by Mortgagor in the restoration or repair of the Mortgaged Property. Proceeds paid or payable to Mortgagor of the Required Insurance shall be applied to restoration of the Mortgaged Property in such fashion as Mortgagee reasonably may require. Mortgagor will pay and discharge or cause to be paid and discharged when due, and before any penalty attaches, all taxes (including real and personal property taxes), general and special assessments, water and sewer rents or assessments, and all other governmental and municipal charges and impositions of any kind imposed upon or assessed against Mortgagor or the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof.

5. **Protection of Security by Mortgagee.** Mortgagee may, at Mortgagee's option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any default by Mortgagor, make any payment and perform any act required of Mortgagor by this Mortgage, including but not limited to, payment of insurance premiums, taxes, assessments, repair expenses and prior liens and encumbrances. All expenses so incurred, including reasonable attorneys' fees, and any other reasonable expenses incurred by Mortgagee to protect the Mortgaged Property shall constitute Advancements and shall be immediately due and payable by Mortgagor.

6. **Transfer of Mortgaged Property.** Mortgagor shall not, without the prior written consent of Mortgagee (which consent may be withheld without reasonable cause), lease, transfer, sell, contract to sell or in any way further encumber all or any part of the Mortgaged Property.

7. **Condemnation.** If all or any part of the Mortgaged Property, is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award or compensation payable in respect of the part so taken or damaged are hereby assigned to and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by Mortgagee after deduction therefrom of all costs and expenses including reasonable attorneys' fees incurred by Mortgagee in connection with the taking, at Mortgagee's option, shall be applied, without premium, in part or entirely to payment of the Indebtedness or to restoration of the Mortgaged Property.

8. **Default and Acceleration.** Time is of the essence of this Mortgage. Upon the occurrence of any "Event of Default" (as hereinafter defined), and at any time thereafter, then, in any and every such case, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable without any notice, presentment, demand, protest, notice of protest, or other notice of dishonor or demand of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee shall have the right immediately to foreclose the mortgage lien created by this Mortgage against the Mortgaged Property, to enforce every other security interest created by this Mortgage and to institute any action, suit or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests. The following shall each constitute an "Event of Default" for purposes of this Mortgage:

(a) Default: (i) in the payment when due of any of the Indebtedness, or (ii) in the performance any covenant or term of this Mortgage;

(b) Lease, sublease, assignment, sale, contracting for sale, transfer or encumbrance of all or any part of the Mortgaged Property, without Mortgagee's prior written consent;

(c) If Mortgagor or Borrower (or any one of them, if more than one) becomes the subject of an order for relief under the United States Bankruptcy Code, takes any action to obtain relief under the United States Bankruptcy Code, files an answer admitting bankruptcy or insolvency or in any manner is adjudged bankrupt or insolvent;



(d) Any part of the Mortgaged Property or all or any substantial part of the property or assets of Borrower (or any one of them, if more than one) is placed in the hands of any receiver or trustee, or Borrower (or any one of them, if more than one) consents, agrees or acquiesces to the appointment of any such receiver or trustee; or

(e) Institution of proceedings to enforce or foreclose any Prior Mortgage Lien or any other mortgage or lien upon all or any part of the Mortgaged Property.

9. **Foreclosure and Application of Proceeds.** All expenses which may be paid or incurred by or on behalf of Mortgagee in connection with the foreclosure of this Mortgage for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and cost of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee reasonably may deem necessary to prosecute such suit shall constitute Advancements, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be allowed and included as Indebtedness in the judgment for sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order or priority: First, on account of all Advancements incident to the foreclosure proceedings and all Costs; second, all other items which under the terms of this Mortgage constitute Indebtedness additional to the Primary Debt; third, all principal, interest and other amounts remaining unpaid on the Primary Debt; and fourth, any remainder to the person or persons entitled thereto as determined by the court in the foreclosure proceedings.

10. **Foreclosure Proceedings and Receiver.** Upon the commencement of any proceedings to foreclose this Mortgage, Mortgagee shall be entitled forthwith to the appointment of a receiver or receivers, as a matter of right, without the giving of notice to any other party, without regard to the adequacy or inadequacy of any security for the Indebtedness and without the requirement of any bond. Mortgagee shall be entitled to recover judgment either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of this Mortgage, or the foreclosure of the lien of this Mortgage.

11. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until being recorded. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein. In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage. This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's heirs, administrators, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Indebtedness instruments. All notices pursuant to this Mortgage shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified United States mail, addressed: (i) if to Mortgagee, at 711 MAIN STREET, JASPER, IN 47546, and (ii) if to Mortgagor, at the address of Mortgagor shown opposite Mortgagor below, or if none is shown, then at the address of Mortgagor as shown in the business records of Mortgagor; or at such other place as either party may, by notice in writing, designate as a place for service of notice.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage this 2nd day of October, 2000.

Mortgagor:

BR Associates, Inc.  
\_\_\_\_\_  
\_\_\_\_\_

Address:

4201-A Mannheim Rd.  
Jasper, IN 47546  
\_\_\_\_\_  
\_\_\_\_\_

By: Robert L. Ruckriegel President  
By: Lovella Ruckriegel Sec/Treas.  
Lovella Ruckriegel

State of Indiana )  
County of DUBOIS )

This Document is the property of  
the Lake County Recorder!

Before me, a Notary Public in and for State of Indiana and a resident of \_\_\_\_\_  
County, Indiana, personally appeared Robert L. Ruckriegel, Known to be the  
President of BR Associates, Inc. and Lovella Ruckriegel, Known to  
be the Sec/Treas. of BR Associates, Inc.  
who, being first duly sworn, acknowledged execution of the foregoing mortgage.  
Witness my hand and Notarial Seal this 2nd day of October, 2000.

Larry C. Fryberger  
LARRY C. FRYBERGER, Notary Public

Resident of DUBOIS, County, Indiana.

My commission expires 3/30/2001

THIS INSTRUMENT PREPARED BY Charles Fleck, Senior VP  
FOR GERMAN AMERICAN BANK

Return to German American Bank, P.O. Box 810, Jasper, IN 47547-0810  
Attn: Commercial Loan Dept. (Marcie)