

UNOFFICIAL COPY

3 7 3 5 2 3 8 5

Handwritten initials and numbers: 5800, 5800

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

WHEREAS, the indebtedness evidenced by the Note ("indebtedness"), including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in Note provided, are herein called the "indebtedness Hereby Secured."

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagor's installment note dated the date hereof, in the principal sum of Nine Hundred Fifty Thousand Dollars (\$950,000.00) bearing interest at the rate specified therein, due in installments and in any event on July 1, 1997, payable to the order of the Mortgagee, and otherwise in the form of note attached hereto as Exhibit A and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length, and Brooklyn Bagel Boys, Inc., an Illinois corporation, has executed and delivered to Mortgagee its installment note dated the date hereof in the principal amount of Six Hundred Fifty Thousand Dollars (\$650,000.00) bearing interest at the rate specified therein, due in installments and in any event July 1, 1997, payable to the order of Mortgagee, and otherwise in the form of note attached hereto as Exhibit B and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length (both notes hereinafter "Notes") and

THIS MORTGAGE is made this 27th day of July, 1989, by Devon Bank as Trustee under Trust Agreement dated June 27, 1989 and known as Trust Number 5567-3 ("Mortgagor") whose address is 6445 North Western Avenue, Chicago, IL 60645 and DEVON BANK, an Illinois banking association (herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"), whose address is 6445 North Western Avenue, Chicago, Illinois 60648.

ASSIGNMENT OF RENTS AND LEASES
MORTGAGE, SECURITY AGREEMENT AND

DEFI-01 RECORDING
142222 FROM 05/01/89 15:24
44252 F. 89-55238
COURT COUNTY RECORDS

893520

EDS-A59

294 S1203486 M&E CHE

(g) Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and improvements or other rights, interests or

(f) All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or improvements, or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;

(e) All rents, issues, profits, royalties, income, awards and other benefits now or hereafter derived from the Real Estate and improvements, under leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment hereinafter referred to, to collect and apply the rents;

(d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any leases;

(c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or improvements;

(b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all herein generally called the "Improvements");

(a) All of the real estate (herein called the "Real Estate") described in Exhibit C attached hereto and made a part hereof;

such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10) in hand paid by the Mortgagee to the Mortgagee, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagee, the Mortgagee does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

58352385

89352385

properties comprising the premises now owned or hereafter acquired;

(h) All right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connections with the Real Estate and improvements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or improvements or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;

(i) All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property"), owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or improvements or used or useful in connection therewith, including but not limited to:

(1) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or improvements;

(ii) all building materials and equipment located upon the Real Estate and intended to be incorporated in the improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such improvements;

(iii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;

(iv) all window or structural cleaning rigs, maintenance equipment and equipment relating to exclusion of vermin or insects and removal of dust, refuse or garbage;

(v) all lobby and other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, safes, and other furnishings;

89352385

TO HAVE AND TO HOLD all sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses

(j) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a charge of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated; but provided that there shall be excluded from and not included with the term "Personal Property" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of tenants of the Premises;

(k) all maintenance supplies and inventories;

(l) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate;

(m) all laundry equipment, including washers and dryers;

(n) all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;

(o) all office furniture, equipment and supplies;

(p) all recreational equipment and materials;

(q) all lamps, chandeliers and other lighting fixtures;

(r) all rugs, carpets and other floor coverings, draperies, drape rods and brackets, awnings, window shades, venetian blinds and curtains;

89352385

1. Payment of Indebtedness. The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other indebtedness hereby secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.

AND IT IS FURTHER AGREED THAT:

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the indebtedness hereby secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagor in the Premises shall cease and become void and of no effect.

provided that the aggregate of the indebtedness hereby secured shall at no time exceed \$5,000,000.

(d) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under that Loan Agreement or even date herewith entered into between Mortgagor and Mortgagee ("Loan Agreement").

(c) Performance by any Guarantor of its obligations under any guaranty or other instrument given to further secure the payment of the indebtedness hereby secured or the performance of any obligation secured hereby;

(b) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the assignment referred to in Section 24 hereof;

(a) Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other indebtedness hereby secured:

FOR THE PURPOSE OF SECURING:

and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the indebtedness hereby secured, or the breach of any covenant or agreement contained, or upon the occurrence of any Event of Default as hereinafter defined.

UNOFFICIAL COPY

8 9 3 5 2 3 8 5

9

(k) Not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets,

(j) Reserve and use all parking areas, if any, solely and exclusively for the purpose of providing ingress, egress and parking facilities for automobiles and other passenger vehicles of Mortgagee and tenants of the Premises and their invitees and licensees; and

(i) Provide, improve, grade, surface and thereafter maintain, clean, repair, police and adequately light parking areas, if any, within the Premises of sufficient size, as may be required by law, ordinance or regulation (notwithstanding greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;

(h) Initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent;

(g) Pay when due all operating costs of the Premises;

(f) Suffer or permit no change in the general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;

(e) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

(d) Complete within a reasonable time any improvements now or at any time in the process of erection upon the Premises;

(c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a party with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;

(b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;

(a) Promptly repair, restore or rebuild any improvements now or hereafter on the Premises which may become damaged or destroyed, whether or not proceeds of insurance are available or sufficient for the purpose;

2. ~~Maintenance, Repair, Restoration, Prior Liens, Parking.~~ The Mortgagee will:

89352385

89352385

(b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$2,000,000 single limit coverage;

(a) Insurance against loss to the improvements caused by fire, lightning and risks covered by the so-called "all perils" endorsement, builders' risk insurance and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the improvements, plus the costs of debris removal, with full replacement cost endorsement and "agreed amount" endorsement;

4. Insurance Coverage. The Mortgagee will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

3. Taxes. The Mortgagee will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagee, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagee will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any part of the Taxes or liens herein required to be paid by Mortgagee, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then, and in any such event, the Mortgagee upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor; and (b) nothing in this Section 3 contained shall require the Mortgagee to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

driveways, sidewalk cuts or paved areas or rights-of-way or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises, without the prior written consent of the Mortgagee.

89352385

(b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored prior to loan maturity, to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty,

(a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagee, or (ii) allow the Mortgagee to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagee may itself adjust losses aggregating not in excess of Fifty Thousand Dollars (\$50,000) provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional indebtedness hereby secured, and shall be reimbursed to the Mortgagee upon demand;

6. ~~Provision of Insurance.~~ The Mortgagee will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

5. ~~Insurance Policies.~~ All policies of insurance to be maintained and provided as required by section 4 hereof shall (i) be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgage clauses or endorsements in favor of and with loss payable to Mortgagee; (ii) contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee; (iii) be written in amounts sufficient to prevent Mortgagee from becoming a co-insurer; and (iv) provide for thirty (30) days' prior written notice of cancellation to Mortgagee; and Mortgagee will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagee will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

(c) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in subsection (b) above, and (ii) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements; and

89352385

(h) Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to (1) collect any proceeds of any policies of insurance, or (ii) Restore any portion of the premises damaged or destroyed through any cause.

(g) No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee;

(f) Any portion of insurance proceeds remaining after payment in full of the indebtedness hereby secured shall be paid to Mortgagee or as ordered by a court of competent jurisdiction;

(e) In the event that proceeds of insurance, if any, shall be made available to the Mortgagee for the restoring of the premises, Mortgagee hereby covenants to Restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;

(d) Except as provided for in subsection (b) of this Section 7, Mortgages shall apply the proceeds of insurance (including amounts not required for restoring effected in accordance with subsection (b) above) consequent upon any insured Casualty upon the indebtedness hereby secured, in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the indebtedness hereby secured made out of insurance proceeds as aforesaid;

(c) If, in the reasonable judgment of Mortgagee, the premises cannot be restored to an architectural and economic unit as provided for in subsection (b) above, then at any time from and after the insured Casualty, upon thirty (30) days' written notice to Mortgagee, Mortgagee may declare the entire balance of the indebtedness hereby secured to be, and at the expiration of such thirty (30) day period the indebtedness hereby secured shall be and become, immediately due and payable;

and adequately securing the outstanding balance of the indebtedness hereby secured, and the insurers do not deny liability to the insureds, then, if no event of default as hereinafter defined shall have occurred and be then continuing, and if there was no event of default, whether continuing or not, at the time of occurrence of damage or destruction which resulted in said loss, the proceeds of insurance shall be applied to reimburse the Mortgagee for the cost of restoring, repairing, replacing or rebuilding (herein generally called "restoring") the premises or any part thereof subject to insured Casualty, as provided for in Section 9 hereof;

59352385

(g) No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

(f) Any portion of any Award remaining after payment in full of the indebtedness hereby secured shall be paid to Mortgagee or as ordered by a court of competent jurisdiction;

(e) In the event that any Award shall be made available to the Mortgagee for restoring the portion of the premises remaining after a Taking, Mortgagee hereby covenants to restore the remaining portion of the premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;

(d) Except as provided for in subsection (b) of this Section 7, Mortgagee shall apply any Award (including the amount not required for restoration effected in accordance with subsection (b) above) upon the indebtedness hereby secured in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any repayment of the indebtedness hereby secured made out of any Award as aforesaid;

(c) If, in the reasonable judgment of Mortgagee, the premises cannot be restored to an architectural and economic unit as provided for in subsection (b) above, then at any time from and after the Taking, upon thirty (30) days' written notice to Mortgagee, Mortgagee may declare the entire balance of the indebtedness hereby secured to be, and at the expiration of such thirty (30) days period the indebtedness hereby secured shall be and become, immediately due and payable;

(b) If, in the reasonable judgment of the Mortgagee, the premises can be restored to an architectural and economic unit of the same character and not substantially less valuable than the premises prior to such Taking and adequately securing the outstanding balance of the indebtedness hereby secured, then in event of default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagee for the cost of restoring the portion of the premises remaining after such Taking, as provided for in Section 9 hereof;

(a) Mortgagee hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking;

7. Condemnation. The Mortgagee will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the premises, including damages to grade, and;

(a) If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter

Others. Mortgagor covenants and agrees that:

11. ~~Effect of Extensions of Time, Amendments on Junior Liens and~~

10. ~~Prepayment Privilege.~~ The Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise, without notice or penalty.

9. ~~Stamp Tax.~~ If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the note, the Mortgagor shall pay such tax in the manner required by such law.

Item.

(c) At all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for

(b) Funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds, and

(a) No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time;

8. ~~Disbursement of Insurance Proceeds and Condemnation Awards.~~ In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and payments as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to an approved by the Mortgagee prior to commencement of work; and in each case:

89352385

13. Mortgagee's Performance of Mortgagor's Obligations. In case of default therein, not cured within applicable cure periods, if any, the Mortgagor shall be deemed to be in default of the lien indebtedness hereby secured or the foreclosure of the lien

12. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagor the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagor's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the indebtedness hereby secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagor, shall pay such taxes or assessments, or reimburse the Mortgagor therefor; provided that it in the opinion of counsel for the Mortgagor the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagor may, by notice to the Mortgagor, declare the entire principal balance of the indebtedness hereby secured and all accrued interest to be due and payable on a date specified in such notice, not less than 180 days after the date of such notice, and the indebtedness hereby secured and all accrued interest shall then be due and payable without premium or penalty on the date so specified in such notice.

(c) Nothing in this Section contained shall be construed as waiving any protection of Section 15 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

(b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagor herein to amend, modify and supplement this Mortgage, the Note and the Assignment and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the indebtedness hereby secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien;

liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagor, notwithstanding any such extension, variation or release;

65352335

85352335

(e) The Mortgagee, in making any payment hereby authorized (1) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof, (2) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, or (3) in connection with the completion of construction, furnishing or equipping of the improvements or the premises or the rental, operation or management of the premises or the payment of operating costs and expenses thereof, Mortgagee

(d) Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor;

(c) All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the indebtedness hereby secured, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the premises and the lien hereof, or to complete construction, furnishing and equipping, or to rent, operate and manage the premises and such improvements, or to pay any such operating costs and expenses thereof, or to keep the premises and improvements operational and usable for their intended purposes, shall be so much additional indebtedness hereby secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate");

(b) Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the premises and rent, operate and manage the premises and such improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the premises and improvements shall be operational and usable for their intended purposes;

(a) The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises, or contest any tax or assessment;

hereof, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein which is required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and in connection therewith:

89352205

(d) If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer,

(c) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over the Counter" market, then this Section 15(c) shall be inapplicable;

(b) If the Mortgagor is a trustee, then if any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;

(a) If the mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sales or other dispositions of collateral as defined in Section 18 (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises; provided that prior to the sale or other disposition thereof such Obsolete Collateral shall have been replaced by collateral subject to the first and prior lien hereof, or at least equal value and utility;

13. Restraints on Transfer. Except as hereinafter provided in Section 16, it shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagor, any of the following shall occur, and in any event Mortgagor may condition its consent upon such increase in rate of interest payable upon the indebtedness hereby secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagor may in its sole discretion require;

14. Inspection of Premises. The Mortgagor shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

may do so in such amounts and to such persons as Mortgagor may deem appropriate, and may enter into such contracts therefor as Mortgagor may deem appropriate or may perform the same itself.

85352305

(a) The Mortgagee (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other

of this Mortgage, but shall be in addition thereto: not limit the generality or applicability of any other provision of this Section 19 shall Premises; and the following provisions of this Section 19 shall to the same extent as to any other property comprising the in this Mortgage pertain and apply to the Collateral as fully and all of the terms, provisions, conditions and agreements contained property other than real estate (all herein called "Collateral"); hereafter be or be deemed to be personal property, fixtures or respect to any part of the Premises which may or might now or in which the Premises is located (herein called the "Code") with Security Agreement under the Uniform Commercial Code of the State 17. Uniform Commercial Code. This Mortgage constitutes a

(b) The lien of current real estate taxes and assessments not in default.

(a) Liens securing the Indebtedness Hereby Secured; and

shall not apply to any of the following: 16. Permitted Transfers. The provisions of Section 15 hereof

Mortgagee consequent thereon event or condition or a waiver of any right, remedy or power of constitute a consent to a waiver of any other or subsequent such constitute an Event of Default under this Section 15, shall or any waiver of, any event or condition which would otherwise Mortgagee; and provided further that no consent by Mortgagee to, interest in the Mortgagee or any beneficiary of a Trustee interest in, share of stock of or partnership or joint venture interest in or encumbrance upon the Premises, or such beneficial with the terms hereof or otherwise, shall acquire any part of or to, and shall be binding upon, any persons who, in accordance provisions of this Section 15 shall be operative with respect involuntarily, by operation of law or otherwise; provided that or alienation is effected directly, indirectly, voluntarily or transfer, lien, pledge, mortgage, security interest, encumbrance, in each case whether any such conveyance, sale, assignment,

beneficiary as described in subsection 15(d) above; is a general partner of a partnership or joint venture in any general partner which directly or indirectly controls or transfers of stock ownership, partnership interest or otherwise) (e) If there shall be any change in control (by way of

alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venture; or

(f) The Mortgagee shall be entitled to hold, maintain, preserve and prepare the collateral for sale, until disposed of, or may propose to retain the collateral, subject to the Mortgagee's right of redemption, if any, in satisfaction of the Mortgagee's obligations as provided in the Code; provided that the Mortgagee without removal may render the collateral

(g) Upon the occurrence of any Event of Default hereunder and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the indebtedness hereby secured immediately due and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the collateral, or any part thereof, and for that purpose may, so far as the Mortgagee can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the collateral or any part thereof may be situated and remove the same therefrom (provided that if the collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);

(h) Upon the occurrence of any Event of Default hereunder and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the indebtedness hereby secured immediately due and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the collateral, or any part thereof, and for that purpose may, so far as the Mortgagee can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the collateral or any part thereof may be situated and remove the same therefrom (provided that if the collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);

(i) The only persons having any interest in the Premises are the Mortgagee, Mortgagees and Purchasers;

(j) The collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagee or any other person; and the collateral may be affixed to the Real Estate but will not be affixed to any other real estate;

(k) The lien hereof, subject to sales permitted pursuant to paragraph 16 hereof;

89352385

(a) If default is made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default is made in the making of any other monies required

18. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

(k) The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(j) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the Indebtedness hereby Secured remains unsatisfied;

(i) The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness hereby Secured; and the Mortgagee will account to the Mortgagor for any surplus on such disposition;

(h) The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised within the Premises, the Collateral and Real Estate to be sold as one lot of Mortgagee so elects;

(g) The Mortgagee will give Mortgagor at least (15) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor determined as provided in Section 42 hereof, at least fifteen (15) days before the time of the sale or disposition;

(f) The Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties;

(e) The Mortgagee may dispose of the Collateral on the Premises, and (11)

58352385

- (v) The Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the premises; or
 - (iv) The Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor or for all or the major part of the Mortgagor's property or the premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or in the premises in any involuntary proceeding for the protection, reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or
 - (iii) Within sixty (60) days after the filing against Mortgagor of any involuntary proceedings under such Bankruptcy code or similar law, such proceedings shall not have been vacated or stayed, or
 - (ii) The Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or
 - (i) The Mortgagor shall file a petition in voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or federal, now or hereafter in effect, or
 - (d) If and for the purpose of this Section 18(d) only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a Trustee Mortgagor and each person who, as guarantor, co-maker or otherwise shall be or become liable for or obligated upon all or any part of the indebtedness hereby Secured or any of the covenants or agreements contained herein),
 - (c) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, and be continuing for seven (7) days after written notice; or
 - (b) If an Event of Default pursuant to Section 15 hereof shall occur and be continuing for fifteen (15) days after written notice; or
 - (a) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, and be continuing for seven (7) days after written notice; or
- to be made hereunder or under the Note, and any applicable period of grace specified in the Note shall have elapsed; or

59352385

(a) In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs

19. Foreclosure. When the indebtedness hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and in connection therewith:

Then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all indebtedness hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or by law or in equity conferred.

(f) If an Event of Default as therein defined shall occur under the Loan Agreement or any of the other Loan Documents described therein.

(g) If the premises shall be abandoned for a period of thirty (30) days.

(h) If default, except as described in paragraph (a) hereof, shall continue for 30 days after notice thereof by Mortgagee to Mortgagor in the due and punctual performance or observance of any other agreement or condition herein or in the Note contained; provided that if such default is not susceptible of cure within such 30-day period, such 30-day period shall be extended to the extent necessary to permit such cure if, but only if, Mortgagor shall commence such cure within such 30-day period and shall thereafter prosecute such cure to completion, diligently and without delay, and (ii) no other Event of Default shall occur; or

(i) If any representation made by or on behalf of Mortgagor in connection with the indebtedness hereby Secured shall prove untrue in any material respect, and if capable of cure shall continue for thirty (30) days after written notice thereof; or

(j) If any default shall exist under the provisions of Section 24 hereof, or under the Assignment referred to therein, and shall continue for thirty (30) days after written notice thereof; or

88352385

(c) Such receiver shall have the power to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in the case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any

(b) Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not; and the Mortgagor hereunder, or any holder of the Note may be appointed as such receiver;

(a) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the premises;

21. Receiver. Mortgagor consents and agrees that:

20. Proceeds of Foreclosure. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 21 hereof; second, all other items which, under the terms hereof, constitute indebtedness hereby secured additional to that evidenced by the Note, with interest on such items as herein provided; third, to the interest remaining unpaid upon the Note; fourth, to the principal remaining unpaid upon the Note; and lastly, any overplus to the Mortgagor, and its successors or assigns, as their rights may appear.

(b) All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the premises, and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagor in any litigation or proceedings affecting this Mortgage, the Note or the premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.

(which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagor may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the premises; and

23. ~~Master.~~ The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner

(b) In the event of foreclosure sale, the Mortgagor is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagor may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

(a) In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagor's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each clause attached to each casualty insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeмпtor; and

22. ~~Insurance~~ In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and

(1) The deficiency in case of a sale and deficiency.

The indebtedness hereby secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or

(d) The court may, from time to time, authorize the receiver to apply the net income from the premises in his hands in payment in whole or in part to:

such receiver, would be entitled to collection of such rents, issues and profits, and all other powers which may be necessary, or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period;

89352335

89052385

(a) All of the rents, royalties, bonuses, issues, profits, revenue, income, and other benefits derived from the premises or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto and liquidated damages following default under such leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the premises, together with any and all rights that Mortgagor may

24. Assignment of Rents, Profits, etc.

(c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

(b) The Mortgagor will not invoke or utilize any such law or law or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws has been made or enacted; and

(1) The Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor acquiring any interest or title to the premises or beneficial interest in Mortgage subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, Para. 15-1601 of the Illinois Statutes or other applicable law or replacement statutes;

Limiting the foregoing:
whenever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without

50325588

Leases; (f) enforce the tenants' obligations under the

including, however, notice of defaults under residential leases; Mortgagee receives from any tenant or subtenant under any lease, specifying any claimed default by any party under such leases, (f) give immediate notice to Mortgagee of any notice

and give prompt notice to Mortgagee of any failure to do so; (f) perform all of its obligations under the Leases

(d) Mortgagee covenants to:

except as indicated in the Leases, Mortgagee has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents.

(iv) no rents have been or will be anticipated, waived, released, discounted, set off or compromised other than in the ordinary course of business; and

(f) unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged, except to Mortgagee;

(f) Mortgagee has good title to the Leases and Rents hereby assigned and authority to assign them, and no other person or entity, other than Mortgagee, has any right, title or interest therein;

(c) Mortgagee represents that:

(b) Mortgagee hereby assigns to Mortgagee any and all existing and future leases, including, without limitation, assignments, and all extensions, renewals, modifications, and replacements thereof, upon any part of the premises (collectively, the "Leases"). Mortgagee hereby further assigns to Mortgagee all guarantees of tenants' performance under the Leases. Prior to an event of default, Mortgagee shall have the right, without joinder of Mortgagee, to enforce the Leases, unless Mortgagee directs otherwise.

and thereafter to the account of Mortgagee. Payment of the indebtedness in such manner as Mortgagee elects and Mortgagee shall apply the funds so collected first to the all Rents as trustee for the benefit of Mortgagee and Mortgagee, defined, Mortgagee shall have a license to collect and receive the indebtedness. Prior to an event of default (as hereinafter assigned to Mortgagee, to be applied by Mortgagee in payment of called the "Rents"), are hereby absolutely and unconditionally occupants of any party of the premises (hereinafter collectively have against any tenant under such leases or any subtenants or

89352385

(g) Mortgagee's acceptance of this assignment shall not, prior to entry upon and taking possession of the premises by Mortgagee, be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate Mortgagee to appear in or defend any proceeding relating to any of the Leases or to premises, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Mortgagee by any leasee and not delivered to Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the mortgaged property.

(f) Mortgagee agrees that no settlement for damages for termination of any of the Leases under the Federal Bankruptcy Code, or under any other federal, state, or local statute, shall be made without prior written consent of Mortgagee, and any check in payment of such damages shall be made payable to both Mortgagee and Mortgagee. Mortgagee hereby assigns any such payment to Mortgagee, to be applied to the indebtedness as Mortgagee may elect, and agrees to endorse any check for such payment to the order of Mortgagee.

(vi) permit any assignment of the Leases.

(v) renew or extend any of the Leases, except pursuant to terms in existing Leases; or

(iv) cancel, terminate or modify any of the Leases, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for disposition of any tenant under any of the Leases, except upon default by the tenant thereunder;

(iii) waive or release any obligation of any tenant under the Leases;

(ii) encumber or assign future Rents;

(i) receive or collect Rents more than one month in advance;

(e) Mortgagee shall not, without the prior written consent of Mortgagee:

(v) neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Mortgage and any other encumbrances permitted by this Mortgage.

(iv) defend, at Mortgagee's expense, any proceeding pertaining to the Leases, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; and

89352335

27. Business Loan. It is understood and agreed that the loan evidenced by the Note and secured herein is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor or, if the Mortgagor is a

26. Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the premises by the Mortgagee.

25. Priorities With Respect to Leases. If the Mortgagee shall execute and record (or register) in the public office wherein this Mortgage was recorded (or registered) a unilateral declaration that this Mortgage shall be subject and subordinate, in whole or in part, to any lease, then upon such recordation (or registration), this Mortgage shall become subject and subordinate to such lease to the extent set forth in such instrument, provided that such subordination shall not extend to or affect the priority of entitlement to insurance proceeds or any award unless such instrument shall specifically so provide.

(l) Mortgagor hereby authorizes and directs the tenants under the leases to pay rents to Mortgagee upon five (5) days' written demand by Mortgagee, without further consent of Mortgagor, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payment to Mortgagee shall constitute payment to Mortgagor under the leases.

(k) There shall be no merger of the leasehold estates created by the leases with the fee estate of the land without the prior written consent of Mortgagee.

(j) Upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed originals of all leases and copies of all records relating thereto.

(i) Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from all liability, damage, or expense incurred by Mortgagee from any claims under the leases, including, without limitation, claims by tenants for security deposits or for rental payments in advance, if any. All amounts indemnified against hereunder, including without limitation reasonable attorneys' fees, if paid by Mortgagee shall bear interest at the default rate specified in the Note, and shall be payable by Mortgagor immediately without demand and shall be secured hereby.

(h) Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, empowering Mortgagee to subordinate any leases to this Mortgage.

88552385

trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgagor as contemplated by said Section.

28. Compliance with Environmental Law. The Mortgagor

represents and warrants that the Premises comply in all material respects and covenants and agrees to cause the Premises to at all times comply with all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq., the Toxic Substance Control Act of 1976, 15 U.S.C. §2601 et seq., the Emergency Planning and Community Right-to-know Act of 1986, 42 U.S.C. §11001 et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §7401 et seq., the National Environmental Policy Act of 1975, 42 U.S.C. §4321, the Rivers and Harbors Act of 1899, 33 U.S.C. §401 et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 et seq., and the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §300(f) et seq., and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation, relating to releases, discharges, emissions or disposal to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling or disposal of polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde, to the treatment, storage, disposal or management of hazardous substances (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons), to exposure to toxic, hazardous, or other controlled, prohibited or regulated substances, to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

29. Condition of Premises.

The Mortgagor warrants and represents that, to the best of its knowledge after due inquiry, the Premises, including, without limitation, all personal property, is free from contamination, that there has not been thereon a release, discharge or emission, or threat of release, discharge or emission, of any hazardous substance, gas or liquid (including, without limitation, petroleum, its derivatives or by-products, or other hydrocarbons), or any other substance, gas or liquid, which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, and that the Premises does not

31. Use of Property and Facilities. The Mortgagor represents and warrants that it has never in the past engaged in, and agrees that in the future it shall not conduct, any business, operations or activity on the premises, or employ or use the personal property or facilities, to manufacture, use, generate, treat, store, transport or dispose of any hazardous substance (including, without limitation, petroleum, its derivatives or by-products, or other hydrocarbons) or any other substance which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, including, without limitation, any business, operation or activity which would bring the Mortgagor, its property or facilities, within the ambit of the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §7401, et seq., or any similar state, county, regional or local statute, law,

thereof. fifteen (15) days from the Mortgagor's receipt or submission provide a copy to the Mortgagor, and in no event, later than described in this Section 30, the Mortgagor shall promptly event that the Mortgagor receives or gives any notice of the type its by-products or derivatives, or other hydrocarbons). In the a hazardous substance (including, without limitation, petroleum, incurred by such governmental entity in response to a release of environmental law, rule or regulation arising from or costs liability, costs or damages, under federal, state or local subject to a lien in favor of any Governmental Body for any carbon); (iv) any of the Mortgagor's property or assets are petroleum, its by-products or derivatives, or other hydro- of hazardous substances (including, without limitation, the cost of cleaning up, remediating or responding to a release (iii) the Mortgagor may be or is liable, in whole or in part, for products or derivatives or other hydrocarbons) from the premises; substances (including, without limitation, petroleum, its by- been a release, or there is threat of release, of hazardous rule, regulation, ordinance, judgment or order; (ii) there has county or local environmental, health or safety statute, law, violated, or is about to violate, any federal, state, regional, complaint, inquiry, claim or demand that; (i) the Mortgagor has it received, any notice, letter, citation, order, warning, and warrants that it has not given, nor should it give, nor has 30. Notice of Environmental Problem. The Mortgagor represents

contain, or is not affected by: (i) asbestos, (ii) urea formaldehyde foam insulation, (iii) polychlorinated biphenyls (PCB's), (iv) underground storage tanks, or (v) landfills, land disposals or dumps.

503252305

85352385

(d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (1) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (11) forthwith upon demands by Mortgagor, in the opinion of Mortgagor, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagor may, but shall not be required to pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the

(c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagor to be represented in any such contest and shall pay all expenses incurred by Mortgagor in so doing, including fees and expenses of Mortgagor's counsel (all of which shall constitute so much additional indebtedness hereby secured bearing interest at the Default Rate until paid, and payable upon demand);

(b) Mortgagor shall deposit with Mortgagor the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagor may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagor a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagor;

(a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagor at the time the same shall be asserted;

32. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a Lien thereon and any mechanics', materialmen's or other Liens or claims for Lien upon the Premises (all herein called "Contest Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

regulation, rule or ordinance, including, without limitation, any state statute providing for financial responsibility for cleanup for the release of substances provided for thereunder, unless such is (1) in strict compliance with all applicable law, including, without limitation, those referred to in Sections 28, 29, 30 and 31 of this Mortgage and (2) necessary to the proper conduct of the business in which it is engaged on the date hereof. The provisions of this Section 31 shall apply to all real and personal property, without limitation, owned or controlled by the Mortgagor.

85352305

(d) Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from and against all loss, cost (including reasonable attorneys' fees), liability and damage whatsoever incurred by Mortgagee by reason of any violation of any applicable federal, state, county or local statute, law, regulation or ordinance for the protection of the environment which occurs on the premises, or by reason of the imposition of any governmental lien for the recovery of environmental clean up

(c) Except for Mortgagee's gross negligence Mortgagee shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (1) exercise by Mortgagee of any right hereunder, and (2) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the indebtedness hereby secured or in any contracts, agreements or other instruments relating to or affecting the premises; and all such liability, loss or damage incurred by the Mortgagee together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional indebtedness hereby secured, and the Mortgagee shall reimburse the Mortgagee therefor on demand together with interest thereon at the Default Rate from the date of demand to the date of payment.

(b) No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee, and Mortgagee expressly waives and releases any such liability!

(a) Mortgagee shall have no responsibility for the control, care, management or repair of the premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the premises resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person;

33. Indemnification. Mortgagor does hereby covenant and agree that:

judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional indebtedness hereby secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in subsection 30(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

59352385

36. Title in Mortgagee's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagee (a) the Mortgagee may, without notice to the Mortgagee, deal with such successor or successors in interest of the Mortgagee with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagee; and (b) the Mortgagee will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section

(d) Notwithstanding the release of record of Senior Liens (as hereinafter defined) Mortgages shall be subrogated to the rights and liens of all mortgages, trust deeds, superior titles, vendors' liens, mechanics' liens, or liens, charges, encumbrances, rights and equities on the Premises having priority to the lien of this Mortgage (herein generally called "Senior Liens"), to the extent that any obligation secured thereby is directly or indirectly paid or discharged with proceeds of disbursements or advances of the Indebtedness Hereby Secured, whether made pursuant to the provisions hereof or of the Note or any document or instrument executed in connection with the Indebtedness Hereby Secured.

(a) Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the Senior Lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee in securing the Indebtedness Hereby Secured; and

35. Subrogation. To the extent that Mortgagee, on or after the date hereof, pays any sum due under or secured by any Senior Lien as hereinafter defined or Mortgagee or any other person pays any such sum with the proceeds of the Indebtedness Hereby Secured:

34. Mortgagee Not a Joint Venture or Partner. Mortgagee and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagee or any beneficiary of Mortgagee; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

under this Indemnity shall likewise be without regard to fault on the part of Mortgagee with respect to the violation of law which results in liability to Mortgagee.

85352305

33 contained shall vary or negate the provisions of Section 16 hereof.

37. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often as in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impart any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

38. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagee and its successors and assigns (including, without limitation, each and every person having an interest therein) and shall inure to the benefit of the Mortgagee and its successors and assigns and (1) wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and (2) each such person to whom the holder of the Note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

39. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

40. Waiver of Defense. No action for the enforcement of the Note or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

41. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as conforming or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular number shall include the

85352305

45. Exemption. Anything in this Mortgage contained to the contrary notwithstanding, it is expressly understood and agreed that nothing herein contained shall be construed as creating any personal liability of Devon Bank, as Trustee, to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied contained herein or in the Loan Instruments, and it is expressly understood and agreed by the Mortgagee that none of the undertakings, covenants, undertakings or agreements made or intended as personal covenants, undertakings or agreements by the Trustee, but are for the purpose of binding the property held by it as such Trustee, and any liability or damage for breach or nonperformance by the undersigned shall be collectible, with respect to the undersigned, only out of the trust properties, provided, however, that nothing herein contained is intended or shall be deemed or construed to limit, modify, impair, release or in any other manner adversely affect any of the Mortgagee's rights under any of the Loan Instruments. This provision shall not in any way impair the lien and security interest of this Mortgage or the rights and remedies of the Mortgagee hereunder. As used in this paragraph, references to Devon Bank or the "Trustee" shall also mean the beneficiary (or any partner thereof) of the Trustee.

44. Interest at the Default Rate. Without limiting the generality of any provision herein or the Note continued, from and after the occurrence of any event of default hereunder, all of the indebtedness hereby secured shall bear interest at the Default Rate.

43. Mortgagee Will Not Discriminate. Mortgagee covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirement of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement acts.

42. Addresses and Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

UNOFFICIAL COPY

5 9 3 5 2 3 8 5

46. Time. Time is of the essence hereof and the Note, Assignment and all other instruments delivered in connection with the Indebtedness Hereby Secured.

IN WITNESS WHEREOF, Mortgagor have caused these presents to be signed, all as of the day, month and year first above written.

DEVON BANK, not personally but solely as Trustee under that certain Trust Agreement dated June 27, 1989 and known as Trust No. 5567-3

ATTEST:

By: *Peter A. May*
Name: PETER A. MAY
Title: TRUST OFFICER

cc By: *Peter A. May*
Name: PETER A. MAY
Title: TRUST OFFICER

ATTEST:

By: *Catherine Ciabino*
NAME: CATHERINE CIABINO
TITLE: TRUST ADMINISTRATOR

EXCULPATORY RIDER ATTACHED
DEVON BANK

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee are nevertheless each and every one of them made and intended not as personal representations, covenants, undertakings, warranties and agreements but are made and intended for the purpose of binding said Trustee personally and the Trustee or for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforced against the DEVON BANK IN CHICAGO or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any representation contained, either expressed or implied, all agreements of the said Trustee in this instrument contained, either expressed or implied, all such personal liabilities, in any being expressly waived and released. The Trustee makes no maintenance of the covenants herein described, if any.

889352385

Property of Cook County Clerk's Office



Ernest D. Simon, Esq.
SACHNOFF & WEAVER, LTD.
30 S. Wacker Drive
29th Floor
Chicago, IL 60606

THIS INSTRUMENT WAS PREPARED BY AND
WHEN RECORDED SHOULD BE RETURNED TO:

My Commission Expires: 10/24/89

[Signature]
Notary Public

SUBSCRIBED AND SWORN to
before me this 14th day
of "989."

I, *[Signature]*, a notary public in and for the county
aforesaid, hereby certify, that on this 14th day of
1989, personally appeared *Peter A. May*,
and *[Signature]*, personally known to me to be
TRUST OFFICER *[Signature]* and *[Signature]* Secretary of Devon Bank, not
personally but as Trustee under a Trust Agreement dated June 28,
1989 and known as Trust No. 5567-3, and that they acknowledged
the foregoing Mortgage to be the free and voluntary act and deed
of said Trustee.

STATE OF ILLINOIS)
SS.)
COUNTY OF COOK)

UNOFFICIAL COPY

8 7 3 5 2 3 8 5

85352305

EXHIBIT 5

Property of Cook County Clerk's Office

PINE 12-20-401-212

THE WEST 352.0 FEET OF THE EAST 402.0 FEET OF THE NORTH
240.0 FEET OF THE SOUTH 26 RODS OF THE SOUTHEAST 1/4 OF
SECTION 20, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LEGAL DESCRIPTION

55352305

then and in any such event, the entire principal balance disbursed hereunder and all indebtedness secured by the Mortgages shall thereafter bear interest at the Prime Rate plus five percent (5%) per annum (herein called the "Default Rate"). Borrower shall pay a late charge of five percent (5%) of each

(b) Maturity of the indebtedness evidenced hereby, whether by passage of time, acceleration, declaration or otherwise;

(a) Any default (after the expiration of all applicable cure periods, if any) specified in Section 7(a) hereof or any Event of Default (as defined in the Mortgages hereinafter referred to); or

occur:

3. Default Rate. In the event that there shall

Bank of Chicago. decrease in the aforescribed prime rate of Exchange National concurrently with and in an amount equal to each increase and Regular Rate shall fluctuate hereafter from time to time Rate is not necessarily the lowest rate charged by Lender. The principal balance hereof shall remain outstanding. The Regular the basis of a 360 day year for each day all or any part of the percent (1-1/2%) per annum (the "Prime Rate"), computed daily on National Bank of Chicago as the prime rate plus one-and-one-half the rate of interest announced from time to time by Exchange principal balance hereof prior to default shall bear interest at 2. Interest Rate Prior to Default. The outstanding

or as much thereof as is disbursed hereunder and from time to time and remaining unpaid together with interest at the rates provided for in Sections 2 and 3 hereof.

SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00)

1. Agreement to Pay. FOR VALUE RECEIVED, the undersigned, Brooklyn Bagel Boys, Inc., an Illinois corporation ("Borrower"), promise to pay to the order of Devon Bank, an Illinois banking association (herein called "Lender"), and each successor from time to time owner and holder of this Note (herein generally called the "Holder") in the manner provided for herein and in the Mortgage hereinafter referred to, the principal sum of

\$650,000.00 July 27, 1989

PROMISSORY NOTE

EDS-A66

EXHIBIT A

UNOFFICIAL COPY

8 9 3 5 2 3 8 5

2

(g) All payments on account of the indebtedness evidenced by this Note shall be applied (1) first, to principal of and interest on this Note; (2) second, to interest on the unpaid principal balance hereof at the applicable rates specified in Sections 2 and 3 hereof; and (3) third, the remainder shall be applied to principal.

(f) THIS IS A BALLOON NOTE and on the Maturity Date substantial portions of the principal amount of this Note will remain unpaid by the Monthly Payments above required;

(e) In all events, on July 1, 1997 (herein called the "Maturity Date") the entire unpaid principal balance of this Note then outstanding, together with all unpaid interest accrued thereon, shall be due and payable.

(d) The provisions of Subsection (c) above shall be self-executing without the need for any modification or amendment to this Note; provided that the Borrower, at Holder's request, will execute any modification or amendment reflecting or acknowledging changes in the amount of Monthly Payments effected pursuant to Subsection (c) above;

(c) If the Regular Rate changes then the amount of the Monthly Payment will be adjusted to reflect the change in the amount needed to amortize the principal balance over the fifteen-year period.

(b) On July 1, 1990 (herein called the "Amortization Commencement Date"), and on the first day of each and every month thereafter to and including July 1, 1997, there shall be paid on account of principal and interest at the Regular Rate the sum needed to amortize the principal amount of this Note at the Regular Rate over a period of fifteen (15) years ("Monthly Payment").

(a) On August 1, 1989, and on the first day of the next eleven (11) months, interest only accrued at the Regular Rate hereof shall be paid on the unpaid principal balance hereof then outstanding;

4. Monthly Payments. Principal and interest at the Regular Rate upon this Note shall be paid in monthly payments (herein called "Monthly Payments") as follows:

Installment past due more than five (5) days. Such amounts shall be part of the indebtedness evidenced by this Note and shall be due and payable by Borrower to Lender without notice or demand by Lender.

55052205

85552305

9. Business Loan. Borrower represents that the loan evidenced by this Note is a business loan within the purview and intent of the Illinois Interest Act (Ill. Rev. Stat., ch. 17, para. 6406, §4(1)(c)), transacted solely for the purpose of owning and

8. Prepayment Privilege. This note may be prepaid in whole or in part or anytime without premium or penalty.

(b) In the event that any Event of Default (as defined in the Mortgages) shall occur.

(a) In the event that any payment of principal or interest required hereon shall remain unpaid for more than five (5) days after written notice and failure to pay; or

7. Default and Acceleration. At the election of the Holder, and without notice, the unpaid principal balance hereof, together with accrued interest thereon, shall be at once due and payable at the place herein provided for payment upon the occurrence of any of the following events:

6. Security. This Note is given to evidence an actual loan in the above amount and is the Note referred to in and secured by a Mortgage ("First Mortgage") made by Borrower, as mortgagor, to Lender, as mortgagee, of even date herewith, encumbering certain improved real property located in Cook County, Illinois (herein called the "Premises"); and reference is hereby made to the Mortgage (which is incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a description of the Premises, a statement of the covenants and agreements of Mortgagor under the Mortgage and a statement of the rights, remedies and securities afforded thereby and all other matters contained therein, this Note is additionally secured by a grant of a security interest in certain personal property granted by Brooklyn Bagel Boys, Inc. ("Security Interest") which Security Agreement is incorporated herein by reference and by a Second Mortgage ("Second Mortgage") made by Luis Gorbena and Ernest Gorbena as Mortgagors to Lender as mortgagee of even date herewith, encumbering certain property in Cook County, Illinois, which Second Mortgage is incorporated herein by reference (the First Mortgage, Second Mortgage and Security Agreement sometimes collectively called "Mortgages").

5. Method and Place of Payment. Payments upon this Note shall be made in lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment, and shall be made at such place as the Holder may from time to time in writing appoint, provided that in the absence of such appointment, all payments hereon shall be made at the offices of Lender at 6445 North Western Avenue, Chicago, Illinois 60645.

85352305

16. Compliance with Law. The parties hereto intend and believe that each provision in this Note and the mortgages complies with all applicable local, state and federal laws and judicial decisions. However, if any such provision, is provisions, or if any portion of any provision or provisions, is or are found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that

15. Waivers. All parties hereto severally waive presentment for payment, notice of dishonor, protest and notice of protest.

14. Notices. All notices required or permitted to be given hereunder to Borrower shall be given in the manner and to the place as provided in the mortgages for notices to Mortgagee.

13. Governing Law. This Note shall be governed by the internal laws of the State of Illinois and any action commenced to enforce the provisions hereof shall have as its venue Cook County, Illinois.

12. Captions. The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

11. Time. Time is of the essence of this Note and each of the provisions hereof.

10. Costs of Collection. In the event that this Note is placed in the hands of an attorney-at-law for collection after maturity, or upon default, or in the event that proceedings at law, in equity, or bankruptcy, receivership or other legal proceedings are instituted in connection herewith, or in the event that this Note is placed in the hands of an attorney-at-law to enforce any of the rights or requirements contained herein or in the Mortgage or Assignment or other instruments given as security for, or related to, the indebtedness evidenced hereby, the Borrower hereby agrees to pay all costs of collection or attempting to collect this Note, or protecting or enforcing such rights, including, without limitation, attorneys' fees (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder; all of which shall be secured by the Mortgage and the Assignment.

operating the business of the beneficiaries of the Borrower as contemplated by said Act.

85352385

provided that nothing herein contained shall affect or impair (A) the existence of the indebtedness evidenced hereby, or (B) the lien and security interests created by the Mortgage, the assignment or any other instrument securing the indebtedness evidenced

(c) In case of default in the payment of this Note, or any installment thereof, the remedy of the Holder shall be (1) by foreclosure of the Mortgages, (2) by enforcement of or realization upon any other property and security given for such indebtedness, or (3) by action to enforce the personal liability of any guarantor or any co-maker hereof;

(b) No personal liability shall be asserted or be enforceable against Borrower personally or against its successors or assigns because of or in respect of this Note, or the making, issue or transfer thereof, and such liability it being expressly waived by each Taker and Holder hereof; and

(a) This Note is payable only out of the property specifically described in the Mortgage securing the payment hereof, by the enforcement of the provisions contained in the Mortgage and out of other property, security and guarantees given for the indebtedness evidenced hereby;

17. Exemption of Borrower. It is intended hereby, and by acceptance hereof the Holder agrees that:

the remainder of this Note and the Mortgage and Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest or Maker and Lender under the remainder of this Note and the Mortgage and Assignment shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration pursuant to Paragraph 7 or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be disbursed hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provisions hereof or of the Mortgages at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may be applicable hereof, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and it from any circumstance the holder hereof shall ever receive an interest or default interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest or default interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest or default interest.

UNOFFICIAL COPY

8 9 3 5 2 3 8 5

88352305

Property of Cook County Clerk's Office

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST:

BROOKLYN BAGEL BOYS, INC.

Executed in Chicago, Illinois as of the day and year first written above.

hereby, or the enforceability hereof or the rights of holder to enforce the same, or (c) the liability or obligation of any guarantor or other person who by separate instrument shall be or become liable upon any of the indebtedness evidenced hereby.

55252005

then and in any such event, the entire principal balance disbursed hereunder and all indebtedness secured by the mortgages shall thereafter bear interest at the Prime Rate plus five percent (5%) per annum (herein called the "Default Rate").

(b) Maturity of the indebtedness evidenced hereby, whether by passage of time, acceleration, declaration or otherwise;

(a) Any default (after the expiration of all applicable cure periods, if any) specified in Section 7(a) hereof or any Event of Default (as defined in the Mortgages hereinafter referred to); or

3. Default Rate. In the event that there shall occur:

2. Interest Rate prior to Default. The outstanding principal balance hereof prior to default shall bear interest at the rate of interest announced from time to time by Exchange National Bank of Chicago as its prime rate plus one-and-one-half percent (1-1/2%) per annum (the "Prime Rate"), computed daily on the basis of a 360 day year for each day all or any part of the principal balance hereof shall remain outstanding. The Regular Rate is not necessarily the lowest rate charged by Lender. Regular Rate shall fluctuate hereafter from time to time concurrently with and in an amount equal to each increase and decrease in the aforescribed prime rate of Exchange National Bank of Chicago.

or as much thereof as is disbursed hereunder and from time to time and remaining unpaid together with interest at the rates provided for in Sections 2 and 3 hereof.

NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000.00)

1. Agreement to Pay. FOR VALUE RECEIVED, the undersigned, Devon Bank, not personally, but solely as Trustee under Trust Agreement dated June 27, 1989 and known as Trust No. 5567-3, ("Borrower"), promise to pay to the order of Devon Bank, an Illinois banking association (herein called "Lender"), and each successive from time to time owner and holder of this Note (herein generally called the "Holder") in the manner provided for herein and in the Mortgage hereinafter referred to, the principal sum of

\$950,000.00 July 27, 1989

PROMISSORY NOTE

EXHIBIT 8

85552335

(g) All payments on account of the indebtedness evidenced by this Note shall be applied (1) first, to amounts payable to the Holder under the Mortgage other than principal of and interest on this Note; (ii) second, to interest on the unpaid principal balance hereof at the applicable rates specified in Sections 2 and 3 hereof; and (iii) third, the remainder shall be applied to principal.

(f) THIS IS A BALLOON NOTE and on the Maturity Date substantial portions of the principal amount of this Note will remain unpaid by the Monthly Payments above required;

(e) In all events, on July 1, 1997 (herein called the "Maturity Date") the entire unpaid principal balance of this Note then outstanding, together with all unpaid interest accrued thereon, shall be due and payable.

(d) The provisions of Subsection (c) above shall be self-executing without the need for any modification or amendment to this Note; provided that the Borrower, at Holder's request, will execute any modification or amendment reflecting or acknowledging changes in the amount of Monthly Payments effected pursuant to Subsection (c) above;

(c) If the Regular Rate changes then the amount of the Monthly Payment will be adjusted to reflect the change in the amount needed to amortize the Principal Balance over the fifteen-year period.

(b) On July 1, 1990 (herein called the "Amortization Commencement Date"), and on the first day of each and every month thereafter to and including July 1, 1997, there shall be paid on account of principal and interest at the Regular Rate the sum needed to amortize the principal amount of this Note at the Regular Rate over a period of fifteen (15) years ("Monthly Payment").

(a) On August 1, 1989, and on the first day of the next eleven (11) months, interest only accrued at the Regular Rate hereof shall be paid on the unpaid principal balance hereof then outstanding;

4. Monthly Payments. Principal and interest at the Regular Rate upon this Note shall be paid in monthly payments (herein called "Monthly Payments") as follows:

Borrower shall pay a late charge of five percent (5%) of each installment past due more than five (5) days. Such amounts shall be part of the indebtedness evidenced by this Note and shall be due and payable by Borrower to Lender without notice or demand by Lender.

0000000000

9. Business Loan. Borrower represents that the loan evidenced by this Note is a business loan within the purview and intent of the Illinois Interest Act (Ill. Rev. Stat., ch. 17, para. 6406, §4(1)(c)), transacted solely for the purpose of owning and

8. Prepayment Privilege. This note may be prepaid in whole or in part or anytime without premium or penalty.

(b) In the event that any event of default (as defined in the Mortgages) shall occur.

(a) In the event that any payment of principal or interest required hereon shall remain unpaid for more than five (5) days after written notice and failure to pay; or

7. Default and Acceleration. At the election of the Holder, and without notice, the unpaid principal balance hereof, together with accrued interest thereon, shall be at once due and payable at the place herein provided for payment upon the occurrence of any of the following events:

6. Security. This Note is given to evidence an actual loan in the above amount and is the Note referred to in and secured by a Mortgage ("First Mortgage") made by Borrower, as mortgagor, to Lender, as mortgagee, of even date herewith, encumbering certain improved real property located in Cook County, Illinois (herein called the "Premises"); and reference is hereby made to the Mortgage (which is incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a description of the Premises, a statement of the covenants and agreements of Mortgagor under the Mortgage and a statement of the rights, remedies and securities afforded thereby and all other matters contained therein, this Note is additionally secured by a grant of a security interest in certain personal property granted by Brooklyn Bagel Boys, Inc. ("Security Interest") which Security Agreement is incorporated herein by reference and by a Second Mortgage ("Second Mortgage") made by Luis Gordena and Ernesto Gordena as Mortgagors to Lender as mortgages of even date herewith, encumbering certain property in Cook County, Illinois, which Second Mortgage is incorporated herein by reference (the First Mortgage, Second Mortgage and Security Agreement sometimes collectively called "Mortgages").

5. Method and Place of Payment. Payments upon this Note shall be made in lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment, and shall be made at such place as the Holder may from time to time in writing appoint, provided that in the absence of such appointment, all payments hereon shall be made at the offices of Lender at 6445 North Western Avenue, Chicago, Illinois 60645.

0000000000

16. Compliance with Law. The parties hereto intend and believe that each provision in this Note and the mortgages and all applicable local, state and federal laws and judicial decisions. However, if any such provision or provisions, or if any portion of any provision or provisions, is or are found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that

15. Waivers. All parties hereto severally waive presentment for payment, notice of dishonor, protest and notice of protest.

14. Notices. All notices required or permitted to be given hereunder to Borrower shall be given in the manner and to the place as provided in the mortgages for notices to Mortgagor.

13. Governing Law. This Note shall be governed by the internal laws of the State of Illinois and any action commenced to enforce the provisions hereof shall have as its venue Cook County, Illinois.

12. Captions. The captions to the Sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

11. Time. Time is of the essence of this Note and each of the provisions hereof.

10. Costs of Collection. In the event that this Note is placed in the hands of an attorney-at-law for collection after maturity, or upon default, or in the event that proceedings at law, in equity, or bankruptcy, receivership or other legal proceedings are instituted in connection herewith, or in the event that this Note is placed in the hands of an attorney-at-law to enforce any of the rights or requirements contained herein or in the mortgage or Assignment or other instruments given as security for, or related to, the indebtedness evidenced hereby, the Borrower hereby agrees to pay all reasonable costs of collection or attempting to collect this Note, or protecting or enforcing such rights, including, without limitation, attorneys' fees (whether or not suit is brought), in addition to all principal interest and other amounts payable hereunder; all of which shall be secured by the mortgage and the Assignment.

operating the business of the beneficiaries of the Borrower as contemplated by said Act.

855322335

provided that nothing herein contained shall affect or impair (A) the existence of the indebtedness evidenced hereby, or (B) the lien and security interests created by the Mortgage, the Assign- ment or any other instrument securing the indebtedness evidenced

(c) In case of default in the payment of this Note, or any installment thereof, the remedy of the Holder shall be (1) by foreclosure of the Mortgage, (11) by enforcement of or realization upon any other property and security given for such indebtedness, or (1V) by action to enforce the personal liability of any guarantor or any co-maker hereof;

(b) No personal liability shall be asserted or be enforceable against Borrower personally or against its successors or assigns because of or in respect of this Note, or the making, issue or transfer thereof, all such liability it any being expressly waived by each maker and Holder hereof; and

(a) This Note is payable only out of the property specifically described in the Mortgage securing the payment hereof, by the enforcement of the provisions contained in the Mortgage and out of other property, security and guarantees given for the indebtedness evidenced hereby;

17. ~~Qualification of Borrower.~~ It is intended hereby, and by acceptance hereof the Holder agrees that:

the remainder of this Note and the Mortgage and Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest or Maker and Lender under the remainder of this Note and the Mortgage and Assignment shall continue in full force and effect. All agree- ments herein are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration pursuant to Paragraph 7 or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be disbursed hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provisions hereof or of the Mortgages at the time performance of such provision shall be required by law which a court of competent jurisdiction may be applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and it from any circumstance the holder hereof shall ever receive an interest or Default interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest or Default interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest or Default interest.

58325335

It is expressly understood and agreed by and between the parties hereto, appearing herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form reporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and the instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the DEVON BANK IN CHICAGO or any of the beneficiaries under said Trust Agreement, on account of the instrument or on account of any representation covenant, undertaking, warranty or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released. The Trustee makes no maintenance of the chattels herein described, if any.

EXCULPATORY RIDER ATTACHED
 DEVON BANK

ATTEST:
 BY: [Signature]
 Name: CAITHERINE CIOLINO
 Title: TRUST ADMINISTRATOR
 BY: [Signature]
 Name: PETER A. MAY
 Title: TRUST OFFICER

DEVON BANK, not personally, but solely as Trustee under Trust No. 5567-3, as aforesaid

Executed in Chicago, Illinois as of the day and year first written above.
 hereby, or the enforceability hereof or the rights of Holder to enforce the same, or (c) the liability or obligation of any guarantor or other person who by separate instrument shall be or become liable upon any of the indebtedness evidenced hereby.