

# UNOFFICIAL COPY



Doc#: 0501208083  
Eugene "Gene" Moore Fee: \$44.00  
Cook County Recorder of Deeds  
Date: 01/12/2005 09:37 AM Pg: 1 of 11

THIS INSTRUMENT WAS PREPARED BY: Tanny Terrell



Loan #: 02-8406167

## MORTGAGE

THIS INDENTURE made December 15, 2004, by and between **The Breakers of Manistique, Inc.**, herein referred to as "Mortgagor", and **Citibank, Federal Savings Bank**, a corporation organized and existing under the laws of the United States, or its successors and assigns, (hereinafter referred to as "Mortgagee"), WITNESSETH:

THAT, WHEREAS Mortgagor has concurrently herewith executed and delivered a promissory note bearing even date herewith (said promissory note, together with each other note, instrument, evidence of indebtedness or document from time to time substituted for said promissory note or evidencing all or part of the indebtedness evidenced by said promissory note or any extension, renewal or modification of any or all of such indebtedness, is hereinafter referred to as the "Note") in the principal sum of **NINE HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$975,000.00 )**, made payable to the order of the Mortgagee in and by which the Mortgagor promises to pay, (1) any additional advances and escrows, with interest thereon as provided in the Note, made by the Mortgagee to protect the security hereunder, at any time before the release and cancellation of this mortgage, and (2) the principal sum and interest thereon at the rate and at the times and amounts as provided in the Note, to be applied first to advances and escrows then to interest, and the balance to principal until said indebtedness is paid in full. All of said principal and interest are made payable at such place as the holders of the Note may, from time to time, in writing appoint, and in absence of such appointment, then at the office of **Citibank, Federal Savings Bank**.

NOW, THEREFORE, to secure the payment and performance of all sums payable under the Note and all sums payable and other obligations in accordance with the terms, provisions and limitations of this Mortgage, (provided, however, that the maximum amount secured hereby on account of principal shall not exceed the sum of an amount equal to two times the loan amount set forth above plus the total amount of all advances made by mortgagee to protect the premises (defined below) and the security interest and lien created hereby), and in consideration for the loan evidenced by the Note and secured by this Mortgage, and for other valuable considerations, the receipt of which is hereby acknowledged, Mortgagor does by these presents **MORTGAGE, GRANT, REMISE, RELEASE, ALIEN and CONVEY** unto the Mortgagee, its successors and assigns, to have and to hold the following described real estate ("Land"), right, title and interest therein, situate, lying and being in the City of Chicago, County of Cook, and State of Illinois, to-wit:

Lawyers Unit #09194 Case # 04-03915 HP (2 of 5)

11

# UNOFFICIAL COPY

LOTS 47 AND 48 IN BLOCK 1 IN DERBY'S SUBDIVISION OF THE SOUTHWEST ¼ OF THE NORTH WEST ¼ OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN #20-10-114-001-0000

COMMONLY KNOWN AS: 4901 S. MICHIGAN AVENUE, CHICAGO, IL 60615

TOGETHER with all of the following property of Mortgagor (but excluding any property owned by a tenant), which, together with the Land is referred to in this Mortgage as the "premises" or the "mortgaged property":

- a) **Appurtenances.** All tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing;
- b) **Improvements and Fixtures.** All buildings, structures, replacements, furnishings, fixtures, fittings, and other improvements and property of every kind and character now or hereafter located or erected on the Land, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Land or said improvements, including (without limitation) all motors, boilers, engines, and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");
- c) **Personal Property.** All building materials, goods, construction materials, appliances (including stoves, refrigerators, water fountains and coolers, fans, heaters, incinerators, compactors, dishwashers, clothes washers and dryers, water heaters and similar equipment), supplies, blinds, window shades, carpeting, floor coverings, elevators, office equipment, growing plants, fire sprinklers and alarms, control devices, equipment (including motor vehicles and all window cleaning, building cleaning, swimming pool, recreational, monitoring, garbage, air conditioning, pest control and other equipment), tools, furnishing, furniture, light fixtures, non-structural additions to the premises, and all other tangible property of any kind or character now or hereafter owned by the Mortgagor and used or useful in connection with the premises, any construction undertaken in or on the premises, any trade, business or other activity (whether or not engaged in for profit) for which the premises are used, the maintenance of the premises or the convenience of any guests, licensees or invitees of the Mortgagor, all regardless of whether located in or on the premises or located elsewhere for purposes of fabrication, storage or otherwise including (without limitation) all rights under and to the escrow account(s) established and maintained pursuant to this Mortgage (all of the foregoing is herein referred to collectively as the "Goods");
- d) **Intangibles.** All goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of the Mortgagor relating to the premises (or any portion thereof) and all accounts, contract rights, instruments, chattel paper and other rights of the Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made, and any other intangible property the Mortgagor related to the premises (or any portion thereof) (all of the foregoing is herein referred to collectively as the "Intangibles");
- e) **Rents.** All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Mortgagor directly or indirectly from the premises (or any portion thereof) (all of the foregoing is herein collectively called the "Rents");
- f) **Leases.** All rights of the Mortgagor under all leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the premises (or any portion thereof), and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein called the "Leases");

**UNOFFICIAL COPY**

- g) **Plans.** All rights of the Mortgagor to plans and specifications, designs, drawings and other matters prepared for any construction in or on the premises (all of the foregoing is herein called the "Plans");
- h) **Other Property.** All other property or rights of the Mortgagor of any kind or character related to the Land or the Improvements, and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing.

It is understood that the enumeration of any specific items of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the mortgaged property described above is intended to be mortgaged and conveyed as a unit. All of the such mortgaged property hereby agreed to form, to the fullest extent permitted by law, real estate and conveyed and mortgaged hereby. As to the balance of the above described mortgaged property which is personal property under applicable law or items which are or may become fixtures, this Mortgage shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the official records of the County Recorder of the County in which the premises are located with respect to any and all fixtures included within the property described above, and with respect to any goods or other personal property that may now or hereafter become such fixtures.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, Etc.** Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (b) keep said premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof; (c) pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises; (e) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the premises and use thereof; (f) make no material alterations in said premises except as required by law or municipal ordinance; (g) suffer or permit no change in the general nature of the occupancy of the premises, without Mortgagee's written consent; (h) initiate or acquiesce in no zoning reclassification, without Mortgagee's written consent; (i) pay each item if indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; (j) not to suffer or permit any unlawful use of or any nuisance to exist upon the premises; (k) not to diminish or impair the value of premises or the security intended to be effected by virtue of this Mortgage by any act or omission to act; (l) appear in and defend any proceeding which in the opinion of the Mortgagee affects its security hereunder, and to pay all costs, expenses and attorneys' fees incurred or paid by the Mortgagee in any proceeding in which Mortgagee may participate in any capacity by reason of this Mortgage; (m) not suffer or permit, without Mortgagee's written consent, (i) any alterations, additions to, demolition or removal of any of the improvements, apparatus, fixtures or equipment now or hereafter upon said property, (ii) a sale, assignment or transfer of any right, title or interest in and to any of the improvements, apparatus, fixtures or equipment which may be found in or upon the premises, (iii) any change in the nature or character of the operation of the premises which will increase the intensity of the use thereof, and (iv) a change or alteration of the exterior or interior structural arrangement (but not to the exclusion of others), walls, rooms and halls.
2. **Sale or Transfer of Premises or Interest Therein.** Mortgagor agrees and understands that it shall constitute an event of default under this Mortgage and the Note entitling the remedies herein and in the Note to be exercised if (a) the Mortgagor, or any beneficiary of the Mortgagor, shall convey title to, or beneficial interest in, or otherwise suffer or permit any equitable or beneficial interest in the premises to become vested in any person or persons, firm or corporation or other entity recognized in law or equity other than the Mortgagor or the present beneficiary or beneficiaries, (b) allow any line or security interest to attach to the premises or the beneficial interest in the premises other than the lien of this Mortgage, excluding taxes and assessments not yet due and payable, (c) any articles of agreement for deed or other installment contract for deed, title or beneficial interest or land contract in the premises are entered into, or (d) any partnership interest of a partnership, if any, owning all or a portion of the beneficial interest in the Mortgagor or any stock of a corporation, if any, owning all or a portion of the beneficial interest in the Mortgagor is conveyed, transferred, or hypothecated, in whole or in part.
3. **Payment of Taxes.** Mortgagor shall pay before any penalty attaches all real estate taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall upon written request, furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.
4. **Insurance.** Mortgagor shall keep all building and improvements now or hereafter situated on said premises insured, until the indebtedness secured by this Mortgage is fully paid, or in case of foreclosure, until the expiration of any period of redemption, against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including, without limitation on the generality of the foregoing, war damage insurance whenever in the opinion of Mortgagee such protection is necessary.



**UNOFFICIAL COPY**

Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require and if required by Mortgagee, flood and rents (which will assure coverage for loss of rental income for twelve (12) consecutive months) insurance. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, (but in no event less than the amount needed to pay in full the indebtedness secured hereby) with mortgagee clause attached to all policies in favor of an in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without ten(10) days' prior written notice to the Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

Unless Mortgagor provides evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the premises. The insurance may but need not, protect Mortgagor's interests. The coverage that Mortgagee may purchase may not pay any claim that mortgagor makes or any claim that is made against Mortgagor in connection with the premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the premises, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Mortgagee may be able to obtain acting alone.

5. **Tax and Insurance Deposits.** To more fully protect the security of this Mortgage and to provide security to the Mortgagee for the payment of real estate taxes and insurance premiums, Mortgagor agrees to pay to Mortgagee, at such place as Mortgagee may from time to time in writing appoint in the absence of such appointment, then at the office of the Mortgagee in Chicago, Illinois, each month at the due date for the monthly installments of principal and interest provided for under the Note (in addition to paying the principal and interest provided for under the Note) in an amount as determined by Mortgagee, in such manner as the Mortgagee may prescribe, to provide security for the payment of the real estate taxes and insurance premiums.

If at any time the amount of the real estate taxes or insurance premiums are increased or Mortgagee receives information that the same will be increased, or if the monthly deposits then being made by Mortgagor for this purpose (if continued) would not make up a fund sufficient in the opinion of the Mortgagee to pay such item 60 days prior to its normally scheduled installment due date, said monthly deposits shall thereupon be increased and Mortgagor shall deposit immediately with Mortgagee on demand such additional sums as are determined by the Mortgagee so that the moneys then on hand for the payment of said item plus the increased monthly payments and such additional sums demanded shall be sufficient so that Mortgagee shall have received from Mortgagor adequate amounts to pay such item at least 60 days before the normally scheduled installment due date. For the purpose of determining whether Mortgagee has on hand sufficient money to pay any particular item at least 60 days prior to the due date therefore, deposits for each item shall be treated separately, it being the intention that Mortgagee shall not be obligated to use moneys deposited for the payment of an item not yet due and payable for the payment of an item that is due and payable.

Notwithstanding the foregoing, it is understood and agreed (a) that deposits provided for hereunder may be held by Mortgagee in a single non-interest bearing account, and (b) that Mortgagee at its option may, if Mortgagor fails to make any deposit required hereunder, use deposits for one item for the payment of another item then due and payable. All such deposits shall be held in escrow by Mortgagee and shall be applied by Mortgagee to the payment of the said real estate taxes and insurance premiums when the same become due and payable. Failure to pay any of the aforesaid monthly deposits for 10 days after they are due or failure to pay any of the aforesaid additional deposits for 5 days after demand by Mortgagee, shall be an event of default under the Note secured by this Mortgage and under this Mortgage, in which event all remedies under the Note secured by this Mortgage and this Mortgage may be immediately exercised by the Mortgagee and, further, all moneys on hand in the deposit fund may, at the option of Mortgagee, be applied in reduction of the indebtedness under the Note secured by this Mortgage.

If the funds so deposited exceed the amount required to pay such taxes for any year, the excess shall be applied on a subsequent deposit or deposits. The Mortgagor further agrees that Mortgagee shall not be required to make payments for which insufficient funds are on deposit with the Mortgagee. Mortgagor agrees that nothing herein contained shall be construed as requiring the Mortgagee to advance other monies for such purpose and the Mortgagee shall not incur any liability for anything it may do or omit to do.

Upon an assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of such deposits in its possession to the assignee and Mortgagee shall thereupon be completely released from all liability with respect to such deposits and Mortgagor shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee. Upon full payment of the indebtedness under the Note secured by this Mortgage and the Mortgage (or at any prior time at the election of the then holder of the Note and this Mortgage) the balance of the deposits in its possession shall be

**UNOFFICIAL COPY**

paid over to the record owner of the premises within a reasonable time period following payment and no other party shall have any right or claim thereto in any event.

6. **Hazardous Material; Indemnification.** Neither Mortgagor nor, to the best knowledge of Mortgagor, any other person or entity has ever caused or permitted, and Mortgagor will not at any time cause or permit, a Reportable Quantity (as hereinafter defined) of Hazardous Material (as hereinafter defined) to be placed, held, located or disposed of on, under or at the premises, or any part thereof, or to be unlawfully transported from the premises, or to be transported from the premises and unlawfully placed, held, located or disposed of on, under or at any other site or property (by whomsoever owned), or to be released in to the atmosphere or any watercourse, body of water or wetlands, or to be disposed of in any place or manner which, with the passage of time or the giving of notice or both, would give rise to liability (or potential liability) under any environmental Laws (as hereinafter defined). Neither the premises nor any part thereof, has ever been used (whether by Mortgagor or, to the best knowledge of Mortgagor, by any other person or entity), and Mortgagor will not use or permit the premises, or any part thereof, to be used, as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Material.

Mortgagor hereby indemnifies Mortgagee and agrees to hold Mortgagee harmless from and against any and all losses, liabilities, damages, fines, penalties, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, attorneys' and paralegals' fees and other legal expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against, Mortgagee for, with respect to, or as a direct or indirect result of, the presence on, at or under the premises, or, following relocation thereof from the premises, the presence on, at or under any other site or property, or the escape, seepage, leakage, spillage, discharge, emission or release from the premises into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, fines, penalties, injuries, costs, expenses or claims asserted or arising under any Environmental Laws.) Notwithstanding anything to the contrary in this Mortgage, the Note or any other instrument or document, the provisions of and undertakings and indemnification set out in this provision shall survive the satisfaction and release of this Mortgage and the payment and satisfaction of all indebtedness secured by this Mortgage, and shall continue in effect forever.

"Hazardous Material" means and includes any hazardous, toxic or dangerous substance or any pollutant or contaminant defined as such in, or for purpose of, any Environmental Laws. "Reportable Quantity" means, with respect to any Hazardous Material, a reportable quantity of such Hazardous Material as specified in or for purposes of, any Environmental Laws. "Environmental Laws" means the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, the Resource Conservation and Recovery Act, the Clean Water Act, the Toxic Substances Control Act, the Illinois Responsible Property Transfer Act or any other existing or future federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to, or imposing liability, or standards of conduct or remediation concerning any hazardous, toxic or dangerous waste, substance or material, each as now or hereafter in effect.

7. **Mortgagee's Interest In and Use of Deposits.** In the event of a default in any of the provisions contained in this mortgage or in the Note, the Mortgagee may at its option, without being required to do so, apply any moneys at the time on deposit pursuant to paragraph 5 hereof, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the mortgaged premises within a reasonable period of time. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held in trust to be irrevocably applied by the Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that the Mortgagee shall not be liable for any failure to apply to the payment of taxes and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing not less than thirty (30) days prior to the due date therefore to make application of such funds to the payment of the particular taxes or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes and insurance premiums.
8. **Mortgagee's Right to Act.** If Mortgagor fails to pay any claim, lien or encumbrances which shall have a prior lien to the lien of this indenture, or to pay, when due, any tax or assessment, or any insurance premium, or to keep the premises in repair, as aforesaid, or shall commit or permit waste, or if there be commenced any action or proceeding affecting the premises or the title thereto, then Mortgagee, at its option, may pay such claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may procure such abstracts or other evidence of title as it deems necessary, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of such purposes Mortgagee may advance such sums of money as it deems necessary. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax, assessment and premium, and of the amount necessary to be paid in satisfaction thereof. Mortgagor will pay to Mortgagee, immediately and without demand, all sums of money advanced by Mortgagee pursuant to this paragraph,

**UNOFFICIAL COPY**

together with interest on each such advance at the rate set forth in the Note, and all such sums and interest thereon shall be secured hereby.

9. **Adjustment of Losses with Insurer and Application of Proceeds of Insurance.** In case of loss, the Mortgagee (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is hereby authorized either (a) to settle, collect, compromise and adjust, in its discretion any claim under such insurance policies without consent of Mortgagor, or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case Mortgagee is authorized to collect and receipt for any such insurance money. Mortgagor agrees to sign, upon demand by Mortgagee, all receipts, vouchers and releases required of him by the companies. If (a) Mortgagor is obligated to restore or replace the damaged or destroyed buildings or improvements under the terms of any lease or leases which are or may be prior to the lien of this Mortgage, (b) such damage or destruction does not result in cancellation or termination of such lease, (c) the insurers do not deny liability as to the insureds, and (d) such proceeds are sufficient to restore or replace the damaged or destroyed buildings or improvements in the judgement of Mortgagee, such proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be used to reimburse Mortgagor for the cost of rebuilding or restoration of buildings and improvements of said premises. In all other cases, such insurance proceeds may, at the option of Mortgagee, either be applied in reduction of the indebtedness secured hereby, whether due or not, or be held by the Mortgagee and used to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on said premises. The buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same character as prior to such damage or destruction. In the event Mortgagor is entitled to reimbursement out of insurance proceeds, or, if Mortgagee elects to permit reimbursement out of insurance proceeds, such proceeds shall be made available, from time to time, upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractor's sworn statements and other evidence of cost and of payments as the Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such rebuilding or restoration as the Mortgagee may reasonably require and approve, no payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. In the case where insurance proceeds are used for reimbursement, Mortgagor agrees to pay Mortgagee its out of pocket fees and expenses and its inspection and processing fees.

In the case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if he shall then be entitled to the same or as the court may direct. In case of the foreclosure of this mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said creditor; and any such foreclosure decree may further provide, that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redeemptor may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemptor. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

10. **Stamp, Transfer or Revenue Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor or the premises, any tax is due or becomes due in respect of the issuance of the Note or this Mortgage or the recordation thereof, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to hold harmless and agrees to indemnify the Mortgagee, its successor or assigns, against any liability incurred by reason of the imposition of any such tax.
11. **Prepayment Privilege.** At such time as the Mortgagor is not in default either under the terms of the Note or under the terms of this Mortgage, the Mortgagor shall have such privilege of making prepayments on the principal of the Note (in addition to the required payments) as may be provided in the Note, and in accordance with the terms and conditions, if any, set forth in the Note.
12. **Effect of Extensions of Time.** If the payment of said indebtedness or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefore, or interested in said premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.



**UNOFFICIAL COPY**

13. **Effect of Change in Laws Regarding Taxation.** In the event of the enactment after this date of any law of the state in which the premises are located deducting from the value of land for the purpose of taxation any lien hereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagees interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefore; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest in excess of the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the date of giving of such notice.
14. **Mortgagee's Performance of Defaulted Acts.** In case of default therein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the mortgaged premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest then applicable to the indebtedness secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.
15. **Mortgagee's Reliance on Tax and Insurance Bills, Etc.** Mortgagee in making any payment is hereby authorized: (a) to pay any taxes, assessments and insurance premiums according to any bill, statement or estimate procured from the appropriate public office or vendor without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, insurance premiums, sale, forfeiture, tax lien or title or claim thereof; or (b) to purchase, discharge, compromise or settle any other prior lien, without inquiry as to the validity or amount of any claim for lien which may be asserted.
16. **Acceleration of Indebtedness in Case of Default.** If any of the following occur: (a) default be made for fifteen (15) days in the due and punctual payment of the Note, or any installment due in accordance with the terms thereof, either of principal or interest; or (b) the Mortgagor shall file a petition in voluntary bankruptcy under the United States Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within the (10) days, as hereinafter provided; or (c) the Mortgagor shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Mortgagor or for all of its property or the major part thereof in any involuntary proceedings, or any court shall have taken jurisdiction of the property of the Mortgagor or the major part thereof in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ten (10) days; or (d) the Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or (e) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by the Mortgagor and the same shall continue for three (3) days; or (f) a default or event of default occur under any other loan, secured or unsecured, or other agreement made by Mortgagee to Mortgagor (and/or any beneficiary of Mortgagor) or any agreement between Mortgagee and Mortgagor ( and/or any beneficiary of Mortgagor) or to any guarantor of this loan, then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of the Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor.
17. **Foreclosure; Expense of Litigation.** When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs, (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and any other expenses as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said premises and the maintenance of the lien of this mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or said premises, including probate and bankruptcy proceedings, or in preparations for the commencement or

**UNOFFICIAL COPY**

broken, and Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers and accounts of the Mortgagor or then owner of the premises relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the premises and conduct the business, if any, thereof, either personally or by its agents and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents issues, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Mortgagor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious, insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof and to receive all of such avails, rents, issues and profits.

The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, and the Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby, and the Mortgagor shall reimburse the Mortgagee therefore immediately upon demand.

22. **Application of Income Received by Mortgagee.** The Mortgagee in the exercise of the rights and powers herein conferred shall have full power to use and apply the avails, rents issues and profits of the premises to the payment of or on account of the following, in such order as the Mortgagee may determine:
- a) to the payment of the operating expenses of said property, including cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
  - b) to the payment of taxes and special assessments now due or which may hereafter become due on said premises;
  - c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing said property in such condition as will, in the judgment of the Mortgagee, make it readily rentable;
  - d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.
23. **Mortgagee's Right of Inspection.** Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.
24. **Late Charge.** In the event the Mortgagee shall, from time to time, accept payment of any installment required on the Note and under this Mortgage which is in arrears, Mortgagee may collect a "late charge" as provided for in the Note to cover the extra expense involved in handling delinquent payments; provided, however, that nothing in this paragraph contained shall authorize the Mortgagee to collect or demand any payment which would result in the imposition of interest in excess of the maximum amount allowed by law.
25. **Condemnation.** Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the mortgaged property taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or to require Mortgagor to restore or rebuild, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoring of buildings or improvements on said premises, in accordance with plans and specifications to be submitted to and approved by Mortgagee. If the Mortgagor is obligated to restore or replace the damaged or destroyed buildings or improvements under the terms of any lease or leases which are or may be prior to the lien of this Mortgage and if such taking does not result in cancellation or termination of such lease, the award shall be used to reimburse Mortgagor for the cost of the rebuilding or restoring of buildings or improvements on said premises, provided Mortgagor is not then in default under this Mortgage. In the event Mortgagor is required or authorized, either by Mortgagee's election as aforesaid, or by virtue of any such lease, to rebuild or restore, the proceeds of the award shall be paid out in the same manner as is provided herein for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover



**UNOFFICIAL COPY**

the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto. In applying the proceeds of any award on account of the indebtedness secured hereby, Mortgagee shall be entitled to collect, out of the proceeds of the award, a premium on the amount prepaid, at the same rate as though Mortgagor had elected at the time of such application of proceeds (or if Mortgagor then has no such election, at the first succeeding date on which Mortgagor could so elect) to prepay the indebtedness in accordance with the terms of the Note secured hereby.

26. **Release upon Payment and Discharge of Mortgagor's Obligations.** Mortgagee shall release this mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgagee for the preparation and execution of such release.
27. **Giving of Notice.** Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof by certified mail addressed to the Mortgagor at the mortgaged premises (designated by street address) or to the Mortgagee, at its principal office in Chicago, Illinois to the attention of the office of the Vice President in charge of commercial/multi-family real estate loans and specifying the loan number, or at such other place within the United States as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder. Any notice given by the Mortgagee shall be deemed given on the date of the same is deposited in the United States mail.
28. **Waiver of Defense.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.
29. **Waiver of Statutory Rights.** Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the mortgaged property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the mortgaged property sold as an entirety. **THE MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION UNDER ANY STATUTE, ORDER OR JUDGMENT OF FORECLOSURE, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF THE MORTGAGOR, THE TRUST ESTATE AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PREMISES DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OTHER PERSONS TO THE EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.**
30. **Mortgagee's Lien for Service Charges and Expenses.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, services charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and loan commitment issued in connection with this transaction.
31. **Furnishing of Financial Statements to Mortgagee.** Upon request, Mortgagor shall furnish to Mortgagee, a semi-annual operating statement of income and expense of the mortgaged premises signed and certified by the Mortgagor's beneficiary or beneficiaries.
32. **Cumulative Rights.** Each right, power and remedy herein conferred upon the Mortgagee is cumulative of every other right or remedy of the Mortgagee, whether herein or by law conferred, and may be enforced concurrently therewith.
33. **Binding on Successors and Assigns.** The lien of this Mortgage and all of the provisions and conditions contained herein shall extend to and be binding upon all successors and assigns of the Mortgagor. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.
34. **Captions.** The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.
35. **Time of Essence.** Time is declared to be of the essence in this Mortgage, the Note and any document or instrument delivered pursuant to or in connection with this Mortgage or the Note, and of every part hereof and thereof.

**UNOFFICIAL COPY**

defense of any proceeding or threatened suit or proceedings, whether or not actually commenced, shall be immediately due and payable by Mortgagor, with interest thereon at the rate applicable to the indebtedness secured by this Mortgage and the same shall be secured by this Mortgage.

18. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.
19. **Appointment of Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure suit and in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.
20. **Assignment of Rents and Leases.** To further secure the indebtedness secured hereby, Mortgagor does hereby sell, assign and transfer unto the Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all of the avails thereunder, unto the Mortgagee, and Mortgagor does hereby appoint irrevocably the Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the premises as provided herein) to rent, lease or let all or any portion of said premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on said premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession pursuant to the provisions herein.

The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the above described premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the said premises has been or will be waived, released, reduced, discounted or otherwise nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the premises by the Mortgagee pursuant to the provisions herein. In the exercise of the power herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagor.

The Mortgagor further agrees to assign and transfer to the Mortgagee all future leases upon all or any part of the premises hereinabove described and to execute and deliver, at the request of the Mortgagee, all such further assurances and assignments in the premises as the Mortgagee shall from time to time require.

Although it is the intention of the parties that the assignment contained herein shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Mortgagee shall not exercise any of the rights or powers conferred upon it by this paragraph until a default shall exist hereunder.

21. **Mortgagee's Right of Possession in Case of Default.** In any case in which under the provisions of this Mortgage the Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises or any part thereto personally, or by its agents or attorneys, as for condition

# UNOFFICIAL COPY

- 36. **Personal Jurisdiction.** Mortgagor and Mortgagee agree that all disputes between them arising out of, in connection with, related to, or incidental to this Mortgage, and whether arising in contract, tort, equity or otherwise, shall be resolved only by state or federal courts located in Cook County, Illinois, but the parties acknowledge that any appeals from those courts may have to be heard by a court located outside of Cook County, Illinois. The Mortgagor waives in all disputes any objection that it may have to the location of the court considering the dispute.
- 37. **WAIVER OF JURY TRIAL.** MORTGAGOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR THE NOTE, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS NOTE OR THE MORTGAGE, AND AGREES THAT ANY SUCH ACTION SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

IN WITNESS WHEREOF, **The Breakers of Manistique, Inc.**, has/have caused these presents to be signed this 16<sup>th</sup> day of Dec 2004.

[Signature] Pres.  
 \_\_\_\_\_  
 The Breakers of Manistique, Inc.

STATE OF ILLINOIS )  
 ) SS:  
 COUNTY OF Cook )

I, [Signature], a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY, that **The Breakers of Manistique, Inc.**, by: \_\_\_\_\_ who is/are personally known to me to be the same person, is whose name is/are subscribed to the foregoing instrument, respectively, appeared before me this day in person and acknowledged that he/they/she signed and delivered the said instrument as his/their/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16<sup>th</sup> day of Dec 2004.

My commission expires:  
 \_\_\_\_\_  
31405

[Signature]  
 \_\_\_\_\_  
 Notary Public

