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INSTRUMENT PREPARED BY:
NICHOLAS GEROU LIS
MARTIN & KARCAZES, LTD.
161 N. Clark Street - Suite 550
Chicago, Illinois 60601

Doc#: 0706746024 Fee: \$36.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/08/2007 01:08 PM Pg: 1 of 7

MAIL TO:
ALLEGIANCE COMMUNITY
BANK
8001 W. 183rd Street
Tinley Park, Illinois 60477

596580

TICOR TITLE

MORTGAGE

THIS MORTGAGE made and entered into this 23rd day of February, 2007, by and between MICHAEL J. CAREY, JR. and MICHAEL A. DISTASIO, SR. (collectively the "Mortgagor"), and ALLEGIANCE COMMUNITY BANK ("Mortgagee"), which maintains an office and place of business at 3001 W. 183rd STREET, TINLEY PARK, ILLINOIS 60477.

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the Mortgagor does hereby mortgage, sell, grant, assign and convey unto the Mortgagee, its successors and assigns, all of the following described property situated and being in the County of Cook, State of Illinois, commonly known as 1388 S. State Street, Lemont, Illinois, and legally described as follows:

THE NORTH 290.0 FEET OF THE SOUTH 305 FEET OF THE EAST 255.50 FEET OF LOT 15 IN COUNTY CLERK'S DIVISION IN SECTION 32, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 30, 1880 AS DOCUMENT 269447, IN BOOK 15 OF PLATS, PAGE 49, COOK COUNTY, ILLINOIS.

PIN: 22-32-300-051-0000

THIS IS NOT HOMESTEAD PROPERTY

Together with and including all buildings, all fixtures, including but not limited to, all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the Mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues and profits of the above described property (provided, however, that the Mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder). To have and to hold the same unto the Mortgagee and the successors in interest of the Mortgagee forever in fee simple or such other estate, if any, as is stated herein.

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MORTGAGOR HEREBY RELEASES AND WAIVES ALL RIGHTS UNDER AND BY VIRTUE OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS.

Mortgagor covenants that it is lawfully seized and possessed of and has the right to sell and convey said property, that the same is free from all encumbrances except as hereinabove recited; and that Mortgagor hereby binds itself and its successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever.

This instrument is given to secure (i) the payment of a promissory note dated February 22, 2007 in the principal sum of \$1,500,000.00 signed by Mortgagor, including the principal thereof and interest and premium, if any, thereon and all extensions and renewals thereof in whole or in part and any and all other sums which may at any time be due and owing or required to be paid as provided for in the note or herein or in accordance with the terms of any other agreement entered into between Mortgagor and Mortgagee in relation to the note; and (ii) any other indebtedness of the Mortgagor, either jointly or singly, payable to the Mortgagee, howsoever created, evidenced or arising, whether direct or indirect, absolute or contingent, now due or to become due, or now existing or hereafter arising (herein called the "Indebtedness Hereby Secured"). At no time shall the principal amount of the Indebtedness Hereby Secured, not including the sums advanced in accordance herewith to protect the security of this mortgage, exceed the original amount of the note, plus One Million (\$1,000,000.00) Dollars.

1. Mortgagor covenants and agrees as follows:

(a) Mortgagor will promptly pay the Indebtedness Hereby Secured;

(b) Mortgagor will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefore to Mortgagee. The real estate taxes will be paid through a real estate tax escrow pursuant to the Real Estate Tax Escrow Agreement executed and delivered by Mortgagor.

(c) Mortgagor will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the reasonable fees of any attorney employed by Mortgagee for the collection of any or all of the Indebtedness Hereby Secured, or foreclosure by Mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way shall be paid by Mortgagor.

(d) For better security of the Indebtedness Hereby Secured, upon the request of the Mortgagee, its successors or assigns, Mortgagor shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the property hereinabove described and all property acquired by it after the date hereof (all in form satisfactory to Mortgagee). Furthermore, should Mortgagor fail to cure any default in the

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payment of a prior or inferior encumbrance on the property described by this instrument, Mortgagor hereby agrees to permit Mortgagee to cure such default, but Mortgagee is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

(e) The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the Indebtedness Hereby Secured.

(f) Mortgagor will continuously maintain hazard insurance, of such type or types and in such amounts as Mortgagee may from time to time require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to Mortgagee and the policies and renewals thereof shall be held by Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee. In event of loss, Mortgagor will give immediate notice in writing to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by Mortgagee at its option either to the reduction of the indebtedness Hereby Secured or to the restoration or repair of the property damaged or destroyed. In the event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the Indebtedness Hereby Secured, all right, title, and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or Mortgagee or, at the option of Mortgagee, may be surrendered for a refund. **Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required herein, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the property. This insurance may, but need not, protect Mortgagor's interest. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after Mortgagee with written evidence of the Mortgagor has obtained insurance as required herein. If the Mortgagee purchases insurance for the property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges 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 the Indebtedness Hereby Secured. The costs of the insurance may be more than the cost of insurance mortgagor may be able to obtain on mortgagor's own.**

(g) Mortgagor will keep all buildings and other improvements on said property in good repair and condition; will permit, commit, or suffer no waste, impairment, deterioration of said property or any part thereof; in the event of failure of Mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, Mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.

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(h) Mortgagor will not voluntarily create or permit to be created against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage without the written consent of Mortgagee; and further, that Mortgagor will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises.

(i) Mortgagor will not rent or assign any part of the rent of said mortgaged property or demolish, or remove, or substantially alter any building without the written consent of Mortgagee.

(j) All awards of damages in connection with any condemnation for public use of or injury to any of the property subject this mortgage are hereby assigned and shall be prepaid to Mortgagee, who may apply the same to payment of the installments last due under said note, and Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

(k) Mortgagee shall have the right to inspect the mortgaged premises at any reasonable time.

(l) Mortgagor has never received any written notice of any violations of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of hazardous materials and, to its actual knowledge, there have been no actions commenced or threatened by any party for noncompliance.

(m) Mortgagor shall keep or cause the premises to be kept free of Hazardous Materials other than as may customarily be used in the course of construction of Hazardous Materials other than as may customarily be used in the course of construction or operation of similar restaurant/residential building improvements and businesses and in accordance with applicable environmental laws, and, without limiting the foregoing, Mortgagor shall not cause or permit the premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on Mortgagor's part, or on the part of any tenant, subtenant or occupant, a release of Hazardous Materials onto the premises or onto any other property.

(n) Mortgagor shall, subject to the contest rights provided in the Environmental Indemnity Agreement of even date executed and delivered to Mortgagee by Mortgagor:

(i) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the premises in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of

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Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities; and

(ii) defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise (excluding consequential and punitive damages except to the extent Mortgagee may be subject to the same by reason of any third party claim) arising out of or in any way related to:

(A) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from, or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon;

(B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials;

(C) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials; and/or

(D) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses; provided that this indemnity shall not apply where the claim is attributable to acts of Mortgagee or its agents.

Mortgagee shall tender defense of any claim to Mortgagor for handling with counsel of Mortgagor's selection, and Mortgagor shall control any remediation, provided Mortgagor has not defaulted under the Note, Mortgage or any other agreement. This indemnity shall survive the release of the lien of the Mortgage, foreclosure or deed in lieu thereof or by any other action, and this covenant shall survive such re-conveyance or extinguishment; provided, however, this indemnity shall not apply to any fact, event or circumstance occurring after the Property has been transferred by Mortgagor, by foreclosure, deed in lieu of foreclosure or otherwise. To the extent of any conflict between the provisions herein and the Environmental Indemnity Agreement of even date executed and delivered to Mortgagee by Mortgagor, said Environmental Indemnity Agreement shall control.

2. Default in any of the covenants or conditions of this instrument or of the Note or Construction Loan Agreement secured hereby, which, in the case of a monetary default, shall remain uncured for ten (10) days, or, in the case of non-monetary default, shall remain uncured for thirty (30) days, shall terminate Mortgagor's right to possession, use and enjoyment of the Property, at the option of Mortgagee or its assigns (it being agreed that Mortgagor shall have such right until default). Upon any such default, Mortgagee shall become the owner of all of the rents and profits accruing after default as security for the Indebtedness Hereby Secured, with the right to enter upon said Property for the purpose of collecting such rents and profits,

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pursuant to the terms of a separate instrument of even date entitled Assignment of Leases and Rents executed by Mortgagor.

3. Mortgagor covenants and agrees that if Mortgagor shall fail to pay the Indebtedness Hereby Secured or any part thereof when due, or shall fail to perform any covenant or agreement of this instrument or any note or guaranty secured hereby, the entire Indebtedness Hereby Secured shall immediately become due, payable and collectible without notice, at the option of Mortgagee or assigns, regardless of the maturity; and Mortgagee or its assigns may, before or after entry, sell said property without appraisal (Mortgagor having waived and assigned to Mortgagee all rights of appraisal) pursuant to the laws of the State of Illinois governing the disposition of said Property.

4. The proceeds of any sale of said property in accordance with the preceding paragraph shall be applied first to pay the costs and expenses of said sale, the expenses incurred by Mortgagee for the purpose of protecting and maintaining said Property, and reasonable attorneys' fees; secondly, to pay the Indebtedness Hereby Secured; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale, and the proceeds are not sufficient to pay the Indebtedness Hereby Secured, Mortgagee will be entitled to a deficiency judgment for the amount of the deficiency without regard to appraisal.

6. In the event Mortgagor fails to pay any federal, state or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the Property, Mortgagee is hereby authorized, at its option, to pay the same. Any sums so paid by Mortgagee shall be added to and become a part of the principal amount of the Indebtedness Hereby Secured, subject to the same terms and conditions applicable under this mortgage and any note or guaranty secured hereby. If Mortgagor shall pay and discharge the Indebtedness Hereby Secured, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing and executing this mortgage, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order or judgment holding any provision of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument

10. Any written notice to be issued to Mortgagor pursuant to the provisions of this instrument shall be addressed to Mortgagor at 1388 S. State Street, Lemont, IL 60439 and any

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written notice to be issued to Mortgagee shall be addressed to Mortgagee at 8001 W. 183RD Street, Tinley Park, IL 60477.

11. Mortgagor, on behalf of it, and each and every person claiming by, through, or under it, **HEREBY WAIVES ALL RIGHTS OF REDEMPTION**, statutory or otherwise, without prejudice to Mortgagee's right to any remedy, legal or equitable, which Mortgagee may pursue to enforce payment or to affect collection of all or any part of the Indebtedness Hereby Secured, and without prejudice to Mortgagee's right to a deficiency judgment or any other appropriate relief in the event of foreclosure of this mortgage.

IN WITNESS WHEREOF, Mortgagor has executed this instrument and Mortgagee has accepted delivery of this instrument as of the day and year aforesaid.

✓ *Michael J. Carey, Jr.*
MICHAEL J. CAREY, JR.

x *Michael A. Distasio Sr.*
MICHAEL A. DISTASIO, SR.

State of Illinois)
) ss.
County of Cook)

The undersigned, a Notary Public in and for said county, in the aforesaid State, does hereby certify that MICHAEL J. CAREY, JR. and MICHAEL A. DISTASIO, SR., known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and for the uses and purposes therein set forth.

Dated: February 23, 2007

Carole A. Valela
Notary Public

