

# UNOFFICIAL COPY

96612659

Prepared by:  
Stephen E. Hall, Esq.  
Jones, Day, Reavis & Pogue  
77 West Wacker  
Chicago, Illinois 60601-1692

Mail to:  
Paul A. Smith, Esq.  
Holleb & Coff  
55 East Monroe Street  
Chicago, Illinois 60603-5896

. DEPT-01 RECORDING \$51.00  
. T#0012 TRAN 1670 08/09/96 14:43:00  
. #6051 + CG \*-96-612659  
. COOK COUNTY RECORDER

## COLLATERAL ASSIGNMENT

THIS ASSIGNMENT (the "Assignment") is dated as of July 1, 1996 by CHECKERS DRIVE IN RESTAURANTS, INC., a Delaware corporation ("Assignor") and the ultimate parent of Checkers of Chicago, Inc. ("Chicago"), which is the general partner of North Side Double Drive-Thru, L.P., an Illinois limited partnership (together with Chicago, the "Borrowers") in favor of DONALD BURNES (the "Lender").

## WITNESSETH:

WHEREAS, Assignor prior to July 1, 1996 was owed in excess of \$2 million by Chicago Double Drive-Thru, Inc. ("CDDT") pursuant to that certain Construction Funding Agreement, dated November 23, 1993 (the "Original Loan"). The Original Loan was secured by a security interest in certain real and personal property assets of CDDT, pursuant to certain instruments, documents, and agreements as described and set forth in Exhibit A attached hereto and made a part hereof (collectively, the "Security Documents"). On July 1, 1996, pursuant to that certain Purchase Agreement between CDDT and Chicago, the obligations of CDDT to Assignor under the Original Loan were assumed by Chicago, and continue to be secured by the Security Documents;

WHEREAS, the Borrowers have executed and delivered to the Lender that certain Secured Promissory Note, dated July 1, 1996 (the "Note") in the original principal amount of One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000) (the "Loan") payable to the Lender; and

WHEREAS, the Lender is willing to make the Loan pursuant to the Note provided that, among other things, the Assignor executes and delivers this Assignment in favor of Assignee.

NOW, THEREFORE, to induce the Lender to execute and deliver the Note and in consideration of the benefits accruing to the Assignor, and for other good and valuable

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consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Assignor hereby covenants and agrees with the Lender as follows:

1. Assignment. Assignor hereby assigns, hypothecates, pledges and grants to the Lender a continuing security interest in all of Assignor's right, title and interest in and to the Security Documents.

2. Obligations Absolute. Anything herein to the contrary notwithstanding:

(a) Chicago and its assigns shall remain liable under the Security Documents to the full extent set forth therein, and shall perform all of its duties and obligations thereunder to the same extent as if this Assignment had not been executed;

(b) the exercise by the Lender of any of its rights hereunder or under the Note or any of the Related Documents (as defined in the Note) shall not release Chicago and its assigns from any of its duties or obligations under the Security Documents; and

(c) the Lender shall have no obligation or liability under the Security Documents by reason of this Assignment, nor shall the Lender be obligated to perform any of the obligations or duties of Assignor thereunder.

3. Affirmative Covenants. Assignor shall, at its own expense:

(a) perform and observe in all material respects each of the terms and provisions of the Security Documents to be performed or observed by it, maintain the Security Documents in full force and effect, enforce the Security Documents in accordance with their terms, and take all such action to such end as the Lender may from time to time reasonably request, including the execution of any and all documents, instruments and agreements that Lender may deem necessary from time to time to better secure its interest hereunder;

(b) furnish to the Lender promptly upon receipt thereof copies of all material notices, requests and other documents received by Assignor from time to time under or pursuant to the Security Documents;

(c) furnish to the Lender such information and reports regarding the Security Documents as the Lender may from time to time reasonably request; and

(d) upon specific request of the Lender make such demands and requests for information and reports or for action as Assignor is entitled to make thereunder.

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4. Negative Covenants. Assignor shall not, without the prior written consent of the Lender:

(a) cancel or terminate the Security Documents or take such other action as may result in the cancellation or termination thereof;

(b) amend or otherwise modify the Security Documents or give any consent, waiver or approval thereunder, except to the extent any such amendments, modifications, consents, waivers or approvals could not reasonably be expected to, individually or in the aggregate, materially adversely affect Assignor or the Lender;

(c) waive any default under or breach of the Security Documents, except to the extent any such waiver could not reasonably be expected to, either individually or in the aggregate, materially adversely affect the rights of Assignor or the Lender thereunder or therein; or

(d) take any other action in connection with the Security Documents which could reasonably be expected to materially impair the value of the interest or rights of Assignor or which could reasonably be expected to materially impair the interest or rights of the Lender thereunder or therein.

5. Event of Default. Upon an Event of Default (as such term is defined in the Note), the Lender may exercise any and all rights and remedies of Assignor under or in connection with the Security Documents.

6. Termination: Assignment Absolute. This Assignment shall remain in full force and effect until payment in full is made to the Lender of all liabilities (as defined in the Note).

7. Waivers and Amendments. No term or provision of this Assignment may be waived, amended, supplemented or otherwise modified at any time except by a written instrument executed by the parties hereto and consented to by the Lender.

8. Successors and Assigns. This Assignment shall be binding upon Assignor and its successors and assigns and inure to the benefit of the Lender and its successors and assigns, except that Assignor may not assign or transfer any of its rights or obligations under this Assignment without the prior written consent of the Lender.

9. Notices, Etc. All notices and other communications provided to any party hereto under this Assignment shall be in writing (including telex or facsimile) and addressed or delivered to such party at its address set forth herein:

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If to Lender: Mr. Donald Burnes  
3625 Ari Lane  
Glenview, Illinois 60025  
Telephone No.:  
Facsimile No.:

If to Assignor: Checkers Drive In Restaurants, Inc.  
c/o Jones, Day, Reavis & Pogue  
77 West Wacker  
Chicago, Illinois 60601-1692  
Attention: Timothy R. Pohl, Esq.  
Telephone No.: (312) 269-4394  
Facsimile No.: (312) 782-8585

With a copy to: Holleb & Coff  
55 East Monroe Street, Suite 4100  
Chicago, Illinois 60603  
Attention: Theodore L. Koenig, Esq.  
Telephone No.: (312) 807-4600  
Facsimile No.: (312) 807-3900

or at such other address as may be designated by such party from time to time in a notice complying with the terms of this Section. Any notice, if mailed and properly addressed with postage prepaid, shall be deemed given three (3) business days after being sent; any notice, if transmitted by telex or facsimile, shall be deemed given when transmitted (answerback confirmed in the case of telexes and receipt confirmed in the case of facsimiles).

10. Governing Law. This Assignment shall be a contract made under and governed by, and construed in accordance with, the laws of the State of Illinois, without regard to conflict of laws principles. All obligations of the Assignor and rights of the Lender expressed herein shall be in addition to and not in limitation of those provided by applicable law.

11. SUBMISSION TO JURISDICTION; WAIVER OF VENUE. THE ASSIGNOR: (A) HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY ILLINOIS STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS ASSIGNMENT, AND THE ASSIGNOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH ILLINOIS STATE OR FEDERAL COURT; AND (B) AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST THE LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY OF THE LENDER, ARISING OUT OF OR RELATING TO THIS ASSIGNMENT, IN ANY COURT OTHER THAN AS HEREINABOVE SPECIFIED IN THIS SECTION. THE ASSIGNOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF

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VENUE IN ANY ACTION OR PROCEEDING (WHETHER BROUGHT BY THE ASSIGNOR, THE LENDER, OR OTHERWISE) IN ANY COURT HEREINABOVE SPECIFIED IN THIS SECTION AS WELL AS ANY RIGHT THEY MAY NOW OR HEREAFTER HAVE TO REMOVE ANY SUCH ACTION OR PROCEEDING, ONCE COMMENCED, TO ANOTHER COURT ON THE GROUNDS OF FORUM NON CONVENIENS OR OTHERWISE. THE ASSIGNOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

12. WAIVER OF JURY TRIAL. THE ASSIGNOR AND THE LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS ASSIGNMENT OR UNDER ANY OTHER DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREE THAT ANY SUCH ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY; THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER ENTERING INTO THIS ASSIGNMENT.

13. Severability. In case any provision in or obligation under this Assignment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

14. Enforcement Action. If any action is brought by Lender to enforce any provision of this Assignment, Lender shall be entitled to recover from Assignor, on demand, all reasonable out-of-pocket costs and expenses, including, without limitation, court costs and reasonable attorneys' fees. The provisions of this Section shall survive any termination of this Assignment.

15. Headings Descriptive. The headings of the several sections of this Assignment are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Assignment.

16. Fax Signatures. Notwithstanding the laws of any jurisdiction in which this Assignment is executed or delivered, a telefacsimile signature shall for all purposes be deemed an original and shall bind the signor as if such telefacsimile were an original.

17. Counterparts. This Assignment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

(Signature Page Follows)

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IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed and delivered as of the date first written above.

CHECKERS DRIVE IN RESTAURANTS, INC.,  
a Delaware corporation

By: Michael Dew  
Name: Michael Dew  
Title: Vice-President

Donald Burnes  
Donald Burnes

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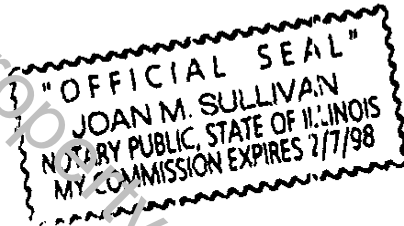
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STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF COOK     )

The foregoing Collateral Assignment was acknowledged before me this 1st day of July, 1996, by Michael Dew, a Vice President of Checkers Drive In Restaurants, Inc, a Delaware corporation, on behalf of such corporation.



  
Notary Public

My commission expires: 2/4/98

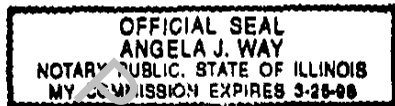
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STATE OF ILLINOIS     )  
                              )  
COUNTY OF COOK        )     SS

The foregoing Collateral Assignment was acknowledged before me this 6th day of August, 1996, by Donald Burnes.



Angela J. Way  
Notary Public

My commission expires: 3-25-98

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## CONSENT

Each of the undersigned, hereby consent to the assignment and pledge by Assignor of its rights, pursuant to the terms of the foregoing Collateral Assignment, in, to and under the Security Documents (as defined therein) and acknowledges that after an Event of Default by the Borrowers the Lender may exercise the rights of the Assignor thereunder in the place and stead of Assignor, subject to the terms and conditions of the Security Documents. Each of the undersigned further agrees and acknowledges that the Lender shall not be deemed to have assumed any of the obligations or liabilities of Assignor under the Security Documents by reason of the foregoing Collateral Assignment; provided that any exercise by the Lender of Assignor's rights under the Security Documents shall be subject to satisfaction of the conditions and obligations related thereto.

CHECKERS DRIVE IN RESTAURANTS, INC.,  
a Delaware corporation

By: Michael Dew  
Name: Mike Dew  
Title: Vice President

CHECKERS OF CHICAGO, INC.,  
a Delaware corporation

By: Michael Dew  
Name: Mike Dew  
Title: Vice President

NORTH SIDE DOUBLE DRIVE-THRU, L.P.

By: Checkers of Chicago, Inc., its  
general partner

By: Michael Dew  
Name: Mike Dew  
Title: Vice - President

TOP FORM PROPERTY CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

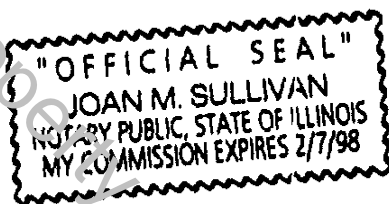
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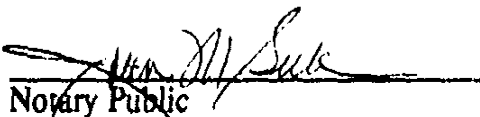
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STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK       )     SS

The foregoing Consent to Collateral Assignment was acknowledged before me this 1st day of July, 1996, by Michael Dew, a Vice President of Checkers Drive In Restaurants, Inc, a Delaware corporation, on behalf of such corporation.



  
Notary Public

My commission expires: 2/7/98

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STATE OF ILLINOIS

COUNTY OF COOK

SS

The foregoing Consent to Collateral Assignment was acknowledged before me this 1st day of July, 1996, by Michael Dew, a Vice President of Checkers of Chicago, Inc, a Delaware corporation, on behalf of such corporation.



*Joan M. Sullivan*  
Notary Public

My commission expires: 2/7/98

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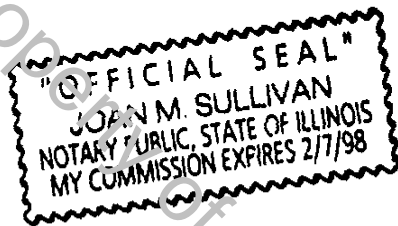
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STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK     )     SS

The foregoing Consent to Collateral Assignment was acknowledged before me this 1st day of July, 1996, by Michael Dew, a Vice President of Checkers of Chicago, Inc, a Delaware corporation, on behalf of such corporation as the general partner of North Side Double Drive-Thru, L.P., an Illinois limited partnership.



Joan M. Sullivan  
Notary Public

My commission expires: 2/7/98

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## CONSENT

Each of the undersigned, hereby consent to the assignment and pledge by Assignor of its rights, pursuant to the terms of the foregoing Collateral Assignment, in, to and under the Security Documents (as defined therein) and acknowledges that after an Event of Default by the Borrowers the Lender may exercise the rights of the Assignor thereunder in the place and stead of Assignor, subject to the terms and conditions of the Security Documents. Each of the undersigned further agrees and acknowledges that the Lender shall not be deemed to have assumed any of the obligations or liabilities of Assignor under the Security Documents by reason of the foregoing Collateral Assignment; provided that any exercise by the Lender of Assignor's rights under the Security Documents shall be subject to satisfaction of the conditions and obligations related thereto.

CHECKERS DRIVE IN RESTAURANTS, INC.,  
a Delaware corporation

By: [Signature]  
Name: Mike Dew  
Title: Vice-President

CHECKERS OF CHICAGO, INC.,  
a Delaware corporation

By: [Signature]  
Name: Mike Dew  
Title: Vice-President

NORTH SIDE DOUBLE DRIVE-THRU, L.P.

By: Checkers of Chicago, Inc., its  
general partner

By: [Signature]  
Name: Mike Dew  
Title: Vice-President

TOP FORM PROPERTY CORP.

By: [Signature]  
Name: John D. Terzakis  
Title: President

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## ACKNOWLEDGEMENTS

STATE OF ILLINOIS

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) SS

COUNTY OF DU PAGE

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I, Roxanne E. Gardner a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that John D. Terpak, personally known to me to be the \_\_\_\_\_ President of Top Form Property Corp., whose name is subscribed to the foregoing instrument, appeared before me this day in person acknowledged that he signed and delivered the said instrument of writing as \_\_\_\_\_ President of said corporation and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1<sup>st</sup> day of August, 1996.

Roxanne E. Gardner  
Notary Public

My Commission Expires:



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## EXHIBIT A

### Description of Security Documents

1. Real Estate Mortgage and Security Agreement for the Halsted Street, Chicago, Illinois site dated as of November 24, 1993, by Chicago Double Drive -Thru, Inc. ("CDDT") in favor of Assignor, and recorded with the Cook County Recorder on May 11, 1994, as Document No. 94-403544.
2. Delegation and Assumption Agreement dated as of July 1, 1996, among Borrowers and Assignor.
3. UCC-1 Financing Statement naming CDDT, as debtor, and Assignor, as secured party, and filed with the Illinois Secretary of State on May 2, 1994, as Document No. 3253346.
4. UCC-1 Financing Statement naming CDDT, as debtor, and Assignor, as secured party, and filed with the Cook County Recorder on April 29, 1994, as Document No. 94 U 06721.
5. Assignment of Contracts, Licenses, Permits and Other Miscellaneous Documents for the Halsted Street, Chicago, Illinois Site dated as of November 24, 1993, by and between CDDT and Assignor.

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STREET ADDRESS: 6646 S. HALSTED

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 20-20-231-034-0000, -035, -036, -037, -038, & -039

**LEGAL DESCRIPTION:**

LOTS 71, 72, 73, 74, 75 AND 76 IN WHEELER'S SUBDIVISION OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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