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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/14/2018 09:32 AM Pg: 1 of 25

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

from

STEAK N SHAKE INC.,
an Indiana corporation,
as Mortgagor

to

JEFFERIES FINANCE LLC, AS COLLATERAL AGENT,
as Mortgagee

Effective as of June 4, 2018

Premises Address:
672 Meacham Rd.
City of Elk Grove Village
County of Cook
State of Illinois
Tax ID: 07-36-101-113-0000

Prepared by and after
recording to be returned to:

Jones Day
3161 Michelson Drive, Suite 800
Irvine, CA 92612
Attn.: Carol Su

NOTE TO COUNTY RECORDER: THIS MORTGAGE IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS AS A FIXTURE FILING IN ACCORDANCE WITH THE ILLINOIS UNIFORM COMMERCIAL CODE AS ENACTED IN THE STATE OF ILLINOIS. THE NAMES OF THE DEBTOR AND THE SECURED PARTY, THE MAILING ADDRESS OF THE SECURED PARTY FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED, THE MAILING ADDRESS OF THE DEBTOR AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING THE ITEMS, OF COLLATERAL, ARE AS DESCRIBED IN SECTION 28 HEREOF.

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

This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**"), executed on the acknowledgment date of the signature hereto and effective as of June 4, 2018 (the "**Effective Date**"), is made by STEAK N SHAKE INC., an Indiana corporation, formerly known as Steak N Shake Operations, Inc. ("**Mortgagor**"), whose address is 36 South Pennsylvania Street, Suite 500, Indianapolis, Indiana 46204, in favor of JEFFERIES FINANCE LLC, a Delaware limited liability company ("**JF**"), whose address is 520 Madison Avenue, 19th Floor, New York, New York 10022, as Collateral Agent for the Secured Parties (as each such term is defined in the Credit Agreement, which is hereinafter defined) (JF, in such capacity, together with its successors and assigns in such capacity, "**Mortgagee**"). References to this "Mortgage" shall mean this instrument and any and all renewals, modifications, amendments, supplements, extensions, consolidations, substitutions, spreaders and replacements of this instrument.

Background

A. Mortgagor is the fee owner of that certain parcel of real property described on **Schedule A** attached hereto and made a part hereof (the "**Land**") and all of the buildings, improvements, structures and fixtures now or subsequently located on the Land (collectively, the "**Improvements**"; the Land and the Improvements being hereinafter collectively referred to as the "**Real Estate**").

B. Mortgagor has entered into that certain Credit Agreement, dated as of March 19, 2014, as amended by that certain Waiver and First Amendment to Credit Agreement dated as of August 3, 2017 (as the same may be amended, supplemented, restated, substituted, replaced or otherwise modified from time to time, the "**Credit Agreement**"), by and among Mortgagor, as Borrower ("**Borrower**"), and the other Subsidiaries of Borrower party thereto, as Subsidiary Guarantors, the banks, financial institutions and other institutional lenders party thereto from time to time, as Lenders, JF, as Administrative Agent for the Lenders, Collateral Agent for the Secured Parties, joint lead Arranger, Book Manager, Documentation Agent and Syndication Agent, and Fifth Third Bank, as joint lead Arranger, Issuing Bank and Swingline Lender. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. References in this Mortgage to the "**Default Rate**" shall mean the interest rate applicable pursuant to Section 2.06 of the Credit Agreement.

C. Pursuant to the Credit Agreement, the Lenders have agreed to make extensions of credit and other financial accommodations to Borrower in the aggregate principal amount not to exceed \$250,000,000.00, with an option to increase such amount by up to an additional \$70,000,000.00 (collectively, the "**Loans**"), excluding interest and advances made to protect and enforce the lien of this Mortgage, upon the terms and subject to the conditions set forth therein.

D. Mortgagor will derive substantial direct and indirect benefit from the extensions of credit and other financial accommodations under the Credit Agreement.

E. It is a requirement under the Credit Agreement that Mortgagor secure its obligations under the Credit Agreement and other Loan Documents to which Mortgagor is a party by executing and delivering this Mortgage.

Granting Clauses

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees that to secure:

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(a) the unpaid principal of, premium (if any) and interest on the Loans and all other Secured Obligations (as defined in the Credit Agreement) of Mortgagor, the other Loan Parties and any other obligor under the Credit Agreement and the other Loan Documents (including, without limitation, future advances which may be made pursuant to the provisions of **Section 12** hereof, interest accruing at the then applicable rate provided in the Credit Agreement after the maturity of the Loans and interest accruing at the then applicable rate provided in the Credit Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Mortgagor or such other obligor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) to Mortgagee and the Secured Parties, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the Credit Agreement, this Mortgage, the other Loan Documents, or any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, premium, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise, including, without limitation, all fees and disbursements of counsel to Mortgagee that are required to be paid by the Mortgagor pursuant to the terms of any of the foregoing agreements; and

(b) all obligations and liabilities of Mortgagor which may arise under or in connection with this Mortgage or any other Loan Document to which Mortgagor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise, including, without limitation, all fees and disbursements of counsel to Mortgagee that are required to be paid by Mortgagor pursuant to the terms of this Mortgage or any other Loan Document to which Mortgagor is a party (all of the obligations described in paragraphs (a) and (b) are collectively referred to herein as the **"Obligations"**);

MORTGAGOR HEREBY GRANTS TO MORTGAGEE, AS COLLATERAL AGENT FOR THE SECURED PARTIES PURSUANT TO THE CREDIT AGREEMENT, A LIEN UPON AND A SECURITY INTEREST IN, AND HEREBY MORTGAGES AND BARGAINS, WARRANTS, GRANTS, ASSIGNS, TRANSFERS AND SETS OVER TO MORTGAGEE, FOR THE USE AND BENEFIT OF MORTGAGEE, WITH MORTGAGE COVENANTS:

(A) all right, title and interest of Mortgagor in and to the Land;

(B) all right, title and interest of Mortgagor in and to the Improvements;

(C) all right, title and interest of Mortgagor in, to and under all easements, rights of way, strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water and riparian rights, oil and gas rights, development rights, air rights, mineral rights and all estates, rights, titles, interests, privileges, licenses, tenements, hereditaments and appurtenances belonging, relating or appertaining to the Real Estate, and any reversions, remainders, rents, issues, profits and revenue thereof and all land lying in the bed of any street, road or avenue, in front of or adjoining the Real Estate to the center line thereof;

(D) all right, title and interest of Mortgagor in and to all of the fixtures, chattels, business machines, machinery, apparatus, equipment, movable appliances, furnishings, fittings and articles of personal property of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts, and accessories) currently owned or subsequently acquired by Mortgagor and now or subsequently attached to, or contained in or used or usable in any way in connection with any operation or letting of the Real Estate, including but without limiting the generality of the foregoing, all screens, awnings, shades, blinds, curtains, draperies, artwork,

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carpets, rugs, storm doors and windows, furniture and furnishings, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilating, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description (all of the foregoing in this paragraph (D) being referred to as the "**Equipment**");

(E) all right, title and interest of Mortgagor in and to all substitutes and replacements of, and all additions and improvements to, the Real Estate and the Equipment, subsequently acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor on the Real Estate, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Real Estate or offsite, and, in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor;

(F) all right, title and interest of Mortgagor, as lessor, ground lessor, licensor, or sublessor, in, to and under all leases, subleases, underlettings, concession agreements, licenses and other occupancy agreements relating to the use or occupancy of the Real Estate or the Equipment, now existing or subsequently entered into by Mortgagor and whether written or oral and all guarantees of any of the foregoing (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, a "**Lease**" or the "**Leases**"), and all rights of Mortgagor in respect of cash and securities deposited thereunder and the right to receive and collect the revenues, income, rents, issues and profits thereof, together with all other rents, royalties, issues, profits, revenue, income and other benefits arising from the use and enjoyment of the Mortgaged Property (as defined below) (collectively, the "**Rents**");

(G) all right, title and interest of Mortgagor in and to all trade names, trade marks, logos, copyrights, good will, and books and records relating to or used in connection with the operation of the Real Estate, the Leases, or the Equipment, and all general intangibles related to the operation of the Improvements, now existing or hereafter arising;

(H) all right, title and interest of Mortgagor in and to all unearned premiums under insurance policies now or subsequently obtained by Mortgagor relating to the Real Estate or Equipment and Mortgagor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds, subject to the provisions relating to insurance generally set forth below and in the Credit Agreement; and, except as otherwise provided in the Credit Agreement, all awards, damages, and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Real Estate or Equipment for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Estate or Equipment;

(I) to the extent not prohibited under the applicable contract, consent, license or other item unless the appropriate consent has been obtained, all right, title and interest of Mortgagor in and to (i) all contracts from time to time executed by Mortgagor or any manager or agent on its behalf relating to the ownership, construction, design, maintenance, repair, operation, management, sale or financing of the Real Estate or Equipment and all agreements relating to the purchase or lease of any portion of the Real Estate or any property which is adjacent or peripheral to the Real Estate, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, entitlements, certificates of occupancy and other

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governmental approvals relating to construction, completion, occupancy, use or operation of the Real Estate or Equipment, (iii) all warranties and guaranties relating to the construction, completion, occupancy, use or operation of the Real Estate or Equipment, and (iv) all drawings, plans, specifications and similar or related items relating to the Real Estate;

(J) all right, title and interest of Mortgagor in and to any and all refunds of real estate taxes, monies now or subsequently on deposit for the payment of real estate taxes or special assessments against the Real Estate or for the payment of premiums on insurance policies covering the foregoing property or otherwise on deposit with or held by Mortgagee as provided in this Mortgage or the other Loan Documents; all capital, operating, reserve or similar accounts held by or on behalf of Mortgagor and related to the operation of the Mortgaged Property, whether now existing or hereafter arising; and all monies held in any of the foregoing accounts and any certificates or instruments related to or evidencing such accounts; and

(K) all proceeds, both cash and noncash, of the foregoing.

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by Mortgagor and described in the foregoing clauses (A) through (E) are collectively referred to as the "**Premises**", and those described in the foregoing clauses (A) through (K) are collectively referred to as the "**Mortgaged Property**").

TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby mortgaged unto Mortgagee, its successors and assigns, for the uses and purposes set forth, until the Obligations are fully paid and performed.

Terms and Conditions

Mortgagor further represents, warrants, covenants and agrees with Mortgagee as follows:

1. **Warranty of Title.** Mortgagor is lawfully seized of the Premises in fee simple title absolute and holds good and marketable title to the remainder of the Mortgaged Property, free of any liens, claims, encumbrances and restrictions, except for Permitted Collateral Liens.
2. **Payment and Performance of Obligations.** Mortgagor shall pay and perform the Obligations at the times and places and in the manner specified in the Credit Agreement and other Loan Documents.
3. **Covenants from Other Loan Documents.** All of the covenants and agreements of Mortgagor contained in the Credit Agreement and other Loan Documents are incorporated herein by reference.
4. **Insurance Coverage.** Mortgagor shall at all times provide, maintain and keep in force all policies of insurance as required by Section 5.04 of the Credit Agreement. All of the covenants and agreements of Mortgagor contained in Section 5.04 of the Credit Agreement are incorporated herein by reference.
5. **Environmental Compliance.** All of the covenants and agreements of Mortgagor contained in Section 5.09 of the Credit Agreement are incorporated herein.
6. **Lien Law Compliance.** Mortgagor will indemnify and hold Mortgagee harmless from and against any loss, liability, cost or expense, including, without limitation, any judgments, reasonable attorneys' fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by Mortgagor of any applicable lien law provision.

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7. **Casualty Events.**

(a) Mortgagor shall promptly notify Mortgagee of any Casualty Event. Subject to the provisions of the Credit Agreement, Mortgagor hereby assigns to Mortgagee all insurance/condemnation proceeds, which Mortgagee is entitled to collect and receive and which shall be paid to Mortgagee by the payor thereof or, if the same are nonetheless paid to Mortgagor, by Mortgagor immediately upon Mortgagor's receipt thereof, and Mortgagor hereby authorizes and directs any applicable insurance company, Governmental Authority and/or other payor to make all payments of insurance/condemnation proceeds directly to Mortgagee. Mortgagee may, at its option without regard to the adequacy of its security, commence, appear in and prosecute, in its own name or Mortgagor's name, any action or proceeding, or make any compromises or settlements, in connection with any Casualty Event; provided that, in such event, so long as no Event of Default has occurred under the Loan Documents, Mortgagor shall, at its own expense, be entitled to reasonably participate in such action, proceeding, compromise or settlement. In no event shall Mortgagee have any liability with respect to any such action, proceeding, compromise or settlement, or any failure to reach any terms thereof, and Mortgagee shall be under no obligation to question the amount of any insurance/condemnation proceeds payable with respect to any Casualty Event. Mortgagor shall execute and deliver to Mortgagee, within ten (10) days after Mortgagee's written request, such further assignments of any insurance/condemnation proceeds as Mortgagee may reasonably require.

(b) Mortgagee shall apply all insurance/condemnation proceeds received by Mortgagee in accordance with Section 2.10(e) of the Credit Agreement.

8. **Maintenance.** Mortgagor shall maintain the Mortgaged Property in the manner required by Section 5.03(b) of the Credit Agreement.

9. **Leases.** Mortgagor shall not permit the Mortgaged Property to be leased except as permitted by the Credit Agreement.

10. **Due on Sale.** Mortgagor shall not sell, transfer, or otherwise dispose of all or any part of the Mortgaged Property or any interest therein except as permitted by the Credit Agreement.

11. **Mortgagee's Rights of Cure.** In the event of an Event of Default, Mortgagee shall have the right, but not the obligation, to cure such Default. Any sums advanced by Mortgagee to pay the cost of curing any such Default shall be due and payable by Mortgagor to Mortgagee on demand and shall earn interest from and after the date the same are paid by Mortgagee, at the Default Rate. All sums so advanced and all interest thereon shall be an Obligation secured by this Mortgage in addition to all other obligations of Mortgagor to Mortgagee secured hereby. If, at the time Mortgagee elects to cure such Default, Mortgagee shall hold any insurance proceeds or condemnation awards or other sums pursuant to this Mortgage or any other Loan Document, Mortgagee may, at its option and upon written notice to Mortgagor, apply such funds, in such order as it deems appropriate, to the payment of all costs of such cure, notwithstanding anything to the contrary elsewhere contained in the Loan Documents, in lieu of advancing its own funds for such purpose. If Mortgagee has advanced its own funds to cure such Default, Mortgagee shall have the right, at any time that any such advances remain unpaid, without notice to Mortgagor, to apply any proceeds, escrows or other sums then held by Mortgagee pursuant to this Mortgage or any other Loan Document, notwithstanding anything to the contrary elsewhere contained in the Loan Documents, to the payment of such advances and all outstanding and unpaid interest, if any, thereon. Upon demand by Mortgagee, Mortgagor shall immediately replenish the amount of any proceeds, escrows or other sums so applied by Mortgagee so that Mortgagee shall thereafter hold the same amount of proceeds, escrows and other sums which Mortgagee would have held but for the exercise of the rights granted to Mortgagee in this **Section 11**.

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12. **Future Advances.** Mortgagee may, but shall not be obligated to, make such additional advances and readvances to Mortgagor from time to time in accordance with the Credit Agreement, and said advances and readvances shall become part of the Obligations secured hereby to the fullest extent permitted by law and to the same extent and with the same priority of lien as if such future advances and readvances were made on the Effective Date. At no time shall the outstanding principal amount of the Obligations secured by this Mortgage exceed the outstanding principal amount of the Loans, nor shall the maturity of any further advances secured hereby extend beyond the time of repayment of such amounts as set forth in the Credit Agreement.

13. **Reimbursement of Expenses.** Any and all costs and expenses incurred or expended by Mortgagee, including, without limitation, attorneys' fees, whether in connection with any action or proceeding or not, to sustain the lien and security interest of this Mortgage or its priority, or to protect or enforce any of its rights and remedies hereunder, or to recover any Obligations hereby secured, or for any title examination relating to the title to the Premises, shall be due and payable by Mortgagor to Mortgagee on demand and shall earn interest from and after the date the same are paid by Mortgagee, provided demand for repayment has been made, at the Default Rate. All sums so advanced and all interest thereon shall be a lien on and security interest in the Mortgaged Property and shall be secured by this Mortgage in addition to all other Obligations of Mortgagor to Mortgagee secured hereby.

14. **After-Acquired Property.** All property of every kind which is hereafter acquired by Mortgagor which, by the terms hereof, is required or intended to be subjected to the lien and security interest of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage.

15. **Bankruptcy Related Provisions.**

(a) Without limiting the generality of any provision of this Mortgage, if a proceeding under Title 11 of the United States Code (as amended, the "**Bankruptcy Code**") is commenced by or against Mortgagor, then, pursuant to Section 552(b)(2) of said Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents acquired by Mortgagor after the commencement of the case and such Rents shall constitute cash collateral under Section 363(a) of said Bankruptcy Code.

(b) During the continuance of any Default or Event of Default, Mortgagee shall have the right to file, in its own name or on behalf of Mortgagor, any proof of claim or any bankruptcy or insolvency proceeding in which the debtor is a lessee under a Lease or a guarantor thereof.

16. **Appointment of Receiver.** Mortgagee, in any action to foreclose this Mortgage, or upon the actual or threatened waste to any part of the Premises, or upon an Event of Default or a default in the observance or performance of any covenant or agreement of Mortgagor hereunder, shall be at liberty to apply for the appointment of a receiver of the rents and profits and the Premises without notice, and Mortgagee shall be entitled, to the fullest extent permitted by applicable law, to the appointment of such receiver as a matter of right, without consideration of the value of the Premises as security for the amounts due Mortgagee or the solvency of any person or corporation liable for the payment of such amounts.

17. **Right of Entry.** On demand and during the continuation of an Event of Default, and to the fullest extent permitted by applicable law, Mortgagee, personally or by its agents and attorneys, may enter upon the Premises, and exclude Mortgagor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other items constituting the Premises, and Mortgagor agrees to surrender possession of the Premises including such books, records and accounts to Mortgagee; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof,

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either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from Mortgagor; and upon each such entry and from time to time thereafter may, at the expense of Mortgagor, without interference by Mortgagor and as Mortgagee may deem advisable, (i) maintain, restore and keep secure the Premises, (ii) insure or reinsure the Premises, (iii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon and (iv) in every such case in connection with the foregoing have the right to exercise all rights and powers of Mortgagor with respect to the Premises, either in Mortgagor's name or otherwise; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Premises and every part thereof; and in furtherance of such right Mortgagee may, subject as above stated, collect the rents payable under all leases of the Premises directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists accompanied by a demand on such lessee for the payment to Mortgagee of all rents due and to become due under its lease in accordance with this Mortgage, and Mortgagor for the benefit of Mortgagee and each such lessee, hereby covenants and agrees that such lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said rents to Mortgagee without regard to the truth of Mortgagee's statement of default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default, with the result that the payment of rent by such lessee to Mortgagee pursuant to such demand shall constitute performance in full of such lessee's obligation under its lease for the payment of rents by such lessee to Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and other proper charges upon the Premises or any part thereof, as well as reasonable compensation for the service contractors and employees by it engaged and employed, Mortgagee shall apply the moneys arising as aforesaid, but subject as aforesaid, to the Obligations secured herein in such order as Mortgagee shall determine in its discretion. To the extent any expenses incurred by Mortgagee pursuant to the terms of this **Section 17** exceed the amounts so collected by Mortgagee, all such excess amounts shall bear interest at the Default Rate from the date of incurrence until the date of reimbursement and shall constitute Obligations secured hereby. Nothing in this **Section 17** shall constitute a limitation on the rights granted to Mortgagee under this Mortgage. For the purpose of carrying out the provisions of this **Section 17**, Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney-in-fact of Mortgagor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Mortgagor's name and stead, to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does by these presents ratify and confirm any and all actions of said attorney-in-fact in and with respect to the Premises.

18. **UCC.** Upon the occurrence of any Event of Default, Mortgagee shall have the right to take all actions permitted under the Uniform Commercial Code as enacted in the State where the Premises are located (the "UCC").

19. **All Legal and Equitable Remedies.** Mortgagee shall have the right from time to time to enforce any legal or equitable remedy against Mortgagor including specific performance of any of the provisions contained in any of the Loan Documents and to sue for any sums whether interest, damages for failure to pay principal or any installment thereof, taxes, installments of principal, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not the principal sum secured or any other sums secured by this Mortgage and the other Loan Documents shall be due and without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor including an action of foreclosure, or any other action, for a Default or Defaults by Mortgagor existing at the time such earlier action was commenced.

20. **Foreclosure and Sale.**

(a) Upon acceleration of all or any portion of the Obligations in accordance with the terms of the applicable Loan Document(s), Mortgagee shall have the right to collect all Obligations then due and payable by proceeding against all real and personal property

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constituting the Mortgaged Property or any part thereof or interest therein by foreclosure, including, without limitation, non-judicial foreclosure in accordance with applicable law, public or private sale, judicial foreclosure or otherwise as may be permitted by the laws of the state where the Premises are located. Mortgagor hereby waives any right it may have to require the marshaling of its assets. Mortgagee shall have the right to foreclose and/or sell the Premises in its entirety or any part thereof or interest therein as Mortgagee in its sole and absolute discretion shall determine, in one or more sales in such order and priority as Mortgagee may in its sole and absolute discretion deem necessary or advisable. All sums realized from any such foreclosure or sale, less all costs and expenses of such sale, shall be applied as provided in **Section 20(c)** hereof. If, following any such sale, any Obligations secured hereby, whether or not then due and payable, shall remain unpaid or unsatisfied in any respect, the Loan Documents and all Obligations of Mortgagor thereunder shall continue in full force and effect until such unpaid and unsatisfied Obligations are fully paid and satisfied as therein provided.

(b) Upon the completion of any sale or sales made or caused by Mortgagee, Mortgagor or an officer of any court empowered to do so shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. In connection therewith, Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's true and lawful attorney in fact, coupled with an interest, in Mortgagor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Premises and rights so sold. For that purpose, Mortgagee may execute all necessary instruments of conveyance, assignment and transfer and may substitute one or more persons with like power. Mortgagor hereby ratifies and confirms all that Mortgagor's said attorney or such substitutes(s) shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for such purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of judicial proceedings or of a non-judicial decree of foreclosure and sale in accordance with applicable law, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(c) The purchase money, proceeds or avails of any such sale or sales, together with any other sums which then may be held by Mortgagee under this Mortgage, shall be applied as set forth in Section 8.04 of the Credit Agreement.

(d) Upon any sale or sales under or by virtue of judicial proceedings or of a non-judicial decree of foreclosure and sale in accordance with applicable law, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash in whole or in part therefor may make settlement for the purchase price by crediting upon the Obligations secured hereby the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(e) Mortgagee may from time to time, if permitted by law, take action to recover any sums, whether interest, principal, premium or any other sums, required to be paid under this Mortgage or any other Loan Documents as the same become due, without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure (judicial or non-judicial), or any other action in accordance with applicable law for a default or defaults by Mortgagor existing when such earlier action was commenced. Mortgagee may also foreclose this Mortgage for any sums

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due under this Mortgage or any other Loan Document and the lien of this Mortgage shall continue to secure the balance of the Obligations and the interest hereon not then due.

21. **Fair Rental Value.** During the continuance of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Premises, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Premises or any portion thereof which are in its possession for such period and, upon default of any such payment, Mortgagor will vacate and surrender possession of the Premises to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of premises for non-payment of rent, however designated.

22. **Rights Pertaining to Sales.** Subject to the provisions or other requirements of law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of **Section 20**:

(a) Mortgagee may conduct any number of sales from time to time. The power of sale set forth in **Section 20** above shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Mortgagee's opinion, until the Obligations shall have been paid in full.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice. Without limiting the foregoing, in case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings have been discontinued or abandoned for any such reason or shall have been determined adversely to Mortgagee, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been instituted.

(c) The receipt by Mortgagee of the purchase money paid at any such sale, or the receipt of any other person authorized to receive the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(d) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Mortgagor to the fullest extent permitted by applicable law.

(e) In the event that Mortgagor, or any person claiming by, through or under Mortgagor, shall transfer or refuse or fail to surrender possession of the Mortgaged Property after any sale thereof, then Mortgagor, or such person, shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available hereunder or under applicable law.

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(f) Upon the foreclosure of this Mortgage, any Leases then existing shall not be destroyed or terminated as a result of such foreclosure unless Mortgagee or any purchaser at a foreclosure sale shall so elect by notice to the lessee in question.

23. **Expenses.** In any proceeding, judicial or otherwise, to foreclose this Mortgage or enforce any other remedy of Mortgagee under the Loan Documents, there shall be allowed and included as an addition to and a part of the Obligations in the decree for sale or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred in connection with the exercise by Mortgagee of any of its rights and remedies provided herein or any comparable provision of any other Loan Document, together with interest thereon at the Default Rate from the date such expense is incurred, and the same shall be part of the Obligations and shall be secured by this Mortgage.

24. **Additional Provisions as to Remedies.**

(a) Without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of the Obligations, Mortgagee may, from time to time and without notice, agree to (i) release any person liable for the Obligations, (ii) extend the maturity or alter any of the terms of the Loans or any guaranty thereof, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

(b) Neither the acceptance of this Mortgage nor its enforcement, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may determine in its sole and absolute discretion.

(c) No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be separate, distinct and cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee or to which it may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and no act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

(d) No action by Mortgagee in the enforcement of any rights or remedies under this Mortgage or any other Loan Document or otherwise at law or equity shall be deemed to cure any Event of Default.

(e) If Mortgagee shall have proceeded to invoke any right or remedy permitted under the Loan Documents, Mortgagee shall have the unqualified right thereafter to elect to discontinue or abandon such right or remedy for any reason, and in such event Mortgagor and Mortgagee shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property, and otherwise, and the rights and remedies of Mortgagee shall continue as if the right or remedy had not been invoked, but no such discontinuance or abandonment shall waive any Event of Default that may then exist or the right of Mortgagee thereafter to exercise any right or remedy under the Loan Documents for such Event of Default.

25. **Mortgagor's Waiver of Rights.** To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that may subsequently be enacted providing for (i) any appraisal before sale of the Mortgaged Property, (ii) any extension of the time for the enforcement

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of the collection of the Obligations or the creation or extension of a period of redemption from any sale made in collecting such debt, (iii) exemption of the Mortgaged Property from attachment, levy or sale under execution or exemption from civil process, and (iv) any right to a marshalling of assets. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Mortgage before exercising any other remedy granted hereunder and Mortgagor, for Mortgagor and its successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured Obligations and marshalling in the event of foreclosure of the liens hereby created. To the fullest extent of the law, Mortgagor hereby waives any defense to the recovery by Mortgagee against Mortgagor or the Mortgaged Property of any deficiency after a foreclosure sale (whether judicial or non-judicial).

26. **Cross-Collateralization.** Mortgagor acknowledges that the Obligations are secured by other collateral as more specifically set forth in the Credit Agreement and the other Loan Documents. Upon the occurrence of an Event of Default, Mortgagee shall have the right to institute a proceeding or proceedings or take such action with regard to such other collateral under any applicable provision of law, for all of the Obligations or any portion of the Obligations. Neither the acceptance of this Mortgage nor the other Loan Documents shall prejudice Mortgagee's enforcement rights relative to such other collateral.

27. **Security Agreement Under Uniform Commercial Code.**

(a) It is the intention of the parties hereto that this Mortgage shall constitute a "security agreement" within the meaning of the UCC. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. By executing and delivering this Mortgage, Mortgagor has granted and hereby grants to Mortgagee, as security for the Obligations, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the UCC (the portion of the Mortgaged Property so subject to the UCC being referred to in this paragraph as the "**Personal Property**"). If an Event of Default shall occur, Mortgagee shall have any and all rights and remedies granted to a secured party upon default under the UCC, including the right to take possession of the Personal Property or any part thereof and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action of Mortgagee with respect to the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action shall constitute commercially reasonable notice to Mortgagor. In the event of any conflict between the terms of this **Section 27** and terms of the Security Agreement, the terms of the Security Agreement shall control.

(b) Pursuant to applicable law, Mortgagor authorizes Mortgagee to file or record financing statements, continuation statements, and other filing or recording documents or instruments with respect to the Personal Property or fixtures without the signature of Mortgagor in such form and in such offices as the Mortgagee reasonably determines appropriate to perfect the security interests of Mortgagee under this Mortgage. Mortgagor hereby ratifies and authorizes the filing by Mortgagee of any financing statement with respect to such Mortgaged Property made prior to the Effective Date.

28. **Fixture Filing.** A portion of the Mortgaged Property is or is to become fixtures upon the

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Real Estate. The filing of this Mortgage in the real estate records of the county in which the Mortgaged Property is located shall also operate from the time of filing as a "fixture filing" within the meaning of Article 9 (or such equivalent section) of the UCC with respect to all portions of the Mortgaged Property that are or are to become fixtures related to the Real Estate. For such purpose, Mortgagor is the record owner of the Real Estate, Mortgagee is the secured party and Mortgagor is the debtor, their respective addresses are set forth in the preamble to this Mortgage, and Mortgagor's organizational identification number is 198402-012.

29. Assignment of Leases and Rents.

(a) In furtherance of and in addition to the assignment made by Mortgagor in the granting clauses of this Mortgage, Mortgagor hereby irrevocably and absolutely grants, transfers and assigns to Mortgagee the Leases and Rents. The foregoing grant, transfer and assignment is a present and absolute assignment and not merely the passing of a security interest. Such assignment shall continue in effect until the Obligations are paid in full. Mortgagor also grants to Mortgagee the right to enter the Mortgaged Property for the purpose of collecting the same and to let the Mortgaged Property or any part thereof, and to apply the Rents on account of the Obligations. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a license from Mortgagee to exercise all rights granted to the landlord under the Leases, including the right to receive and collect all Rents. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, the license hereby granted shall automatically expire and terminate, without notice to Mortgagor by Mortgagee (any such notice being hereby expressly waived by Mortgagor to the extent permitted by law), and Mortgagor shall pay over to Mortgagee, or to any receiver appointed to collect the Rents, any lease security deposits and rent prepayments.

(b) Mortgagor hereby further grants to Mortgagee the right to notify the lessee under any Lease of the assignment thereof and, after the occurrence of an Event of Default, (i) to demand that such lessee pay all amounts due under such Lease directly to Mortgagee, (ii) to enter upon and take possession of the Mortgaged Property for the purpose of collecting the Rents, (iii) to dispossess by the usual summary proceedings any lessee defaulting in the payment thereof, (iv) to let the Mortgaged Property, or any part thereof, and (v) to apply the Rents, after payment of all necessary charges and expenses, on account of the Obligations. Mortgagor hereby irrevocably authorizes and directs each lessee under any Lease to rely upon any such notice. Nothing contained in this **Section 29** shall be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any Lease or otherwise to impose any obligation on Mortgagee thereunder, except that Mortgagee shall be accountable for any Rents actually received pursuant to such assignment. Mortgagor shall not modify, amend, terminate or consent to the cancellation, surrender or assignment of any Lease if any modification, amendment, termination or assignment would have a Material Adverse Effect (it being understood that the preceding portions of this sentence shall not apply to the expiration of any Lease by its terms). Mortgagor shall not accept prepayments of installments of Rent to become due for a period of more than one month in advance (except for security deposits and estimated payments of percentage rent, if any). The collection of Rents by Mortgagee shall in no way waive the right of Mortgagee to foreclose this Mortgage in the event of any Event of Default. Mortgagor shall furnish to Mortgagee promptly after a request by Mortgagee to do so, a written statement containing the names of all lessees, sublessees and concessionaires of the Mortgaged Property, the terms of any Lease, the space occupied, the rentals or license fees payable thereunder, whether each such lessee is in default under its Lease and if so, the nature thereof.

(c) Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage Mortgagee shall have, to the extent permitted under

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applicable law, a valid and fully perfected, first priority, present assignment of the Rents. Mortgagor acknowledges and agrees that upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and to the extent permitted under applicable law, all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking other affirmative action. Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (i) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (ii) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case under the Bankruptcy Code and to all amounts paid as Rents, and (iii) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

30. **Changes in Method of Taxation.** In the event of the passage after the Effective Date of any law of any Governmental Authority deducting from the value of the Premises for the purposes of taxation, or changing in any way the laws for the taxation of mortgages or debts secured thereby for federal, state or local purposes, or the manner of collection of any such taxes, and imposing a tax, either directly or indirectly, on mortgages or debts secured thereby, Mortgagor shall, to the fullest extent permitted by applicable law, assume as an Obligation hereunder the payment of any tax so imposed until full payment of the Obligations. Mortgagor shall not claim, demand or be entitled to receive any credit or credits toward the satisfaction of this Mortgage or on any interest payable thereon for any taxes assessed against the Mortgaged Property or any part thereof, and shall not claim any deduction from the taxable value of the Mortgaged Property by reason of this Mortgage.

31. **Notices.** All notices, requests, demands and other communications hereunder shall be deemed to have been sufficiently given or served when made in accordance with Section 10.01 of the Credit Agreement.

32. **Matters to Be in Writing.** This Mortgage (or any provision hereof) cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

33. **Partial Invalidity.** In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.

34. **No Third Party Beneficiary; Covenants Run with the Land; Successors and Assigns.** All covenants of Mortgagor contained in this Mortgage are imposed solely and exclusively for the benefit of Mortgagee and the Secured Parties and their respective successors and assigns, and no other person or entity shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Mortgagee at any time if in its sole discretion it deems such waiver advisable. All such covenants of Mortgagor shall run with the land and bind Mortgagor, the successors and assigns of Mortgagor (and each of them) and all subsequent owners, encumbrancers and tenants of the Mortgaged Property, and shall inure to the benefit of Mortgagee and the Secured Parties and their respective successors and assigns.

35. **Relationship of Mortgagee and Mortgagor.** The relationship between Mortgagor and Mortgagee created hereunder is that of creditor/debtor. Mortgagee does not owe any fiduciary duty or special obligation to Mortgagor or any of Mortgagor's officers, partners, agents, or representatives.

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Nothing herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between Mortgagor and Mortgagee.

36. **No Waivers, etc.** Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Acceptance of any payment after the occurrence of any Default or Event of Default shall not be deemed a waiver or a cure of such Default or Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only.

37. **Governing Law.** THIS MORTGAGE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION; PROVIDED, HOWEVER, THAT THE LAWS OF THE STATE WHERE THE REAL ESTATE IS LOCATED, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION, SHALL GOVERN THE CREATION, PERFECTION, PRIORITY, VALIDITY AND ENFORCEMENT OF THE MORTGAGE LIEN AND SECURITY INTEREST PROVIDED FOR HEREIN. NEW YORK LIEN LAW AND SECTIONS 1301 AND 1371 OF THE NEW YORK REAL PROPERTY ACTIONS AND PROCEEDINGS LAW SHALL NOT APPLY TO THIS MORTGAGE IN ANY WAY WHATSOEVER.

38. **Sole Discretion of Mortgagee.** Whenever Mortgagee's judgment, consent or approval is required hereunder for any matter, or Mortgagee shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Mortgagee, except as otherwise expressly provided herein.

39. **Construction of Provisions.** The following rules of construction shall be applicable for all purposes of this Mortgage and all documents or instruments supplemental hereto, unless the context otherwise requires:

(a) All references herein to numbered Articles or Sections or to lettered Schedules or Exhibits are references to the Articles and Sections hereof and the Schedules and Exhibits annexed to this Mortgage, unless expressly otherwise designated in context. All Article, Section, Schedule and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Mortgage.

(b) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without being limited to".

(c) The terms "Land", "Improvements", "Equipment", "Mortgaged Property," "Real Estate," and "Premises" shall be construed as if followed by the phrase "or any part thereof".

(d) The word "Mortgagor" shall be construed as if it read "Mortgagors" whenever the sense of this Mortgage so requires and if there shall be more than one Mortgagor, the obligations of the Mortgagors shall be joint and several.

(e) The term "Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof".

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(f) References herein to the "Credit Agreement," and the "Loan Documents" shall mean the Credit Agreement and the Loan Documents, respectively, as in effect on the Effective Date hereof, and as the same may be amended, supplemented, restated, substituted, replaced or otherwise modified from time to time from and after such date, including any of the foregoing that increases the principal amount or interest rate of the Obligations secured hereby.

(g) Words of masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

(h) The term "person" shall include natural persons, firms, partnerships, corporations and any other public and private legal entities.

(i) All Obligations of Mortgagor hereunder shall be performed and satisfied by or on behalf of Mortgagor at Mortgagor's sole cost and expense.

(j) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

40. **Receipt of Copy.** Mortgagor acknowledges that it has received a true and correct copy of this Mortgage.

41. **Release.** Upon payment in full of the Obligations, Mortgagee shall, at Mortgagor's sole expense, either (i) release and cause to be released such liens, grants, assignments, conveyances or security interests evidenced under this Mortgage and the other Loan Documents in due form, or (ii) assign or cause to be assigned to such party as Mortgagor shall request, in each case without representation or warranty of any kind, such liens, grants, security interests, conveyances and assignments.

42. **Application of Payments; Reduction of Secured Amount.** Notwithstanding anything to the contrary in this Mortgage, if at any time the aggregate principal amount of the Obligations secured by this Mortgage (the principal amount secured by this Mortgage being the "**Secured Amount**") is less than the aggregate outstanding principal amount of the Loans, then any payments or repayments by Mortgagor or any other obligor on account of the Loans shall not be deemed to be applied against, or to reduce, the Secured Amount unless and until the Secured Amount equals the aggregate outstanding principal amount of the Loans. Such payments shall instead be applied first, and be deemed to reduce first, such portions of the Obligations that are not secured by this Mortgage. The Secured Amount shall be reduced by payments or repayments by Mortgagor or any other obligor on account of the Loans only after the aggregate outstanding principal amount of the Loans has been reduced to an amount equal to the Secured Amount.

43. **Conflicts With Credit Agreement.** In the event of any conflict or inconsistency between the terms and provisions of this Mortgage and the terms and provisions of the Credit Agreement, the terms and provisions of the Credit Agreement shall govern.

44. **State-Specific Provisions.** The terms and conditions set forth in **Schedule B** attached hereto are made a part hereof and are incorporated into this Mortgage by reference. In the event of any conflict or inconsistency between the terms and conditions of **Schedule B** and the other provisions of this Mortgage, the terms and conditions of **Schedule B** shall govern.

45. **Time of the Essence.** With regard to all dates and time periods set forth in this Mortgage, time is of the essence.

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46. **Waiver of Jury Trial.** MORTGAGOR IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY TRANSACTION CONTEMPLATED HEREBY.

[Signature Page Follows]

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SCHEDULE A

Legal Description

PARCEL 1:

LOT 1 IN STEAK 'N SHAKE RESUBDIVISION, BEING A SUBDIVISION IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 41 NORTH, RUNNING 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 12, 2003 AS DOCUMENT NUMBER 0030344719.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS DATED FEBRUARY 9, 2000 AS DOCUMENT 00112533 FROM ELK GROVE PROPERTIES, L.L.C., A FLORIDA LIMITED LIABILITY COMPANY TO FIRST AMERICAN BANK, AS TRUSTEE AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 28, 1992 AND KNOWN AS TRUST NUMBER 1-92-051 AND NORTH STAR TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 4, 2000 AND KNOWN AS TRUST NUMBER 00-2364 AND FIRST AMENDMENT TO AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS DATED MARCH 31, 2003 BY AND BETWEEN BENAIM ELK GROVE, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY, BINNIE ROAD FARM, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, NORTHSTAR TRUST COMPANY AS TRUSTEE OF TRUST NO. 00-2364, FIRST AMERICAN BANK, AS CUSTODIAN FOR THE THOMAS R. SCHREINER IRA 00-7747 AND THOMAS R. SCHREINER RECORDED APRIL 7, 2003 AS DOCUMENT NUMBER 0030466260 FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN PASSAGE AND ACCESS OVER SAID PORTIONS OF PARCEL 1 AS SHOWN CROSS-HATCHED ON EXHIBIT 'F' AND EXHIBIT 'G', AS SAME MAY BE CONSTRUCTED, LOCATED OR RELOCATED (IN ACCORDANCE WITH PARAGRAPH 3(D)) FOR INGRESS AND EGRESS TO, FROM AND BETWEEN PARCEL 2A, PARCEL 2B, PARCEL 1 AND THE ADJACENT PUBLIC RIGHTS OF WAY KNOWN AS BIESTERFIELD ROAD AND MEACHAM ROAD.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF LOT 2 AS CREATED BY SHARED ACCESS EASEMENT AGREEMENT DATED APRIL 8, 2003 AND RECORDED APRIL 25, 2003 AS DOCUMENT 0311533023 BY AND BETWEEN STEAK 'N SHAKE OPERATIONS, INC., AN INDIANA CORPORATION AND NORTHSTAR TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 4, 2000 AND KNOWN AS TRUST NUMBER 00-2364, AND FIRST AMERICAN BANK, AS CUSTODIAN FOR THE THOMAS R. SCHREINER IRA NO. 00-7747 FOR THE PURPOSE OF ACCESS FOR MOTOR VEHICLE AND PEDESTRIAN TRAFFIC TO LOT 2 FROM THE PUBLIC ROADWAY COMMONLY KNOWN AS MEACHAM ROAD OVER THE FOLLOWING DESCRIBED LAND:
THE NORTH 24 FEET OF LOT 2 (EXCEPT FOR THE EAST 50 FEET) IN STEAK 'N SHAKE RESUBDIVISION, BEING A SUBDIVISION IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY FIRST AMENDMENT TO AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS DATED MARCH 31, 2003 AND RECORDED APRIL 7, 2003 AS DOCUMENT 0030466260 FROM THOMAS R. SCHREINER TO BINNIE ROAD FARM, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY AND NORTH STAR TRUST COMPANY AS TRUSTEE OF TRUST NO. 00-2364 OVER, UPON AND ACROSS THE PAVED CURB-CUT AND DRIVEWAY AREAS OF PARCEL 3, AS SAME MAY BE CONSTRUCTED, LOCATED OR RELOCATED (IN ACCORDANCE WITH PARAGRAPH 3(D) OF THE AGREEMENT) ON SUCH PARCEL BY THE OWNERS OF SUCH PARCEL (THE "PARCEL 3 ACCESS AND DRIVEWAY EASEMENT") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN PASSAGE AND ACCESS OVER SAID PORTIONS OF SUCH PARCEL FOR INGRESS AND EGRESS TO, FROM AND BETWEEN PARCELS 1, 2A, AND 2B AND THE ADJACENT PUBLIC RIGHT-OF-WAY KNOWN AS MEACHAM ROAD.

PIN: 07-36-101-113-0000

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COMMONLY KNOWN AS: 672 Meacham Rd, Elk Grove Village, IL 60007

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SCHEDULE B

State Specific Provisions

1.1 **Conflicts.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (“IMFL”), the provisions of the IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee, then Mortgagee shall be vested with the rights granted in the IMFL to the full extent permitted by law. In the event of any inconsistencies between this Schedule B and any of the other terms and provisions of this Mortgage, the terms and provisions of this Schedule B shall control and be binding.

1.2 **Waiver of Statutory Rights.** Mortgagor hereby waives, to the extent now or hereafter permitted by law, all rights of redemption and reinstatement of this Mortgage pursuant to the IMFL, on behalf of itself and all those taking by, through or under Mortgagor. Mortgagor further agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action with the intent to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges and agrees that the Land covered by this Mortgage at the time of execution hereof is neither “Agricultural Real Estate” nor “Residential Real Estate” (as those terms are defined in the IMFL). Mortgagor hereby voluntarily and knowingly waives any and all rights of redemption as allowed under Sections 15-1601 through 5/15-1605 of IMFL.

1.3 **Use of Loan Proceeds.** Mortgagor covenants and agrees that all of the proceeds of the Obligations will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured hereby constitutes: (a) a “business loan” as that term is defined in, and for all purposes of, the Illinois Interest Act, Section 815 ILCS 205/4(1)(c); and (b) “a loan secured by a mortgage on real estate” within the purview and operation of Section 815 ILCS 205/4(1)(1).

1.4 **IMFL.** (a) Mortgagee shall have the benefit of all of the provisions of the IMFL, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMFL which is specifically referred to herein may be repealed, to the maximum extent permitted by law, Mortgagee 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.

(b) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Premises, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMFL, to be placed in the possession of the Premises or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 through 15-1704 of the IMFL.

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(c) All expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Obligations secured by this Mortgage or by the judgment of foreclosure.

(d) All advances, disbursements and expenditures made or incurred by Mortgagee 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 the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage, or the Credit Agreement or by the IMFL (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL herein below referred to:

(i) all advances by Mortgagee in accordance with the terms of the Mortgage or the Credit Agreement to: (A) preserve, maintain, repair, restore or rebuild the improvements upon the Premises; (B) preserve the lien of the Mortgage or the priority thereof; or (C) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMFL;

(ii) payments by Mortgagee of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by the Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of the Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the IMFL; (B) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of the Mortgage or arising from the interest of Mortgagee hereunder; or (C) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Premises;

(v) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the IMFL;

(vi) expenses deductible from proceeds of sale as referred to in Section 15-1512(a) and (b) of the Act;

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if Mortgagor's interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Section 15-1704(c)(1) of the IMFL; (D) repair or restoration of damage or destruction in

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excess of available insurance proceeds or condemnation awards; (E) payments deemed by Mortgagee to be required for the benefit of the Property or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (G) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (H) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Premises and (I) if the Mortgage is insured, payment of Federal Housing Administration or private mortgage insurance required to keep such insurance in force.

(e) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMFL. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and be included in:

(i) any determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 15-1603(d)(2) and 1603(e) of the IMFL;

(iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Mortgagee;

(v) application of income in the hands of any receiver or mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the IMFL.

(f) Mortgagor expressly agrees that for purposes of this Mortgage and the other Loan Documents: (i) this Mortgage and the other Loan Documents shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, et seq. (the "**Credit Agreement Act**"); (ii) the Credit Agreement Act applies to this transaction including, but not limited to, the execution of this Mortgage and each promissory note secured by the Mortgage and (iii) any action on or in any way related to this Mortgage and each other Loan Document shall be governed by the Credit Agreement Act. No modification, amendment or waiver of, or consent to any departure by the Mortgagor from, any provision of this Mortgage will be effective unless made in a writing signed by Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Mortgagor will entitle the Mortgagor to any other or further notice or demand in the same, similar or other circumstance.

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1.5 **Insurance.** (a) Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by the Loan Documents, Mortgagee may, but shall not be required to, purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required under the Loan Documents. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed 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 Obligations. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

(b) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.

1.6 **Revolving Loan.** Among the Obligations, this Mortgage is given to secure a revolving credit facility and secures not only present indebtedness but also "future advances" as defined and authorized under applicable Illinois statutes, including, without limitation, 205 ILCS 5/5d, 205 ILCS 105/1-6b, 815 ILCS 205/4.1, 735 ILCS 5/15-1207 and 735 ILCS 5/15-1302. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made pursuant to the terms and provisions of the Credit Agreement, whether such advances are obligatory or to be made at the option of the Lenders, or otherwise, as are to be made twenty (20) years of the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the Premises is located. The total amount of indebtedness may increase or decrease from time to time, as provided in each promissory note secured by the Mortgage, and any disbursements which Mortgagee may make under this Mortgage, each promissory note secured by the Mortgage, the Credit Agreement or any other document with respect hereto shall be additional indebtedness secured hereby, but the total unpaid balance so secured at any one time shall not exceed the Secured Amount (as hereinafter defined). The Obligations secured by this Mortgage, include, among other things, the obligation to pay interest on the unpaid principal balance of the Loan described in the Credit Agreement, which interest accrues from time to time at a variable rate of interest as provided in the Credit Agreement and each promissory note secured by the Mortgage.

1.7 **Maximum Indebtedness.** The maximum aggregate amount of all indebtedness constituting the Obligations that is, or under any contingency may be secured at the date hereof or at any time hereafter by this Mortgage is Five Hundred Million Dollars (\$500,000,000.00) (the "**Secured Amount**"), plus, to the extent permitted by applicable law, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by Mortgagee by reason of any default by Mortgagor under the terms hereof, together with interest thereon, all of which amount shall be secured hereby. This Mortgage shall be valid and shall have priority over all subsequent

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liens and encumbrances, including statutory liens except taxes and assessments levied on the Property, to the extent of the maximum amount secured hereby.

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