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This instrument has been drafted by:

Kristin Hermann, Esq.  
Miller, Canfield, Paddock & Stone, P.L.C.  
101 N. Main, Seventh Floor  
Ann Arbor, Michigan 48104

Recorded at Request of and When Recorded Return To:

Captec Financial Group, Inc.  
24 Frank Lloyd Wright Drive  
Lobby L, Fourth Floor  
P.O. Box 544  
Ann Arbor, Michigan 48106-0544  
Attention: Manager, Real Estate Contract Administration

Loan No. 8558  
17350 Torrence Avenue, Lansing, Illinois 60438

(space above this line for recorder's use)

BORROWER:	CHI-CO, INC.
BORROWER ADDRESS:	4101 E. LOUISIANA, SUITE 200, DENVER, COLORADO 80222
BORROWER FAX NO.:	(303) 756-7344
RESTAURANT ADDRESS:	17350 TORRENCE AVENUE, LANSING, ILLINOIS 60438
LOAN AMOUNT:	\$570,000.00

**MORTGAGE, ASSIGNMENT OF RENTS, FIXTURE FILING AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF RENTS, FIXTURE FILING AND SECURITY AGREEMENT ("Mortgage") is made by the Borrower(s) whose name(s) and address(es) are set forth above (collectively, if more than one, "Borrower"), for the benefit of CAPTEC FINANCIAL GROUP, INC., a Michigan corporation, whose address is 24 Frank Lloyd Wright Drive, Lobby L, 4th Floor, P.O. Box 544, Ann Arbor, Michigan 48106-0544 (together with its successors, assigns and transferees, "Lender"). This instrument is dated as of the date the signatures hereto were acknowledged or notarized but shall become effective on the Closing Date set forth on Schedule A attached hereto (the "Closing Date").

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## PRELIMINARY STATEMENT

This Mortgage is made to secure (1) performance by Borrower of the covenants and obligations of Borrower under that certain Promissory Note ("Note"), by Borrower to Lender, made as of the date of this Mortgage by Borrower, together with any and all extensions, renewals modifications, substitutions or replacements thereof; (2) the performance by Borrower of the covenants and obligations of Borrower under this Mortgage; (3) the performance by Borrower of the covenants and obligations of Borrower under any other documents securing payment of all amounts due under the Note, and any agreements or amendments relating thereto or executed in connection therewith (collectively, together with the Note and Mortgage, the "Loan Documents"); (4) all obligations of Borrower for any cost overruns or other sums that may be advanced by Lender, whether or not evidenced by the Note or a promissory note; and (5) such Trust Obligations and Retained Obligations described in the following two paragraphs. Such covenants and obligations of Borrower are sometimes collectively referred to herein as the "Indebtedness." The original principal amount of the loan evidenced by the Note is the Loan Amount set forth above (the "Loan Amount").

If the Note, this Mortgage and the Loan Documents are assigned to a trust sponsored by Lender or any of its affiliates to securitize its loan receivables (the "Trust"), "Indebtedness" shall also include the payment of all other sums (together with interest and costs thereon) concurrently or subsequently loaned to Borrower by Captec Financial Group, Inc., a Michigan corporation, Captec Financial Group Funding Corporation, a Michigan corporation, or Captec Leasing Company, a California corporation (each an "Originator"), as evidenced and/or secured by certain notes and other documents of Borrower with respect to such amounts and which notes and other documents are assigned to the Trust, together with any and all extensions, renewals, modifications, substitutions or replacements thereof; and the performance of the covenants and obligations of Borrower due or to become due under such notes and other documents assigned to the Trust, and the repayment of all sums expended in connection with performance of those covenants and obligations (collectively, the "Trust Obligations").

If the Note, this Mortgage and the Loan Documents are not assigned to the Trust, "Indebtedness" shall also include the payment of all other sums (together with interest thereon) concurrently or subsequently loaned to Borrower by an Originator, as evidenced and/or secured by certain notes and other documents of Borrower which are not assigned to the Trust, together with any and all extensions, renewals, modifications, substitutions or replacements thereof; and the performance of the covenants and obligations of Borrower due or to become due under such notes and other documents, and the repayment of all sums expended in connection with performance of those covenants and obligations (collectively, the "Retained Obligations").

1. **GRANTING CLAUSE.** To secure the Indebtedness and as security for the purposes stated elsewhere in this Mortgage, Borrower grants, mortgages and warrants to Lender, its successors and assigns, with power of sale and right of entry and possession, all of its present and future estate right, title and interest in and to that certain real property more particularly described in Schedule B attached hereto (the "Real Estate") and all rights to the Real Estate which may be acquired by the Borrower at any time, including all rights, privileges, options, elections and other benefits of every name and nature; together with all present and future easements and rights used in connection therewith or as a means of access thereto; together with all right, title and interest that Borrower now has or may hereafter acquire in:

1.1. All right, title and interest of the Borrower in, to, under or derived from all buildings, structures, facilities and other improvements of every kind and description now or hereafter located on the Real Estate, including all parking areas, roads, driveways, walks, fences, walls, drainage facilities and other site improvements, all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment and facilities, all plumbing, lighting, heating, ventilating, air-conditioning, refrigerating, incinerating, compacting, fire protection and sprinkler, surveillance and security, public address and communications equipment and systems, all awnings, floor coverings, partitions, elevators, escalators, motors, machinery, pipes, fittings and other items of equipment and personal property of every kind and description now or hereafter located on the Real Estate, as defined herein, or attached to the improvements which by the nature of their location thereon or attachment thereto are real property under applicable law; and including all materials intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, equipment, fixtures, structures and improvements, all of which materials shall be deemed to be part of the Real Estate immediately upon

delivery thereof on the Real Estate and to be part of the improvements immediately upon their incorporation therein (the foregoing being collectively the "Improvements");

1.2. All estate, right, title and interest of the Borrower in, to, under or derived from all machinery, equipment, fixtures and accessions thereof and renewals, replacements thereof and substitutions therefor, other customary franchise fast food restaurant equipment and other tangible property of every kind and nature whatsoever owned by the Borrower, or in which the Borrower has or shall have an interest, now or hereafter located upon the Real Estate, or appurtenant thereto, or usable exclusively in connection with the present or future operation and occupancy of the Real Estate or the Improvements (hereinafter collectively called the "Equipment");

1.3. All estate, right, title and interest of the Borrower in, to, under or derived from all tenements, hereditaments and appurtenances now or hereafter relating to the Real Estate; the streets, roads, sidewalks and alleys abutting the Real Estate; all air space and rights to use air space above the Real Estate; all development, operating or similar rights appurtenant to the Real Estate (including, without limitation, all rights arising from reciprocal access agreements, joint occupancy, use or development agreements, and parking agreements); all rights of ingress and egress now or hereafter appertaining to the Real Estate; and all easements, licenses and rights of way now or hereafter appertaining to the Real Estate;

1.4. All estate, right, title and interest of the Borrower in, to, under and derived from all leases of or relating to the Real Estate, Improvements or Equipment (together with all amendments, supplements, consolidations, replacements, restatements, extensions, renewals and other modifications thereof), other than the Lease identified in Schedule C attached hereto (the "Lease"), if any, now or hereafter in effect, whether or not of record (the "Additional Leases"); and the right to bring actions and proceedings under the Additional Leases or for the enforcement thereof and to do anything which the Borrower or any lessor is or may become entitled to do under the Additional Leases;

1.5. All estate, right, title and interest of the Borrower in, to, under or derived from all contract rights, chattel paper, instruments, general intangibles, computer hardware, software and intellectual property, accounts, guaranties and warranties, letters of credit, and documents, in each case relating to the Improvements or Equipment or to the present or future operation or occupancy of the Real Estate, and all plans, specifications, maps, surveys, studies, books of account, records, files, insurance policies, guarantees and warranties, all relating to the Improvements or Equipment or to the present or future operation or occupancy of the Real Estate, all architectural, engineering, construction and management contracts, all supply and service contracts for water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utilities relating to the Real Estate and all other agreements affecting or relating to the use, enjoyment or occupancy of the Real Estate or Improvements;

1.6. All estate, right, title and interest of the Borrower in, to, under or derived from all rents, royalties, issues, profits, receipts, revenue, income, earnings and other benefits now or hereafter accruing with respect to all or any portion of the Real Estate; sums now or hereafter payable pursuant to the Additional Leases; all other sums now or hereafter payable with respect to the use, occupancy, management, operation or control of the Real Estate; and all other claims, rights and remedies now or hereafter belonging or accruing with respect to the Real Estate, including oil, gas and mineral royalties (collectively, "Rents"), refunds of taxes, assessments or other charges levied or imposed upon the Real Estate or of utility or tenant deposits, all of which the Borrower hereby irrevocably directs to be paid to the Lender, subject to the license, if any, granted to the Borrower herein, to be held, applied and disbursed, as provided in this Mortgage;

1.7. All estate, right, title and interest of the Borrower in, to, under or derived from all licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Real Estate and all estate, right, title and interest of the Borrower in, to, under or derived from all tradenames or business names relating to the Real Estate or Improvements or the present or future operation or occupancy of the Real Estate excluding, however, from the grant under this Section 1.7 any franchise rights and any permits which cannot be transferred or encumbered by the Borrower without causing a default thereunder or a termination thereof;

1.8. All estate, right, title and interest of the Borrower in, to, under or derived from all amounts deposited with the Lender, including all insurance proceeds and awards and including all notes, certificates

of deposit, securities and other investments relating thereto and all interest, dividends and other income thereon, proceeds thereof and rights relating thereto;

1.9. All estate, right, title and interest of the Borrower in, to, under or derived from all proceeds of any sale, transfer, taking by condemnation (or any proceeding or purchase in lieu thereof), financing, refinancing or a conversion into cash or liquidated claims, whether voluntary or involuntary, of any of the Property (as hereinafter defined), including all insurance proceeds and awards and title insurance proceeds under any title insurance policy now or hereafter held by the Borrower, and all rights, dividends and other claims of any kind whatsoever (including damage, secured, unsecured, priority and bankruptcy claims) now or hereafter relating to any of the Property, all of which the Borrower hereby irrevocably directs be paid to the Lender to the extent provided hereunder, to be held, applied and disbursed as provided in this Mortgage;

1.10. All estate, right, title and interest of the Borrower as seller in, to or under any agreement, contract, understanding or arrangement pursuant to which the Borrower has obtained the agreement of any person to purchase any of the Property or any interest therein and all income, profits, benefits, avails, advantages and claims against guarantors under any thereof;

1.11. All inventory held or maintained at the restaurant whose address is set forth above, or otherwise used in the ownership or operation of such restaurant (including, without limitation, all food and paper inventory together with all additions and accessions thereto, replacements therefor, products thereof and documents therefor (collectively, the "Inventory");

1.12. All estate, right, title and interest of the Borrower in, to, under or derived from the Real Estate hereafter acquired by the Borrower and all right, title and interest of the Borrower in, to, under or derived from all extensions, improvements, betterment, renewal substitutions and replacements of, and additions and appurtenances to, any of the Real Estate hereafter acquired by or released to the Borrower or constructed or located on, or attached to, the Real Estate; and

1.13. All proceeds of any and all of the items described in Section 1.1 through 1.12 inclusive (all such items being sometimes collectively referred to herein as the "Property").

1.14. All substitutions, replacements, extensions, renewals, additions and accessories for or to any of the foregoing.

## 2. **ADDITIONAL SECURITY.**

2.1. **Security Interest.** This Mortgage, as to any Equipment, Inventory, fixtures, accounts, general intangibles and other personal property included within the definition of Property (collectively, "Personal Property"), shall constitute a security agreement within the meaning of the Uniform Commercial Code and Borrower grants to Lender a security interest in the Personal Property. Borrower shall, upon request of Lender, promptly furnish a list of Personal Property owned by Borrower and subject to this Mortgage and, upon request by Lender, immediately execute, deliver and/or file any amendments to this Mortgage, any separate security agreement and any financing statements to evidence and perfect the security interest in such Personal Property contemplated by this Section. Lender or any of its employees are each irrevocably appointed attorney-in-fact and are authorized to execute, deliver and/or file any of such amendments to this Mortgage, any separate security agreement and any financing statements.

2.2. **Certain Remedies.** Upon the occurrence of any Event of Default under this Mortgage, Lender shall have all of the rights and remedies of a secured party under the Uniform Commercial Code or otherwise provided by law or by this Mortgage including without limitation the right to require Borrower to assemble the Personal Property and make it available to Lender at a place to be designated by Lender which is reasonably convenient to Lender, the right to collect all accounts receivable, the right to take possession of the Personal Property with or without demand and with or without process of law and the right to sell and dispose of it and distribute the proceeds according to law. Any requirement regarding the giving of reasonable notice shall be satisfied if Lender sends notice to Borrower at least five (5) days prior to the date of sale, disposition or other event



giving rise to the required notice. The proceeds of any disposition of the Personal Property may be applied by Lender first to Lender's reasonable expenses in connection with the disposition including without limitation reasonable attorneys' fees and legal expenses, and then to payment of the Indebtedness.

2.3. **Licenses and Permits.** As additional security for the Indebtedness and to the extent permitted by their terms, Borrower assigns to Lender all of Borrower's rights and interest in all licenses or permits affecting the Property. This Mortgage shall not impose upon Lender any obligations with respect to any license or permit. Borrower shall not cancel or amend any of the licenses or permits assigned (nor permit any of them to terminate if they are necessary or desirable for the operation of the Property) without first obtaining the written approval of Lender.

2.4 **Effective as a Financing Statement.** This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included with the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Borrower is the address of Borrower set forth at the beginning of this Mortgage and the address of Lender from which information concerning the security interests hereunder may be obtained is the address of Lender set forth at the beginning of this Mortgage. A carbon photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

3. **COVENANTS AND WARRANTIES.** Borrower represents, warrants and covenants to Lender as follows:

3.1. **Authority.** Borrower has the power and authority to execute, deliver and perform its obligations under the Loan Documents. Borrower (if not an individual) is duly organized and in good standing under the laws of the state of its organization. Borrower (if not an individual) is validly existing and qualified to do business in the state where the Real Estate is located (the "Subject State"). The execution, delivery and performance of the Loan Documents by Borrower does not, and shall not, violate or conflict with any provision of the organizational or charter documents of Borrower (if not an individual).

3.2. **Legal Obligation.** The Loan Documents are the legal, valid and binding obligations of Borrower, enforceable in accordance with their terms. Borrower will pay and perform the Indebtedness when due, whether by maturity, acceleration or otherwise.

3.3. **Consents, Approvals.** All consents, approvals and authorizations of any governmental body, subdivision, agency, board or authority in the Subject State, if any, required on the part of Borrower in connection with the execution and delivery of the Loan Documents have been obtained and are in full force and effect.

3.4. **No Conflict.** The execution, delivery and performance of the Loan Documents does not violate or conflict with any agreement, court order or consent decree to which Borrower is a party or by which Borrower may be bound. There are no disputes, litigations or other proceedings pending against Borrower or the Property, which will have a material adverse effect on the Borrower's ability to perform its obligations under the Loan Documents.

3.5. **Existing Defaults.** There are no circumstances, state of facts or other matters which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Mortgage or the other Loan Documents.

3.6. **Title to Property.** Borrower is the owner and is lawfully seized and possessed of the Property. Borrower has good right, full power and authority to mortgage the Property in accordance with the terms of this Mortgage. Borrower has and shall maintain good and marketable title to the Real Estate (if a loan policy of title insurance issued to Lender on or about the Closing Date shows Borrower to be the fee owner thereof) free and clear of any liens and encumbrances, excepting only those liens or encumbrances, if any, which are (a) shown on a

loan policy of title insurance, if any, and approved in writing by Lender, or (b) junior in priority to the lien created by this Mortgage. Borrower has and shall maintain good and marketable title to the Equipment free and clear of any liens and encumbrances.

3.7. **Franchise Agreement.** Borrower is a franchisee in good standing with the Franchisor whose name is set forth on Schedule A attached hereto (the "Franchisor"), and is not in default under the franchise agreement ("Franchise Agreement") with Franchisor relating to the restaurant whose address is set forth above (the "Franchised Operation"). Borrower shall comply with the terms of the Franchise Agreement and shall take all actions necessary or required to keep the Franchise Agreement in full force and effect. Borrower shall not encumber its rights under the Franchise Agreement except to Lender. Borrower shall promptly provide Lender with a copy of any notice of a default or alleged default under the Franchise Agreement. Borrower shall promptly provide Lender with a copy of any notice of the existence of any breach or alleged breach of the Franchise Agreement.

3.8. **Fixed Charge Coverage Ratio.** Borrower shall maintain a Fixed Charge Coverage Ratio (as hereinafter defined) of not less than the Composite FCCR set forth on Schedule A attached hereto for Borrower's business operations generally and not less than the Restaurant FCCR set forth on Schedule A attached hereto for the Franchised Operation. "Fixed Charge Coverage Ratio" shall mean Borrower's Operating Cash Flow divided by its Fixed Charges (each as defined below). The Fixed Charge Coverage Ratios shall be calculated by Borrower from time to time and dates as determined by Lender, and Borrower shall submit such information as Lender may require to confirm and approve Borrower's calculation of the Fixed Charge Coverage Ratios.

3.8.1. "Fixed Charges" shall mean the sum of the following items set forth on a pro forma basis separately stated for both Borrower's business operations generally and for the Franchised Operation, in each case, for the applicable twelve (12) month operating period:

- (a) current portion of long-term debt (defined as the current portion of long-term debt due to mature during the next twelve (12) month operating period, as stated in Borrower's applicable financial statement, plus, if not already included therein, the current portion of principal payments imputed on all capital leases), plus
- (b) interest expense (defined as the interest expense as stated on Borrower's applicable financial statement, plus, if not already included therein, the interest expense imputed on all capital leases), plus
- (c) the current portion of operating leases (defined as the amount of rent due under operating leases for the next twelve (12) month operating period)

3.8.2. "Operating Cash Flow" shall mean the sum or subtraction of the following items separately stated for both Borrower's business operations generally and for the Franchised Operation in each case, for the applicable prior twelve (12) month operating period:

- (a) net income (defined as the net income stated on Borrower's applicable financial statement), plus
- (b) depreciation and amortization (defined as the depreciation and amortization expense as stated on Borrower's applicable financial statement), plus
- (c) interest expense (as defined above), plus
- (d) operating lease expense (defined as the amount of rental expense paid under operating leases, as stated on Borrower's applicable financial statements), plus or minus
- (e) non-recurring items (defined as items which, when computing cash flow, should in Lender's reasonable business judgment, be added back to or subtracted from net income to normalize results).

3.9. **Maintenance of Property; Waste.** Borrower shall preserve and maintain the Property in good repair, working order and condition, excepting ordinary wear and tear, and shall not commit or permit the commission of waste against the Property.

3.10. **Payment of Taxes; Discharge of Liens.**

3.10.1. Borrower shall pay when due, and before any interest, collection fees or penalties accrue, all taxes, assessments, encumbrances, liens, mortgages, water or sewer charges and other charges and impositions (collectively, "Impositions") levied, assessed or existing with respect to the Property, or any part of it, and Borrower shall deliver to Lender receipts showing payment of the Impositions. If Borrower fails to pay any of the Impositions, Lender, at their option, may pay such Impositions and the monies paid shall be a lien upon the Property, added to the amount secured by this Mortgage, and payable immediately by Borrower to Lender with interest at the higher of (i) the interest rate, if any, charged by the particular entity levying or assessing the Impositions, or (ii) the highest rate charged by Lender on any of the Indebtedness (but in either case not to exceed the maximum interest rate permitted by law). Notwithstanding the foregoing:

(A) Borrower shall have the right, at its cost and expense, to contest the amount or validity, in whole or in part, of any Impositions of any kind by appropriate proceedings diligently conducted in good faith, but no such contest shall be carried on or maintained by Lender after the time limit for the payment of any Impositions unless Borrower, at its option: (i) shall pay the amount involved under protest; or (ii) shall procure and maintain a stay of all proceedings to enforce any collection of any Impositions, together with all penalties, interest, costs and expenses, by a deposit of a sufficient sum of money, or by such undertaking, as may be required or permitted by law to accomplish such stay; or (iii) shall deposit with Lender, as security in amounts equal to one hundred fifty percent (150%) of such contested amount or such other reasonable security as may be demanded by Lender to insure payment of such contested Impositions and all penalties, interest, costs and expenses which may accrue during the period of the contest. Upon the termination of any such proceedings, it shall be the obligation of the Borrower to pay the amount of such Impositions or part thereof, as finally determined in such proceedings, together with any costs, fees (including attorneys' fees), penalties or other liabilities in connection therewith; provided, however, that if Borrower has deposited cash or cash equivalents with Lender as security under clause (iii) above, then, so long as no material default exists under this Mortgage, Lender shall arrange to pay such Impositions (or part thereof) together with the applicable costs, fees and liabilities as described above out of such cash equivalents and return any unused balance, if any to Borrower. Otherwise, Lender shall arrange to have returned to Borrower all amounts, if any, held by or on behalf of Lender which were deposited by Borrower in accordance with the provisions hereof.

(B) Borrower shall have the right, at its cost and expense, to seek a reduction in the valuation of the Property as assessed for tax purposes and to prosecute any action or proceeding in connection therewith. Provided Borrower is not in default hereunder, Borrower shall be authorized to collect any tax refund of any tax paid by Borrower obtained by reason thereof and to retain the same.

(C) Lender agrees that whenever Lender's cooperation is required in any of the proceedings brought by Tenant as aforesaid, Lender will reasonably cooperate therein, provided same shall not entail any cost, liability or expense to Lender, and Borrower will pay, indemnify and save Borrower harmless of and from, any and all liabilities, losses, judgments, decrees, costs and expenses (including all reasonable attorneys' fees and expenses) in connection with any such contest and will, promptly after the final settlement, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, and Borrower shall perform and observe all acts and obligations, the performance of which shall be ordered or decreed as a result thereof. No such contest shall subject Lender to the risk of any civil liability or the risk of any criminal liability, and Borrower shall give such reasonable indemnity or security to Lender, as may reasonably be demanded by Borrower to insure compliance with the foregoing provisions of this Section 1(e).

3.10.2. Following the occurrence of an Event of Default (as hereinafter defined), whether or not cured, at the option of Lender, Borrower shall pay to Lender, in advance on the first day of each month, a pro rata portion (as determined by Lender) of all Impositions levied, assessed or existing on the Property. In the event that sufficient funds have been deposited with Lender to cover the amount of these Impositions when they become due and payable, Lender shall pay them. In the event that sufficient funds have not been deposited to

cover the amount of these Impositions at least thirty (30) days prior to the time when they become due and payable. Borrower shall immediately pay the amount of the deficiency to Lender. Lender shall not be required to keep a separate account or to pay Borrower any interest on the funds held by Lender for the payment of the Impositions pursuant to this Section 3.10 or for the payment of insurance premiums under Section 3.12 below, or on any other funds deposited with Lender in connection with this Mortgage. The funds on deposit with Lender are further security for the Indebtedness and if an Event of Default occurs under this Mortgage, any funds remaining on deposit with Lender may be applied against the Indebtedness at any time after the Event of Default occurs, and without notice to Borrower.

3.11. **Sale or Transfer.** Neither Borrower nor its owners shall sell or transfer all or any interest in the Real Estate, Improvements without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. For purposes of this Section 3.11, a "transfer" shall include without limitation any sale of ownership interests, merger, consolidation, or other agreement or reorganization which, when taken together with any other similar transactions occurring after the Closing Date, results or would result in a change in control of 50% or more of the beneficial ownership interests in Borrower; provided that no change of control resulting from the death of a person owning 50% or more of the beneficial ownership interests in Borrower shall be deemed to be a transfer for the purposes of this Section; provided further, that Borrower may, upon Lender's prior written consent (which consent shall not be unreasonably withheld or delayed), transfer all or any interest in the Real Estate or Improvements to any entity controlled by Michael Kramer..

3.12. **Insurance**

3.12.1. **Borrower's Insurance.** From and after taking possession of the Property, Borrower shall carry and maintain, at its sole cost and expense, the following types and amounts of insurance:

<u>Insurance Type</u>	<u>Amount of Coverage</u>	<u>Risk Coverage</u>
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 per site in the aggregate	bodily injury (including liquor liability coverage) property damage and contractual liability
Property Damage (including builder's risk if construction on Real Estate)	full replacement value	"all risk", including earthquake, sprinkler damage, with inflation-guard, vandalism and malicious mischief endorsements
Business Interruption	not less than 12 installments of Minimum Monthly Rent, if applicable, and 12 loan payments under the Note	loss of earnings by at least the perils of fire and lightning, extended coverage, vandalism, malicious mischief and sprinkler leakage
Worker's compensation	as required by law	
Flood Insurance	to the extent available	damage caused by flooding

3.12.2. **Policy Form.** Borrower shall obtain all policies of insurance required by Section 3.12.1 from insurance companies having an A.M. Best rating of A- or better which are qualified to do business in the jurisdiction where the Property is situated. All such policies shall be issued in the names of Lender and Borrower, and if requested by Lender, any mortgagee or beneficiary of Lender, as additional insureds. In addition, all such policies providing coverage for physical damage include loss payee and mortgagee endorsement in favor of Lender and Lender's mortgagee or beneficiary, respectively and as applicable. The Borrower shall cause copies of such policies of insurance or originally executed certificate thereof to be delivered to Lender prior to Lender's execution of this Mortgage, and not less than 30 days prior to any renewal thereof. As often as any such policy shall expire or terminate, Borrower shall procure and maintain renewal or additional policies with like terms. None of such policies shall contain any co-insurance requirements and all such policies shall provide for written notice to Lender and any mortgagee or beneficiary of Lender not less than 10 days prior to any modification, cancellation, lapse, or reduction in the amounts of insurance, and shall further provide that any loss otherwise payable thereunder shall be payable



notwithstanding any act or negligence of Lender or Borrower which might, absent such provision, result in a forfeiture of all or part of the payment of such loss. All general liability, property damage, and other casualty policies shall be written on an occurrence basis as primary policies, not contributing with or in excess of coverage which Lender may carry.

3.12.3. Borrower's obligations to carry the insurance provided for above may be brought within the coverage of an "umbrella" policy or policies of insurance carried and maintained by Borrower; provided, however, that such policy or policies shall (i) have limits of not less than \$5,000,000, (ii) name Lender and any mortgage or beneficiary of Lender as additional insureds as their interests may appear, and (iii) provide that the coverage afforded Lender will not be reduced or diminished by reason of the use of such blanket policies. Borrower agrees to permit Lender at all reasonable times to inspect any policies of insurance of Borrower which Borrower has not delivered to Lender.

3.12.4. Should Borrower fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals as provided above, Lender may have the insurance issued or renewed (and pay the premiums on it for the account of Borrower) in amounts and with companies and at premiums as Lender deems appropriate. If Lender elects to have insurance issued or renewed to insure Lender's interest, Lender shall have no duty or obligation of any kind to also insure Borrower's interest or to notify Borrower of Lender's actions. Any sums paid by Lender for insurance, as provided above, shall be a lien upon the Property, added to the amount secured by this Mortgage, and payable immediately by Borrower to Lender, as the case may be, with interest on those sums at the highest rate charged by Lender on any of the Indebtedness (but not to exceed the maximum interest rate permitted by law).

3.12.5. In the event of loss or damage to the Property, the proceeds of all required insurance shall be paid to Lender. No loss or damage shall itself reduce the Indebtedness. Lender or any of its employees is each irrevocably appointed attorney-in-fact for Borrower and is authorized to adjust and compromise each loss without the consent of Borrower, to collect, receive and receipt for the insurance proceeds in the name of Lender and Borrower and to endorse Borrower's name upon any check in payment of the loss.

3.12.6. Lender shall apply such proceeds to the repair and restoration of the Property subject to the following conditions:

- (1) there shall be no Event of Default existing hereunder;
- (2) plans for repair and restoration shall be reviewed and approved by Lender, which approval shall not be unreasonably withheld or delayed;
- (3) repair and restoration of the Property to a viable, economic unit (as reasonably determined by Lender) can practically be completed prior to the Due Date set forth in the Note;
- (4) Borrower shall have deposited with Lender funds equal to the positive difference, if any, between the cost of repair, restoration and completion, and the amount of the insurance proceeds; and
- (5) disbursements will be made by Lender or, at Lender's option, a title insurance company acceptable to Lender, pursuant to procedures necessary or appropriate to keep the Property free of mechanics' liens and to ensure that funds are properly applied.

Provided that no Event of Default exists, if there are insurance proceeds in the amount of Twenty-Five Thousand Dollars (\$25,000) or less remaining after the repair and restoration of the Property as required hereunder, such proceeds shall be paid to Borrower. Provided that no Event of Default exists, if there are insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) remaining after the repair and restoration of the Property as required hereunder, such proceeds shall be applied toward payment of the Indebtedness (or any portion thereof)

without premium, whether or not then due or payable, in whatever order of maturity as Lender may elect. Application of proceeds by Lender toward later maturing installments of the Indebtedness shall not excuse Borrower from making the regularly scheduled installment payments nor shall such application extend or reduce the amount of any of these payments.

3.12.7. Notwithstanding Section 3.12.6 above, if a substantial portion (fifty percent (50%) or more) of the Property is damaged or destroyed during the last twenty-four (24) months of the term of the Note, and provided that no Event of Default then exists hereunder, either Borrower or Lender may elect not to rebuild and to apply the insurance proceeds toward payment of the Indebtedness (or any portion thereof) without premium, whether or not then due and payable, in whatever order of maturity as Lender may elect. Application of proceeds by Lender toward later maturing installments of the Indebtedness shall not excuse Borrower from making the regularly scheduled installment payments nor shall such application extend or reduce the amount of any of these payments.

3.12.8. In the event of a foreclosure of this Mortgage, or the giving of a deed in lieu of foreclosure, the purchaser or grantee of the Property shall succeed to all of the rights of Borrower under the insurance policies including, without limit, any right to unearned premiums and to receive the proceeds.

3.12.9. Upon the occurrence of an Event of Default hereunder, at the option of Lender, Borrower shall pay to Lender, in advance on the first day of each month, a pro rata portion of the annual premiums due (as estimated by Lender) on the required insurance. In the event that sufficient funds have been deposited with Lender to cover the amount of the insurance premiums when the premiums become due and payable, Lender shall pay the premiums. In the event that sufficient funds have not been deposited with Lender to pay the insurance premiums at least thirty (30) days prior to the time when they become due and payable, Borrower shall immediately pay the amount of the deficiency to Lender.

3.13. **Compliance With Law and Other Matters.** Borrower shall, in all material respects, comply with all federal, state and local laws, ordinances, rules, regulations and restrictions relating to the ownership, use, occupancy and operation of the Property. Borrower shall be solely responsible to apply for and secure any building permit or permission of any duly constituted authority for the purpose of doing any of the things which Borrower is required or permitted to do under the provisions of this Mortgage. Borrower shall comply with, perform Borrower's obligations under, and enforce the obligations of all other parties to all building and use restrictions, ground leases, leases, reservation and/or purchase agreements, condominium documents and/or other instruments affecting or relating to the use and/or occupancy of the Property.

Borrower has not received any written notice of, and, to the knowledge of Borrower, neither Borrower nor the Property are in material violation of any law, municipal ordinance or other requirement of any governmental authority. The Property is legally occupied by Borrower, and all required certificates of occupancy, building permits, certificates of environmental impact approval, all zoning, building, housing, safety, fire and health approvals and all permits and licenses required by any governmental authority and necessary to operate, occupy or use the Property for the purposes permitted under the Mortgage have been issued, are unexpired, and, without cost or risk to Lender, are hereby assigned, to the extent assignable, to Lender.

3.14. **Alteration of Improvements.**

3.14.1. Without the prior written consent of Lender, Borrower shall not remove any building, structure or other improvement forming a material part of the Property.

3.14.2. Borrower may from time to time make alterations, replacements, additions, changes and improvements (collectively, "Alterations") in and to the Property as Borrower may find necessary or convenient for its purposes; provided, however, that no such Alterations shall decrease the value of the Property. All work with respect to any Alteration shall be done in a good and workmanlike manner by properly qualified and licensed personnel, and such work shall be diligently prosecuted to completion.

3.14.3. Borrower shall pay the costs of any Alterations done on the Property. Borrower shall indemnify and defend Lender from and against any liability, loss, damage, costs, attorneys' fees and any other expense incurred as a result of claims of lien by any person performing work or furnishing materials or supplies for Borrower or any person claiming under Borrower.

3.14.4. No Alteration shall be undertaken until Borrower shall have procured and paid for all required permits and authorizations of all governmental authorities having jurisdiction. Any Alteration involving an estimated cost in excess of the lesser of ten percent (10%) of the Loan Amount or Fifty Thousand and 00/100 Dollars (\$50,000.00) shall be conducted under the supervision of a licensed architect or engineer selected by Borrower and reasonably satisfactory to Lender and shall be made in accordance with detailed plans and specifications and cost estimates prepared by such architect or engineer and approved in writing in advance by Lender, which approval shall not be unreasonably withheld. Any Alteration shall be made promptly and in a good workmanlike manner and in compliance with all applicable permits and authorizations and building, zoning and other laws and in accordance with the orders, rules and regulations of the Board of Fire Insurance Underwriters and any other body hereafter exercising similar functions.

### 3.15. **Obligation to Rebuild.**

3.15.1. If any portion of the Property is damaged or destroyed by fire or other casualty, subject to Section 3.12 above, Borrower shall, at its sole cost and expense, forthwith repair, restore, rebuild or replace the damaged or destroyed improvements, fixtures or equipment, and complete the same as soon as reasonably possible, to the condition they were in prior to such damage or destruction, except for such changes in design or materials as may then be required by law, by Borrower's franchisor or are approved by Lender in Lender's reasonable discretion. Lender, in such event, shall, to the extent the proceeds of the insurance are made available to Lender, reimburse Borrower for the costs of making such repairs, restoration, rebuilding and replacements on such terms as Lender may reasonably require. To the extent, if any, that the proceeds of insurance made available to Borrower are insufficient to pay the entire cost of making such repairs, restoration, rebuilding and replacements, Borrower shall pay the amount by which such costs exceed the insurance proceeds made available to Borrower.

3.15.2. In the event that Borrower fails to commence the repair or restoration of the Property pursuant to this Section 3.15 within sixty (60) days after the casualty, or if Borrower abandons or fails to diligently pursue completion of such repair or restoration, then Lender shall be entitled to apply the insurance proceeds first towards reimbursement of all costs and expenses of Lender in collecting the proceeds (including, without limit, court costs and reasonable attorneys' fees), and then toward any payment of the Indebtedness or any portion of it, whether or not then due or payable.

### 3.16. **Covenants Regarding Environmental Compliance.**

3.16.1. Borrower shall, at its sole cost and expense at all times comply in all respects with the Environmental Laws (as defined below) in its use and operation of the Property.

3.16.2. Borrower shall not use the Property for the purpose of storing Hazardous Materials (as defined below) except in full compliance with the Environmental Laws and other applicable law, and shall not cause the release of any Hazardous Material.

3.16.3. Borrower shall notify Lender promptly and in reasonable detail in the event that Borrower becomes aware of or suspects (i) the presence of any Hazardous Material on the Property (other than any Permitted Hazardous Materials, as defined below), or (ii) a violation of the Environmental Laws on the Property.

3.16.4. If Borrower uses or permits the Property to be used so as to subject Borrower, Lender or any occupant of the Property to a claim of violation of the Environmental Laws (unless contested in good faith by appropriate proceedings), Borrower shall, at its sole cost and expense, immediately cease or cause cessation of such use or operations and shall remedy and fully cure any conditions arising therefrom.

3.16.5. At its sole cost and expense, Borrower shall (i) immediately pay, when due, the cost of compliance with the Environmental Laws within the Property, and (ii) keep the Property free of any liens imposed pursuant to the Environmental Laws. Borrower shall, at all times, use, handle and dispose of any Permitted Hazardous Material in a commercially reasonable manner and in compliance with the Environmental Laws and applicable industry standards. Borrower shall cooperate with Lender in any program between Lender and any governmental entity for proper disposal and/or recovery of any Permitted Hazardous Material.

3.16.6. Borrower shall indemnify, save and hold Lender harmless from and against any claim, liability, loss, damage or expense (including, without limitation, reasonable attorneys' fees and disbursements) arising out of any violation of the covenants of Borrower contained in this Section by Borrower, or out of any violation of the Environmental Laws by Borrower, its owners, employees, agents, contractors, customers, guests and invitees, which indemnity obligation shall survive the expiration or termination of this Mortgage.

3.16.7. Borrower hereby represents, warrants and certifies that (i) the execution and delivery of the Loan Documents is not a transfer of "real property" under and as defined in the Illinois Responsible Property Transfer Act (765 ILCS 90/1 et seq.), as amended from time to time ("RPTA"); (ii) there are no underground storage tanks located on, under or about the Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. §6991); and (iii) there is no facility located on or at the Property which is subject to the reporting requirement of Section 312 of the Federal Emergency Planning and Community Right to Know Act of 1986 and the federal regulations promulgated thereunder (42 U.S.C. §11022), as "facility" is defined in RPTA.

3.16.8. In the event that Borrower fails to comply with any of the foregoing requirements of this Section, after the expiration of the cure period permitted under the Environmental Laws, if any, Lender may, but shall not be obligated to (i) elect that such failure constitutes an Event of Default under this Mortgage; and/or (ii) take any and all actions, at Borrower's sole cost and expense, that Lender deems necessary or desirable to cure any such noncompliance. Borrower shall reimburse Lender for any costs incurred by Lender in exercising its options under this subsection within 5 days after receipt of a bill therefor.

3.16.9. The provisions of this Section shall survive the expiration or termination of this Mortgage. Capitalized terms used in this Section and not otherwise defined herein shall have the following meanings:

(a) "Hazardous Materials" shall mean any of the following as defined by the Environmental Laws: solid wastes; medical or nuclear waste or materials; toxic or hazardous substances; natural gas, liquified natural gas or synthetic fuel gas; petroleum products or derivatives, wastes or contaminants (including, without limitation, polychlorinated biphenyls); paint containing lead; urea-formaldehyde foam insulation; asbestos (including, without limitation, fibers and friable asbestos); explosives, and discharges of sewage or effluent.

(b) "Environmental Laws" shall mean all requirements of environmental, ecological, health, or industrial hygiene laws or regulations or rules of common law related to the Property, including all requirements imposed by any law, rule, order, or regulation of any federal, state, or local executive, legislative, judicial, regulatory, or administrative agency, board, or authority, which relate to (i) noise; (ii) pollution or protection of the air, surface water, ground water, or land; (iii) solid, gaseous, or liquid waste generation, treatment, storage, disposal, or transportation; (iv) exposure to Hazardous Materials; or (v) regulation of the manufacture, processing, distribution and commerce, use, or storage of Hazardous Materials.

(c) "Permitted Hazardous Material" shall mean any Hazardous Material which is necessary and commercially reasonable for the provision of any good or service related to the current use of the Property.

3.17. **Financial Condition; Reporting Requirements.** Borrower has furnished to Lender its most recent annual and quarterly financial statements, which statements completely and accurately present the financial condition of Borrower on the dates thereof. There has been no material adverse change in the business,



property or condition of Borrower since the date of the most recent financial statements furnished to Lender. Borrower is not insolvent within the meaning of Section 548(a)(2)(B) of the United States Bankruptcy Code or any other federal or state law using or defining such term, and will not be rendered insolvent by the transactions contemplated by this Mortgage.

Borrower shall at all times maintain accurate and complete books and records and copies of all building and use restrictions, ground leases, leases, reservation and/or purchase agreements, contracts and/or other instruments with respect to the Property. Lender may inspect and make copies of those books and records and any other data relating to the Property at reasonable times. Lender may inspect the Property at such reasonable times as Lender shall determine. Borrower shall deliver to Lender the following:

3.17.1. Management prepared and certified quarterly financial statements for Borrower within forty-five (45) days after the end of the first three (3) quarters of each fiscal year of Borrower;

3.17.2. Annual financial statements for Borrower prepared by an independent certified public accountant within ninety (90) days after the end of each fiscal year of Borrower, which financial statements shall be audited, reviewed or compiled as Lender shall direct;

3.17.3. Management prepared and certified unit level profit and loss statements relating to the Franchised Operation within forty-five (45) days after the end of each fiscal year of Borrower;

3.17.4. Annual signed personal financial statements for each guarantor of all or part of the Indebtedness (each a "Guarantor") by May 1 of each year, which financial statements shall be satisfactory in form and content to Lender; and

3.17.5. Annual federal tax returns of each Guarantor within fifteen (15) days after filing, but in no event later than October 1 of each year.

Such financial statements shall be true and correct in all respects, shall be prepared in accordance with generally accepted accounting principles, and shall fairly represent the respective financial conditions of the subjects thereof as of the respective dates thereof. If Borrower's financial statements are prepared on a consolidated basis, Borrower shall prepare financial statements specifically relating to the operation of the Franchised Operation. At the request of Lender, Borrower shall obtain the consent of Borrower's accountant(s) to the inclusion of Borrower's most recent financial statement in any regulatory filing or report to be filed by Lender.

3.18. **Indemnification.** Borrower shall appear in and defend any suit, action or proceeding that might in any way and in the sole judgment of Lender affect the value of the Property, the validity, enforceability and priority of this Mortgage or the rights and powers of Lender. Borrower shall, at all times, indemnify, defend, hold harmless and on demand, reimburse Lender for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage and shall bear interest at the highest rate accruing on the Indebtedness, not to exceed the maximum rate permitted by law, and shall be due and payable on demand. Borrower shall pay cost of suit, cost of evidence of title and reasonable attorneys' fees in any proceeding or suit, including appellate proceedings, brought by Lender to foreclose or otherwise enforce this Mortgage. Borrower shall reimburse Lender, upon demand, any costs incurred in connection with the recording or filing of this Mortgage, any financing statements or memorandum of lease including without limitation any mortgage tax, transfer tax, recording fees or filing fees.

3.19. **Estoppel Certificates.** Borrower shall, within ten (10) days after written request therefor from Lender, furnish to Lender, or such other persons or entities as Lender shall designate, a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, and stating either that no set-offs or defenses exist against such debt, or, if such set-offs or defenses are alleged to exist, the nature thereof, that no Event of Default then exists, and no event has occurred, which with notice or the passage of time, or both, would constitute an Event of Default.

4. APPLICATION OF CONDEMNATION AWARDS.

4.1. **Condemnation Award.** Any eminent domain or condemnation proceeds shall be paid directly to Lender and applied toward reimbursement of all Lender's costs and expenses incurred in connection with collecting the award (including without limitation court costs and reasonable attorneys' fees), and the balance thereafter applied to the payment of the Indebtedness, or any portion of it, whether or not then due or payable; provided, however, that if only an immaterial portion of the Real Estate has been condemned and no Event of Default exists, such proceeds shall be applied to the repair and restoration upon the terms and conditions and in the manner set forth in the case of insurance proceeds.

4.2. **Appointment of Lender.** Lender or any of its employees is each irrevocably appointed attorney-in-fact for Borrower and is authorized to receive, receipt for, discharge and satisfy any condemnation award or judgment, whether joint or several, on behalf of Borrower, Borrower's legal representatives, successors and assigns; provided, however, that Lender shall not be liable for failure to collect any condemnation award.

5. EVENTS OF DEFAULT AND REMEDIES.

5.1. **Events of Default.** Any of the following events shall, for purposes of this Mortgage, constitute an "Event of Default":

5.1.1. Any failure by Borrower (or any guarantor) to pay any amount owing on or with respect to this Mortgage, the Note or the other Loan Documents when due, whether by maturity, acceleration or otherwise, which failure continues for five (5) business days.

5.1.2. Any failure by Borrower to comply with any of the non-monetary terms, provisions, warranties or covenants of this Mortgage, the Note or the other Loan Documents, which failure continues for fifteen (15) days after the date of written notice to Borrower (or any guarantor) from Lender of such default; provided that if the nature of Borrower's non-compliance is such that more than fifteen (15) days are reasonably required for its cure, then Borrower shall not be deemed to be in default if Borrower commences such cure within such fifteen-day period and thereafter diligently prosecutes such cure to completion within forty-five (45) days after the date of the notice from Lender.

5.1.3. Any statement, representation or information made or furnished by or on behalf of Borrower (or any guarantor) to Lender in connection herewith shall prove to be materially false or misleading when made or furnished.

5.1.4. Insolvency of Borrower (or any guarantor), or the admission in writing of Borrower's (or any guarantor's) inability to pay debts as they mature, institution of bankruptcy, reorganization, insolvency or other similar proceedings by or against Borrower (or any guarantor), unless, in the case of a petition filed against Borrower (or any guarantor), the same is dismissed within sixty (60) days of the date of filing

5.1.5. If Borrower shall fail to provide to Lender any agreement or instrument appropriate or necessary to create or maintain a perfected, first priority security interest in the Property

5.1.6. Any default by Borrower under any promissory note, deed of trust, mortgage, security agreement or other instrument or agreement between Borrower and Lender, or by Borrower in favor of Lender but only if the rights under such defaulted instrument or agreement are not held, at the time of such default, by the holder of this Mortgage.

5.1.7. Receipt by Borrower, or any person owning the Franchise used by Borrower, of a notice of termination of the Franchise Agreement.

5.1.8. Sale or other disposition by Borrower (or any guarantor) of any substantial portion of its assets or property.

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5.1.9. Dissolution, merger, consolidation, without the prior written consent of lender (which consent shall not be unreasonably withheld) termination of existence, insolvency, business failure or assignment for the benefit of creditors of or by Borrower (or any guarantor).

5.2. **Remedies Upon Event of Default.** Upon the occurrence of any Event of Default, Lender shall have the following rights:

5.2.1. Declare all or part of the Indebtedness immediately due and payable. IN THE EVENT THAT THE NOTE IS PAID PRIOR TO MATURITY DUE TO AN ACCELERATION OF THE INDEBTEDNESS, THE PREPAYMENT PREMIUM PROVIDED FOR IN THE NOTE SHALL BE DUE IN FULL.

5.2.2. Foreclose the interest of Borrower in the Property by action pursuant to applicable law. Commencement of such an action shall be deemed a declaration of acceleration pursuant to Section 5.2.1 above. Lender is authorized and empowered to sell the Property and to convey the same to the purchaser thereof. In the event Lender invokes such power of sale, Lender shall give written notice to Borrower of the occurrence of an Event of Default and of Lender's election to cause the Property to be sold. Lender shall record a notice of sale in each county in which any part of the Property is located, cause the same to be published in a newspaper of general circulation in each such county in the manner prescribed by applicable law, and mail copies of the notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. After the time required by applicable law and after publication and posting of the notice of sale, Lender, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place designated in the notice of sale. Lender may direct the sale of the Property to be in one parcel or several parcels and in any order as Lender may elect in their sole discretion. Lender may postpone the sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or their respective designees may purchase all or any portion of the Property at any such sale. Lender shall deliver to each purchaser at any sale of the Property by Lender a deed conveying that portion of the Property purchased without any covenant or warranty, expressed or implied. The recitals in such deed shall be *prima facie* evidence of the truth of the statements made therein.

5.2.3. Collect and receive all rents, profits and other amounts that are due or shall subsequently become due under the terms of any leases, land contract, or other agreements by which Borrower is leasing or selling the Property or any interest in the Property. Lender may also exercise any other rights or remedy of Borrower under any such lease, land contract or other agreement. However, Lender shall have no obligation to make any demand or inquiry as to the nature or sufficiency of any payment received or to present or file any claim or take any other action to collect or enforce the payment of any amounts to which Lender may become entitled under this Mortgage. Similarly, Lender shall not be liable for any of Borrower's obligations under any such lease, land contract or other agreement.

5.2.4. Exercise all rights, remedies and privileges afforded a "secured party" under Article 9 of the Uniform Commercial Code.

5.2.5. Enter upon the Property and take other actions as Lender deems appropriate to perform Borrower's obligations under this Mortgage to inspect, repair, protect or preserve the Property, to investigate or test for the presence of any Hazardous Materials and/or to appraise the Property.

5.2.6. Pursue any other available remedy at law or equity to enforce the payment of the Indebtedness.

(a) It is the express intention of the Borrower and Lender that the rights, remedies, powers and authorities conferred upon the Lender pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a borrower may confer upon a lender under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-101 et seq.) (The "Act") (including all amendments thereto which may become effective after the date hereof) and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or

render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with the Act. In addition, if any provision of the Act which is specifically referred to herein is repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision of this Mortgage shall grant Lender any rights or remedies upon default by Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted by the Act to the full extent permitted by law.

(b) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Section 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgement of foreclosure, and whether provided for in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgement of foreclosure.

(c) After a default under the Mortgage or any other Loan Documents and the expiration of the applicable cure period and upon demand by Lender, Borrower shall surrender to Lender and Lender may enter and take possession of the Property or any part thereof personally, by its agent or attorneys, or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in Sections 5/15-1701 and 5/15-1702 of the Act and Lender, in its discretion, personally, by its agents or attorneys, or pursuant to court order as mortgagee in possession or receiver as provided in Section 5/15-1701 and 5/15-1702 of the Act may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly therefrom and may, on behalf of Borrower, or in its own name as Lender and under the powers herein granted, hold, operate, manage and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property.

### 5.3. Remedies Generally.

5.3.1. All remedies provided for in Section 5.2 shall be available to the extent not prohibited by law and Lender shall have the unrestricted right to exercise any summary proceeding available at law or in equity in connection therewith. Each remedy shall be cumulative and additional to any other remedy of Lender at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of, or acquiescence in, any such default or Event of Default.

5.3.2. Lender may waive any Event of Default and may rescind any declaration of maturity of payments on the Indebtedness. In case of such waiver or rescission, Borrower and Lender shall be restored to their respective former positions and rights under this Mortgage. Any waiver by Lender of any default or Event of Default shall be in writing and shall be limited to the particular default waived and shall not be deemed to waive any other default.

5.4. **Application of Proceeds.** Any proceeds received by Lender from the exercise of remedies pursuant to Section 5.2 of this Mortgage shall be applied as follows:

(a) First, to pay all costs and expenses incidental to the leasing, foreclosure, sale or other disposition of the Property. These costs and expenses shall include, without limit, any costs and expenses incurred by Lender (including, without limit, attorneys' fees and disbursements), and any taxes and assessments or other liens and encumbrances prior to the lien of this Mortgage.

(b) Second, to all sums expended or incurred by Lender directly or indirectly in carrying out any term, covenant or agreement under this Mortgage or any related document, together with interest as provided in this Mortgage.



(c) Third, to the payment of the Indebtedness. If the proceeds are insufficient to fully pay the Indebtedness, then application shall be made first to late charges and interest accrued and unpaid, then to any applicable prepayment premiums, then to unpaid fees and other charges and then to the outstanding principal balance.

(d) Fourth, any surplus remaining shall be paid to Borrower or to whomsoever may be lawfully entitled.

5.5. **Receivers.** Upon an Event of Default and commencement of foreclosure proceedings to enforce the rights of Lender under this Mortgage, or upon the commission of waste against the Property, Lender shall be entitled to the appointment of a receiver or receivers of the Property and of the rents, issues and profits of the Property.

5.6. **Marshalling.** In the event of foreclosure of this Mortgage or the enforcement by Lender of any other rights and remedies under this Mortgage, Borrower waives any right in respect to marshalling of assets which secure the Indebtedness or to require Lender to pursue its remedies against any other assets or any other party which may be liable for any of the Indebtedness.

5.7. **Further Actions.** Promptly upon the request of Lender, Borrower shall execute, acknowledge and deliver any and all further conveyances, documents, mortgages, deeds of trust, security agreements, financing statements and assurances, and do or cause to be done all further acts as Lender may require to confirm and protect the lien of this Mortgage or otherwise to accomplish the purposes of this Mortgage.

5.8. **Fees, etc.** All costs, expenses and fees of any nature for which Borrower is obligated to reimburse or indemnify Lender are part of the indebtedness secured by this Mortgage and are payable upon demand, unless expressly provided otherwise, with interest until repaid at the highest rate charged on any of the Indebtedness (but not to exceed the maximum rate permitted by law).

## 6. MISCELLANEOUS.

6.1. **Governing Law.** This Mortgage shall be construed in accordance with the laws of the State in which the Real Estate is located.

6.2. **Notices.** Notice from one party to another relating to this Mortgage shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or telecopier number set forth in this Mortgage 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, telex or other wire transmission 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 or wire transmission, 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.

6.3. **Entire Agreement; Amendments.** This Mortgage and any agreement to which it refers state all rights and obligations of the parties and supersede all other agreements (oral or written) with respect to the lien granted by this Mortgage. Any amendment of this Mortgage shall be in writing and shall require the signature of Borrower and Lender.

6.4. **Partial Invalidity.** The invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of the remaining provisions of this Mortgage.

6.5. **Joint and Several Liability.** In the event that more than one party executes this Mortgage, the obligations of each party shall be joint and several.

6.6. **WAIVER OF JURY TRIAL.** EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE OR THE INDEBTEDNESS.

6.7. **Assignment.** This Mortgage is freely assignable, in whole or in part, by Lender without notice to or consent of Borrower; provided that Lender (or its assignee) shall provide written notice of such assignment to Borrower in the event that Lender (or its assignee) desires to designate a new person or entity as payee and/or a new place of payment for the obligations under this Mortgage. Lender shall be fully discharged from all responsibility accruing hereunder from and after the effective date of any such assignment. Lender's assignee shall, to the extent of the assignment, be vested with all the powers and rights of Lender hereunder (including those granted under Section 4 hereof or otherwise with respect to the Property), and to the extent of such assignment the assignee may fully enforce such rights and powers, and all references to Lender shall mean and refer to such assignee. Lender shall retain all rights and powers hereby given not so assigned, transferred and/or delivered. Borrower hereby waives all defenses which Borrower may be entitled to assert against Lender's assignee with respect to liability accruing hereunder prior to the effective date of any assignment of Lender's interest herein. Borrower may not, in whole or in part, directly or indirectly, assign this Mortgage or its rights hereunder or delegate its duties hereunder without, in each instance, the specific prior written consent of Lender, which consent may be withheld or delayed in Lender's sole discretion.

6.8. **Securitization.** Borrower understands and agrees that Lender may, from time to time, assign its rights and powers under the Note, this Mortgage and any other Loan Documents, in whole or in part, in connection with a securitization program. Borrower agrees to enter into an amendment to the Note, this Mortgage and any other Loan Documents if such amendments are required by a nationally recognized rating agency in connection with a securitization program sponsored by Lender and in which the Note, this Mortgage and any other Loan Documents are to be included; provided, however, that Borrower shall not be obligated to enter into any amendment which adversely affects Borrower or adversely alters any of the financial terms of the Note, this Mortgage or the Loan Documents.

6.9. **Counterparts.** This Mortgage may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

6.10. **Protective Advances.** All advances, expenses, disbursements and other expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during pendency of any related proceedings in addition to those otherwise authorized by the Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act and shall be added to the Indebtedness secured by this Mortgage or by the judgement of foreclosure.

6.11. **Waiver of Statutory Rights.** Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Borrower knowingly and voluntarily waives, on behalf of itself and all persons or entities now or hereafter interested in the Property, to the fullest extent permitted by applicable law including the Act, (i) all rights under all appraisal, homestead, moratorium valuation, exemption, stay, extension, redemption, single action, election of remedies and marshalling statutes, laws or equities now or hereafter existing, (ii) any and all rights to reinstatement and redemption as allowed under Section 15-1601 (b) of the Act or to cure any defaults, except such rights of reinstatement and cure as may be expressly provided by the terms of the Note, this Mortgage and the Loan Documents.

6.12. **Business Loan.** Borrower warrants, represents and agrees that the proceeds of the Note have been or will be used for the purposes specified in 815 ILCS 205/4(c), and that the Indebtedness evidenced by the Note constitutes a business loan which comes within the purview of said statute.

6.13. **Fixture Filing.** To the extent that the Property includes items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing of this

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Mortgage in the real estate records of the county in which such Property is located shall also operate from the time of filing as a fixture filing with respect to such Property, and the following information is applicable for the purpose of such fixture filing, to wit:

- (a) Name and address of the Debtor:  
Chi-Co, Inc.  
4101 E. Louisiana Avenue  
Suite 200  
Denver, Colorado 80222
- (b) Name and address of the Secured Party:  
Captec Financial Group Funding Corporation  
24 Frank Lloyd Wright Drive, Lobby L  
4th Floor, P.O. Box 544  
Ann Arbor, Michigan 48106-0544
- (c) This financing statement covers goods or items of personal property and any proceeds therefrom which are or are to become fixtures upon the Property.
- (d) The name of all of the record owners of the Property on which such fixtures are or are to be located is Chi-Co, Inc., 4101 E. Louisiana, Suite 200, Denver, Colorado 80222.

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6.14 **Future Advances.** This Mortgage is given to secure not only the existing Indebtedness, but also future advances (whether such advances are obligatory or are made at the option of Lender, or otherwise) made by Lender under the Note or this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all Indebtedness secured hereby shall in no event exceed five (5) times the aggregate face amount of the Note.

6.15 **Release of Mortgage.** Notwithstanding anything contained herein to the contrary, Lender shall execute and deliver to Borrower or Borrower's designee, within ten (10) business days after the written request of Borrower, a release of mortgage in recordable form whereby this Mortgage shall be fully released as a lien against the Real Estate and the Property ("Release"), provided that (a) Borrower shall not be in default under any of the terms, covenants or conditions of any document or instrument evidencing or securing the Indebtedness; (b) the outstanding principal balance of the Note, together with the interest, premiums, costs and all other sums on that amount, shall be paid in full; and (c) the Release shall be prepared by Lender at Borrower's expense.

[signature page follows]

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IN WITNESS WHEREOF, Borrower has executed this Mortgage, Assignment of Rents, Fixture Filing and Security Agreement.

CHI-CO, INC., A COLORADO CORPORATION

By: [Signature]  
Name: Gary Garrison  
Its: Sr. V.P.

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STATE OF Colorado )  
COUNTY OF Denver ) ss.

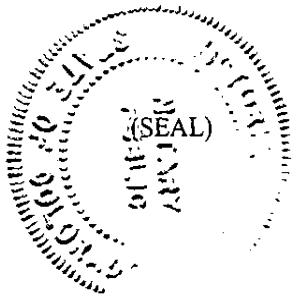
I, Victoria L Ott, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gary Garrison, who is personally known to me to be the Sr. V.P. of CHI-CO, INC., a Colorado corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 3 day of December, 1998.

Notary Public [Signature]

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

**My Commission Expires**  
09-23-2001





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SCHEDULE A  
TO  
MORTGAGE, SECURITY AGREEMENT  
ASSIGNMENT OF RENTS, FIXTURE FILING  
AND SECURITY AGREEMENT

(certain defined terms)

Franchisor:	Arby's Inc.
Closing Date:	
Composite FCCR:	1.2 to 1.0
Restaurant FCCR:	1.2 to 1.0

Property of Cook County Clerk's Office

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## EXHIBIT A

### PARCEL 1:

LOTS 29 AND 30 AND THAT PART OF THE WEST 1/2 OF VACATED NORTH-SOUTH ALLEY EAST AND ADJOINING SAID LOTS 29 AND 30 IN BLOCK 7 IN CALUMET VILLA, BEING A SUBDIVISION OF THE EAST 30 ACRES OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE 150 FEET RIGHT OF WAY OF THE PUBLIC SERVICE COMPANY) IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

LOTS 13 THROUGH 17, ALSO THAT PART OF LOT 18 LYING NORTHWESTERLY OF A LINE WHICH INTERSECTS THE NORTHEAST CORNER OF LOT 18 AND INTERSECTS THE SOUTH LINE OF LOT 18, 23 FEET FROM THE SOUTHEAST CORNER, (EXCEPT THE EAST 7.00 FEET OF SAID LOTS 13 TO 18 TAKEN IN CASE NO. 93L50351) ALSO THAT PART OF LOT 19 LYING NORTHWESTERLY OF A LINE WHICH INTERSECTS THE NORTH LINE OF LOT 19, 23 FEET FROM ITS NORTHEAST CORNER AND INTERSECTS THE SOUTH LINE OF LOT 19, 46 FEET FROM ITS SOUTHEAST CORNER, AND THAT PART OF THE EAST 1/2 OF VACATED NORTH-SOUTH ALLEY WEST AND ADJOINING SAID LOTS 13 THROUGH 19, ALL IN BLOCK 7 IN CALUMET VILLA, BEING A SUBDIVISION OF THE EAST 30 ACRES OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE 150 FOOT RIGHT OF WAY OF THE PUBLIC SERVICE COMPANY) IN COOK COUNTY, ILLINOIS.

**08151146**

29-25-209-039,-042,-043