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Attention: John Pettiette
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Dallas, Texas 75231



0010212279

Property of Cook County Clerk's Office

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**COMMERCIAL MORTGAGE,
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

THIS COMMERCIAL MORTGAGE (herein "Instrument") is made and entered into as of March 8, 2001 but made effective on March 13, 2001, between the Mortgagor/Grantor, **STEAK AND ALE OF ILLINOIS, INC.**, a Nevada corporation, whose address is 6500 International Parkway, Plano, Texas 75093 (herein "Borrower") and **WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION**, a national banking association, as Collateral Agent (herein "Collateral Agent") (pursuant to that certain Collateral Agency Agreement dated as of June 16, 2000 between Collateral Agent and Lender, as the same may be hereafter amended, restated and/or consolidated, and their successors and assigns, from time to time), having an address of Corporate Trust Services, N9311-160, Sixth Street and Marquette Avenue, Minneapolis, Minnesota 55479, a Mortgagee, for the benefit of the holder (the "Holder") of the Note (as hereafter defined).

WHEREAS, Borrower is indebted to **CNL FRANCHISE NETWORK, LP**, a Delaware limited partnership (herein "Lender"), in the principal amount of **ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (US \$1,850,000.00)** (the "Loan"), which Loan is evidenced by that certain promissory note from Borrower to Lender dated of even date herewith (herein "Note") providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on April 1, 2016 (the "Maturity Date");

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions and modifications thereof; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower pursuant to Paragraph 30 hereof (herein "Future Advances"); (c) the performance of the covenants and agreements of Borrower contained herein and in any of the other Instruments (as hereinafter defined) and in any other Loan Document (as hereinafter defined); (d) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; and (e) the payment of

all other sums, with interest thereon, due and payable from Borrower to Lender under any of the other Instruments or Loan Documents, Borrower does hereby mortgage, grant, convey, pledge, transfer and assign to Lender, and Lender's successors and assigns, the leasehold estate pursuant to a lease dated July 13, 1999 by and between TDC Niles, L.L.C., an Illinois limited liability company, and Steak and Ale of Illinois, Inc., a Nevada corporation, a Memorandum of Lease of which has been placed of record in Cook County in and to the following described land (the "Land") located in Cook County, State of Illinois:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

TOGETHER with all of Borrower's buildings, improvements, and tenements now or hereafter erected on the property, and to the extent of Borrower's interest therein, all heretofore or hereafter vacated alleys and streets abutting the property, and all of Borrower's right, title and interest in and to the following: easements, rights, appurtenances, rents (subject however to the assignment of rents to Lender herein), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all of Borrower's Equipment, including all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants, and all tax refunds, Contracts, Documents, Receivables, Licenses, the Licensing Agreement, permits, Inventory, insurance proceeds (except as hereinafter provided to the contrary), unearned insurance premiums, choses in action and other General Intangibles, in each case only to the extent relating in any way to the said property; all of which, including replacements, additions and substitutions thereto, and the proceeds thereof, shall be deemed to be and remain a part of the real property and personal property covered by this Instrument; and all of the foregoing, together with said property (or the leasehold estate in the event this Instrument is on a leasehold) are herein referred to as the "Property."

Solely for the benefit of Lender (including successors and assigns) and not to or for the benefit of any third party, Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property (and, if this Instrument is on a leasehold, that the lease is in full force and effect without modification except as noted above and without default on the part of either lessor (to Borrower's actual knowledge) or lessee thereunder), that the Property is unencumbered (excluding Permitted Encumbrances), and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any Permitted Encumbrances or any easements, restrictions and other matters listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Uniform Covenants. Borrower and Lender (by its acceptance hereof) covenant and agree as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this Instrument and any of the other Instruments or Loan Documents.

2. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. Upon a Borrower's Default hereunder, at Lender's request, Borrower shall pay to Lender or its loan servicer a sum (the "Initial Yearly Premium Payment") equal to such amount as is deemed necessary by Lender to be in position to pay the next annual payment of real estate taxes and insurance when due. Thereafter, until the Funds Release Date (as defined below), Borrower shall pay to Lender or its loan servicer on the day monthly installments of principal or interest are payable under the Note (or on another day designated in writing by Lender), a sum (herein, together with the Initial Yearly Premium Payment, the "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and real estate taxes and assessments which may be levied on the Property, and (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to Paragraph 5 hereof (the "Yearly Premium"). Any waiver by Lender of a requirement that Borrower pay such Funds

may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. Lender may require Borrower to pay to Lender, in the manner provided above for real estate taxes and insurance, such other Funds for other real estate taxes, charges, premiums, assessments and impositions which may become a lien on the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions") only after a Default has occurred and Lender is then requiring that Borrower make payments of Funds to Lender.

Lender shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills. No interest shall be payable by Lender to Borrower on monies so paid, however, all such Funds shall be held in an interest-bearing account and all such interest shall be applied by Lender to pay such taxes and insurance premiums. Lender shall give to Borrower, at Borrower's expense, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Instrument, any of the other Instruments or in any of the other Loan Documents. During any period that Lender is making such payments, upon Borrower's written request, Lender will confirm in writing to Borrower within thirty (30) days of any payment by Lender under this Paragraph 2, that such payment(s) have been made.

If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of water and sewer rates, real estate taxes and assessments, insurance premiums and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay such amounts as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty (30) days after notice from Lender to Borrower requesting payment thereof.

Upon Borrower's Default under this Instrument, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay rates, taxes and assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon the release of the Property secured by this Instrument and payment in full of the amounts secured hereby, Lender shall promptly refund to Borrower any Funds held by Lender applicable to the Property. In the event that Borrower cures such Default(s), upon written request of Borrower and provided Borrower has provided such notice 3 business days prior to the date on which the next monthly payment is due under the Note, Lender shall no longer require Borrower to make further payments of Funds. In addition, as of the date of such next monthly payment under the Note ("AF under Release Date"), Lender shall return to Borrower any and all Funds then held by Lender. Notwithstanding the foregoing, in the event that a subsequent Default occurs, and in connection with such subsequent second Default, Lender requests that Borrower make payment of Funds as set forth in this Paragraph 2, and Borrower subsequently cures such second Default(s) (or reasonably satisfies Lender that further payment delinquencies are unlikely to recur) and Lender returns any and all Funds held by it to Borrower, thereafter upon any further Default pursuant to which Lender requests that Borrower make further payment of Funds, Borrower shall have no further right, upon a cure of such further Default(s), to a return of the Funds or for relief from the requirement to make monthly payments of Funds as set forth in this Paragraph 2.

3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, so long as Borrower is not in Default hereunder, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts due and payable to Lender by Borrower under Paragraph 2 hereof or under any of the other Loan Documents related to the Property; (ii) interest due and payable on the Note; (iii) principal of the Note; (iv) interest due and payable on advances made pursuant to Paragraph 8 hereof or under any of the other Instruments or Loan Documents; (v) principal of advances made pursuant to Paragraph 8 hereof or under any of the other Instruments or Loan Documents; (vi) interest due and payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums due and payable secured by this Instrument or under any of the other Instruments or any other Loan Documents in such order as Lender, at Lender's option, may

determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to Paragraph 8 hereof or payable under similar provisions of the other Instruments prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this Paragraph 3. Upon Borrower's Default under this Instrument or any of the Loan Documents related to the Property, Lender may apply any payments received by Lender in any amount and in any order as Lender shall determine in Lender's sole discretion.

4. CHARGES; LIENS. Borrower shall pay all water and sewer rates, taxes and assessments which could result in a lien against the Property, insurance premiums and Other Impositions attributable to the Property, by Borrower making payment, when due, directly to the payee thereof; provided that, after a Borrower's Default under this Instrument, at Lender's option, Borrower shall make such payments in the manner and to the extent provided under Paragraph 2 hereof. Borrower shall furnish to Lender copies of paid receipts for all real estate tax bills annually within thirty (30) days of the end of each calendar year. Alternatively, upon request of Lender, Borrower shall certify annually within thirty (30) days of the end of each calendar year to Lender that all real estate taxes due during such calendar year have been paid, and promptly make available for Lender's inspection pursuant to Paragraph 9 receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to exist against the Property except for Permitted Encumbrances and as otherwise provided herein; provided that the provisions of this Paragraph 4 shall not prevent the creation, incurrence, assumption or existence of:

(a) liens for water and sewer rates, rents, taxes, assessments or Other Impositions not yet due, or liens for water and sewer rates, rents, taxes, assessments being contested in good faith and by appropriate proceedings for which adequate reserves have been established;

(b) liens in respect of Property imposed by law, which were incurred in the ordinary course of business, which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Property, or assets subject to any such lien; and

(c) Mechanic's liens or any similar lien filed against the Property, or any part thereof, purporting to be for or on account of any labor done, materials or services furnished in connection with any work in or about the Property, done by, for, or under the authority of Borrower or anyone claiming by, through or under Borrower, which are discharged of record within thirty (30) days after service upon Borrower of notice of the filing thereof; provided, however, Borrower shall have the right to remove the lien by bonding the same in accordance with applicable law and to contest any such lien; provided, further that Borrower shall diligently prosecute any such contest, at all times effectively staying or preventing any official or judicial sale of the Property under execution or otherwise, and, if unsuccessful, Borrower shall satisfy any final judgment against Borrower adjudging or enforcing such lien or, if successful, procuring record satisfaction or release thereof.

5. INSURANCE. Borrower shall keep the improvements now existing or hereafter erected on the Land insured by Approved Carriers (as hereinafter defined) against loss by fire, hazards included within an all-risk "extended coverage" endorsement, rent loss and such other hazards, casualties, liabilities and contingencies as Lender (and, if this Instrument is on a leasehold, the lease) shall require and in such amounts and for such periods provided in this Paragraph 5; provided, however, in lieu of the insurance required hereunder, throughout the "Construction Period" (as defined in the Note), if any, Borrower shall keep the Property insured in accordance with the terms of the Construction Loan Agreement, if the restaurant operation is to be constructed on the Property after the date of this Instrument. Immediately upon the expiration of the Construction Period, Borrower shall maintain insurance as set forth in this Paragraph 5. All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the carrier, or upon a Default at Lender's option, in the manner and to the extent provided under Paragraph 2 hereof.

"Approved Carriers" shall mean insurance carriers which have a long-term debt rating of claims paying in the category "A-" or better as rated by Best's Insurance Rating Service.

Borrower shall purchase a blanket or other policies of insurance with respect to the Property with such Approved Carriers, in the following amounts and covering the following risks: (i) Standard Fire and Hazard, with all-risk (including earthquake coverage (in a high risk area) and builder's risk, and worker's compensation coverage on all construction related to the Property), agreed value endorsement and extended coverage endorsement including vandalism and malicious mischief in an amount equal to at least 100% of the replacement cost of the improvements existing on the Land; (ii) coverage for the peril of sprinkler leakage must be included as a covered cause of loss for buildings equipped with automatic sprinkler system designed to discharge water, or a chemical or gas, or any other extinguishing agent and Lender may require boiler or machinery insurance to cover the sudden and accidental breakdown of specific types of Equipment; (iii) business interruption insurance or, only if the entire Property is subleased by Borrower to a third party and such sublease expressly provides for an abatement of rent in the event of a casualty, Borrower may, in lieu of business interruption insurance, obtain rent loss insurance, in either case for a period of at least six (6) months; (iv) flood insurance, if any improvements on the Land are or will be located in an area identified by the U.S. Department of Housing and Urban Development (H.U.D.) as an area having "special flood hazards" (zones beginning with "A" or "V"), in the amount equal to the lesser of (i) one hundred percent (100%) of the replacement cost of all buildings and other improvements to the Land and (ii) the maximum limit of coverage available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the Housing and Community Development Acts of 1974 and 1977, all as amended; and (v) commercial general liability, with limits equal to or greater than \$1,000,000.00 per occurrence and liquor liability if Borrower serves alcoholic beverages on the Property with limits equal to or greater than \$1,000,000.00, and employer's liability and workers' compensation in amounts which are customary practice, and an umbrella policy in the amount of \$10,000,000.00 per occurrence in excess of the above commercial general liability, liquor liability and employer's liability requirements; provided, that each policy shall provide by way of endorsement, rider or otherwise that no such insurance policy shall be canceled or non-renewed, unless such insurer shall have first given Lender thirty (30) days prior written notice thereof. The Standard Fire and Hazard policy shall be on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the policy, but not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of the Property. The deductible clause(s), if any, of the following policies may not exceed (A) \$100,000.00 per occurrence for fire and extended coverage, (B) five hundred thousand dollars (\$500,000.00) per occurrence for general liability/workers' compensation and (C) one million dollars (\$1,000,000) per occurrence for liquor liability; provided, that, in the case of (C) above, such deductible shall be reduced so as not to exceed five hundred thousand dollars (\$500,000), in the event that the net worth of the Guarantor shall have decreased by an amount equal to or greater than thirty percent (30%) from the amount of net worth identified on the Guarantor's financial statement for the period ending December 31, 1999. A reduction in the deductible, if any, as set forth in the immediately preceding sentence, shall be made upon the next renewal of such policy or within twelve (12) months, whichever occurs first. Borrower shall cause all insurance (except commercial general liability and employer liability/workers' compensation and liquor liability insurance) carried in accordance with this Paragraph 5 to be payable to Lender as a mortgagee (pursuant to a standard mortgagee clause) and not as a coinsured, and, in the case of all policies of insurance carried by each lessee for the benefit of Borrower, if any, to cause all such policies to be payable to Lender as Lender's interest may appear. The Borrower shall also cause the Lender to be named as an Additional Insured/Mortgagee with respect to the commercial general liability and umbrella policies. Notwithstanding anything in this paragraph to the contrary, in the event earthquake or flood insurance cannot be obtained by Borrower subsequent to the date of this Instrument for a commercially reasonable premium, Lender may waive said insurance requirement, in its reasonable discretion.

All insurance policies and renewals thereof shall be in a form acceptable to Lender as provided in this Paragraph 5 and all property policies shall include a standard mortgagee clause in favor of and in form acceptable to Lender. Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, Borrower shall deliver to Lender insurance certificate(s) in form and substance satisfactory to Lender, together with an outline of the material terms of such renewal policy. If this Instrument is on a leasehold, Borrower shall furnish Lender a duplicate of all policies, renewal notices, renewal certificates and receipts of paid premiums if, by virtue of the lease, the originals thereof may not be supplied by Borrower to Lender. Evidence of such coverage shall be provided to Lender in the form of a certified copy of the policy or an insurance certificate.

In the event of loss in excess of the applicable deductible, Borrower shall give prompt written notice to the insurance carrier and to Lender, and in the event of a Major Casualty, Borrower shall promptly (and, in any event, within sixty (60) days of any event of loss), provide written notice to Lender of Borrower's determination to rebuild or to prepay the Note (including the prepayment premium) in full to the extent permitted in the Note. During the continuance of a Default hereunder, or after Borrower fails to do so, Borrower hereby authorizes and empowers Lender, and/or its assigns in respect of the Loan, as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's reasonable expenses incurred in the collection of such proceeds; provided however, that nothing contained in this Paragraph 5 shall require Lender to incur any expense or take any action hereunder. Borrower agrees and covenants that in the event of a Major Casualty (unless waived by Lender) or during the continuance of a Default hereunder all insurance proceeds (except rent loss) shall be paid to Lender, and Lender agrees that all insurance proceeds shall be solely payable to Borrower if the casualty is less than a Major Casualty and Borrower is not in Default hereunder. Borrower, subject to the following sentence, further authorizes Lender to apply the balance of such proceeds remaining after restoration or repair to the payment of the sums secured by this Instrument, if any, whether or not then due, in the order of application set forth in Paragraph 3 hereof, provided that, in the event the balance of such proceeds described in this subclause (b) is equal to or less than \$10,000.00, then the balance shall be remitted directly to Borrower (subject, however, to the rights of the lessor under the lease if this Instrument is on a leasehold). In the event a Major Casualty (as hereinafter defined) of the Property occurs within two (2) years of the Note Maturity Date, then at Lender's option, all insurance proceeds (except rent loss) shall be paid to Lender and applied to the payment of sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 3 hereof, in which event the Lender shall have the right to accelerate all amounts payable hereunder, and Borrower shall have the right to prepay any remaining balance due, without any prepayment premium. Borrower covenants that in no event shall Borrower use any insurance proceeds from loss or damage to the Property to rebuild any buildings or improvements on any real property other than the Property.

Unless Borrower elects to prepay the Note (including the prepayment premium, if applicable) as permitted in this Paragraph 5, Borrower shall restore the Property to the equivalent of the type and class of construction existing before such casualty, with new materials as required by the current building codes or such other condition as Lender may approve in writing, such approval not to be unreasonably withheld, delayed or conditioned. If the insurance proceeds from a Major Casualty are held by Lender, Lender shall disburse (no more than once a month) such proceeds to Borrower for restoration and repair of the Property, and Lender may, at Lender's option, condition disbursement of said proceeds on Lender's reasonable approval of such plans and specifications of an architect reasonably satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require; provided, however, during the continuance of a Default, any or all such proceeds shall be applied in the manner prescribed in Paragraph 3 hereof. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amounts of such installments unless Lender and Borrower otherwise agree in writing. If the Property is sold pursuant to Paragraph 27 hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon, and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

"Major Casualty" shall mean any damage, injury or loss to the Property by fire, lightning, hail, windstorm, explosion, flood or other hazard or casualty (collectively, a "Casualty") for which the cost to replace or repair would exceed \$100,000.00.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property (normal wear and tear excepted), (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of the type and class of construction existing before such casualty, with new materials as required by the current building codes, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, Equipment,

machinery and appliances thereon in good repair and shall replace fixtures, Equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) shall operate and maintain the Property as set forth in Paragraph 7 of this Instrument, and (g) shall give notice in writing to Lender of any action or proceeding in which the amount in controversy is equal to or excess of \$300,000.00 and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender.

If this Instrument is on a leasehold, Borrower (i) shall comply with the provisions of the lease, (ii) shall give immediate written notice to Lender of any default by lessor under the lease which is known to Borrower and any notice received by Borrower from such lessor of any default under the lease by Borrower, (iii) shall exercise any option to renew or extend the lease relating to a period prior to the Note Maturity Date and give written confirmation thereof to Lender within the later to occur of (x) sixty (60) days before the expiration of such option and (y) if the lease does not provide for at least sixty (60) days in which to exercise such option, the earliest date on which such renewal/extension option may be exercised under the lease, and hereby appoints Lender as its attorney-in-fact giving Lender full power and authority to exercise any option to renew or extend the lease in the event Borrower fails to do so, (iv) shall give immediate written notice to Lender of the commencement of any remedial proceedings under the lease by any party thereto and, if Borrower shall fail to diligently contest any such remedial proceeding brought against it (in Lender's reasonable determination and such non-action could result in a material adverse affect on the value of the Property), shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings, and (v) shall use its reasonable efforts to obtain within thirty (30) days after request by Lender from the lessor under the lease and deliver to Lender the lessor's estoppel certificate required thereunder, if any. Borrower hereby irrevocably authorizes and empowers Lender as attorney-in-fact for Borrower, at Borrower's expense, during the continuance of a Default, or after Lender reasonably determines that Borrower is not diligently pursuing resolution of claims or prosecuting actions with respect to the lease and such non-action could result in a material adverse affect on the value of the Property, to make proof of claim, to adjust and compromise any claim under any such leases, to appear in and prosecute any action arising from such leases, and otherwise to represent and act on behalf of the Borrower in connection with any enforcement, arbitration, bankruptcy or similar action or proceeding involving such leases, and to deduct therefrom Lender's reasonable expenses incurred in connection therewith, provided however, that nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder.

Borrower shall not surrender the leasehold estate and interests herein conveyed nor terminate or cancel the lease creating said estate and interests, and Borrower shall not, without the express written consent of Lender, materially alter or amend said lease. Borrower covenants and agrees that there shall not be a merger of the lease, or of the leasehold estate created thereby, with the fee estate covered by the lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Lender shall consent in writing to such merger; if Borrower shall acquire such fee estate, then this Instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate.

7. USE OF PROPERTY. Unless required by applicable law, permitted under the terms of this Instrument or unless Lender has otherwise agreed in writing, Borrower shall use the Property for the operation of a Bennigan's restaurant. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

8. PROTECTION OF LENDER'S SECURITY; LENDER COOPERATION. If Borrower is in Default, then Lender, at Lender's option, may make appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in Paragraph 5 hereof, (iv) if this Instrument is on a leasehold, exercise of any option to renew or extend the lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the lease, (v) the payment of any taxes and/or assessments levied against the Property and then due and payable, and (vi) discharge (by payment, bonding or otherwise) of any lien (including any Lien) on the Property which is not a Permitted Encumbrance. In addition, if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or

arrangements or proceedings involving a bankruptcy and Lender determines in its reasonable discretion that Borrower is not diligently pursuing available legal rights or remedies with respect to such actions or proceedings and such non-action could result in a material adverse affect on the value of the Property, then Lender, at Lender's option, may make such appearances, disburse such sums (including reasonable attorneys' fees) and take such actions as Lender deems reasonably necessary to protect Lender's interest.

Any amounts disbursed by Lender pursuant to this Paragraph 8 or under any of the other Instruments or Loan Documents, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable on demand and, if not paid within ten (10) days of notice by Lender to Borrower, shall bear interest from the date of disbursement at the applicable rate stated in the Note. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this Paragraph 8 shall require Lender to incur any expense or take any action hereunder.

Lender shall fully cooperate with Borrower throughout the term of the Loan to assist Borrower in maintaining proper zoning, building and other permits and easements, the filing of easements or restrictions arising in the ordinary course and which do not materially adversely affect the value of the Property and complying with all applicable laws, and shall subordinate the interest of this Instrument to the extent necessary or required in respect of those instruments to be recorded in the public real estate records relating to any such easements or restrictions; provided, however, that Borrower shall indemnify and save Lender harmless from any and all expenses, costs, charges, liabilities, losses, obligations, damages and claims of any type which may be imposed upon, asserted against or incurred by Lender by reason of same.

9. INSPECTION. Lender may make or cause to be made reasonable entries upon and inspections of the Property during business hours. Lender agrees to provide Borrower with not less than 48 hours notice of any such entry or inspection (except in the case of an emergency situation in which Lender deems it necessary to act immediately to protect its interest in the Property).

10. BOOKS AND RECORDS. Guarantor and Borrower shall keep and maintain at all times at Guarantor's address stated in its Guaranty or such other place as Lender may approve in writing, which approval shall not be unreasonably withheld, complete and accurate books of accounts and records adequate to reflect correctly the consolidated financial condition of Guarantor, including, but not limited to, the operation by Borrower of the Bennigan's restaurant located on the Property. Borrower shall keep books and records in a manner necessary to enable Guarantor to comply with the requirements of this Paragraph 10. Such books and records shall be in accordance with generally accepted accounting principles consistently applied, and shall, together with all material contracts, leases, and other instruments which affect the Property (including signed rent rolls or lease digests, if any), be subject to examination and inspection by Lender on 48 hours written notice at all times during normal business hours at the Guarantor's offices referenced above, and Lender shall have the right, at Lender's sole cost and expense, to make such copies or abstracts thereof as Lender may desire. During the term of the Loan, Guarantor and Borrower (collectively referred to as the "Reporting Entities"), on a consolidated basis at the Guarantor level must furnish or cause to be furnished to the Lender within 120 days of the close of its fiscal year, a fiscal year end current, signed financial statements (including annual balance sheet, statement of cash flows, profit/loss statements and any footnotes, supporting schedules, or management reports included in or issued with the financial statements) audited by independent certified public accountants of recognized standing selected by Borrower and reasonably acceptable to Lender, all of which shall be certified by the Chief Financial Officer of the Borrower or the Guarantor.

During the term of the Loan, Guarantor must furnish or cause to be furnished to the Lender within 60 days of the close of each of the first three (3) respective fiscal quarters, current, internally prepared financial statements of the Reporting Entities (on a consolidated basis at the Guarantor level) including balance sheet, statement of cash flows, profit/loss statements and all supporting schedules and certified by the Guarantor to be true, correct and accurate to the best knowledge of the officer so certifying. During the term of the Loan, Borrower shall furnish or cause to be furnished to the Lender (i) within 60 days of the close of each of the first three (3) respective fiscal quarters, a profit/loss statement for Borrower and for the restaurant that is a part of the Property, (ii) within 60 days

of the close of the fourth (4th) fiscal quarter, a gross sales report for the restaurant that is a part of the Property and (iii) within 120 days of the close of the fourth (4th) fiscal quarter, a profit/loss statement for Borrower and for the restaurant that is operated on the Property. In addition, Borrower shall advise Lender of its fiscal year-end date and shall notify Lender, in writing, of any change in such year-end date.

11. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding known to Borrower relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding. During the continuance of a Default or, if Lender has made the determination, in its reasonable discretion, that Borrower is not diligently and effectively prosecuting such action or proceeding and, such lack of prosecution could result in a materially adverse affect on the value of the Property, then immediately upon written notice to Borrower of Lender's determination, Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any Major Taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation ("Condemnation Proceeds"), are hereby assigned to and shall be paid to Lender subject, if this Instrument is on a leasehold, to the rights of lessor under the lease.

In the event such condemnation or other taking does not require the repair or restoration of the remaining portion of the Property, then the Condemnation Proceeds shall be assigned and paid to Lender and applied to the payment of sums secured by this Instrument, whether or not due, in accordance with Paragraph 3 hereof without prepayment premium. In the event such condemnation or other taking is not a Major Taking and requires the repair and restoration of the remaining portion of the Property and (i) is not a Material Taking, or (ii) is a Material Taking and Borrower has elected to rebuild as set forth below, then, provided Borrower is not in Default hereunder, the Condemnation Proceeds shall be paid to Borrower and Borrower shall immediately undertake the renovation and repair of the remaining portions of the Property.

In the event such condemnation or other taking is a Major Taking and requires the repair and restoration of the remaining portion of the Property and (i) is not a Material Taking, or (ii) is a Material Taking and Borrower has elected to rebuild as set forth below, then the Condemnation Proceeds shall be assigned and paid to Lender, and Borrower shall repair and restore the remaining portion of the Property and Lender shall distribute the Condemnation Proceeds in the same manner as Lender distributes insurance proceeds under Paragraph 5 hereof. Borrower covenants that, if Borrower is required or has elected to rebuild as set forth below, Borrower shall use any Condemnation Proceeds to restore or repair any buildings or improvements on the Property. If Borrower is in Default hereunder at the time of such condemnation or other taking, Lender, at its sole option, shall apply the Condemnation Proceeds as set forth in Paragraph 3 hereof. After application of the Condemnation Proceeds as set forth herein, any excess proceeds shall, at Lender's sole option, be applied to the principal balance of the Note without penalty or premium, or paid directly to Borrower; provided that, in the event the balance of such excess proceeds is equal to or less than \$10,000.00, then the balance shall be remitted directly to Borrower. "Major Taking" shall mean any condemnation or other taking by eminent domain, or conveyance in lieu thereof, of a portion of the Property for which a claim for payment of an award for such taking and for damages in connection therewith exceeds \$100,000.00.

The foregoing provisions providing for the application of Condemnation Proceeds to the sums secured by this Instrument are agreed to be necessary to prevent an impairment of Lender's security resulting from such taking. In the event, however, that any provision hereof providing for the application of any Condemnation Proceeds to the indebtedness secured by this Instrument is held to be unenforceable, in whole or in part, then all Condemnation Proceeds not payable to Lender for immediate application to the sums secured by this Instrument as the result of such invalidity, shall be applied by Borrower to the restoration of the Property with the balance thereof, if any, being deposited with Lender as additional amounts due under Paragraph 2 hereof, which balance shall be held and applied as provided for therein.

In the event that a material part of the building on the Property or a material portion of the Land (for purposes hereof, "material" shall mean: (1) more than twenty percent (20%) of the then-existing parking spaces on the Property, provided that Borrower is unable to provide alternate parking spaces adjacent to the Property acceptable to Borrower in its reasonable judgment; or (2) more than ten percent (10%) of the building in which the restaurant operates or (3) reasonable ingress/egress (as reasonably acceptable to Borrower) to the adjacent roadways from the existing or comparable curb cuts) shall be taken, damaged or destroyed during the term of the Note or any extension or renewal thereof for any public or quasi-public use under any governmental law, ordinance, regulation or by right of eminent domain, or shall be sold to the condemning authority under threat of condemnation (any of such events being hereinafter referred to as a "Material Taking"), such that the portion or portions remaining is not or are not sufficient and suitable, in the reasonable judgment of Lender, for the continued operation of the business contemplated by this Instrument and Borrower permanently ceases operation of the Bennigan's restaurant at the Property, then, in lieu of restoring the Property, Borrower shall have the option of prepaying the Note without the payment of a prepayment premium as of a date no earlier than the date of such taking and no later than the date which is sixty (60) days after the date of such Material Taking (unless extended by mutual consent of Lender and Borrower), such termination date to be specified in a written notice of termination to be given by Borrower to Lender within such time period. In the event that there is a Material Taking and the portion or portions of the Property remaining is sufficient and suitable, in the reasonable judgment of Lender, for the continued operation of the Bennigan's restaurant but the portion or portions of the Property remaining is not sufficient and suitable, in the reasonable judgment of Borrower, for the continued operation of such restaurant and Borrower elects not to restore the Property, then Borrower shall either prepay the Note (including the Prepayment Premium) or substitute another property for such Property in accordance with Paragraph 19 of this Instrument, as of a date no earlier than the date of such taking and no later than the date which is sixty (60) days after the date of such taking (unless extended by mutual consent of Lender and Borrower), such prepayment date or proposed substitution date to be specified in a written notice to be given by Borrower to Lender within such time period.

Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may reasonably require.

12. BORROWER AND LIEN NOT RELEASED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's Default under this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Paragraph 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument or any of the other Instruments and to observe the covenants of Borrower contained herein and therein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby (provided, however, that in the event Guarantor is no longer an Affiliate of Borrower, any such extension, renewal, modification, release, reconveyance, consent, or other amendment or agreement in writing with/or for Borrower by/or with Lender shall not extend or modify Guarantor's obligations under its Guaranty, which Guaranty shall remain in effect and enforceable only to the extent of the obligations thereunder when Borrower was affiliated with Guarantor), and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and reasonable attorneys' fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

13. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder or under any of the other Instruments, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum

secured by this Instrument after the due date of such payment shall not be deemed to be a waiver of Lender's right thereafter either to require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument or by any of the other Instruments after notice of such breach and failure of Borrower to cure as hereinafter provided, nor shall Lender's receipt of any awards, proceeds or damages under paragraphs 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument or by any of the other Instruments.

14. ESTOPPEL CERTIFICATE. Borrower shall promptly, and in no event in excess of fifteen (15) business days of a written request from Lender furnish Lender with a written statement, duly acknowledged, (a) setting forth (i) the then outstanding principal balance of the Note and all other sums, if any, then due and payable by Borrower to Lender under the provisions of the Note or this Instrument or Loan Documents relating to the Property and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument; (ii) that no Default or event which, with the passage of time or the giving of notice, would constitute a Default exists; and (iii) other matters reasonably requested by Lender; and (b) attaching true, correct and complete copies of the Note, this Instrument, and the Loan Documents related to the Property and any and all modifications, amendments and substitutions thereof. Lender shall promptly, and in no event in excess of fifteen (15) business days of a written request from Borrower furnish Borrower with a written estoppel certificate, duly acknowledged, and similar to the estoppel described in this Paragraph 14.

15. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT . This Instrument is intended to be a security agreement pursuant to the UCC for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the UCC, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition Borrower agrees to execute and deliver to Lender, upon Lender's reasonable request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may reasonably require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof; Lender shall be deemed reasonable (by way of example but not of limitation), to require payment for any continuation statements or amendments reasonably required to perfect or continue the perfection of Lender's security interest or amendments or releases necessitated due to actions of or related to Borrower. Without the prior written consent of Lender and other than Permitted Encumbrances, Borrower shall not create or suffer to be created pursuant to the UCC any other security interest in said items, including replacements and additions thereto. Upon Borrower's Default under this Instrument, including as a result of any breach of the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the UCC and, at Lender's option, may also invoke the remedies provided in Paragraph 27 of this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the UCC or of the remedies provided in Paragraph 27 of this Instrument.

16. LEASES OF THE PROPERTY. As used in this Paragraph 16, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property which have not been previously furnished to Lender. Borrower shall not be required to obtain the prior approval of Lender in the event it leases or subleases its interest (or assigns its leasehold interest) in the Property to an Affiliate provided such lessee, sublessee or assignee executes all necessary documentation as required by this Instrument or the Loan Documents and no Default exists under any of the Loan Documents related to the Property (it being agreed that Borrower shall be given the opportunity to cure any such default unless the Note has been accelerated). Except as set forth in the immediately preceding sentence, and as may be permitted under Paragraph 19(f) or 19(g), Borrower shall not have the right to lease or sublease any of the Property (or assign any leasehold interest therein) unless it obtains the Lender's prior written approval which approval shall not be unreasonably conditioned, delayed or withheld. The

following provisions shall apply if the Property is leased or subleased to any party pursuant to this Paragraph 16 or Paragraph 19(f): (i) all leases must be provided to Lender for its review and approval (which approval shall not be unreasonably withheld, delayed or conditioned, and which approval shall be deemed given if Lender shall fail to respond to Borrower's request for approval within ten (10) business days after Lender's written acknowledgment of its receipt of all information with respect to such lease reasonably requested by Lender) prior to closing or execution thereof; (ii) except as provided in paragraph 19(f), all rents, leases, and profits involving any portion of the Property shall be assigned to Lender as additional collateral; (iii) after approval by Lender, no such lease can be modified in any material respect or canceled (unless the tenant is in default thereunder) without the prior written approval of Lender (which approval shall not be unreasonably withheld, delayed or conditioned); (iv) Lender may require that all tenants agree in writing to give Lender both a written notice of any default by landlord(s) under the lease(s) and a reasonable opportunity to cure the same; and (v) Lender shall require all tenants to execute a Subordination and Attornment Agreement pursuant to which each tenant shall (a) agree to subordinate its lease to the lien of this Instrument regardless of the non-default status of the Lease and (b) agree to recognize Lender or its assigns as the landlord under the lease in the event that Lender or its assigns becomes owner of the Property. Borrower acknowledges and agrees that, except for any lease or sublease pursuant to Paragraph 19(f) or any other third party lease permitted by this Paragraph 16, Lender shall have the right to terminate any lease or sublease upon the occurrence of any Default under this Instrument. Any non-Affiliate lessee or sublessee shall have an interest subordinate to Lender but Lender shall execute its customary non-disturbance agreement, if required.

17. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

18. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY. If Borrower or Guarantor shall voluntarily file a petition under the Federal Bankruptcy Code (the "Code"), as such Code may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower or Guarantor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower or Guarantor respectively, within sixty (60) days of the filing of such involuntary proceeding, or if Borrower or Guarantor shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Guarantor or for Borrower's property or Guarantor's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower or Guarantor shall make an assignment for the benefit of Borrower's or Guarantor's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's or Guarantor's assets and such seizure is not discharged within ten (10) days, then Borrower shall be in Default under this Instrument and Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by Paragraph 27 of this Instrument. Any attorneys' fees and other expenses incurred by Lender in connection with Borrower's or Guarantor's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to Paragraph 8 hereof.

19. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER OR PROPERTY; ASSUMPTION.

Except as otherwise provided herein, on sale or transfer of all or any part of the Property, or any interest therein, Borrower shall be in Default under this Instrument and Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by Paragraph 27 of this Instrument.

(a) Transfer Event. A sale or transfer of all or substantially all of the assets or more than fifty percent (50%) of the voting stock of the Borrower or Guarantor (for purposes of this Paragraph 19(a), Borrower and Guarantor are individually and collectively referred to as "Transferor") or a transaction in which a Transferor merges or consolidates into another corporation or entity (such sale or transaction referred to herein as a "Transfer Event") or a sale of all or substantially all of the assets which constitute the "Bennigan's" concept or the "Steak and Ale"

concept, whether effectuated through an asset sale, stock sale, merger or consolidation (such sale or transaction referred to herein as a "Concept Sale") shall constitute a Default under the Note in the event of a Transfer Event (or in the event of a Concept Sale, if the restaurant located on the Property is a restaurant of the concept so sold, then such Concept Sale shall be a Default under the Note) unless the Transferor shall have obtained the prior written consent of the Lender (which consent, with respect to all aspects of such Transfer Event or Concept Sale, including without limitation, the use of the Property and the creditworthiness of the acquiror or surviving entity, shall not be unreasonably withheld, delayed or conditioned). Consent by the Lender shall not be required if all of the following conditions (the "Transfer Requirements") are met: (i) the Property shall be used only as it was used prior to such Transfer Event; and (ii) the minimum net worth of the Transferor, the acquiring corporation (or entity) or surviving corporation (or entity) (as the case may be) of such Transfer Event (the "Transferee") immediately after the Transfer Event is not less than Sixty Million Dollars (\$60,000,000.00) determined on a proforma basis assuming consummation of the Transfer Event; and (iii) the Transferee has a Consolidated Fixed Charge Coverage Ratio of not less than 1.7:1.0 determined on a proforma basis assuming consummation of the Transfer Event; and (iv) the Transfer Event shall not result in the downgrade in the rating of Loans or Notes or the Borrower and Guarantor for purposes of any securitization of the Loans or Notes as confirmed in writing by the appropriate rating agency reasonably acceptable to the Lender. Consent by Lender to a Concept Sale shall not be required if Transfer Requirements (i) and (iv) above are satisfied and Transfer Requirements (ii) and (iii) above are satisfied by each of Transferor and Transferee. Lender agrees that it will consider a Transfer Event or Concept Sale that does not satisfy one or more of the Transfer Requirements set forth above and Lender may nevertheless approve the Transfer Event or Concept Sale in its reasonable discretion, and may also release Borrower and Guarantor from liability under the Notes and Loan Documents, in its reasonable discretion. In the event the Transfer Requirements are not satisfied and the Lender has not otherwise provided consent to the Transfer Event or Concept Sale in its reasonable discretion, the Transferor shall have the right to provide written notice to the Lender (which notice must be provided within thirty (30) days after the Lender has notified the Transferee that it has not consented to the Transfer Event or Concept Sale), to prepay the Note in accordance with the provisions of the Note including payment of the Prepayment Premium set forth therein; provided, that in the event that such prepayment pursuant to this Paragraph 19 occurs prior to the Lender's securitization of this Note, Borrower shall pay to Lender all amounts due and payable pursuant to the Note (but excluding the Prepayment Premium set forth therein), plus an amount equal to the greater of (x) five percent (5%) of the then outstanding principal balance of the Note and (y) Breakage Costs, if any. In the event that Borrower prepays the Note in accordance with the foregoing provisions, no Default shall be deemed to have occurred, and Lender shall not be entitled to exercise any remedies against Borrower, Guarantor, the Property or any Transferee. Notwithstanding anything to the contrary contained in this Paragraph 19, Lender agrees that a Transfer Event shall not be deemed to have occurred in connection with and Lender's consent and approval need not be obtained with respect to (a) any sale or transfer of the voting stock of a Transferor, if following such sale or transfer, Metromedia Company, its affiliates, its general partners or any trust or other entity established by such general partners for the benefit of their heirs or any foundation continues to control, directly or indirectly, more than fifty percent (50%) of the voting stock of such Transferor, or (b) a transaction in which a Transferor merges or consolidates into another corporation or entity and the shareholders of such Transferor end up owning at least a majority of the voting stock of the combined entity, or (c) any sale or transfer of the voting stock of a Transferor by means of any initial public offering of voting stock. Borrower and Guarantor shall be released from all liability under this Instrument, the Note and Loan Documents upon: (yy) a sale of all or substantially all of the assets of Borrower and Guarantor where all of the Transfer Requirements have been satisfied, or (zz) a Concept Sale (in which the Concept so sold is the same concept as the restaurant located on the Property) where the Transfer Requirements, as set forth above, have been satisfied.

(b) Economically Disadvantaged Sites. In the event the Property has a negative unit level cash flow for a trailing period of at least twelve (12) consecutive accounting periods, each approximately a month, taken as a whole, or in the event that Guarantor has notified Lender in writing of a final determination that all restaurants operated by Guarantor or any Affiliate, other than the Property (but of the same concept as such Property), located in the same DMA as the Property, are permanently closed or Guarantor or any Affiliate is diligently pursuing closure of all such restaurants as part of Guarantor's decision to exit such DMA, said closure to be completed within a reasonable period of time, Borrower may serve written notice on Lender designating the site as an "Economically Disadvantaged Site". Borrower may then notify Lender of its request to replace such site ("Existing Collateral") with a proposed substitute site ("Substitute Collateral"). Borrower shall submit or cause to be submitted, to Lender for Lender's approval in accordance with the terms set forth herein, all information regarding the Substitute

Collateral as may reasonably be requested by Lender. Borrower shall pay all costs (including reasonable documented out-of-pocket costs of Lender) which relate to such substitution. Such an approved substitution is limited to:

(i) A single fee property may be substituted for a single fee site and of the same concept, (Bennigan's Restaurant for Bennigan's Restaurant and Steak and Ale Restaurant for Steak and Ale Restaurant) or a Bennigan's Restaurant may be substituted for a Steak and Ale Restaurant (and if approved by Lender in its sole discretion, a Steak and Ale Restaurant may be substituted for a Bennigan's Restaurant). The then current real estate and business enterprise valuation of the Substitute Collateral must be at least equal to or greater than the then current real estate and business enterprise valuation of the Existing Collateral and the then current principal balance of the Loan must provide a loan to value ratio so that the then current principal balance of the Loan does not exceed seventy percent (70%) of the total then current real estate and business enterprise valuation appraisal for the Substitute Collateral.

(ii) A single leasehold property may be substituted for a single leasehold property of the same concept (Bennigan's Restaurant for Bennigan's Restaurant and Steak & Ale Restaurant for Steak & Ale Restaurant) or a Bennigan's Restaurant may be substituted for a Steak & Ale Restaurant (and if approved by Lender in its sole discretion, a Steak and Ale Restaurant may be substituted for a Bennigan's Restaurant). The then current building (if owned by Borrower) and business enterprise valuation of the Substitute Collateral must be sufficient to provide a loan to value ratio so that the then current principal balance of the Loan does not exceed sixty-five percent (65%) of the total then current building (if owned by Borrower) and business enterprise valuation appraisal for the Substitute Collateral (if the Substitute Collateral is a ground lease property) or (y) sixty percent (60%) of the business enterprise valuation appraisal for the Substitute Collateral (if the Substitute Collateral is a leasehold property).

(iii) Two (2) properties may be substituted for a single site of the same form of ownership (fee or leasehold) and of the same concept (Bennigan's Restaurants for Bennigan's Restaurant and Steak and Ale Restaurants for Steak and Ale Restaurant) or one Bennigan's Restaurant and one Steak and Ale Restaurant may be substituted for one (1) Steak and Ale Restaurant or two (2) Bennigan's Restaurants may be substituted for one (1) Steak and Ale Restaurant; provided that (y) the two (2) properties to be substituted must collectively satisfy the current valuation appraisal and loan to value requirements set forth in Paragraph 19(b)(i) in the case of fee properties and Paragraph 19(b)(ii) in the case of leasehold properties and (z) each of the two (2) properties to be substituted shall have a Unit Level Fixed Charge Coverage Ratio of not less than 1.2:1.0.

(iv) A single leasehold Substitute Collateral property may be substituted for a single fee Existing Collateral property and of the same concept (Bennigan's Restaurant for Bennigan's Restaurant and Steak and Ale Restaurant for Steak and Ale Restaurant) or a Bennigan's Restaurant may be substituted for a Steak and Ale Restaurant (and if approved by Lender in its sole discretion, a Steak and Ale Restaurant may be substituted for a Bennigan's Restaurant); provided, that (a) the then current building (if owned by Borrower) and business enterprise valuation of the Substitute Collateral must be at least equal to or greater than the then current real estate and business enterprise valuation of the Existing Collateral, and (b) the then current principal balance of the Loan must provide a loan to value ratio so that the then current principal balance of the Loan does not exceed sixty-five (65%) of the total then current building (if owned by Borrower) and business enterprise valuation appraisal for the Substitute Collateral (if the Substitute Collateral is a ground lease property) or (y) sixty percent (60%) of the business enterprise valuation appraisal for the Substitute Collateral (if the Substitute Collateral is a leasehold property), and (c) in Lender's reasonable discretion no fee simple Substitute Collateral acquired after the Closing owned by Guarantor or any Affiliate is available for substitution notwithstanding Borrower's or Guarantor's best efforts to provide such fee simple Substitute Collateral, and (d) the principal balance amount of the Note secured by the Existing Collateral at the initial date of the Note, when aggregated with

the principal balance as of the initial date of each of those certain Related Notes or Other Notes which as of the date of any such aggregated calculation is then secured by "Substitute Collateral" (as such term is defined in the Instrument related to such Related Notes or Other Notes) in which a leasehold property was substituted for a fee property (or which Related Note or Other Note had been previously secured by a leasehold property substituted for fee property as "Substitute Collateral" but which Related Note or Other Note has been prepaid) shall not exceed Four Million Dollars (\$4,000,000.00) (Substitution Limitation).

(c) Notice And Approval. Borrower shall serve written notice of its desire to substitute collateral, under one of the options above, including such site information as may be reasonably requested by Lender, including but not limited to title, environmental, valuation and other such information. Lender shall either approve or disapprove of the substitution within a period not to exceed thirty (30) days after Lender's prompt written acknowledgment of receipt of all such reasonably requested information, such approval or disapproval not to be unreasonably withheld or delayed. A failure to respond to Borrower's request for substitution, within thirty (30) days after Lender's written acknowledgment of receipt of all such reasonably requested information, shall be deemed as an approval. Time shall be of the essence for such decision by Lender. Should Lender approve (or be deemed to have approved) the substitution, Lender shall use best efforts to implement the substitution within sixty (60) days from satisfactory review. Borrower shall pay all costs (including reasonable documented out-of-pocket costs of Lender) which relate to any substitution or proposed substitution.

(d) Temporary Closure. If the Property is an Economically Disadvantaged Site, and provided that no Default is continuing hereunder, Borrower, after giving prior written notice to Lender of its intention to exercise its rights under this Paragraph 19(d), shall have the right to cease its business operations on the Property for the lesser of six (6) months or any period permitted by any third party landlord, whichever is less (or at Lender's sole discretion, for a longer period); provided that Borrower continues to pay all amounts due under the Note, this Instrument and the Loan Documents relating to the Property (and continues to make all payments and otherwise comply with all the terms of any third party lease in the event the Property is a leasehold). In the event the Property suffers material casualty damage through an Act of God or otherwise during such six (6) month period (or lesser period as provided in the underlying lease), then Borrower shall have a period not to exceed six (6) months (or lesser period as provided in the underlying lease) from the date of such material casualty damage in which to repair, remodel or dispose of the Property (or, if Borrower elects to reopen the restaurant at the Property, such additional time to repair or remodel as provided for in Paragraph 42(b) hereof).

(e) Transfer to Non-Affiliate. Borrower may transfer the Property to a non-affiliate third party who is either a franchisee of Guarantor or its Affiliates or an operator of a restaurant concept then currently financed by Lender or which would otherwise meet Lender's then current underwriting criteria (including financial condition, creditworthiness and ability to operate the property) in a manner satisfactory to Lender in its reasonable discretion (such operator hereinafter referred to as a "Operator"), provided however that: (i) Borrower obtains Lender's prior written consent to such transfer to a Operator which consent shall not be withheld if such Operator meets such underwriting criteria (a failure by Lender to respond to Borrower's request for transfer, within ten (10) business days after Lender's written acknowledgment of receipt of all reasonable requested information, shall be deemed as an approval); (ii) the proposed Operator assumes in writing all obligations of the Borrower under the Note, this Instrument and the other Loan Documents relating to the Property; (iii) Lender shall receive for its review and reasonable approval copies of all transfer documents; (iv) Borrower or the Operator shall pay all costs and expenses in connection with such transfer and assumption, including without limitation all reasonable fees and expenses incurred by Lender; and (v) Borrower provides Lender with evidence satisfactory to Lender that such transfer to a Operator shall not result in a withdrawal, downgrade or qualification of the rating of any securities issued in connection with an securitization of the Mortgage or the Loan Documents. In the event of a permitted transfer in accordance with the terms of this paragraph 19(e), the cross default and cross collateralization with other loans of the Borrower (but not other loans of Operator or its Affiliate) shall be deemed deleted. The obligations of the Operator in any permitted transfer shall be cross defaulted with any other obligation owed by the Operator to Lender.

(f) Additional Right to Lease. Borrower may lease or sub-lease the Property (or assign Borrower's leasehold interest in the Property) to (1) a franchisee of Guarantor or its Affiliates or (2) an entity operating another restaurant concept then currently financed by Lender and which would otherwise meet Lender's then current underwriting criteria (including financial conditions, creditworthiness and ability to operate the Property) in a manner satisfactory to Lender in its reasonable discretion, and where the use of the Property is not noxious or offensive, all in accordance with the terms of Paragraph 16 hereof. A noxious or offensive use, for purposes of this Paragraph 19(f), shall be defined to mean a dance hall, off-track betting business, billiard or pool hall, bingo parlor, massage parlor, video game arcade, blood bank, night club, or adult book or adult video store (which are defined as stores in which any part of the inventory is not available for sale or rental to children under eighteen (18) years old, because such inventory explicitly deals with or depicts human sexuality). In the event of any such lease or sublease to a franchisee of Guarantor, Lender shall consent to a collateral assignment of such lease or sublease to another lender, and Lender shall release its collateral assignment of such lease, and paragraphs 27(f) and 28 hereof shall be deemed to be deleted. Any lessee shall have an interest subordinate to Lender but Lender shall execute its customary non-disturbance agreement, if required.

(g) Immaterial Leases. Borrower shall have the right, without the consent of Lender and without complying with the provisions of paragraph 16 to lease or sublease immaterial portions of the Property to third parties in the ordinary course of business for uses related to the operation of the Property (such as video games, automatic teller machines, billboards, etc.)

20. NOTICE. Any notice from one party to another relating to this Instrument and any of the Loan Documents, if required, shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address or telecopier number sent by any of the following means: (i) hand delivery, (ii) registered or certified mail, postage prepaid, (iii) express mail or other overnight courier service or (iv) telecopy, with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with these provisions shall be deemed delivered on receipt if delivered by hand, on a business day during business hours in place of receipt or telecopied on a business day during business hours in place of receipt (and in each such case, if any notice is delivered or telecopied other than on a business day) during business hours in place of receipt, such notice shall be deemed to have been delivered on the next business day, or on the third business day after mailing if mailed by registered or certified mail, or on the next business day after mailing or deposit with the postal service or an overnight courier service if delivered by express mail or overnight courier. Any required notice shall be made to the parties as follows:

If to Lender: CNL Franchise Network, LP
450 South Orange Avenue
Orlando, FL 32801
Attn: Servicing Manager
Telecopy No. 407-422-2933

With copy to: Lowndes Drosdick Doster Kantor & Reed, P.A.
215 North Eola Drive
P.O. Box 2809
Orlando, FL 32802
Attn: Daniel F. McIntosh
Telecopy No. 407-423-4495

If to Borrower or Guarantor:
S & A Restaurant Corp.
6500 International Parkway
Plano, TX 75093
Attn: Chief Financial Officer
Telecopy No. 972-588-5155

With copy to: S & A Restaurant Corp.
6500 International Parkway
Plano, TX 75093
Attn: General Counsel
Telecopy No. 972-588-5031

With copy to: Paul, Weiss, Rifkind, Wharton and Garrison
1285 Avenue of the Americas
New York, NY 10019
Attn: Steven Simkin
Telecopy No. 212-757-3990

21. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraphs 19 and 36 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

22. GOVERNING LAW; SEVERABILITY. This Instrument shall be governed by the law of the jurisdiction in which the real estate that constitutes a portion of the Property is located. Borrower and Lender agree that any dispute arising out of this Instrument shall be subject to the jurisdiction of both the state and federal courts in Illinois. For that purpose, Borrower hereby submits to the jurisdiction of the state and federal courts of Illinois. Borrower further agrees to accept service of process out of any of the aforesaid courts in any such dispute by registered or certified mail addressed to the undersigned. Nothing herein contained, however, shall prevent Lender from bringing any action or exercising any rights against (i) Borrower, (ii) any security, (iii) a guarantor personally, or (iv) the assets of Borrower or any guarantor, within any other state or jurisdiction. In the event that any provision of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note and the other Instruments and Loan Documents are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Instrument, in the Note or any of the other Instruments and Loan Documents, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note in inverse order of maturity, in which case such prepayment shall not be subject to any Prepayment Premium. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument and any of the Instruments, or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

23. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

24. WAIVER OF MARSHALING. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order

in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein. This Paragraph is subject to applicable provisions of law.

25. ASSIGNMENT OF LEASES AND RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender the leases and all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any such lease or other agreement for the occupancy or use of all or any part of the Property, and any award made to Borrower in any court proceeding in any state or Federal court and any payments made by tenants in lieu of rent, regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agent to collect the aforesaid rents and revenues and hereby directs each Tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that during the continuance of a Default by Borrower under this Instrument, Borrower shall collect and receive all rents and revenues of the Property, and Lender hereby grants Borrower a license to collect and receive such rents and revenues as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument or any of the other Instruments or Loan Documents which are then due and payable in the order provided in Paragraph 3 hereof with the balance to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Such license to collect rents and revenue is revocable, in Lender's sole discretion, during the continuance of a Default by Borrower under the Instrument. Upon the Default by Borrower under this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Paragraph 25 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon a Default be held by Borrower as trustee for the benefit of Lender only. Borrower agrees that commencing after a Default, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to the Property, without any liability on the part of said tenant to inquire further as to the existence of a Default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said leases or rents which remains in effect, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this Paragraph 25, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than one (1) month prior to the due dates of such rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than one (1) month prior to the due dates of such rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time reasonably request.

Upon Borrower's Default under this Instrument, and upon ten (10) days notice to Borrower, Lender shall be entitled to the appointment of a receiver for the Property and Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to the Default by Borrower under this Instrument or any other Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the

rents, including, but not limited to, reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Paragraph 25.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to Paragraph 8 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note which applies in the event of Default unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any Default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as the indebtedness and obligations secured by this Instrument have been paid and performed in a complete and irrevocable manner.

26. ENVIRONMENTAL HAZARDOUS PROVISION.

In addition to Borrower's covenants and agreements under Paragraph 6 hereof, Borrower further covenants and agrees that Borrower shall not:

(a) cause, permit, or suffer to exist the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage, treatment, handling, or disposal of any Hazardous Materials (as defined below) (excluding the safe and lawful use and storage of quantities of Hazardous Materials used in the operation and maintenance of the Property) on or under the Property, which in any way materially affect the Property or its value, or which may form the basis for any present or future demand, claim or liability relating to contamination, exposure, cleanup or other remediation of the Property; or

(b) cause, permit or suffer to exist the presence, use, manufacture, installation, storage or disposal of any aboveground or underground storage tanks (excluding aboveground storage tanks which are used in a safe and lawful manner in connection with the operation and maintenance of the Property) on or under the Property; or

(c) cause, permit, or suffer to exist the transportation to, from or across the Property of any Hazardous Material, the presence of which is not permitted on or under the Property pursuant to Subparagraph 26(a) hereof (excluding the safe and lawful transportation of quantities of Hazardous Materials used in the operation and maintenance of the Property); or

(d) cause, exacerbate, or suffer to exist any occurrence or condition on the Property that is or may be in violation of Hazardous Materials Law (as defined below), except for such occurrences or conditions which do not in any way materially affect the Property or its value, and which will not form the basis for any present or future demand, claim or liability relating to contamination, exposure, cleanup or other remediation of the Property.

(The matters described in (a), (b), (c) and (d) above are referred to collectively below as "Prohibited Activities or Conditions.")

Except with respect to any matters which have been disclosed in writing by Borrower to Lender prior to the date of this Instrument, or matters which have been disclosed in an environmental hazard assessment report of the Property received by Lender prior to the date of this Instrument, Borrower represents and warrants that it has not at any time caused or permitted any Prohibited Activities or Conditions and to the best of its knowledge, except as may have been disclosed to Lender, no Prohibited Activities or Conditions exist or have existed on or under the Property. Borrower shall take all appropriate steps (including but not limited to appropriate lease provisions) to prevent its employees, agents, and contractors, and all tenants and other occupants on the Property, from causing, permitting or exacerbating any Prohibited Activities or Conditions. All leases and subleases shall provide that tenants and subtenants shall not cause, permit or exacerbate any Prohibited Activities or Conditions.

If Borrower has disclosed that Prohibited Activities or Conditions exist on the Property, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons pre-sent on the Property to so comply with, (i) any program of operations and maintenance ("O&M Program") relating to the Property which O&M Program has been approved by and is acceptable to Lender (to the extent necessary to comply with Hazardous Materials Laws) with respect to one or more Hazardous Materials [which O&M Program may be set forth in an Agreement of Borrower (an "O&M Agreement")] and all other obligations set forth in any O&M Agreement, and (ii) all Hazardous Materials Laws, except for such instances of noncompliance which, individually, or in the aggregate, do not result in an interruption of operations or will not in any way materially affect the Property or its value and which will not form the basis for any present or future demand, claim or liability relating to contamination, exposure, clean up or other remediation of the Property. Any O&M Program shall be performed by qualified personnel. All costs and expenses of the O&M Program shall be paid by Borrower, including without limitation Lender's reasonable fees and costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance thereunder. If Borrower fails to timely commence or diligently continue and complete the O&M Program and comply with any O&M Agreement, then Lender may, at Lender's option, commence and/or complete such O&M Program or cause compliance with such O&M Agreement at the Borrower's expense, provided that Lenders shall have no obligation to so act in Borrower's stead.

Borrower represents to the best of its knowledge and belief that except for matters which have been disclosed to Lender, the Property and operations at the Property are in compliance with all applicable Hazardous Materials Laws. Borrower represents that (except for matters previously disclosed to Lender) Borrower has not received, and has no knowledge of the issuance of, any claim, citation or notice of any pending or threatened suits, proceedings, orders, or governmental inquiries or opinions involving the Property that allege the presence of any Hazardous Materials, the occurrence of any Prohibited Activity or Conditions or the violation of any Hazardous Materials Law ("Governmental Actions").

Borrower shall promptly notify Lender in writing of: (i) the occurrence of any Prohibited Activity or Conditions on the Property; (ii) Borrower's actual knowledge of the presence on or under any adjoining property of any Hazardous Materials which can reasonably be expected to have a material adverse impact on the Property or the value of the Property, (iii) discovery of any occurrence or condition on the Property or any adjoining real property that could cause any restrictions on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law; (iv) any Governmental Action; and (v) any claim made or threatened by any third party against Borrower, Lender, or the Property relating to loss or injury resulting from any Hazardous Materials. Any such notice by Borrower shall not relieve Borrower of, or result in a waiver of any obligation of Borrower under this Paragraph 26. Borrower shall cooperate with any governmental inquiry, and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activities or Conditions.

Borrower acknowledges that prior to undertaking any construction, renovation or other work to be conducted on Property improvements, Borrower shall make a good faith determination of whether there is a substantial likelihood of the presence of asbestos on the Property, and, if Borrower so determines the likelihood of the presence of asbestos on the Property, Borrower covenants and warrants to Lender that if any construction, renovation or other work to be conducted on the Property actually disturbs any asbestos on the Property, Borrower shall adhere to the guidelines promulgated by the U.S. Environmental Protection Agency in connection with its removal. Any removal of asbestos from the Property shall be conducted at Borrower's sole cost and expense. Borrower further agrees to indemnify and hold Lender harmless from and against any and all liability, cost, charge

and expense which Lender may incur as a result of the failure of Borrower to comply with its obligations, if any, under this Paragraph 26.

Borrower shall pay promptly the costs of any environmental audits, studies or investigations (including but not limited to advice of legal counsel) and the removal of any Hazardous Materials from the Property required by Hazardous Materials Laws or reasonably required by Lender as a condition of its consent to any sale or transfer under Paragraph 19 of this Instrument of all or any part of the Property or any transfer occurring upon a foreclosure or a deed in lieu of foreclosure or any interest therein, or required by Hazardous Materials Laws or reasonably required by Lender following a reasonable determination by Lender that there may be Prohibited Activities or Conditions on or under the Property. Borrower authorizes Lender and its employees, agents and contractors to enter onto the Property during normal business hours and upon 48 hours prior notice to Borrower for the purpose of conducting such environmental audits, studies and investigations. Any such costs and expenses incurred by Lender (including but not limited to reasonable fees and expenses of attorneys and consultants, whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become immediately due and payable, shall bear interest from the date of disbursement at the rate stated in the Note which applies in the event of Default and shall become additional indebtedness secured by this Instrument pursuant to Paragraph 8 hereof.

Borrower shall hold harmless, defend and indemnify Lender, its affiliates, successors and/or assigns and all of its and their officers, directors, trustees, employees, and agents (collectively, the "Indemnitees") from and against all proceedings (including but not limited to Governmental Actions), claims, damages, penalties, costs and expenses (including without limitation reasonable fees and expenses of attorneys and expert witnesses, investigatory fees, and cleanup and remediation expenses, whether or not incurred within the context of the judicial process), arising directly or indirectly from (i) any breach of any representation, warranty, or obligation of Borrower contained in this Paragraph 26 or (ii) the presence or alleged presence of Hazardous Materials on or under the Property; provided, however, that Borrower shall have no obligation under this provision to the extent that such proceedings, claims, damages, penalties, costs or expenses arise out of the gross negligence or willful misconduct of any of the Indemnitees.

The term "Hazardous Materials," for purposes of this Paragraph 26, includes petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, lead, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, those materials defined as "hazardous substances," "extremely hazardous substances," "hazardous chemicals," "hazardous materials," "toxic substances," "solid waste," "toxic chemicals," "air pollutants," "toxic pollutants," "hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" by Hazardous Materials Law or regulated by Hazardous Materials Law in any manner whatsoever.

The term "Hazardous Materials Law," for the purposes of this Paragraph 26, means all federal, state, and local laws, ordinances and regulations and binding standards, rules, binding policies and other binding governmental requirements and any court judgments applicable to Borrower or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human health including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property.

The representations, warranties, covenants, agreements, indemnities and undertakings of Borrower contained in this Paragraph 26 shall be in addition to any and all other obligations and liabilities that Borrower may have to Lender under applicable law.

The representations, warranties, covenants, agreements, indemnities and undertakings of Borrower contained in this Paragraph 26 shall continue and survive notwithstanding the satisfaction, discharge, release, assignment, termination, subordination or cancellation of this Instrument or the payment in full of the principal of

and interest on the Note and all other sums payable under the Loan Documents or the foreclosure of this Instrument or the tender or delivery of a deed in lieu of foreclosure or the release of any portion of the Property from the lien of this Instrument, except with respect to any Prohibited Activities or Conditions or violation of any of the Hazardous Materials Laws which first commences and occurs after the satisfaction, discharge, release, assignment, termination or cancellation of this Instrument following the payment in full of the principal of and interest on the Note and all other sums payable under the Loan Documents or which first commences or occurs after the actual dispossession from the entire Property of the Borrower and all entities which control, are controlled by, or are under common control with the Borrower (each of the foregoing persons or entities is hereinafter referred to as a "Responsible Party") following foreclosure of this Instrument or acquisition of the Property by a deed in lieu of foreclosure. Nothing in the foregoing sentence shall relieve the Borrower from any liability with respect to any Prohibited Activities or Conditions or violation of Hazardous Materials Laws where such Prohibited Activities or Conditions or violation of Hazardous Materials Laws commences or occurs, or is present as a result of, any act or omission by any Responsible Party or by any person or entity acting on behalf of a Responsible Party, or where Borrower is otherwise liable pursuant to this Paragraph 26.

27. ACCELERATION: REMEDIES. Any one or more of the following shall constitute a "Default" under this Instrument.

(a) failure of Borrower to make any payment due under the Note or under Paragraph 2 of this Instrument within ten (10) calendar days after Lender's written demand for such amount;

(b) failure of Borrower (except as set forth under clause (a) above) to pay any amounts, costs, expenses or fees (including reasonable attorney's fees) of Lender, as required by any provisions of the Note, this Instrument or any other Loan Documents related to the Property within ten (10) calendar days after Lender's written demand for such amount;

(c) failure of Borrower (except as set forth under clauses (a), (b), (d), (e), (f), (g) or (h) of this Paragraph 27) to comply with or perform, or any breach or violation by Borrower of, any warranty, representation, covenant, agreement, prohibition, restriction or condition contained herein (except for those contained in paragraphs 18 hereof), in the Note or this Instrument or in any of the Loan Documents related to the Property which failure or breach or violation continues uncured to Lender's reasonable satisfaction for thirty (30) calendar days after the earlier of (i) the delivery by Lender of written notice to Borrower describing such failure or breach or violation or (ii) the delivery to Lender of Borrower's notification of any failure, breach or violation or Default under this Instrument as set forth in Paragraph 34 (l) hereof; provided, however, that if such failure or breach or violation shall be not curable within said thirty (30) calendar day period and Borrower is diligently attempting to cure such failure or breach or violation within such thirty (30) calendar day period, then such failure or breach or violation shall not constitute a Default unless it shall continue uncured to Lender's reasonable satisfaction for ninety (90) calendar days after the delivery by Lender of such notice to Borrower or by Borrower of such notice to Lender, or if Borrower is diligently attempting to effect such cure, such longer period of time as may be necessary in Lender's reasonable judgment to effect such cure.

(d) except as provided in and permitted under the Note, this Instrument or any Loan Document related to the Property, any sale, assignment, transfer, conveyance, mortgaging, encumbering or other change in, or collateral assignment of, the legal title to or beneficial interest in the Property or Borrower, or any part thereof, or any interest therein, including, without limitation, the granting of any subordinate lien, whether voluntarily or involuntarily by operation of law and whether or not of record or for consideration (each, a "transaction"); provided, however, that such transaction(s) shall not constitute a Default until a transaction continues uncured to Lender's reasonable satisfaction for thirty (30) calendar days after notice from Lender; and, provided, further, that any such thirty (30) day cure period shall be applicable only with respect to transactions which Lender reasonably determines are reasonably capable of cure and any and all other transactions shall be deemed to be in Default without an opportunity to cure;

(e) the occurrence of any event deemed to be a Default under Paragraph 18 hereof;

(f) subject to the provisions of Paragraphs 19(e) and (f) and 28 hereof, the occurrence of a Cross Default;

(g) the occurrence of (i) a default, breach or violation by Borrower of any warranty, representation, covenant, agreement, prohibition, restriction or condition contained under any of the Limited Collateral Assignment of Liquor License, the Consent to Assignment of Proprietary Rights, Assignment of Warranties, Contracts, Permits, Etc., or Certificate of Non-Foreign Status or (ii) a default, breach or violation by the Guarantor of any warranty, representation, covenant, agreement, prohibition, restriction or condition contained in the Guaranty, which default, breach or violation relates to the Property or relates to any obligation of or representation by Guarantor which relates to the transaction as a whole, which in either case continues uncured to Lender's reasonable satisfaction for thirty (30) calendar days after the delivery by Lender of written notice to Borrower or Guarantor describing such default; provided, however, that if such default shall not be curable within such thirty (30) calendar day period, then such default shall not constitute a Default hereunder unless it continues for ninety (90) calendar days after delivery by Lender of such required notice, or if Borrower or Guarantor is diligently attempting to effect such cure, such longer period of time as may be necessary in Lender's reasonable judgment to effect such cure; or

(h) Borrower and other entities referenced in Paragraph 34(j) are not in compliance with radius restrictions and the provisions of Paragraph 34(j).

Upon Borrower's Default, in addition to Lender's right to appoint a receiver or enter upon and take and maintain control of the Property as set forth in Paragraph 25 of this Instrument, Lender at Lender's option may declare all of the sums secured by this Instrument to be immediately due and payable without further demand and may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein. Borrower acknowledges that the power of sale herein granted may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses reasonably incurred in pursuing such remedies, including, but not limited to, reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports. Nothing contained herein shall be deemed to require Lender to provide Borrower with notice in the event a bankruptcy proceeding (whether voluntary or involuntary) has been instituted by or against Borrower or any guarantor of Borrower under any of the other Instruments or Loan Documents.

If the Property is sold pursuant to this paragraph 27, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at such sale upon the purchaser's written demand. If possession is not surrendered upon the purchaser's written demand, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or by an action for forcible entry and detainer.

At any time after the exercise by Lender of the option to declare the obligations secured by this instrument to be immediately due and payable. Trustee, upon the written request of Lender, shall foreclose upon and sell the Property to satisfy the obligations secured by this instrument at public auction at the front door of the courthouse in the county (or any county if more than one) in which the Property is situated for cash in hand on the date of sale, after first giving notice of such sale by publishing such notice in a qualified newspaper of general circulation published in the county where the Property is located, or if there be no such newspaper, in a qualified newspaper of general circulation in said county, once a week for two successive weeks preceding the date of sale and after giving notice to Borrower and to any subordinate lienholder who has previously notified the Lender, of the existence of a subordinate lien, at least twenty days prior to the sale, and except as otherwise herein required no other notice of such sale shall be required. Borrower agrees (i) that any sale made hereunder can be made by Trustee without the necessity of any Court proceedings or Court Order authorizing such sale, (ii) that any sale made hereunder may be adjourned from time to time without notice other than oral proclamation of such adjournment at the time and place of sale, or at the time and place of any adjourned sale, and (iii) the Property, or any interest therein, may, at the discretion of the Trustee, be sold in one or more parcels or in several interests or portions and in any order or manner. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to Purchaser Trustee's deed conveying the Property so sold, without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. If Trustee is requested to cancel this Instrument, all notes evidencing indebtedness secured by this Instrument shall be surrendered to Trustee. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including, but not limited to, Trustee's fees in accordance with applicable law and costs of title evidence; (b) to the discharge of all taxes, levies and assessments on the Property, if any, as provided by applicable law; (c) to all sums secured by this Instrument in such order as Lender, in Lender's sole discretion, directs; and (d) the excess, if any, to the person or persons legally entitled thereto, including, if any, holders of liens inferior to this Instrument in order of their priority, provided that Trustee has actual notice of such lien. Trustee shall not be required to take possession of the Property prior to the sale thereof or to deliver possession of such Property to the purchaser thereof.

In the event of a Default under this Instrument or any other Loan Document related to the Property, Lender or any receiver for the Property shall be entitled to terminate the management agreement, if any, between Borrower and any manager of the Property if such manager is an Affiliate of Borrower.

Notwithstanding any provision to the contrary herein, in the event that (i) Borrower's interest in the Property is a leasehold interest, (ii) the real estate portion of the Property is not separately assessed for real estate taxation or assessment purposes, (iii) Borrower is current in its payments, if any, to lessor/owner in connection therewith, and (iv) the lessor/owner of such Property is responsible for the payment of taxes and assessments therefor, then non-payment by lessor/owner shall not be a Default under this Instrument and Borrower shall not be required to make payments as set forth in Paragraph 2 hereof as a result of said non-payment.

28. CROSS-COLLATERALIZATION; CROSS-DEFAULT. This Instrument shall also secure the prompt and timely payment of each of the promissory notes heretofore or hereafter executed under the Commitment and secured by one of the Instruments; provided, however, that such cross-collateralization and the cross-default provisions hereof shall not apply (i) with respect to Borrower or any of its Affiliates upon transfer as described in paragraph 19(e) hereof or (ii) with respect to any such promissory note during any period in which (but only to the extent that) any such promissory note is not held by the holder of the Note or, if the Note or any such promissory note has been pledged or collaterally assigned, during any period in which and to the extent that such pledgee or assignee does not hold such pledge or assignment of both the Note and any such promissory note, or, during any period in which the Note and any such promissory note are not held in a given single loan pool within a Securitization (hereafter each a "Related Note" and referred to collectively as "Related Notes").

29. RELEASE. Upon payment of all sums secured by this Instrument and the other Instruments and all other Loan Documents, or as otherwise provided herein or in the Note, Lender shall release this Instrument. Borrower shall pay Lender's reasonable costs incurred in releasing this Instrument. Borrower may not, except due to an involuntary condemnation or with the approval of Lender, obtain the release of this lien or only a portion of the Property. Notwithstanding the foregoing, the Borrower shall nonetheless be entitled to the release of the Property upon full payment of all amounts due under the Note, this Instrument and each Loan Document relating to the Property in accordance with the Note and upon the substitution of other property for the Property in accordance with Paragraph 19 hereof.

30. FUTURE ADVANCES. It is expressly understood and agreed between the parties hereto that this Instrument is given to secure further advances or extensions of credit with interest thereon which the Secured Party shall make to the Borrower from time to time. All advances, made at the time of recording hereof or to be made in the future, are secured by this Instrument as if made on the date of recording hereof. However, the aggregate maximum principal amount of the indebtedness secured hereunder at any time outstanding shall not exceed the sum of 115% X ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,850,000.00).

31. SUBROGATION. Any of the proceeds of the Note utilized to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and

all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, however remote, regardless of whether said liens or debts are acquired by Lender, by assignment or are released by the holder thereof upon payment.

32. PARTIAL INVALIDITY. In the event any portion of the sums intended to be secured by this Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

33. REPRESENTATIONS OF BORROWER. The Borrower hereby represents and warrants to Lender the following (except as set forth in Schedule 4) as of the date hereof:

(a) Borrower (i) is a Borrower Entity duly organized, validly existing and in good standing under the laws of the Borrower State and in all jurisdictions in which such qualification or licensing is required; and (ii) has the power and authority to own, lease and operate the Property and conduct its business as it is now or proposed to be conducted. There are no proceedings or actions pending, threatened or contemplated for the liquidation, termination or dissolution of Borrower.

(b) As of the date hereof, no person or entity has any leasehold estate in, or any lease or other agreement granting the right to use or occupy any portion of the Property except for the lease(s) or subleases, if any, identified in the title policy insuring Lender's interest in the Property, if any; no rental in excess of one month's rent has been prepaid under any of the leases or subleases by the parties thereto in accordance with its terms; the execution of this Instrument will not constitute an event of Default under any of the leases or subleases; to the knowledge of Borrower, none of the tenants under any of the leases or subleases has rights of offset or counterclaim against the landlord; all of the material obligations of the landlord pursuant to the leases have been performed; and all tenants are current in the payment of rent.

(c) Except as specifically listed in the schedule of exceptions to coverage in the title policy insuring Lender's interest in the Property and except for any permitted Affiliate Leases, Borrower is now in possession of the Property, Borrower's possession of the Property is peaceable and undisturbed; Borrower does not know any facts by reason of which any claim to the Property, or any part thereof, might arise or be set up adverse to Borrower; and, for the benefit of Lender (including its successors and assigns) only and not for the benefit of any third parties, Borrower represents and warrants that to its knowledge the Property is free and clear of (i) any lien for taxes (except real property taxes not yet due and payable for the calendar year in which this Instrument is being executed), and (ii) any easements, rights-of-way, restrictions, encumbrances, liens or other exceptions to title by mortgage, decree, judgment, Agreement, instrument, or, to the knowledge of Borrower, proceeding in any court. No condemnation proceeding affecting the Property is pending, or to the knowledge of Borrower threatened in writing. In the event that the Borrower's interest in the Property is fee simple or pursuant to a ground lease, the Property constitutes a separate tax lot or parcel for property tax purposes.

(d) Except as disclosed in Schedule I of this Instrument, for the benefit of Lender (including its successors and assigns) only and not for the benefit of any third parties, Borrower represents and warrants that, to its knowledge, all charges for labor, materials or other work of any kind furnished in connection with the construction, improvement, renovation or rehabilitation of the Property or any portion thereof have been paid in full, and no unreleased lien claim or affidavit claiming a lien against the Property, or any portion thereof, for the supplying of labor, materials or services for the construction of improvements on the Property has been executed or recorded in the mechanic's lien or other appropriate records in the county in which the Property is located. The Property is not affected by any unrestored casualty.

(e) To the knowledge of Borrower: the current and contemplated uses of the Property as a Bennigan's restaurant are in compliance in all material respects with all applicable federal, state and municipal laws, rules, regulations or ordinances (including without limitation the Americans with Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. 12101), no governmental authority having jurisdiction over any aspect of the Property has made a written claim or determination that there is any such

material violation; the Property and the intended use thereof are in compliance, except with respect to permitted non-conforming features, in all material respects with all applicable restrictions, zoning ordinances, building codes and regulations, building lines and easements, including, without limitation, federal and state environmental protection laws, except as disclosed in environmental reports delivered to Lender and except as disclosed in the survey of the Property prepared for the benefit of Lender; and if the restaurant on the Property has been fully constructed, all material permits, licenses and the like which are necessary for the operation of the Property have been issued and are in full force and effect. Except as set forth in Schedule 2 of this Instrument, the Property has adequate rights of ingress and egress and all necessary utilities are presently serving the Property from public streets or under easements included as part of the insured property under the title policy insuring Lender's interest in the Property.

(f) There have been no material adverse changes, financial or otherwise, in the condition of Guarantor from that disclosed to Lender in the loan application submitted to Lender by Guarantor or in any written supporting data or information (other than projections) submitted in connection with the Loan (or as subsequently revised and provided to Lender by Borrower or Guarantor), and to the best knowledge of Guarantor all of the information contained therein was true and correct in all material respects as of the date of such information, if dated, or if undated, when supplied. None of the Loan Documents, nor any of the other certificates, written statements or written information furnished to Lender by or on behalf of Borrower in connection with the Loan Documents or the transactions contemplated thereby to the best knowledge of Borrower and Guarantor contained, as of the date of such information, if dated, or if undated, when supplied, any untrue statement of a material fact, or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(g) There is no litigation, legal or administrative proceeding, investigation or other action of any nature commenced, or, to the knowledge of Borrower, threatened in writing against or affecting the Borrower, the Property or any interest or right therein or Guarantor which has not been disclosed in detail in writing to Lender and which may involve the possibility of any judgment or liability not fully covered by insurance, and which would materially or adversely affect any of the assets of the Borrower or Borrower's right to carry on business as now conducted, or affecting the continued employment of any officer or director of Borrower, except as described on the attached Schedule 3 attached hereto, if any.

(h) No proceedings in bankruptcy or insolvency have ever been instituted by or against Borrower or any affiliate thereof, and no such proceeding is now pending or contemplated.

(i) Borrower, and the general partner of Borrower if applicable, is solvent pursuant to the laws of the United States and the state in which the Property is located as reflected by the entries in Borrower's books and records and as reflected by the actual facts.

(j) The Note, this Instrument, and the Loan Documents related to the Property, have been duly authorized, executed and delivered by Borrower and constitute valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms (except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditor's rights and remedies generally and by general principles of equity regardless of whether enforcement is sought in equity or at law). No approval, consent, order or authorization of any governmental authority and no designation, registration, declaration or filing with any governmental authority is required in connection with the execution and delivery of the Note, this Instrument, or the other Loan Documents, except those which have been obtained.

(k) The execution, delivery, and performance of the Loan Documents will not (i) violate or contravene in any way the organizational documents of Borrower (if Borrower is a partnership, corporation or other entity) or any indenture, agreement or instrument to which Borrower is a party or by which it or its property may be bound, or be in conflict with, result in a breach of or constitute a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Borrower, nor (ii) to

Borrower's knowledge, violate any governmental requirement applicable to Borrower, the Property or the Restaurant or any other statute, law, regulation or ordinance or any order or ruling of any court or governmental entity; except as contemplated by the provisions of such Loan Documents, and no action or approval with respect thereto by any third person is required.

(l) The proceeds of the Loan will be used by Borrower for its business and commercial purposes, not to include the purchase of margin stock, and not for personal, family, household or agricultural use. No part of the Property is all or part of Borrower's homestead.

If this Instrument secures a leasehold:

(i) The lease is valid, legal and binding and enforceable in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditor's rights and remedies generally and by general principles of equity regardless of whether enforcement is sought in equity or at law); such lease or a memorandum thereof has been (or, prior to the recordation of this Instrument, shall be) duly recorded, and such lease permits (or lessor has consented to) the interest of the Borrower thereunder to be encumbered by this Instrument and does not restrict the use of the Property and related improvements by such tenant, its successors or assigns as a restaurant; and

(ii) Such lease has an original term (or an original term plus one or more optional renewal terms which may be exercised by Borrower and can be enforced by Lender on behalf of Borrower) which extends not less than the stated maturity of the Note.

(m) Borrower has delivered to Lender all formation and organizational documents of Borrower and of its managing members, if any, and of Guarantor, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. The financial statements of Guarantor which have been delivered to Lender, (i) are in accordance with the books and records of Guarantor which have been maintained in accordance with good business practice; (ii) have been prepared in conformity with GAAP, and (iii) fairly present the financial position of Guarantor at such date. Guarantor has no liability for taxes or other outstanding obligations which are material in the aggregate, except as disclosed in such financial statements furnished to Lender.

(n) Borrower has filed all federal, state and local tax returns required to be filed and has paid or made provision for the payment of all taxes and other Governmental Charges due and payable pursuant to such returns and pursuant to any assessments made against it or any of its property and all other Taxes and other Governmental Charges imposed on it or any of its property by any governmental authority (other than taxes and other Governmental Charges the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with GAAP have been provided on the books of the borrower). No Lien has been filed and no material claims are being asserted in writing with respect to any such Taxes and other Governmental Charges. The charges, accruals and reserves on the books of the Guarantor in respect of taxes and other Governmental Charges are adequate and the Borrower and Guarantor know of no proposed material tax assessment against it or any basis thereof.

(o) Each Plan is in compliance with all applicable requirements of ERISA and the Tax Code and with all material applicable rulings and regulations issued under the provisions of ERISA and the Tax Code setting forth those requirements. No Reportable Event has occurred and is continuing with respect to any Plan. All of the minimum funding standards applicable to such Plans have been satisfied and there exists no event or condition which would reasonably be expected to result in the institution of proceedings to terminate any Plan under Section 4042 of ERISA. With respect to each Plan to Title IV of ERISA, as of the most recent valuation date for such Plan, the present value (determined on the basis of reasonable assumptions employed by the independent actuary for such Plan) of such Plan's projected benefit obligations did not exceed the fair market value of such Plan's assets.

34. **BORROWER'S ADDITIONAL COVENANTS.** Borrower hereby covenants, agrees and undertakes to:

(a) from time to time, at the reasonable request of Lender, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Instrument or in any of the other Loan Documents related to the Property or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record and/or file such further documents or instruments (including, without limitation, further mortgages, security agreements, financing statements, continuation statements, assignments of rents or leases and environmental indemnity agreements) and perform such further acts and provide such further assurances as may be necessary, desirable or proper, in Lender's reasonable opinion, to carry out more effectively the purposes of this Instrument and such other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; and (iii) execute, acknowledge, deliver, procure, and file and/or record any document or instrument (including specifically, but without limitation, any financing statement) deemed advisable by Lender to protect the liens and the security interests herein granted against the rights or interests of third persons; provided that such documents or instruments do not increase Borrower's liability under the Loan Documents or materially or adversely affect any of Borrower's rights. Borrower will pay all reasonable costs connected with any of the foregoing in this subparagraph (a);

(b) continuously maintain Borrower's existence, if applicable, as a Borrower Entity in the State of Nevada, and the right to do business, as applicable, in the State of Illinois;

(c) at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Instrument, or upon any rights, title, liens or security interests created hereby, or upon the obligations secured hereby or any part thereof, pay all such taxes within the applicable payment period; provided that, if such law as enacted makes it unlawful for Borrower to pay such tax, Borrower shall not pay nor be obligated to pay such tax, and in the alternative, Borrower may, in the event of the enactment of such a law, and must, if it is unlawful for Borrower to pay such taxes, prepay the obligations secured hereby in full within one hundred eighty (180) days after demand therefor by Lender, without penalty or premium. Borrower shall not be obligated to pay any tax or prepay the Note if Borrower shall contest in good faith and by appropriate and timely legal proceedings any such tax or assessment, and Lender agrees to cooperate with Borrower in connection with any such contest; provided, however, that Borrower shall indemnify and hold harmless Lender from any loss or damage resulting from any such contest, and that all expenses of any such contest (including, without limitation, all attorneys' fees, court and other costs) are paid solely by Borrower. Nothing contained in the foregoing shall obligate Borrower to pay any net income taxes, gross receipts or franchise taxes imposed upon Lender;

(d) not execute or deliver any deed of trust, mortgage or pledge of any type or any other lien covering all or any portion of the Property (including the rents) or any beneficial interest in Borrower other than Permitted Encumbrances;

(e) not permit any drilling or exploration for or extraction, removal or production of any mineral, natural element, compound or substance from the surface or subsurface of the Property regardless of the depth thereof or the method of mining or extraction thereof without the prior consent of the Lender;

(f) promptly pay all reasonable and bona fide out-of-pocket costs, fees and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Lender to third parties incident to this Instrument or any other Loan Document relating to the Property (including, but not limited to, reasonable attorneys' fees and expenses in connection with the negotiation, preparation and execution hereof and of any other Loan Document (subject however, to the attorneys' fee cap described in the Commitment) and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Lender is brought into as a third party defendant involving this Instrument or

the Property) or incident to the enforcement of the obligations secured hereby or the exercise of any right or remedy of the Lender under any Loan Document;

(g) not materially amend the constituent entity organizational documents of Borrower without the prior written consent of Lender, which consent shall not be unreasonably delayed or withheld;

(h) make any additions, alterations, changes and improvements, structural and nonstructural, including but not limited to construction of additional buildings and additions to the then existing buildings related to the Property as Borrower shall desire; provided however: (i) Borrower shall submit plans of all material structural changes to Lender at least thirty (30) days in advance of the proposed construction date, (ii) if the cost of structural changes exceeds TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) or the aggregate cost of all structural changes then in progress or under contract for any of the properties secured by other Instruments, exceed TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00), Borrower shall obtain and deliver to Lender payment and performance bonds for such work, naming Lender and Borrower as dual obligees, and such payment and performance bonds shall be issued by insurance carriers which have a long-term debt rating of claims paying in the category "A-" or better as rated by Best's Insurance Rating Agency, (iii) all such construction shall be completed in a workmanlike manner and in full compliance with all building laws and ordinances applicable thereto, at Borrower's expense, and (iv) such additions, alterations, changes and improvements shall not materially reduce the fair market value of the Property. All such additions, alterations, changes and improvements shall be deemed to be a part of the Property. Notwithstanding the foregoing, this paragraph 34(h) shall not apply or relate to the construction of the restaurant at the Property as contemplated by the Construction Loan Agreement, if any;

(i) with respect to title endorsements, updates, other title documentation and searches and reports, if any, required by Lender after the closing of the Loans, Borrower shall not be required to pay the costs and expenses of the same unless Borrower is in Default under the Loans or unless Borrower is asking for some relief or procedure requiring such title due diligence;

(j) during the term of the Loan, neither of the Borrower, nor the Guarantor, nor any of their Affiliates, without first providing all reasonably requested information (including underlying supporting data) to Lender and obtaining the Lender's prior written consent, which may be withheld in Lender's reasonable discretion, shall own an interest in, or operate, any other Bennigan's restaurant within a two (2) mile radius of the Property, except that such radius may be reduced to one (1) mile in geographic areas where the population living within a one (1) mile radius is greater than 50,000 people. The terms and conditions of this Paragraph shall not apply (x) to any store-front, in-line or other non-traditional locations which Borrower intends to develop in such areas as a college or university campus or inside an airport, hospital or shopping mall; (y) to any existing properties which are in violation of this restriction as of the date of this Instrument; or (z) during the last two (2) years of the term of the Loan;

(k) to the fullest extent permitted by law, Borrower agrees (jointly and severally with Guarantor) ("Indemnitors") to protect, indemnify, defend and hold harmless Lender and its respective shareholders, members, beneficial owners, directors, partners, managers, officers, employees, agents, attorneys, successors, assigns and any affiliate thereof ("Indemnitees") from and against any and all liabilities, losses, damages (whether direct or consequential), obligations, claims, penalties, causes of action, fines, injunctions, costs or expenses of any kind or nature and from any and all suits, claims or demands (including, without limitation, in respect of or for reasonable attorney's fees and other expenses whether incurred within or outside the judicial process) arising on account of or in connection with any matter or thing or action or failure to act by Indemnitees, or any of them, arising out of or relating to Borrower, Guarantor, the Property, or the Loan Documents relating to the Property, whether prior to or after the date of this Instrument including, without limitation, any use by Borrower, Guarantor or any Affiliate of any proceeds of such Loan Documents, except to the extent such liability arises from the willful misconduct or gross negligence of the Indemnitees or to the extent such Indemnitees are held liable in a suit (or countersuit) commenced by any Indemnitors against such Indemnitees by a court of final adjudication. Upon receiving knowledge of any suit, claim or demand asserted by a third party that Lender believes is

covered by this indemnity, Lender shall give Borrower notice of the matter and an opportunity to defend it, at Borrower's sole cost and expense, with legal counsel reasonably satisfactory to Lender. Any failure or delay of Lender to notify Borrower of any such suit, claim or demand shall not relieve Borrower of its obligations under this Paragraph 34 (k). The obligations of Borrower under this Paragraph 34 (k) shall survive the payment and performance of all obligations secured hereby and the exercise of any rights or remedies by Lender. The foregoing indemnification shall not apply to any claim by any participant in a Securitization, unless such claim relates to allegations against Borrower, Guarantor, or any for fraud, misrepresentation, gross negligence or willful misconduct;

(l) promptly, and in any event within three (3) business days after an officer of the Borrower obtains actual knowledge of any failure or breach or violation or a Default under this Instrument, to provide Lender with written notice thereof. "Actual knowledge" as used in this clause (l) of Paragraph 34 means the actual knowledge of an officer of Borrower; and

(m) have no subsidiaries and shall have no subsidiaries during the term of the Loan, except (i) if such subsidiary is formed prior to a Securitization, with the consent of Lender (which consent shall not be unreasonably withheld, conditioned, or delayed) and so long as each such subsidiary has no business other than the business (or a portion thereof) of Borrower and becomes a co-borrower under the Note and otherwise meets the reasonable requirements of Lender so as not to impair the value of the Property, negatively affect the security interest of Lender in the Property or, (ii) if such subsidiary is formed after a Securitization, the applicable Rating Agencies shall confirmed that the formation of such subsidiary will not result in a down-grading of the related securitization pool by such Rating Agencies.

35. MAINTENANCE OF CASH FLOW. During the term of this Instrument, the Borrower shall maintain a Consolidated Fixed Charge Coverage Ratio for the Borrower and Guarantor, on a consolidated basis at the Guarantor level, of not less than 1.2:1 measured annually at the end of each fiscal year of Borrower on a trailing four (4) quarters basis. Failure by Borrower to comply with the covenants set forth herein shall be deemed a Default under this Instrument.

For the purposes of calculating (a) the Borrower's Cash Flow, Non-Recurring Expenses and Non-Recurring Income, the term "Borrower" shall mean the Borrower and Guarantor on a consolidated basis at the Guarantor level, and the term "financial statement" shall mean a consolidated financial statement of the Borrower and Guarantor and (b) the Consolidated Fixed Charge Coverage Ratio, no property shall be included in such calculation unless and until it has been in operation for one (1) full fiscal year.

36. ASSIGNMENT BY LENDER. This Instrument (and unless a contrary intention is expressly provided, each other Loan Document) is freely assignable, in whole or in part, by the Lender and, to the extent of any such assignment, the Lender shall be fully discharged from all liability under this Instrument accruing from and after the date of such assignment. The Lender's assignee shall, to the extent of the assignment, be vested with all the powers and rights of the Lender hereunder and under the other Loan Documents, and to the extent of which assignment the assignee may fully enforce such rights and powers as the holder hereof and all references to the Lender shall mean and refer to such assignee. The Lender shall retain all rights and powers hereby given which are not so assigned, transferred and/or delivered. Without limiting the foregoing, the Borrower understands and agrees that the Lender intends to and may, from time to time, sell, pledge, grant a security interest in and collaterally assign, transfer and deliver or otherwise encumber or dispose of the Note, this Instrument and the other Loan Documents and its rights and powers hereunder and thereunder, in whole or in part, in connection with the Securitization or any other assignment or other disposition of the Note. Except as permitted by this Instrument, the Borrower may not, in whole or in part, directly or indirectly, assign this Instrument or any Loan Document or its rights hereunder or thereunder or delegate its duties hereunder. Lender reserves the right to assign, transfer, participate, pledge, hypothecate or encumber, or any combination thereof (a "Loan Transfer"), all or any part of Lender's interest in this commitment or any of the collateral and security instruments and documents mentioned herein without Borrower's consent. Notwithstanding anything to the contrary contained in the foregoing, except in connection with a Loan Transfer involving a Securitization, Lender agrees with Borrower that, provided that no Default exists under this Instrument or any of the Loan Documents related to the Property, Lender will not knowingly consummate a Loan

Transfer to a restaurant operating company which is a direct competitor of Guarantor in the restaurant business. Any Loan Transfer shall be subject to the provisions of any confidentiality agreement between Lender and Borrower.

37. SECURITIZATION OPINIONS, FINANCIAL INFORMATION. In the event the Loan is included as an asset of a Securitization by Lender or any of its Affiliates, Borrower shall, within ten (10) days after Lender's written request therefor, deliver or cause to be delivered opinions and certifications in form and substance and delivered by counsel reasonably acceptable to Lender and the Rating Agency, as may be reasonably required by Lender and/or the Rating Agency in connection with such Securitization; provided, however, that with respect to any opinion or certification requested from a third party, Borrower shall be obligated only to use its reasonable efforts to obtain delivery of any such certificates or opinions from third parties. Borrower shall not be required to bear the cost of the preparation or delivery of such certificates or opinions, if any. It is understood and agreed that no non-consolidation opinion will be delivered.

Borrower shall, in the event the Loan is included as an asset of a Securitization, (a) gather any existing environmental information reasonably required by the Rating Agency in connection with such a Securitization, at Lender's request, (b) meet a reasonable number of times in connection with a pool of loans with representatives of the Rating Agency to discuss the business and operations of the Property, and (c) cooperate with the reasonable requests of the Rating Agency and Lender in connection with all of the foregoing and the preparation of any offering documents with respect thereto. Lender agrees that Borrower will not be required to undertake any action which would increase Borrower's liability or materially increase any administrative or ministerial obligations of Borrower or adversely affect any of Borrower's or any of its Affiliates' rights under any Loan Document.

Borrower shall, upon Lender's written request therefor in connection with a Securitization in which the Loan is to be included as an asset promptly deliver such financial statements and related documentation prepared by an independent certified public accountant as may be reasonably necessary and shall fully cooperate with the Lender in connection with any assurances or other documents, which are deemed to be reasonably necessary or convenient by Lender, requested from Borrower and consistent with the Borrower's obligations hereunder, in connection therewith. Borrower shall not be required to bear the costs of preparation of financial statements and related documentation prepared by an independent certified public accountant in connection with a Securitization (unless Borrower is otherwise having such financial statements and related documents prepared). It is understood and agreed the Borrower shall not bear any costs with respect to a Securitization, provided, however, Borrower shall not be entitled to reimbursement for any internal administrative or ministerial costs incurred by Borrower's compliance with this Paragraph 37.

Borrower agrees to cooperate in good faith (but without any expense to Borrower) with Lender's reasonable requests relating to the securitization program process and requirements and agrees and acknowledges that all information relating to Borrower and the Loans may be made available by Lender to the other participants in the Securitization subject to any separate confidential agreements between Lender and Borrower. Borrower hereby authorizes Lender to provide any required information regarding Borrower and Guarantor in any report required by any governmental body regulating Lender. In the event of a Securitization, assuming Lender or its affiliate is acting as the servicer thereunder, and provided that Borrower is not in Default under this Instrument or any of the Loan Documents, such entity will use every reasonable effort to assure, that any consent or approval provided for in the Loan Documents will be made by Lender or its affiliate, as servicer, without the requirement of obtaining the consent of the securitization trustee or the holder(s) of the securitization certificate(s); provided, however, such servicer, may, in its sole reasonable discretion under a prudent lender/servicer standard, seek the consent of the securitization trustee in any case in which such servicer believes that such consent is warranted.

38. DEFINITIONS. Borrower and Lender agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms.

"actual knowledge" has the meaning ascribed to such term in Paragraph 34(l) of this Instrument.

"Affiliate" means, with respect to any designated Person, any Person that, directly or indirectly, controls or is controlled by or is under common control with such designated Person and, without limiting the generality of the foregoing, shall include, (i) any Person who is a director or officer of, partner in, trustee of, or blood or legal relative, guardian or representative of the designated Person, or any Person who acts or serves in a similar capacity with respect to the designated Person, (ii) any Person of which or whom the designated Person is a director or officer, partner, trustee, or blood or legal relative, guardian or representative, or with respect to which or whom, the designated Person acts or serves in a similar capacity; and (iii) any Person, who, directly or indirectly, is the legal or beneficial owner of or controls more than 50% of any class of equity securities of the designated Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Affiliate Leases" means any leases by or between (directly or indirectly) Borrower and any Affiliate of Borrower affecting the Property.

"Approved Carriers" has the meaning ascribed to such term in Paragraph 5 of this Instrument.

"Borrower" has the meaning ascribed to such term in the first paragraph of the preamble of this Instrument.

"Borrower Entity" means, if applicable, the entity form of Borrower which is a corporation.

"Borrower State" means, if applicable, the state or other jurisdiction under which the Borrower is formed, which is the State of Nevada.

"Breakage Costs" means an amount equal to:

(i) the present value of all remaining payments of principal and interest discounted at a discount rate equal to the "Swap Rate on Date of Prepayment,"

minus

(ii) the present value of all remaining payments of principal and interest discounted at a discount rate equal to the "Swap Rate on Date of Notes."

"Cash Flow" means, for any period, with respect to any Person, an amount equal to (a) the sum of (i) pre-tax income, (ii) interest expense, including the interest portion of capital lease payments, (iii) all non-cash amounts in respect of depreciation and amortization, (iv) Non-Recurring Expenses, (v) discretionary management fees and (vi) all operating lease or rent expense., less (b) Non-Recurring Income, all as reflected on such Person's financial statement for such period. For purposes of this definition, all leases with Lender or any Affiliate thereof shall be treated as an operating lease.

"Casualty" has the meaning ascribed to such term in Paragraph 5 of this Instrument.

"Code" has the meaning ascribed to such term in Paragraph 18 of this Instrument.

"Collateral Assignment of Liquor License" means that certain Collateral Assignment of Liquor License dated as of the date hereof by Borrower to and in favor of Lender pledging the liquor license collateral relating to operation of the Restaurant located at the Property.

"Commitment" means the commitment letter from CNL Franchise Network, LP to S & A Restaurant Corp. for cumulative loans in the amount not to exceed \$20,000,000.00 dated August 16, 2000.

"Concept Sale" has the meaning ascribed to such term in Paragraph 19(a) of this Instrument.

"Condemnation Proceeds" has the meaning ascribed to such term in Paragraph 11 of this Instrument.

"Consent to Assignment of Proprietary Rights" means that certain Consent to Assignment of Proprietary Rights dated as of the date hereof by and among Guarantor, Franchisor, and Lender pledging the trademark, trade names and related intellectual property collateral relating to operation of the Restaurant located at the Property.

"Consolidated Fixed Charge Coverage Ratio" means, for any period, the ratio of (a) the Borrower's and Guarantor's, if any, Cash Flow for such period to (b) the sum of Borrower's and Guarantor's Debt Service for such period.

"Construction Loan Agreement" means that certain Construction Loan Agreement between Borrower and Lender dated as of the date hereof (if the restaurant operation is to be constructed at the Property after the date of this Instrument).

"Contracts" means all contracts and agreements to which the Borrower now is, or hereafter will be, bound, or a party, beneficiary or assignee (other than rights evidenced by Chattel Paper, Documents or Instruments and the License), including, without limitation the agreements and documents executed and delivered with respect to such contracts, and all revenues, rentals and other sums of money due and to become due thereunder from any of the foregoing.

"Cross Default" means the failure of Borrower or the borrower under any Related Note to pay any amount required to be paid by any provision of any Related Note(s), the other Instruments or other Loan Documents which in the case of Payment Default(s) under such Related Notes remain uncured for the later of (x) seven (7) days after written notice to Borrower or such borrower as the case may be or (y) ten (10) days after the due date of such payment(s), in an aggregate amount exceeding \$125,000.00 (including the amount of a Payment Default under the Note or Related Note, but excluding, however, from such aggregate amount, any amounts (including, without limitation, late charges and default interest) accruing and due as a result of an acceleration of the Note or any Related Notes) or which in the case of any Monetary Default thereunder which remain uncured for a period of thirty (30) days after written notice by Lender to Borrower and/or such borrower as the case may be; provided, that Lender shall have given at least ten (10) days prior written notice to Borrower and such borrower that such Payment Defaults and/or Monetary Defaults under Related Notes shall, if not cured in a timely manner, constitute a cross-default and a Default under this Instrument and under the other Instruments securing Related Notes.

"Debt Service" means, for any period, with respect to any Person, all of such Person's interest payments, the current portion of the principal portion of payments made with respect to any loans, the current portion of any payments made with respect to any capital lease obligations and all operating leases or rent expense. For purposes of this definition, all leases with Lender or any Affiliate thereof shall be treated as operating leases. Debt Service shall not include any current portion of principal obligations (but shall include interest obligations) with respect to the revolving portion of any indebtedness of Borrower and Guarantor.

"Default" has the meaning ascribed to such term in Paragraph 27 of this Instrument.

"DMA" shall mean Designated Market Area.

"Document" has the meaning ascribed to such term under the UCC.

"Economically Disadvantaged Site" has the meaning ascribed to such term in Paragraph 19 (b) of this Instrument.

"Equipment" means any "equipment," as such term is defined in the UCC, used or bought for use primarily in the Restaurant and not included within Inventory, now or hereafter owned or leased by the Borrower and, in any event, shall include, but shall not be limited to, all machinery, tools, computer software, office equipment, furniture, appliances, fixtures, vehicles, motor vehicles, and any manuals, instructions and similar items which relate to the foregoing, and any and all additions, substitutions and replacements of any of the foregoing, wherever located,

together with all improvements thereon and all attachments, components, parts, equipment and accessories installed thereon or affixed thereto; but excluding the "Point of Sale" system and, to the extent approved by Lender, such approval not to be unreasonably withheld, delayed or conditioned, any equipment leased by Borrower.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is a member of a group of which Borrower is a member and which is treated as a single employer under Section 414 of the Tax Code.

"Franchisor" means the Borrower's Affiliates which own the Proprietary Rights of the Bennigan's and Steak and Ale restaurant systems, respectively.

"Funds" has the meaning ascribed to such term in Paragraph 2 of this Instrument.

"Future Advances" has the meaning ascribed to such term in the granting clause on page 1 of this Instrument, with respect to future indebtedness pursuant to Paragraph 30 of this Instrument.

"General Intangibles" has the meaning ascribed to such term under the UCC.

"Governmental Actions" has the meaning ascribed to such term in Paragraph 26 of this Instrument.

"Governmental Charges" means all levies, assessments, fees, claims or other charges imposed by any governmental authority upon or relating to (i) Borrower, (ii) the Loan (excluding any taxes imposed on Lender), (iii) employees, payroll, income or gross receipts of Borrower or Guarantor, or (iv) the ownership or use of any of its assets by Borrower.

"Guarantor" means S & A Restaurant Corp, a Delaware corporation, as guarantor of all or part of Borrower's obligations under the Note, this Instrument or the other Loan Documents relating to the Property.

"Guaranty" means that certain Guaranty of Guarantor dated as of the date hereof.

"Hazardous Materials" has the meaning ascribed to such term in Paragraph 26 of this Instrument.

"Hazardous Materials Law" has the meaning ascribed to such term in Paragraph 26 of this Instrument.

"Indemnitees" has the meaning ascribed to such term in Paragraph 34(k) of this Instrument.

"Indemnitors" has the meaning ascribed to such term in Paragraph 34(k) of this Instrument.

"Initial Yearly Premium Payment" has the meaning ascribed to such term in Paragraph 2 of this Instrument.

"Instrument" means this Instrument as defined on page 1 hereof.

"Instruments" means all documents granting a security interest or assigning rights or otherwise pledging the assets of Borrower (or Guarantor(s) or its or their respective affiliates) to Lender to secure the indebtedness evidenced by the Note or any Related Note.

"Inventory" means all inventory of the Borrower of every type or description, including all "inventory" as such term is defined in the UCC, now owned or hereafter acquired and wherever located, whether raw, in process or finished, and all materials usable in processing the same and all documents of title covering any inventory, including, without limitation, work in process, materials used or consumed in the Restaurant, now owned or hereafter acquired or manufactured by the Borrower and held for sale in the ordinary course of its business; all present and future substitutions thereof, parts and accessories thereof and all additions thereto; and all proceeds thereof and products of such inventory in any form whatsoever.

"Lease", if this Instrument secures a leasehold, has the meaning ascribed to it in the granting clause on page 1 of this Instrument and otherwise has the meaning ascribed to such term in Paragraph 16 of this Instrument.

"Lender" has the meaning ascribed to such term in the first paragraph of the preamble of this Instrument.

"License" means the license to use the Trademarks and other intellectual property of Franchisor in connection with the operation of the Bennigan's restaurant located at the Property.

"Licensing Agreement" means that certain Licensing Agreement dated April 29, 1996 among Bennigan's Franchising Company, LP, Guarantor, Borrower and others.

"Lien" means any mortgage, pledge, security interest, hypothecation, collateral assignment, encumbrance, lien (statutory or other), or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC).

"Loan" has the meaning ascribed to such term in the first Whereas clause of this Instrument.

"Loans" means the Loan and all other loans to Borrower and other borrowers by Lender as contemplated by the Commitment.

"Loan Documents" means (i) the Note, this Instrument, the Guaranty, and all other instruments, documents and agreements relating to the Property and evidencing or securing the indebtedness represented thereby and (ii) with respect to any (or all) Related Note(s), such Related Note(s), other Instrument(s), the "Guaranty," (as that term is defined in such other Instrument(s)), and all other instruments, documents and agreements related to the "Property" (as that term is defined in such other Instrument(s)) and evidencing or securing the indebtedness represented thereby.

"Loan Transfer" has the meaning ascribed to such term in Paragraph 36 of this Instrument.

"Major Casualty" has the meaning ascribed to such term in Paragraph 5 of this Instrument.

"Major Taking" has the meaning ascribed to such term in Paragraph 11 of this Instrument.

"Maturity Date" has the meaning ascribed to such term in the first Whereas clause of this Instrument.

"Monetary Default" means a Payment Default and any other failure to make timely payment of any amount required to be paid by the terms of any Related Note or the Loan Documents related thereto.

"Non-Recurring Expenses" and "Non-Recurring Income" mean expenses or income, as the case may be, that is extraordinary and/or generally not reflected in any prior period or reasonably anticipated to be incurred in any subsequent period.

"Note" has the meaning ascribed to such term in the first Whereas clause of this Instrument.

"Notes" means all the Related Notes and all other promissory notes executed by Borrower or other borrowers to evidence the indebtedness of the Loans.

"O&M Agreement and O&M Program" have the meanings ascribed to such terms in Paragraph 26 of this Instrument.

"Operator" has the meaning ascribed to such term in Paragraph 19(e) of this Instrument.

"Other Impositions" has the meaning ascribed to such term in Paragraph 2 of this Instrument.

"Other Notes" means all the Related Notes and all other promissory notes executed by Borrower or other borrowers to evidence the indebtedness of the Loans.

"Payment Date" means the first day of each month or, in the event that the first day of a month is not a Business Day (as defined in the Note), the next Business Day (as provided in the Note) during the term of the Loan in which a monthly installment of principal and interest is due under the Note.

"Payment Default" means a Default resulting from non-payment of principal or interest due under the Note or a Related Note, as the case may be.

"Person" means any individual, corporation, partnership, unincorporated association, firm, trust, joint stock company, joint venture or other entity of whatever nature.

"Permitted Encumbrances" means (i) liens created by the Loan Documents; (ii) liens for taxes not yet due and payable; (iii) liens imposed by law incurred in the ordinary course of business, such as warehousemen's liens; (iv) liens for workers' compensation, unemployment insurance and similar payments arising in the ordinary course of business and relating to payments which are not yet delinquent or are being contested; (v) other easements, rights-of-way, restrictions, minor defects in title and similar matters (including those which do not diminish, in any material respect, the value of the Property or impair, in any material respect, the priority of the liens created by the Loan Documents related to the Property); (vi) a security interest relating to purchase money financing in connection with the purchase of Equipment to replace existing, obsolete Equipment in an amount which shall not exceed \$75,000.00 per restaurant site annually; and (vii) any exceptions listed on Schedule B of Lender's title policy related to the Property. Notwithstanding any provision to the contrary in this Instrument, Borrower may grant a first priority security interest in such equipment purchased to replace existing equipment. Borrower may obtain purchase money financing in an amount exceeding \$75,000.00 per restaurant site annually, so long as Borrower has obtained the prior written approval of Lender, which approval shall not be unreasonably withheld, delayed or conditioned.

"Plan" means each employee benefit plan (whether in existence on the Closing Date or thereafter instituted), as such term is defined in Section 3 of ERISA, maintained for the benefit of employees, officers or directors of Borrower or of any ERISA Affiliate.

"Prepayment Premium" has the meaning ascribed to such term in the Note.

"Prohibited Activities or Conditions" has the meaning ascribed to such term in Paragraph 26 of this Instrument.

"Property" has the meaning ascribed to such term in the description of collateral in the fourth paragraph of the preamble of this Instrument.

"Rating Agency" means any nationally recognized statistical rating agency; provided, however, that at any time during which the Loan is an asset of a Securitization, "Rating Agency" shall mean the rating agency or rating agencies at such time that rate the securities issued in connection with such Securitization.

"Receivables" means any "account" as such term is defined in the UCC and in any event shall include, but not be limited to, all of the Borrower's rights to payment for goods sold or leased, or services performed, by the Borrower, whether now in existence or arising from time to time hereafter, including, without limitation, rights evidenced by an account, note, contract, security agreement, chattel paper, or other evidence of indebtedness or security, together with (a) all security pledged, assigned, hypothecated or granted to or held by the Borrower to secure the foregoing, (b) all the Borrower's rights, title, and interest in and to any goods, the sale of which gave rise thereto, (c) guarantees, endorsements and indemnifications on, or of, any of the foregoing, (d) all powers of attorney for the execution of any evidence of indebtedness or security or other writing in connection therewith, (e) all books, correspondence, credit files, records, ledger cards, invoices, and other papers relating thereto, including without limitation all similar information stored on a magnet medium or other similar storage device and other papers and documents in the possession or under the control of the Borrower or any computer bureau from time to time acting

for the Borrower, (f) all evidences of the filing of financing statements and other statements and the registration of other instruments in connection therewith and amendments thereto, notices to other creditors or secured parties, and certificates from filing or other registration officers, (g) all credit information, reports and memoranda relating thereto, and (h) all other writings related in any way to the foregoing.

"Related Note" and "Related Notes" has the meaning ascribed to such term in Paragraph 28 of this Instrument.

"Reporting Entities" has the meaning ascribed to such term in Paragraph 10 of this Instrument.

"Responsible Party" has the meaning ascribed to such term in Paragraph 26 of this Instrument.

"Restaurant" means the Bennigan's restaurant operated by the Borrower on the Property and pledged to Lender hereunder.

"Securitization" means the sale, pledge, grant of a security interest, collateral assignment, transfer and delivery or other encumbrance or disposition of all of the Lender's rights and powers in this Instrument, the Note and the Loan Documents related to the Property by the Lender to one or more of its Affiliates or to other Persons who will issue debt instruments or equity certificates backed by such Instrument and the servicing of such Instrument by a Person appointed as servicer in connection therewith.

"Sublease" has the meaning ascribed to such term in Paragraph 16 of this Instrument.

"Substitute Collateral" has the meaning ascribed to such term in Paragraph 19(b) of this Instrument.

"Swap Rate on Date of Note" shall be defined herein as the fixed rate, as determined by Lender in its reasonable discretion, which is paid by Lender (or which otherwise would be paid by an established and active interest rate swap counter party, whether or not a swap transaction is actually entered into) on the date of the Note for a fixed rate swap in the notional amount and with the amortization terms of the Loans, in exchange for a floating rate equal to the 30-day LIBOR (London Inter-Bank Offering Rate).

"Swap Rate on Date of Prepayment" shall be defined herein as the fixed rate, as determined by Lender in its reasonable discretion as of the date and time of a prepayment pursuant to the terms of the Note, which the Lender can contract to receive (or which otherwise would be paid by an established and active interest rate swap counter party, whether or not a swap transaction is actually entered into) under a fixed rate swap in the notional amount and with the remaining amortization terms of the amount being prepaid, in exchange for a floating rate equal to the 30-day LIBOR (London Inter-Bank Offering Rate), minus one-quarter of one percent (25 Basis Points).

"Tax Code" means the Internal Revenue Code of 1986, as amended.

"Transfer Event" has the meaning ascribed to such term in Paragraph 19(a) of this Instrument.

"Transferee" has the meaning ascribed to such term in Paragraph 19(a) of this Instrument.

"Transferor" has the meaning ascribed to such term in Paragraph 19(a) of this Instrument.

"Transfer Requirements" has the meaning ascribed to such term in Paragraph 19(a) of this Instrument.

"UCC" shall mean the Uniform Commercial Code as adopted in the State of West Virginia.

"Unit Level Fixed Charge Coverage Ratio" means, for the for the trailing twelve (12) accounting periods of approximately one (1) month each, the ratio of (a) the Cash Flow for such period to (b) the Debt Service for such period with respect to the Property.

39. INTENTIONALLY OMITTED.

40. WAIVER OF JURY TRIAL; CERTAIN REPRESENTATION. EACH OF BORROWER AND LENDER BY ITS ACCEPTANCE HEREOF, FOR ITSELF AND FOR EACH HOLDER HEREOF, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE, THAT:

(a) NEITHER THE BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR OR LEGAL REPRESENTATIVE OF ANY OF THE SAME SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THE NOTE, THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT EVIDENCING, SECURING OR RELATING TO THE OBLIGATIONS OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;

(b) NEITHER THE BORROWER NOR LENDER SHALL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(c) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE BORROWER AND LENDER, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(d) NEITHER THE BORROWER NOR LENDER 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; AND

(e) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THIS TRANSACTION AND IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

(f) IN NO EVENT SHALL LENDER BE RESPONSIBLE OR LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.

41. MISCELLANEOUS:

Time shall be of the essence with respect to all of Borrower's obligations under the Note, this Instrument, and the other Loan Documents.

In the event that the Lender should become the owner of the Property, there shall be no merger of the estate created by this Instrument with the fee estate or any other interest in the Property.

The Note, this Instrument, and the other Loan Documents may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by the Lender.

The Note, this Instrument, and the other Loan Documents are intended to and shall be deemed to create only the relationship of a borrower and a lender between Borrower and Lender, and are not intended to nor shall they create a joint venture or any relationship other than the relationship of Borrower and Lender.

The liability of each of the parties named as the Borrower hereunder, if more than one, and every other party who or which is or may become liable hereunder is and shall be joint and several in all respects.

Borrower hereby appoints Lender as its attorney-in-fact to perform any action or execute any document required to be taken or executed by Borrower under this Instrument and the other Loan Documents or otherwise deemed necessary or advisable by Lender in its sole discretion with respect to the Loan or the Property; provided that Lender shall not so act as Borrower's attorney-in-fact prior to a Default under this Instrument or the Loan

Documents related to the Property unless Lender reasonably determines that such non-action could result in a material adverse affect on the value of the Property. Lender, in its sole discretion, shall have the right, but not the obligation, to perform or refrain from performing any of Borrower's obligations described in this Instrument or the other Loan Documents and such substituted performance shall not relieve Borrower from its obligations or cure any default under this Instrument or the other Loan Documents. The powers of attorney described in this paragraph are coupled with an interest and irrevocable, shall survive Borrower's death, and shall not be affected by Borrower's disability in any manner. As additional security to Lender, Borrower hereby authorizes Lender to sign and file financing statements at any time with respect to any and all items of personalty included as a portion of the Property, which may be subject to a security interest pursuant to the UCC, without the signature of Borrower. Borrower will, however, at any time on request of Lender, sign financing statements, trust receipts, security agreement or other agreements which Lender reasonably deems necessary or advisable to perfect, or continue to perfect its security interest in the Property. Upon the Borrower's failure to do so, Lender is authorized as the agent of Borrower to sign any such instrument. Borrower agrees to pay all filing fees and to reimburse Lender all reasonable costs and expenses of any kind incurred in any way in connection with such perfection, or the continuance of such perfection, in the Property.

Whenever possible this Instrument and each provision hereof shall be interpreted in such manner as to be effective, valid and enforceable under applicable law. Any provisions of this Instrument which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In addition, any determination that the application of any provision hereof to any person or under any circumstance is illegal and unenforceable shall not affect the legality, validity and enforceability of such provision as it may be applied to any other person or in any other circumstance.

42. NON-UNIFORM COVENANTS.

(a) The Note and the Loan Documents may not be changed, amended or modified, except in writing expressly intended for such purpose and executed by both the Lender and Borrower.

(b) Upon Borrower's Default under the Instrument, Lender shall be entitled to certain other rights as set forth herein, including, without limitation, the right to appointment of a receiver for the Property and the right to be placed as mortgagee-in-possession of the Property

(c) Borrower hereby waives all rights of redemption and/or reinstatement on behalf of Borrower and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Instrument, except decree or judgment creditors of Borrower.

(d) The Powers of Attorney granted to Lender pursuant to this Instrument shall be automatically terminated upon the irrevocable payment of the Note and release of this Instrument.

(e) Borrower shall not permit the Bennigan's restaurant operated on the Property to go "dark" except for temporary closure for periods not to exceed six (6) months or such reasonable additional time if Borrower is diligently pursuing reopening of the restaurant, but, in no event shall such temporary closures exceed twelve (12) months due to repairs, remodeling, casualty damage or Acts of God, or, if this Instrument is on a leasehold, any shorter period designated as an event of default in the underlying lease. Notwithstanding the foregoing, such periods of closure may be extended in the sole discretion of Lender. Such closure shall not be deemed to be an abandonment of the Property as described in Paragraph 6(b) of this Instrument.

(f) From time to time, at the reasonable request of Borrower, Lender agrees to promptly correct any defect, error or omission which may be discovered in the contents of this Instrument or in the other Loan Documents or in the execution or acknowledgment thereof.

(g) Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, in the event Lender or Borrower should bring suit against the other party in respect to any matters provided for herein or in the Loan Documents, the prevailing party shall be entitled to recover from the non-prevailing party its costs of court, legal expenses and reasonable attorneys' fees.

(h) Lender agrees that with respect to the purchase of Equipment in which Lender has allowed Borrower to grant a first priority purchase money security interest as set forth in the definition of Permitted Encumbrances hereof, Lender shall provide promptly upon Borrower's request, written confirmation to the seller of or lender on such new Equipment that, Lender's security interest in such Equipment shall be subordinate in all respect to the security interest of such seller or lender in such Equipment and during the period in which such seller or lender maintains a first priority purchase money security interest on any such Equipment, Lender shall have no right to exercise any right or remedy with respect to its subordinate security interest on such Equipment.

(i) The Note, this Instrument, and other Loan Documents may not be changed, amended or modified, except in writing expressly intended for such purpose and executed by both the Lender and the Borrower.

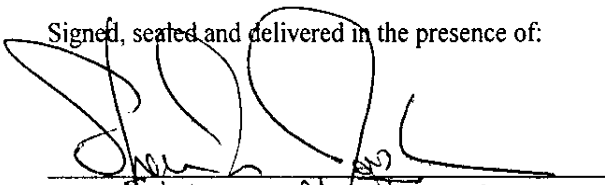
(j) Borrower hereby waives all rights of redemption and/or reinstatement on behalf of Borrower and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Instrument, except decree or judgment creditors of Borrower.

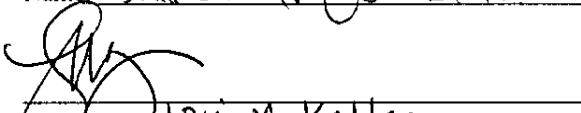
(k) The following clause should be included in the Sale Leaseback Mortgage only:

At no time shall the principal amount of the indebtedness secured by this Security Instrument, exceed twice the original amount of the Note

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

Signed, sealed and delivered in the presence of:


Name: Sharon N. Jordan


Name: Don M. Kelley

STEAK AND ALE OF ILLINOIS, INC., a Nevada corporation

By: 
Todd M. Watson, Senior Vice President

Borrower's Address:
6500 International Parkway
Plano, Texas 75093

CORPORATE ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF COLLIN

The foregoing was acknowledged before me this March 8, 2001, by Todd M. Watson, as Senior Vice President of Steak and Ale of Illinois, Inc., a Nevada corporation, on behalf of the corporation.

Barbara J. Elwell

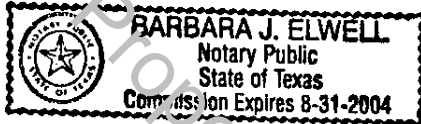
Notary Public, State of Texas

Printed Name: _____

Notary Commission No.: _____

Commission Expires: _____

(NOTARY SEAL)



This instrument was prepared by: Daniel F. McIntosh, Esquire
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
CNL Center at City Commons
150 South Orange Avenue
Orlando, Florida 32801

PROPERTY OF Cook County Clerk's Office

EXHIBIT "A"

PARCEL 1:

Lot 7 in Pointe Plaza Subdivision, being a subdivision of Lot 2 in Annie Mullen Subdivision, being a subdivision of part of the Southeast ¼ of Section 29, Township 41 North, Range 13 East of the Third Principal Meridian, according to the Plat of Pointe Plaza Subdivision aforesaid recorded December 22, 1999 as Document Number 09188471, in Cook County, Illinois.

PARCEL 2:

Non-exclusive easements for access, ingress and egress for the benefit of Parcel 1 as created by Easements with Covenants and Restrictions Affecting Land ("ECR") dated December 30, 1998 and recorded March 18, 1999 as Document Number 99265776 and First Amendment thereto dated March 13, 1999 recorded April 7, 1999 as Document Number 99334830 by and between Wal-Mart Real Estate Business Trust and TDC Niles, L.L.C., over and across the common area as defined and described therein, in Cook County, Illinois.

PIN # 10-29-403-030

SCHEDULE 1

[Paragraph 33(d)]

[Materialmen's and similar liens]

NONE

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SCHEDULE 2

{Paragraph 33(e) utilities, access, etc. w/o recorded easements}

NONE

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SCHEDULE 3

[Paragraph 33(g) Litigation Schedule)

NONE

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SCHEDULE 4

[Paragraph 33 Other]

NONE

Property of Cook County Clerk's Office