

UNOFFICIAL COPY

This document was prepared by
and after recording return to: 1988 DEC -2 PM 1:53

88556129

William C. Hays, Jr.
GLENFED Financial Corporation
12720 Hillcrest Road
Suite 700
Dallas, Texas 75230

8200

ILLINOIS LEASEHOLD MORTGAGE

This Indenture ("Mortgage") is made this 30th day of November, 1988 between Bay Street of Chicago, Inc., an Illinois corporation, ("Mortgagor"), and GLENFED Financial Corporation, a California corporation (the "Mortgagee").

FOR AND IN CONSIDERATION OF FIVE DOLLARS (\$5.00) cash in hand paid by the Mortgagee to the Mortgagor, including the indebtedness recited in this Mortgage, the receipt of which is hereby acknowledged, Mortgagor HAS MORTGAGED, AND DOES HEREBY MORTGAGE to Mortgagee and its successors and assigns ALL of Mortgagor's right, title and interest in, to and under the Ground Lease (hereinafter defined), and the leasehold estate created thereby, in and to the real estate ("Real Estate") situated in Cook County, Illinois described in Exhibit A.

TOGETHER with the appurtenances and all the estate and rights of the Mortgagor of, in and to said premises under and by virtue of the Ground Lease.

TOGETHER with all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to said premises, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TOGETHER with all right, title and interest of the Mortgagor, if any, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining said land to the center line thereof.

TOGETHER with all right, title and interest of the Mortgagor, if any, now owned or hereafter acquired, in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or used in connection with said premises.

TOGETHER with all right, title and interest, if any, of the Mortgagor, now owned or hereafter acquired, in and to any and all buildings, structures and improvements now or at any time hereafter erected, constructed or situated upon said premises or any part thereof, together with all personal property that may be or hereafter become a part of said real estate including, but not limited to, machines, machinery, furniture, furnishings, fixtures, equipment, plumbing, heating and air conditioning apparatus and equipment, and hereby granting, conveying and mortgaging also all leases of the real estate now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder and all of the easements, servient estates appurtenant thereto, rents, issues, uses, and profits;

TOGETHER with all right, title and interest of the Mortgagor, if any, in and to (a) all modifications, extensions and renewals of the Ground Lease and in and to all rights to renew or extend the term of said Ground Lease; (b) all credits, deposits, options, privileges and rights of the Mortgagor, as

BOX 333 - GG

BS/ILLM2/02/RUSH STREET

Mail To: Ellen Schwab
Chicago Title Insurance Co.
5430 LBJ Freeway
Suite 280
Dallas, TX 75240

88556129

71-88-409

2 of 2

UNOFFICIAL COPY

lessee under said Ground Lease; and (c) to the extent not prohibited by or inconsistent with the terms of the Ground Lease all awards heretofore made or hereafter to be made for the taking by eminent domain of the whole or any part of the above described premises, or any estate or easement therein, including any awards are hereby assigned to the Mortgagee, which is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor and to apply the same in accordance with the provisions of the Ground Lease and in case thereafter there shall be any excess of such proceeds the Mortgagee shall have the right and option to apply such excess towards the payment of any sum owing on account of this Mortgage and the note and indebtedness secured hereby, notwithstanding the fact that such sum may not then be due and payable.

TOGETHER with all the right, title and interest of the Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor.

All of the foregoing described property, rights, privileges, interest and franchise hereby granted and released, assigned, transferred, mortgaged, pledged and set over, or intended so to be, being hereinafter collectively referred to as the "Mortgaged Property."

FOR THE PURPOSE OF SECURING:

- A. Payment of Mortgagor's obligations ("Obligations") under an Unconditional Continuing Guaranty of even date ("Guaranty") guarantying all obligations of Bay Street Restaurants, Inc. ("Debtor"). Lender, Debtor, Mortgagor and other subsidiaries of Debtor entered into a Restaurant Loan and Security Agreement of even date (the "Loan Agreement"), reflecting a loan from Lender to Debtor which indebtedness is evidenced by a \$7,500,000 Secured Promissory Note ("Note").
- B. Performance of Grantor's obligations and agreements contained in the Loan Agreement;
- C. Payment of all sums advanced by Lender to protect the Mortgaged Property and to enforce its rights under this Deed of trust, with interest thereon at the appropriate rate set forth in the Note; and
- D. Future advances, which may be made to Debtor by Lender pursuant to the Loan Agreement, thereby increasing Grantor's obligations under the Guaranty, regardless of whether such advances are obligatory or made in the sole discretion of Lender, to the same extent as if such advances were made on the date hereof.

Mortgagor hereby covenants with Mortgagee that Mortgagor holds the Mortgaged Property under that certain Lease Agreement (the "Ground Lease"), dated September 5, 1986, by and between American National Bank and Trust Company of Chicago, as Trustee, under Trust Agreement dated July 15, 1949, and known as Trust No. 7813, as Landlord ("Lessor"), and Steak and Ale of Illinois, Inc., as Tenant, said Ground Lease being subsequently assigned pursuant to that certain Assignment and Assumption of Lease of even date herewith, by and between Steak and Ale of Illinois, Inc., as Assignor, and Mortgagor, as Assignee.

CONDITIONED HOWEVER, that if all Obligations are fully paid, all other present, past or future indebtedness or obligations of Mortgagor are satisfied, and all covenants, agreements, and undertakings to be performed by Mortgagor under this Mortgage are

UNOFFICIAL COPY

- 3 -

fully and faithfully performed, then these presents will be void; otherwise, to remain in full force and effect. Future advances to Debtor under the Loan Agreement shall not exceed \$7,500,000.

AND in connection with the foregoing, Mortgagor covenants and agrees as follows:

1. TITLE. The Mortgagor represents, covenants and warrants to and with the Mortgagee:

(a) that Mortgagor has good and indefeasible title to the Mortgaged Property;

(b) that as against the Mortgagee the Mortgaged Property now is free and clear of all encumbrances whatsoever, and that the Mortgagor has good right and lawful authority to mortgage and convey the same in the manner and form hereby mortgaged and conveyed;

(c) that (i) the Ground Lease is a valid and subsisting lease of the property therein described and purported to be demised, thereby for the term therein set forth and is in full force and effect in accordance with the terms thereof and has not been modified and there are no existing defaults by the Landlord or by the Mortgagor, as Tenant thereunder, and (ii) the Mortgagor is the owner and holder of said Ground Lease and of the leasehold estate created thereby;

2. TAXES. Mortgagor shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property, or any part thereof, before liens or penalties are due thereon, without notice or demand; and shall provide Mortgagee evidence of such payments as Mortgagee shall reasonably request, except those taxes and assessments which are the subject of a good faith contest by the Mortgagor which operates to prevent collection.

3. INSURANCE. Mortgagor shall keep the Mortgaged Property insured against loss or damage by fire, windstorm, public liability and property damage insurance and such other hazards as may be required by Mortgagee, in and for amounts satisfactory to and in insurance companies approved by Mortgagee, the policies for which insurance shall be payable to Mortgagee. Such policies, and abstracts and other title evidence, shall be delivered to and held by Mortgagee without liability. Upon foreclosure of this Mortgage or other acquisition of the premises or any part thereof by Mortgagee, said policies, abstracts and title evidence shall become the absolute property of Mortgagee.

4. REPAIRS TO PROPERTY. Mortgagor shall keep the buildings and other improvements on said premises in as good repair and condition, as same may now be, or are hereafter placed, ordinary wear and tear only excepted, and shall not suffer or commit waste on or to said security.

5. ATTORNEY'S FEES. In case of any action, or in any proceedings in any court, to collect any sums payable or secured by this Mortgage, or to protect the lien or title herein of the Mortgagee, or in any other case permitted by law in which attorney's fees may be collected from Mortgagor, or charged upon the Mortgaged Property, Mortgagor agrees to pay reasonable attorney's fees.

6. CONTINUATION OF ABSTRACT. In event of any default herein by Mortgagor, Mortgagee, may, at the expense of Mortgagor, procure an abstract of title, or continuation thereof, for the Mortgaged Property, and change and add to the Obligations the cost of such abstract or other title evidence or continuation with interest upon such expense at the rate in the Note.

UNOFFICIAL COPY

7. ADVANCES OPTIONAL WITH MORTGAGEE. It is expressly understood and agreed that if the insurance above provided for is not effected as provided above, or if the taxes or special assessments assessed against the Mortgaged Property shall remain unpaid after liens or penalties are imposed thereon, Mortgagee after notice from Mortgagee to Mortgagor and ten days opportunity to cure may, but need not, effect the insurance above provided for, and need not, but may and is hereby authorized to pay said taxes and special assessments (irregularities in the levy or assessment of said taxes being expressly waived) and such payments, with interest thereon at the rate in effect in the Note.

8. EVENTS OF DEFAULT. Any of the following shall constitute an "Event of Default" under this Mortgage:

(a) Non-Payment. Failure to make the payment of any installment pursuant to the Note or of any other amount coming due under the Note, the Loan Agreement, or this Mortgage, or of any amount coming due under any other encumbrance of all or any part of the Mortgaged Property;

(b) Default under the Lease. Mortgagor shall breach or fail to comply with any and all covenants, or obligations, including payment and non-payment obligations, contained in the Lease.

(c) Non-Observance or Non-Performance. Mortgagor shall breach or fail to comply with any other covenant, agreement or obligation of Mortgagor contained in the Note, this Mortgage, the Loan Agreement, or any other instrument given at any time as security for payment of the indebtedness owing Mortgagee by Mortgagor which breach or failure to comply continues for fifteen (15) days after Grantee's written notice of such event to Mortgagor;

(d) Sale, Transfer or Encumbrance. Mortgagor, without the prior written consent of Mortgagee, shall (i) sell, convey, lease with an option to purchase, enter into a contract for the sale of, grant an option to purchase, alienate, mortgage or encumber all or any part of the Mortgaged Property or any interest in it or (ii) be divested of its title or any interest in the Mortgaged Property in any manner or way, whether voluntarily or involuntarily;

(e) Change in Ownership of Mortgagor. Any merger, consolidation, dissolution or reorganization of Mortgagor shall occur; or any sale, conveyance, assignment or other transfer of or the grant of a security interest in a majority interest in the Mortgagor;

(f) Judgments; Enforcement of Liens. Any proceedings shall be instituted or process issued to enforce any lien, charge or encumbrance against the Mortgaged Property; a writ of execution or attachment or any similar process shall be issued or levied against all or any portion of or interest in the Mortgaged Property; or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on all or any portion of the Mortgaged Property or any interest therein and within twenty (20) days thereafter such proceeding, execution, attachment, similar process or judgment is not dismissed, stayed on appeal, withdrawn, released, satisfied or vacated;

(g) Default Under Other Agreements. A default shall occur in the observance or performance of any covenant or agreement of Mortgagor, with respect to payments or otherwise, contained in any other deed of trust, mortgage, lease or security agreement relating to the Mortgaged Property after expiration of the required cure period or an Event of Default shall occur under and as defined in the Loan Agreement;

UNOFFICIAL COPY

(h) Inaccuracy of Representations or Warranties. Any representation or warranty made in the Note, this Mortgage or the Loan Agreement, proves to have been untrue or misleading in any material respect as of the date made or deemed made.

9. MORTGAGEE'S REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default as defined herein, then:

(a) Acceleration. All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without demand or further notice, the same being hereby expressly waived, with interest thereon, from the date of the first of any such Event of Default, at the rate in effect in the Note;

(b) Foreclosure. Mortgagee may enter and take possession of the Mortgaged Property and sell all or part of the Mortgaged Property, at public auction, to the highest bidder for cash, free from any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, after giving notice of the time, place and terms of such sale and of the Mortgaged Property to be sold. Mortgagee may sell all or any portion of the Mortgaged Property, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property a conveyance in fee simple. Mortgagee making any such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, the payment of the expenses of making, maintaining and executing this Mortgage and in the protection of the Mortgaged Property, including the expense of any litigation and reasonable attorneys' fees; (ii) second, to any advancements made by the Mortgagee pursuant to this Mortgage; and (iii) third, to the payment of the Obligations secured hereby or intended so to be, and any unpaid balance of Obligations then remaining may be the subject of immediate suit or the surplus, if any, then remaining shall be paid to Mortgagor, or to such other person as may be legally entitled thereto. Mortgagee may bid and become purchaser of all or any part of the Mortgaged Property at any such sale, and the amount of Mortgagee's successful bid shall be credited and applied in the manner provided in clauses (i) through (iii) above.

(c) Judicial and Other Relief. Mortgagee may proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement in this Mortgage or in aid of the execution of any power herein granted, or for any foreclosure of this Mortgage or for the sale of the Mortgaged Property or for any decree of any court or courts of competent jurisdiction.

(d) Entry on Mortgaged Property. Mortgagee may enter into and upon and take possession of all or any part of the Mortgaged Property and may exclude Mortgagor and all persons claiming under Mortgagor, and its agents or servants, wholly or partly therefrom; and, holding the same, Mortgagee may use, administer, manage, operate, and control the Mortgaged Property and may exercise all rights and powers of Mortgagor in the name, place and stead of Mortgagor, or otherwise, as the Mortgagee shall deem best; and in the exercise of any of the foregoing rights and powers Mortgagee shall not be liable to Mortgagor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Mortgagee.

10. COLLECTION RIGHTS. This instrument shall be effective as a deed of trust as well as a mortgage and upon the occurrence of a default may be foreclosed as to any of the Mortgaged Property in any manner permitted by the laws of the State of Illinois or of any other state in which any part of the Property is situated, and any foreclosure suit may be brought by the Mortgagee. In the event a foreclosure hereunder shall be

commenced by the Mortgagee, the Mortgagee may at any time before the sale of the Mortgaged Property abandon the sale, and may then institute suit for the collection of the Obligations and the other secured indebtedness, and for the foreclosure of this Mortgage. It is agreed that if the Mortgagee should institute a suit for the collection of the Obligations or any other secured indebtedness and for the foreclosure of this Mortgage, the Mortgagee may at any time before the entry of a final judgment in said suit dismiss the same, and sell the Mortgaged Property in accordance with the provisions of this Mortgage.

11. WAIVER OF RIGHT OF REDEMPTION AND SIMILAR RIGHTS. Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property, and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement for the collection of the Obligations, or creating or extending a period of redemption from any sale made in collecting the Obligations in general.

12. NO WAIVER. No waiver by the Mortgagee shall be construed as a waiver of a subsequent similar default or any other default by the Mortgagor. No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder. No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured, no forbearance by Mortgagee after the exercise of such option, and no withdrawal or abandonment of foreclosure proceedings by the Mortgagee after the exercise of such option, shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present, or future default on the part of Mortgagor. Acceptance by Mortgagee of partial payments shall not constitute a waiver of the default by failure to make full payments.

13. MORTGAGEE'S RIGHTS CUMULATIVE. The remedies and rights herein are cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default, acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised separately, successively, concurrently or independently, in such order, when and as often as may be deemed expedient by Mortgagee.

14. GOVERNING LAW. The terms and provisions of the Loan Agreement and the Note, as stated in the Loan Agreement, are governed by the laws of the State of Texas, which is the site of Mortgagee's principal place of business. The validity and enforceability of this Mortgage shall be governed by the laws of the State of Illinois to the extent reference to Illinois law is necessary for issues determined by local real estate law (e.g., foreclosure rights, lien enforceability, recording statutes, environmental compliance).

15. ADDRESSES FOR NOTICES. All notices, demands, consents, requests, or other communications that are either required or contemplated in connection with this Mortgage shall be in writing, and shall be deemed given to the intended recipient thereof upon the earlier of: (a) actual delivery thereof at the address designated below for such intended recipient; (b) the first business day after deposit with a nationally recognized, reputable overnight courier delivery service, such as Federal Express Company, with all charges prepaid; or (c) the third business day after the deposit thereof at any main or branch

UNOFFICIAL COPY

United States post office with postage prepaid for delivery thereof via certified first class mail and in any such case addressed as follows:

If to Mortgagor: Bay Street Restaurants, Inc.
4975 Preston Park Blvd.
Plano, Texas 75075

If to Mortgagee: GLENFED Financial Corporation
12720 Hillcrest Road
Suite 700
Dallas, Texas 75230

16. BANKRUPTCY PROVISIONS. (a) The lien of this mortgage attaches to all of Mortgagor's rights and remedies at any time arising under or pursuant to the Bankruptcy Code, 11 U.S.C. Sec. 101 et seq. (the "Bankruptcy Code"), Section 365(h), including, without limitation, all of Mortgagor's rights to remain in possession of the mortgaged premises thereunder.

(b) Mortgagor shall not without Mortgagee's prior written consent elect to treat the Ground Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Mortgagee's prior written consent shall be void.

(c) Mortgagor hereby unconditionally assigns, transfers and sets over to Mortgagee all of Mortgagor's claims and rights to the payment of damages arising from any rejection by lessor of the Ground Lease under the Bankruptcy Code. Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of Lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Any amounts received by Mortgagee as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to costs and expenses of Mortgagee (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph 16(c) and then in accordance with paragraph 9 of this Mortgage.

(d) Mortgagor shall promptly after obtaining knowledge thereof notify Mortgagee orally of any filing by or against Lessor of a petition under the Bankruptcy Code. Mortgagor shall thereafter forthwith give written notice of such filing to Mortgagee, setting forth any information available to Mortgagor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Mortgagor shall promptly deliver to Mortgagee following receipt thereof any and all notices, summonses, pleadings, applications and other documents received by Mortgagor in connection with any such petition and any proceedings relating thereto.

(e) If there shall be filed by or against the Mortgagor a petition under the Bankruptcy Code, and the Mortgagor, as lessee under the Ground Lease, shall determine to reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, the Mortgagor shall give the Mortgagee not less than ten days' prior notice of the date on which the Mortgagor shall apply to the bankruptcy court for authority to reject the Ground Lease. The Mortgagee shall have the right, but not the obligation, to serve upon the Mortgagor within such ten-day

UNOFFICIAL COPY

period a notice stating that (a) the Mortgagee demands that the Mortgagor assume and assign the Ground Lease to the Mortgagee pursuant to Section 365 of the Bankruptcy Code and (b) the Mortgagee covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Ground Lease. If the Mortgagee serves upon the Mortgagor the notice described in the preceding sentence, the Mortgagor shall not seek to reject the Ground Lease and shall comply with the demand provided for in clause (a) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by the Mortgagee of the covenant provided for in clause (b) of the preceding sentence.

(f) Effective upon the entry of an order for relief in respect of the Mortgagor under the Bankruptcy Code, the Mortgagor hereby assigns and transfers to the Mortgagee a non-exclusive right to apply to the Bankruptcy Court under Section 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Ground Lease may be rejected or assumed.

17. DEFINITIONS OF TERMS. Unless otherwise expressly stated, the word "Mortgagor" as used herein, includes successors in interest of such "Mortgagor"; the word "Mortgagee," as used herein, unless otherwise expressly stated, includes the successors in interest of such "Mortgagee." All words referring to "Mortgagor" or "Mortgagee" shall be construed to be of the appropriate gender and number, according to the context. This construction shall include the acknowledgment hereof.

18. THE GROUND LEASE

(a) With respect to the Ground Lease, Mortgagor hereby warrants and represents as follows: (i) the Ground Lease is in full force and effect, unmodified by any writing or otherwise; (ii) all rent, additional rent and other charges reserved therein have been paid to the extent they are payable to date hereof; (iii) Mortgagor enjoys the quiet and peaceful possession of the property demised thereby; and (iv) Mortgagor is not in default under any of the terms thereof and, to the best of its knowledge, there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder.

(b) Further, with respect to the Ground Lease, Mortgagor covenants and agrees as follows: (i) to promptly and faithfully observe, perform and comply with all the terms, covenants and provisions thereof on its part to be observed, performed and complied with, at the times set forth therein; (ii) not to do, permit, suffer or refrain from doing anything, as a result of which, there could be a default under or breach of any of the terms thereof; (iii) not to cancel, surrender, modify, amend or in any way alter or permit the alteration of any of the terms thereof without Mortgagee's consent; (iv) to give Mortgagee immediate notice of any default thereunder and to promptly deliver to Mortgagee copies of each notice of default and all other notices, communications, plans, specifications and other similar instruments received or delivered by Mortgagor in connection therewith; (v) to furnish to Mortgagee such information and evidence as Mortgagee may reasonably require concerning Mortgagor's due observance, performance and compliance with the terms, covenants and provisions thereof including copies of all checks evidencing payments required thereunder; (vi) that any default of Mortgagor thereunder shall constitute a default under this Mortgage.

(c) In the event of any default by Mortgagor in the performance of any of its obligations under the Ground Lease, including, without limitation, any default in the payment of rent

UNOFFICIAL COPY

and other charges and impositions made payable by the tenant thereunder, then, in each and every case, Mortgagee may, at its option and with notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Mortgagor thereunder in the name of and on behalf of the Mortgagor. Mortgagor shall, on demand, reimburse Mortgagee for all advances made and expenses incurred by Mortgagee in curing any such default (including, without limitation, reasonable attorneys' fees), together with interest thereon computed at a rate 2% per annum in excess of the rate provided in the Note from the date that an advance is made or expense is incurred, to and including the date the same is paid.

(d) Mortgagor agrees that it will, at least six (6) months prior to the last day upon which the Mortgagor, as such tenant, may validly exercise any option to renew or extend the term of the Ground Lease, (i) exercise such option in such manner as will cause the term of said Ground Lease to be effectively renewed or extended for the period provided by such option, and (ii) give immediate written notice thereof to the Mortgagee; it being expressly agreed that, in the event of the failure of the Mortgagor to do, the Mortgagee shall have, and is hereby granted, the irrevocable right to exercise any such option either in its own name and behalf or in the name and behalf of a designee or nominee of the Mortgagee or in the name and behalf of the Mortgagor, as the Mortgagee shall in its sole discretion determine.

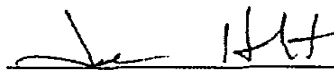
(e) It is hereby agreed that if Mortgagor acquires the fee title or any other estate, title or interest in the property demised by the Ground Lease, or any part thereof, the lien of this Mortgage shall attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of the Mortgaged Property with the same force and effect as if specifically encumbered herein. Mortgagor agrees to execute all instruments and documents which Mortgagee may reasonably require to ratify, confirm and further evidence Mortgagee's lien on the acquired estate, title or interest. Furthermore, Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name of and on behalf of Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the Obligations remain unpaid.


(f) Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of the Ground Lease within the meaning of any provision thereof prohibiting its assignment and Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage.

19. CONDEMNATION. It is further provided that in case a portion of the property described herein and mortgaged hereby is taken or condemned for a public or quasi-public use by any competent authority, and as a result thereof the balance of the premises may be used for the same purpose as before such taking or condemnation, the proceeds shall be paid to the Mortgagee to the extent of the Obligations.

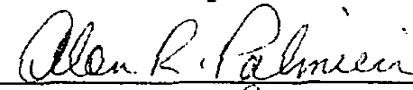
IN WITNESS WHEREOF, this instrument has been executed affective as of the day and year first appearing above.

Witnesses:





BAY STREET OF CHICAGO, INC.
an Illinois corporation

By: 

Name: ALAN R. PALMER

Title: President

BS/ILLM2/01/RUSH STREET

88556129

UNOFFICIAL COPY

Witnesses
Soe H H
Naup Jeff Jennings

By: T Michael Chockley
Name: T. MICHAEL CHOCKLEY
Title: ASST. SECRETARY

STATE OF TEXAS)
COUNTY OF DALLAS) ss.:

On this 30 day of November, 1988, before me, the undersigned, a Notary Public in and for the State of Texas personally appeared Alan R. Palmieri and T. Michael Chockley to me personally known, who, being by me duly sworn, did say that they are the President and Asst Secretary respectively of Bay Street of Chicago, Inc. ("Mortgagor") and are authorized by the Mortgagor to execute this instrument on behalf of the Mortgagor.

My Commission Expires: Ellen Schwab
NOTARY PUBLIC IN AND FOR THE
STATE OF Texas



ELLEN SCHWAB
Notary Public, State of Texas
My Commission Expires June 3, 1989

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

That part of Block 6 below elevation 43.28 feet Chicago City Datum except the South 88.96 feet (as measured along the West line of Block 6), except the North 58.99 feet (as measured along the West line of Block 6) of the West 49.40 feet and except the North 52.99 feet (as measured along the West line of Block 6) lying East of the West 49.40 feet, said Block 6 being in the Subdivision by the Commissioners of the Illinois and Michigan Canal of the South fractional quarter of Section 3, Township 39 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois.

OWNER OF RECORD: AMERICAN BANK AND TRUST COMPANY
AS TRUSTEE UNDER TRUST AGREEMENT NO. 7813

TAX I.D # 17-63-203-055

ADDRESS 1064 N. RUSH STREET
CHICAGO ILLINOIS

88556129