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**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING
(ILLINOIS)**

made from

**EQUISTAR SCHUMBERG COMPANY, L.L.C.,
"Mortgagor"**

to

**BANKERS TRUST COMPANY, as Agent,
"Mortgagee"**

Date: As of September 24, 1996

PREPARED BY, RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

O'Melveny & Myers LLP
153 East 53rd Street
New York, New York 10022-4611
Attention: Malcolm M. Kratzer, Esq.
File #045,710-644

TAX I.D. #: 07-12-200-011

NOTICE: If this Mortgage or the Notes which this Mortgage secures are in your possession, **DO NOT DESTROY THEM.** State law may require presentation of this Mortgage and/or the Notes in order to obtain a termination or release of this Mortgage upon satisfaction of the indebtedness secured hereby. The termination or release must be recorded in the city, town, county or parish records for the jurisdiction in which the land described in the Exhibit A is located.

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MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (ILLINOIS)

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (ILLINOIS) (this "Mortgage") is dated as of September 24, 1996, from EQUISTAR SCHAUMBURG COMPANY, L.L.C., a Delaware limited liability company ("Mortgagor"), whose address is c/o CapStar Hotel Company, 1010 Wisconsin Avenue, N.W., Washington, D.C. 20007, to BANKERS TRUST COMPANY, a New York banking corporation, as Agent (in such capacity, "Agent") for the Lenders listed in the Credit Agreement (as hereinafter defined), having an address at 280 Park Avenue, New York, New York 10017 (Agent, together with its successors and assigns, "Mortgagee").

All capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to such terms in the Credit Agreement.

MORTGAGOR IS THE OWNER OF THE RECORD INTEREST IN THE PARCELS OF LAND AS INDICATED IN EXHIBIT A HERETO.

THIS MORTGAGE COVERS GOODS WHICH ARE OR ARE TO BECOME AFFIXED TO OR FIXTURES ON THE LAND DESCRIBED IN EXHIBIT A HERETO. THIS MORTGAGE IS A FIXTURE FILING AND IS TO BE INDEXED, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS OF EACH COUNTY (OR, TO THE EXTENT SIMILAR RECORDS ARE MAINTAINED AT THE CITY OR TOWN LEVEL INSTEAD OF THE COUNTY LEVEL, EACH SUCH CITY OR TOWN) IN WHICH SAID LAND OR ANY PORTION THEREOF IS LOCATED. THIS INSTRUMENT IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and the mutual covenants herein contained, and in order to secure the Obligations (as hereinafter defined), MORTGAGOR HEREBY COVENANTS AND AGREES WITH AND REPRESENTS AND WARRANTS TO MORTGAGEE AS FOLLOWS:

A. GRANTING CLAUSES. Mortgagor hereby:

(i) grants, bargains, sells, assigns, pledges, transfers, mortgages and conveys, as security for the Obligations, those portions of the following described Mortgaged Property (as hereinafter defined) that constitute real property under the laws of the State wherein located to Mortgagee, pursuant to this Mortgage and Applicable Law, but subject to the rights of Mortgagee under the Assignment of Rents (as hereinafter defined), the Security Agreement (as hereinafter defined) and the assignment made in paragraph (iii) below, and subject to the Permitted Encumbrances, TO HAVE AND TO HOLD such portions of the Mortgaged Property, to Mortgagee and its successors and assigns forever, subject to all of the terms, conditions, covenants and agreements herein set forth, for the security and benefit of Mortgagee and its successors and assigns; and

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(ii) grants, as security for the Obligations, a security interest to Mortgagee in that portion of the Mortgaged Property constituting fixtures or personal property; and

(iii) assigns and transfers to Mortgagee, as security for the Obligations, all of the Leases (as defined in Exhibit B) and all of the Rents (as defined in Exhibit B) and other benefits derived from any Leases, whether now existing or hereafter created, all subject to the Assignment of Rents.

All of Mortgagor's right, title and interest in and to the following described property now or hereafter located upon the Premises (as hereinafter defined), or appurtenant thereto, or used or to be used in connection with the present or future use, construction upon, leasing, sale, operation or occupancy of the Premises is herein collectively referred to as the "Mortgaged Property":

GRANTING CLAUSE FIRST

Land

1. The parcel of land, located at 1725 East Algonquin Road in the City of Schaumburg, County of Cook and State of Illinois, as more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all strips and gores within or adjoining such property, all estate, right, title, interest, claim or demand whatsoever of Mortgagor in the streets, roads, sidewalks, alleys, and ways adjacent thereto (whether or not vacated and whether public or private and whether open or proposed), all vaults or chutes adjoining such land, all of the tenements, hereditaments, easements, reciprocal easement agreements, rights pursuant to any trackage agreement, rights to the use of common drive entries, rights-of-way and other rights, privileges and appurtenances thereunto belonging or in any way pertaining thereto, all reversions remainders, dower and right of dower, curtesy and right of curtesy, all of the air space and right to use said air space above such property, all transferable development rights arising therefrom or transferred thereto, all water and water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and shares of stock evidencing the same, all mineral, mining, gravel, oil, gas, hydrocarbon substances and other rights to produce or share in the production of anything related to such property, all drainage, crop, timber, agricultural, and horticultural rights with respect to such property, and all other appurtenances appurtenant to such property, including without limitation, any now or hereafter belonging or in anywise appertaining thereto, and all claims or demands of Mortgagor, either at law or in equity, in possession or expectancy, now or hereafter acquired, of, in or to the same (all of the foregoing being referred to herein, collectively, as the "Land");

GRANTING CLAUSE SECOND

Improvements

2. The Improvements described in Exhibit B attached hereto and by this reference incorporated herein. The Land and the Improvements are referred to herein, collectively, as the "Premises";

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GRANTING CLAUSE THIRD Rents, Leases and Lease Provisions

3. The Rents, Leases and Lease Provisions described in Exhibit B attached hereto and by this reference incorporated herein, subject to the terms and provisions of the Assignment of Rents and Leases dated as of even date herewith by Mortgagor, as assignor, for the benefit of Mortgagee, as assignee, as the same may hereafter be amended, modified, supplemented, restated or renewed (such Assignment of Rents and Leases, together with any and all amendments, modifications, supplements, restatements, extensions, renewals or replacements thereof are collectively referred to herein as the "Assignment of Rents") and that certain Pledge and Security Agreement dated as of even date herewith from Mortgagor and the other grantors listed on the signature pages thereof, as debtors, to Mortgagee, as secured party, as the same may hereafter be amended, modified, supplemented, restated or renewed (such Pledge and Security Agreement, together with any and all amendments, modifications, supplements, restatements, extensions, renewals or replacements thereof are collectively referred to herein as the "Security Agreement");

GRANTING CLAUSE FOURTH Various Collateral

4. The Equipment, Material, Specifications, Security Deposits, Financing Commitments, Inventory, Negotiable Documents of Title, Rolling Stock, Payment Rights, Accounts, Related Contracts, Assigned Agreements, Deposit Accounts, Deposit Account Collateral, Intellectual Property and General Intangibles described in Exhibit B attached hereto and by this reference incorporated herein and any other property described in Exhibit B and not described in any other Granting Clause (collectively, the "Various Collateral"), subject to the terms and provisions of the Security Agreement;

GRANTING CLAUSE FIFTH Refunds

5. The Refunds described in Exhibit B attached hereto and by this reference incorporated herein, subject to the terms and provisions of the Security Agreement;

GRANTING CLAUSE SIXTH Insurance/Condemnation Proceeds

6. The Insurance/Condemnation Proceeds described in Exhibit B attached hereto and by this reference incorporated herein, subject to the terms and provisions of the Security Agreement and Section 6.11 of the Credit Agreement;

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GRANTING CLAUSE SEVENTH Records And Permits

7. The Records and Permits described in Exhibit B attached hereto and by this reference incorporated herein, subject to the terms and provisions of the Security Agreement;

GRANTING CLAUSE EIGHTH Options

8. The Options described in Exhibit B attached hereto and by this reference incorporated herein, subject to the terms and provisions of the Security Agreement;

GRANTING CLAUSE NINTH Proceeding Rights

9. The Proceeding Rights described in Exhibit B attached hereto and by this reference incorporated herein, subject to the terms and provisions of the Security Agreement;

GRANTING CLAUSE TENTH Encumbrance Rights

10. The Encumbrance Rights described in Exhibit B attached hereto and by this reference incorporated herein, subject to the terms and provisions of the Security Agreement;

GRANTING CLAUSE ELEVENTH Greater Estate Rights

11. The Greater Estate Rights described in Exhibit B attached hereto and by this reference incorporated herein, subject to the terms and provisions of the Security Agreement;

GRANTING CLAUSE TWELFTH After Acquired Property

12. All property hereafter acquired or constructed by Mortgagor of the type described in the foregoing Granting Clauses and located upon the Premises, or appurtenant thereto, or used or to be used in connection with the present or future use, construction upon, leasing, sale, operation or occupancy of the Premises, which shall forthwith, upon acquisition or construction thereof by Mortgagor and without any act or deed by Mortgagor or Mortgagee, become subject to the lien and security interest of this Mortgage as if such property were now owned by Mortgagor and were specifically described in this Mortgage and were specifically conveyed or encumbered hereby; and

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GRANTING CLAUSE THIRTEENTH Accessions And Proceeds

13. All accessions, additions, replacements, substitutions, renewals or attachments to, and proceeds of, any of the foregoing,

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and its successors and assigns, for the uses and purposes set forth herein, forever.

B. OBLIGATIONS.

This Mortgage is given to secure ratably and equally the payment and performance of the following obligations (collectively referred to as the "Obligations"):

1. Payment of and performance of (a) all "Guaranteed Obligations" (the "Guaranteed Obligations") of Mortgagor under, and as defined in, that certain Affiliate Guaranty dated as of even date herewith (the "Affiliate Guaranty") from Mortgagor and the other Subsidiaries of CapStar Management Company, L.P. ("Borrower") in favor of and for the benefit of Mortgagee, pursuant to which Mortgagor is unconditionally and irrevocably, as a primary obligor and not merely as a surety, guarantying the due and punctual payment in full of the "Obligations" of Borrower under and as defined in that certain Senior Secured Revolving Credit Agreement dated as of even date herewith by and among Borrower, as borrower, the financial institutions listed on the signature pages thereof (each individually referred to herein as a "Lender" and collectively as "Lenders") and Mortgagee, and any and all amendments, modifications, supplements, restatements, extensions, renewals or replacements thereof (such Senior Secured Revolving Credit Agreement and any and all amendments, modifications, supplements, restatements, extensions, renewals or replacements thereof are collectively referred to herein as the "Credit Agreement"); and (b) all obligations of Mortgagor under, with respect to or arising in connection with this Mortgage, including, without limitation, all obligations to Mortgagee for fees, costs and expenses (including attorneys' fees and disbursements) as provided therein and herein;

2. Payment and performance of all obligations of Mortgagor to the Lenders and/or Mortgagee for fees, costs and expenses required to be paid by Mortgagor under the other Loan Documents including, without limitation fees, costs and expenses (including attorneys' fees and disbursements), all becoming due as provided therein;

3. Payment of all sums advanced by the Lenders or Mortgagee in accordance with the provisions of this Mortgage or the other Loan Documents

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to protect the Mortgaged Property, with interest thereon at the rate specified in Section 2.2.E of the Credit Agreement (the "Agreed Rate");

4. Payment of all sums advanced and costs and expenses incurred by the Lenders or Mortgagee in accordance with the terms of the Loan Documents in connection with the Obligations or any part thereof, any renewal, extension or change of or substitution for the Obligations or any part thereof, or the acquisition or perfection of the security therefor, whether such advances, costs and expenses were made or incurred at the request of Borrower, Mortgagor, Mortgagee or any Lender;

5. Payment of all other sums, with interest thereon, which may hereafter be loaned to Mortgagor, or its successors or assigns, by the Lenders or Mortgagee, or their respective successors or assigns, or by the holder of any of the Notes, pursuant to an agreement that recites that the repayment of such sums and Mortgagor's other obligations under such agreement are secured by this Mortgage;

6. Payment of all sums with respect to the Obligations that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a), including, without limitation, interest, fees and other charges that, but for the filing of a petition in bankruptcy with respect to Mortgagor would accrue on the Obligations, whether or not a claim is alleged against Mortgagor for such sums in any such bankruptcy proceeding;

7. Due, prompt and complete performance of every obligation, covenant and agreement of Mortgagor contained in any agreement now or hereafter executed by Mortgagor which recites that the obligations thereunder are secured by this Mortgage from and after the date on which all mortgage recording taxes, general intangible taxes or other taxes payable in respect of obligations have been paid; and

8. All renewals, extensions, amendments, modifications and changes and supplements of, or substitutions or replacements for, all or any part of the items described in Paragraphs 1 through 7 above.

C. FUTURE ADVANCES.

In addition to all other indebtedness secured by this Mortgage, this Mortgage shall also secure and constitute a first Lien on the Mortgaged Property for:

1. Mortgagor's guaranty of all future advances (including all extensions, renewals and modifications of such future advances) that relate directly or indirectly to the Credit Agreement (including advances pursuant to Section 2.1 thereof) or to

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this Mortgage and are made as provided in any of the Loan Documents by the Lenders or Mortgagee to Borrower or Mortgagor or otherwise as provided in any of the Loan Documents for any purpose so related after the date of this Mortgage, and Mortgagor acknowledges that the irrevocable and unconditional guaranty of such future advances is among the Guaranteed Obligations; and

2. all sums advanced or paid pursuant to the terms of this Mortgage by Mortgagee upon a default or Event of Default under the terms of this Mortgage (a) for real estate taxes, charges and assessments that may be imposed by law upon the Premises, (b) for premiums on insurance policies covering the Premises, (c) for expenses incurred in upholding the Lien of this Mortgage, including but not limited to the expenses of any litigation to prosecute or defend the rights and Lien created by this Mortgage, (d) to which Mortgagee becomes subrogated, upon payment, under recognized principles of law or equity, or under express statutory authority or (e) for any other purpose, in each case, with interest thereon at the Agreed Rate; and

3. all other sums expended by Mortgagee in accordance with the terms of this Mortgage (including without limitation the amounts advanced pursuant to Sections 2.3, 2.4, 2.5, and 5.2 hereof),

just as if such advances were made on the date of this Mortgage. Any future advances may be made in accordance with the terms of the Credit Agreement or at the option of Mortgagee, as provided herein or in the other Loan Documents. The total amount of the indebtedness that may be secured by this Mortgage may increase or decrease from time to time.

D. MAXIMUM PRINCIPAL SUM SECURED

The Obligations are to be secured by other mortgages and deeds of trust on other real estate in other counties and other states. Each and all of such mortgages and deeds of trust are intended to and shall constitute security for the entire indebtedness represented by the Obligations without allocation. Notwithstanding anything herein to the contrary, it is agreed that the maximum amount of indebtedness secured by this Mortgage, including all advancements, at any one time shall not exceed \$225,000,000.00.

E. DEFINITIONS AND INTERPRETATION.

The definitions set forth in Section 1.1 of the Credit Agreement and the provisions with respect to interpretation and construction of the Loan Documents as set forth in Sections 1.3 through 1.12 and 9.16 of the Credit Agreement are hereby incorporated by reference into this Mortgage with the same effect as if set forth in full herein.

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SECTION 1

OBLIGATIONS OF BORROWER UNDER THE CREDIT AGREEMENT

The "Obligations" of Borrower under and as defined in the Credit Agreement include, without limitation: (a) the due and punctual payment of the indebtedness, together with interest thereon and other amounts payable with respect thereto, owed under the Notes up to the maximum aggregate principal amount set forth in Section 2.1 of the Credit Agreement; (b) the due and punctual payment of all reimbursement obligations in respect of Letters of Credit together with interest thereon and other amounts payable with respect thereto and (c) the due and punctual payment of any Release Price payable in accordance with Section 2.10 of the Credit Agreement (together with interest thereon and other amounts payable with respect thereto).

SECTION 2

COVENANTS AND AGREEMENTS OF MORTGAGOR

2.1 Payment and Performance of Obligations.

Mortgagor shall pay when due and perform the Obligations, including, without limitation, all amounts payable under and with respect to the Affiliate Guaranty (including interest thereon as provided in the Affiliate Guaranty); all charges, fees and other sums (including, without limitation, attorneys' fees and disbursements, late charges, prepayment charges and other amounts and all costs of collection) to be paid by Mortgagor as provided in this Mortgage or in the other Loan Document; the principal and interest on any future advances secured by this Mortgage; and the principal of and interest on any other indebtedness secured by this Mortgage.

2.2 Assignment of Policies Upon Foreclosure.

In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property, the acceptance by Mortgagee (or a nominee of Mortgagee) of a deed to any part of the Mortgaged Property in lieu of foreclosure of this Mortgage or in connection with a plan of reorganization filed under Chapter 11 of the Bankruptcy Code, or the exercise by Mortgagee of any remedy set forth herein, in extinguishment, in whole or in part, of the debt secured hereby or upon the acceptance by Mortgagee (or a nominee of Mortgagee) of a deed to any part of the Mortgaged Property in lieu of foreclosure of this Mortgage but not in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required pursuant to Section 6.10 of the Credit Agreement shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Property.

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2.3 Inspections.

Mortgagee and its agents, representatives and employees are authorized to enter, at any reasonable time and upon reasonable prior notice to Mortgagor, upon or in any part of the Mortgaged Property as set forth in the Credit Agreement or that certain Environmental Indemnity dated as of even date herewith by and among Mortgagor and the other indemnitors listed on the signature pages thereof in favor of Mortgagee and the "Indemnified Parties" described therein, as the same may hereafter be amended, modified, supplemented, restated, extended, renewed or replaced (such Environmental Indemnity, together with any and all amendments, modifications, supplements, restatements, extensions, renewals or replacements thereof, are collectively referred to herein as the "Environmental Indemnity.") for the purpose of inspecting the same and for the purpose of performing any of the acts they are authorized to perform hereunder or under the terms of the Loan Documents, including performing any architectural, environmental and engineering audits and assessments. Mortgagee agrees that employees of Mortgagor shall be entitled to accompany Mortgagee and its agents, representatives and employees during any such inspection or other entry upon the Mortgaged Property, and Mortgagee and its agents, representatives and employees shall use reasonable efforts not to inconvenience hotel guests in connection therewith. Mortgagor shall, at Mortgagor's sole expense, conduct and complete all environmental investigations (including Phase I, Phase II and Phase III environmental investigations), inspections, monitoring, studies, sampling, testing, boring, reporting, clean up, containment, remediation and/or removal of any Hazardous Materials as and when required under the terms of the Environmental Indemnity, and if the same are not timely conducted and completed by Mortgagor due to the fault of Mortgagor or any of its employees, then Mortgagee shall have the right to do so (at Mortgagee's option and without any obligation to do so) on Mortgagor's behalf and at Mortgagor's expense in accordance with the terms of the Environmental Indemnity. Mortgagor hereby grants Mortgagee and its employees and agents an irrevocable and non-exclusive royalty-free license, on and subject to the terms and conditions of the Environmental Indemnity, to enter the Mortgaged Property and, in accordance with the terms of the Environmental Indemnity, to investigate (including conducting Phase I, Phase II and Phase III environmental investigations), inspect, monitor, study, sample, test and conduct borings, to make such reports of the findings as may be required by Applicable Law, and to clean up, contain, remediate and/or remove Hazardous Materials (but Mortgagee shall have no obligation to do so). Without limitation of any other rights or remedies of Mortgagee, Mortgagor hereby irrevocably appoints and constitutes Mortgagee as its lawful attorney-in-fact, coupled with an interest and with full power of substitution, for the purpose of taking any of the actions described in the immediately preceding sentence and all acts incidental thereto (subject, however, to the terms and conditions of the Environmental Indemnity). The costs of any investigation, inspection, monitoring, studying, sampling, testing, boring, clean-up, containment, remediation and/or removal shall be paid as provided in the Environmental Indemnity, and any amounts owed by Mortgagor as provided therein shall be secured by this Mortgage. Notwithstanding the foregoing, Mortgagee shall have no duty to make any inspection of the Mortgaged Property (including, without limitation, any environmental

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inspection) and shall not incur any liability for making or not making any such inspection, and shall not be required to report the results of any such inspection to Mortgagor.

2.4 Actions by Mortgagee To Preserve Mortgaged Property.

From and after the occurrence of an Event of Default, Mortgagee may, without obligation so to do and without releasing Mortgagor from any Obligation, make any payment or perform any act required to be paid or performed by Mortgagor under the terms of any of the Loan Documents, if Mortgagee in its sole discretion shall deem such payment or act necessary or proper to protect the security hereof. In connection therewith (without limiting its general and other powers, whether conferred herein, in any other Loan Document or by law), Mortgagee shall have and is hereby given the right (without limiting the rights otherwise available to Mortgagee under any of the other Loan Documents or any other provisions of this Mortgage), but not the obligation, after Mortgagor's failure to cure within the period described above, and upon the occurrence and during the continuance of an Event of Default: (a) to enter upon and take possession of the Mortgaged Property, (b) to make additions, alterations, repairs and improvements to the Mortgaged Property which Mortgagee may consider necessary or proper to keep the Mortgaged Property in good condition and repair, (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee, (d) to pay, purchase, contest or compromise any claim, charge, Lien or debt which in the judgment of Mortgagee may materially and adversely affect or appears to materially and adversely affect the security of this Mortgage or to be prior or superior hereto except for any claims, charges, Liens or debts being diligently contested in good faith by Mortgagor in appropriate proceedings in accordance with the terms of Sections 6.4 or 6.9 of the Credit Agreement, (e) to pay any Impositions except those Impositions being diligently contested in good faith by Mortgagor in appropriate proceedings in accordance with the terms of Section 6.4 of the Credit Agreement and to procure, maintain and pay premiums on the insurance policies referred to herein, and (f) in exercising such powers, to pay necessary expenses, including fees and disbursements of counsel or other necessary and desirable consultants. No such advance or performance shall be deemed to have cured any Event of Default. Mortgagor shall, within ten (10) days after Mortgagee's written demand therefor, pay to Mortgagee an amount equal to all costs and expenses actually incurred by Mortgagee in accordance with the provisions set forth herein and in the other Loan Documents in connection with the exercise by Mortgagee of the foregoing rights including, without limitation, costs of evidence of title and of endorsements to the Title Policies, court costs, architectural or engineering studies, appraisals, surveys and architect's, engineer's, accountant's, receiver's, trustee's and attorneys' fees, together with interest thereon from the date of such expenditures at the Agreed Rate. All sums advanced and all expenses incurred by Mortgagee in accordance with the provisions set forth herein and in the other Loan Documents in connection with such advances or actions and all other sums advanced or expenses incurred by Mortgagee hereunder in accordance with the provisions set forth herein and in the other Loan Documents (whether required or optional and whether indemnified hereunder or not) shall be deemed Obligations owing by Mortgagor and shall bear interest from the date incurred or paid by Mortgagee until paid by Mortgagor at the Agreed Rate. All such amounts

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advanced or incurred, and all such interest thereon, shall be a part of the Obligations and shall be secured by this Mortgage. Mortgagee, upon making such advance, shall be subrogated to all of the rights of the person receiving such advance.

2.5 Action by Mortgagee to Protect Interests; Subrogation; Waiver of Offset.

A. **Action by Mortgagee to Protect Interests.** If the title, interest or Lien, as the case may be, of Mortgagor or Mortgagee in and to the Mortgaged Property or any part thereof, or the security of this Mortgage, or the rights or powers of Mortgagee or Mortgagor hereunder, shall be attacked, either directly or indirectly, or if any legal proceedings are commenced involving Mortgagor (which proceedings require notice to Agent or the Lenders pursuant to Section 6.1(xii) of the Credit Agreement), Mortgagee or the Mortgaged Property, Mortgagor shall promptly upon obtaining knowledge of the same give written notice thereof to Mortgagee and at Mortgagor's own expense shall take all reasonable steps diligently to defend against any such attack or proceedings, employing attorneys reasonably acceptable to Mortgagee; and if an Event of Default shall have occurred and be continuing, Mortgagee may take such independent action in connection therewith as it may in its discretion deem advisable, and all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, actually incurred by Mortgagee in connection therewith shall be an Obligation owing by Mortgagor and payable to Mortgagee, within ten (10) days of Mortgagee's written demand for payment, and shall bear interest at the Agreed Rate. Mortgagor agrees that, if Mortgagor fails to perform any act which Mortgagor is required to perform under this Section 2.5A, Mortgagee may (after ten (10) days' written notice to Mortgagor), but shall not be obligated to, perform or cause to be performed such act, and any expense actually incurred by Mortgagee in connection therewith shall be an Obligation owing by Mortgagor and payable to Mortgagee within ten (10) days of Mortgagee's written demand for payment, and shall bear interest at the Agreed Rate, and shall be secured by this Mortgage, and Mortgagee shall be subrogated to all of the rights of the party receiving such payment. The liabilities of Mortgagor as set forth in this Section 2.5 shall survive the termination of this Mortgage or of any other Loan Document.

B. **Subrogation.** Mortgagor hereby waives any and all right to claim or recover against Mortgagee and the Lenders, and their respective officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's other property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

C. **Waiver of Offset.** All sums payable by Mortgagor pursuant to this Mortgage shall be paid (except as otherwise expressly provided herein or in any other Loan Document) without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as otherwise expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any

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part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee or the Lenders, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

2.6 Restrictions on Transfer of Mortgaged Property by Mortgagor.

The financial stability and managerial and operational ability of Mortgagor are substantial and material considerations to Mortgagee and the Lenders in their agreement to accept the Notes from Borrower and other Loan Documents from Mortgagor and Borrower and to enter into the transactions contemplated thereby. Mortgagor understands and acknowledges that a Transfer of the Mortgaged Property may significantly and materially alter and reduce Mortgagee's security for the Obligations. Therefore, in order to induce Mortgagee and the Lenders to make the loans secured hereby, Mortgagor agrees that, except as expressly permitted under the terms of the Credit Agreement, Mortgagor will not Transfer the Mortgaged Property, or any portion thereof, without the prior written consent of Mortgagee. In the event of any Transfer of the Mortgaged Property, or any portion thereof, that is not expressly permitted under the terms of the Credit Agreement, or consented to by Mortgagee in writing, Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all of the Obligations immediately due and payable. Consent to one such Transfer shall not be deemed to be a waiver of the right to require consent to future or successive Transfers. If consent should be given to a Transfer and if this Mortgage is not released to the extent of the transferred portion of the Mortgaged Property by a writing signed by Mortgagee, as required by Applicable Law, and recorded in the proper city, town, county or parish records, then (unless otherwise provided in the Credit Agreement) any such Transfer shall be subject to this Mortgage and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Any such assumption shall not, however, release Mortgagor or any maker or guarantor of the Obligations from any liability thereunder without the prior written consent of Mortgagee. This covenant shall run with the land and remain in full force and effect until all of the Obligations are fully paid (or this Mortgage is released of record), and Mortgagee may, without notice to Mortgagor, deal with any transferees with reference to the Obligations in the same manner as Mortgagor, without in any way altering or discharging Mortgagor's liability or the liability of any guarantor of Mortgagor with respect thereto. The provisions of this Section 2.6 shall apply to each and every Transfer of the Mortgaged Property or any portion thereof, regardless of whether or not Mortgagee has consented to

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or waived, by its action or inaction, its rights with respect to any previous Transfer. Notwithstanding anything herein to the contrary, this Section 2.6 shall not limit Mortgagor's right to obtain Releases in accordance with Section 2.10 of the Credit Agreement.

2.7 Incorporation by Reference: Full Performance Required; Survival of Warranties.

Mortgagor hereby makes to Mortgagee all of the affirmative and negative covenants relating to the Mortgaged Property that are set forth in Sections 6 and 7 of the Credit Agreement, which affirmative and negative covenants are incorporated herein by reference as of the date hereof. All representations, warranties and covenants of Mortgagor made to Mortgagee in the Loan Documents or incorporated by reference therein shall run to the benefit of Mortgagee, shall survive the execution and delivery of this Mortgage and shall remain continuing obligations, warranties and representations of Mortgagor so long as any portion of the Obligations has accrued and remains outstanding and Mortgagor shall fully and faithfully satisfy and perform all such Obligations, representations, warranties and covenants as required by the terms of the Loan Documents. In the event of a conflict between the provisions of this Mortgage and the Credit Agreement, it is the intention of Mortgagor and Mortgagee that both such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of a conflict that cannot be resolved as aforesaid, the provisions of the Credit Agreement shall control and govern and Mortgagor shall comply therewith.

2.8 Additional Security.

No other security now existing, or hereafter taken, to secure the Obligations shall be impaired or affected by the execution of this Mortgage; and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment or performance of the Obligations shall not diminish the force, effect or Lien of this Mortgage and shall not affect or impair the liability of any maker, surety, guarantor or endorser for the payment or performance of said Obligations. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right, to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine.

2.9 Further Acts.

Mortgagor shall do and perform all acts as required under Section 6.19 of the Credit Agreement or as necessary to keep valid and effective the Lien hereof and to carry into effect its objective and purposes, in order to protect the lawful owner and holder of this Mortgage and the other Obligations. Promptly upon request, from time to time, of Mortgagee and at Mortgagor's expense, Mortgagor shall execute, acknowledge and deliver to Mortgagee such other and further instruments and do such other acts as in the reasonable

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opinion of Mortgagee may be necessary or reasonably requested by Mortgagee to (a) grant to Mortgagee a first priority perfected Lien on all of the Mortgaged Property to secure all of the Obligations, (b) grant to Mortgagee, to the fullest extent permitted by Applicable Laws, the right to foreclose on the Mortgaged Property nonjudicially, upon the occurrence and during the continuance of an Event of Default, (c) correct any defect or error which may be discovered in the contents of this Mortgage (including, without limitation, all exhibits and/or schedules hereto) or any other Loan Document, (d) identify more fully and subject to the Liens created hereby and by the other Loan Documents any property intended by the terms here of and of the other Loan Documents to be covered hereby and thereby (including any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property), (e) assure the first priority of this Mortgage and of such Liens, and (f) otherwise effectuate the intent of this Mortgage. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest and with full power of substitution, to take the above actions and to perform such obligations on behalf of Mortgagor, at Mortgagor's sole expense, if Mortgagor fails to fully comply with Mortgagor's obligations under this Section 2.9. Without limiting the generality of the foregoing, Mortgagor shall promptly and, insofar as not contrary to Applicable Laws, at Mortgagor's own expense, record, re-record, file and refile in such offices, at such times and as often as may be necessary, this Mortgage, additional mortgages, deeds of trust and deeds to secure debt, and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the Liens (and priority thereof) intended to be created hereby and by the other Loan Documents and the rights and remedies of Mortgagee hereunder and thereunder. Upon request by Mortgagee, Mortgagor shall supply evidence reasonably satisfactory to Mortgagee of fulfillment of each of the covenants herein contained concerning which a request for such evidence has been made.

2.10 Offsite Improvements.

Mortgagor shall not construct or install improvements or Equipment (as defined in Exhibit B hereto) necessary or desirable for the operation of the Premises on real property or any interest in real property (for example, an easement, license or lease) that is not subject to the Lien of this Mortgage without the prior written consent of Mortgagee (which consent may be granted or withheld in Mortgagee's sole discretion), but only to the extent that: (a) the construction or installation of such improvements or Equipment on such other real property is commercially reasonable when compared to, and commercially preferable to, construction or installation on the real property that is subject to the Lien of this Mortgage; and (b) Mortgagor grants Mortgagee rights (including, but not limited to, easements or reciprocal easement agreements) with respect to such improvements, Equipment and land that are appurtenant to the Land encumbered by this Mortgage and are sufficient in Mortgagee's judgment (i) to enable Mortgagee and any future owner or holder of Mortgagor's interest in the Premises to enjoy the full and unrestricted use of such improvements and Equipment and (ii) to continue Mortgagee's first priority Lien on any such Equipment. Mortgagor's obligations under this Section 2.10 shall be full recourse obligations of Mortgagor and shall survive any assignment or foreclosure of this Mortgage, the acceptance by Mortgagee (or a nominee of Mortgagee) of a deed to any part of the

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Mortgaged Property in lieu of foreclosure or in connection with a plan of reorganization filed under Chapter 11 of the Bankruptcy Code, or the exercise by Mortgagee of any remedy set forth herein.

2.11 Utilities.

Mortgagor shall pay or cause to be paid prior to becoming delinquent all utility charges which are incurred for the benefit of the Mortgaged Property or which may become a Lien against the Mortgaged Property for gas, steam, electricity, telephone, water, sewer services and all other utilities furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Mortgaged Property or any portion thereof, whether or not such taxes, assessments or charges are or may become Liens thereon.

2.12 Leasehold Estate.

This Section 2.12 shall apply only if Mortgagor is the tenant under a leasehold estate at the Premises (the "Subject Lease"). If Mortgagor is a tenant under a Subject Lease, Mortgagor hereby covenants, represents and warrants to Mortgagee with respect to the Subject Lease as follows:

A. No default by Mortgagor as lessee has occurred and is continuing under the Subject Lease and no event has occurred which, with the passage of time or service of notice, or both would constitute an event of default under the Subject Lease. The Subject Lease is in full force and effect. Mortgagor has obtained from the lessor with respect to the Subject Lease a) consents to this Mortgage required to be obtained from such lessor and Mortgagor has provided (or within 5 days from the date hereof shall provide) such lessor with all notices required to be given to such lessor with respect to this Mortgage together with copies of all documents required to be delivered to such lessor with respect to this Mortgage under the terms of the Subject Lease.

B. All rents, additional rents, percentage rents and all other charges due and payable under the Subject Lease have been fully paid through a date no earlier than 30 days before the date hereof.

C. The Subject Lease covers 100% of the Land and Mortgagor is the owner of the entire lessee's interest in and under the Subject Lease and has the right and authority under the Subject Lease to execute this Mortgage and to encumber Mortgagor's interest therein.

D. Mortgagor shall, at its sole cost and expense, promptly and timely perform and observe all the terms, covenants and conditions required to be performed and observed by Mortgagor as lessee under the Subject Lease (including,

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but not limited to, the payment of all rent, additional rent, percentage rent and other charges required to be paid under the Subject Lease).

E. If Mortgagor shall violate any of the covenants specified in Section 2.12D above, Mortgagor grants Mortgagee the right (but not the obligation), to take any action as may be necessary to prevent or cure any default of Mortgagor under the Subject Lease, if necessary to protect Mortgagee's interest hereunder, and Mortgagee shall have the right to enter all or any portion of the Premises at such times and in such manner as Mortgagee deems necessary, in order to prevent or to cure any such default. Mortgagee may exercise its rights under this Section 2.12E at any time after, but only after, Mortgagor shall have (i) received from the lessor under the Subject Lease or any other Person notice of such default, and (ii) failed to promptly commence curing such default.

F. No action or payment taken or made by Mortgagee to prevent any default by Mortgagor under the Subject Lease shall remove or waive, as between Mortgagor and Mortgagee, the default which occurred hereunder by virtue of the default by Mortgagor under the Subject Lease. All sums actually expended by Mortgagee in accordance with the terms of this Section 2.12 in order to cure any such default shall be paid by Mortgagor to Mortgagee, within ten (10) days of Mortgagee's written demand, with interest thereon at the Agreed Rate. All such indebtedness shall be deemed to be secured by this Mortgage.

G. Mortgagor shall, promptly upon obtaining knowledge of the following events, notify Mortgagee promptly in writing of (i) the occurrence of any material default by the lessor under the Subject Lease or the occurrence of any event which, with the passage of time or service of notice, or both, would constitute a material default by the lessor under the Subject Lease, and (ii) the receipt by Mortgagor of any notice (written or otherwise) from the lessor under the Subject Lease noting or claiming the occurrence of any default by Mortgagor under the Subject Lease or the occurrence of any event which, with the passage of time or service of notice, or both, would constitute a default by Mortgagor under the Subject Lease. Mortgagor shall deliver to Mortgagee a copy of any such written notice of default.

H. Promptly upon demand by Mortgagee from time to time, Mortgagor shall use reasonable efforts (other than payment to the lessor) to obtain from the lessor under the Subject Lease and furnish to Mortgagee the estoppel certificate of such lessor stating the date through which rent has been paid and whether or not there are any defaults under its lease and specifying the nature of such claimed defaults, if any.

I. Mortgagor shall promptly notify Mortgagee, in writing, of any request made by either party to the Subject Lease for arbitration or appraisal proceedings pursuant to the Subject Lease and of the institution of any arbitration or appraisal proceedings, as well as of all proceedings thereunder, and shall promptly deliver to

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Mortgagee a copy of the determination of the arbitrators or appraisers in each such arbitration or appraisal proceeding. Mortgagee shall have the right (but not the obligation), following the delivery of written notice by Mortgagor, to participate in the appointment of any arbitrator or appraiser to be appointed by Mortgagor and (to the extent permitted under the Subject Lease) to participate (at Mortgagee's expense unless an Event of Default shall have occurred and be continuing, in which case at Mortgagor's expense) in such arbitration or appraisal proceedings in association with Mortgagor or on its own behalf as an interested party. Mortgagor shall promptly notify Mortgagee, in writing, upon learning of the institution of any legal proceedings involving obligations under the Subject Lease. Mortgagee may intervene (at Mortgagee's expense unless an Event of Default shall have occurred and be continuing, in which case at Mortgagor's expense) in any such legal proceedings and be made a party to them. Mortgagor shall promptly provide Mortgagee with a copy of any decision rendered in connection with such proceedings.

J. Mortgagor shall promptly execute, acknowledge and deliver to Mortgagee such instruments as may reasonably be required to permit Mortgagee (subject to the provisions of Section 2.12E above) (i) to cure any default under the Subject Lease or (ii) to take such other action required to enable Mortgagee to cure or remedy the matter in default and preserve the security interest of Mortgagee under this Mortgage with respect to the Subject Lease. Mortgagor hereby irrevocably appoints Mortgagee as its true and lawful attorney-in-fact, coupled with an interest and with full power of substitution, (to do), in its name or otherwise, any and all acts and to execute any and all documents (in each case only upon Mortgagor's failure or refusal to do so) which are necessary to preserve any rights of Mortgagor under or with respect to the Subject Lease, including, without limitation, the right to effectuate any extension or renewal of the Subject Lease, or to preserve any rights of Mortgagor whatsoever in respect of any part of the Subject Lease.

K. Mortgagor shall not, without Mortgagee's prior written consent, surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or change, modify or amend in a material or adverse manner, the Subject Lease. Consent to one amendment, change, agreement or modification shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, changes, agreements or modifications. The acquisition by Mortgagor or any affiliate of Mortgagor of any lessor's interest in the Subject Lease or of any fee holder's interest in the property subject to the Subject Lease shall not require Mortgagee's consent and shall not be a breach of the covenants set forth in this Section 2.12K provided that: (i) such acquisition is accomplished by Mortgagor in such a manner so as to avoid a merger of the interests of lessor and lessee in the Subject Lease; and (ii) Mortgagor, concurrently with the consummation of such acquisition, executes and records an instrument sufficient in Mortgagee's sole discretion to extend and spread the Lien of this Mortgage to encumber such acquired interest as a first priority mortgage Lien. To the full extent permitted under Applicable Laws and in accordance with the grant made by Mortgagor in Granting

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Clause Twelfth, whether or not Mortgagor has executed and recorded the instrument described in the preceding sentence, this Mortgage shall automatically be a Lien on such acquired interest.

L. Notwithstanding anything to the contrary herein contained with respect to the Subject Lease:

(i) The Lien of this Mortgage attaches to all of Mortgagor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including, without limitation, all of Mortgagor's rights to remain in possession of the Land.

(ii) Mortgagor shall not, without Mortgagee's written consent, elect to treat the Subject Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code. Any such election made without Mortgagee's prior written consent shall be void. If any lessor of the Subject Lease rejects the Subject Lease under Section 365 of the Bankruptcy Code, Mortgagor shall remain in possession of the Premises. Neither the Lien of this Mortgage nor Mortgagee's rights with respect to the Subject Lease shall be affected or impaired by any lessor's rejection of the Subject Lease under Section 365 of the Bankruptcy Code.

(iii) As security for the Obligations, Mortgagor hereby unconditionally assigns, transfers and sets over to Mortgagee all of Mortgagor's claims and rights to the payment of damages arising from any rejection by any lessor of the Subject Lease under the Bankruptcy Code. Mortgagee and Mortgagor shall proceed jointly or in the name of Mortgagor (and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest and with full power of substitution, from and after the occurrence of an Event of Default, to proceed in the name of Mortgagor and to otherwise take such actions as Mortgagee may deem necessary or desirable) in respect of any claim, suit, action or proceeding relating to the rejection of the Subject Lease, including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents in any case in respect of such lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until this Mortgage has been released of record or all of the Obligations secured by this Mortgage shall have been satisfied and discharged in full. Any amounts received by Mortgagee or Mortgagor as damages arising out of the rejection of the Subject Lease as aforesaid shall be applied first to all reasonable costs and expenses of Mortgagee (including, without limitation, attorneys' fees and costs) incurred in connection with the exercise of any of its rights or remedies under this Section 2.12L and then in accordance with the other applicable provisions of this Mortgage.

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(iv) If, pursuant to Subsection 365(h)(2) of the Bankruptcy Code, Mortgagor seeks to offset, against the rent reserved in the Subject Lease, the amount of any damages caused by the nonperformance by the lessor thereunder of any of such lessor's obligations under the Subject Lease after the rejection by lessor of the Subject Lease under the Bankruptcy Code, Mortgagor shall, prior to effecting such offset, notify Mortgagee in writing of its intent so to do, setting forth the amounts proposed to be so offset, and, in the event Mortgagee objects, Mortgagor shall not effect any offset of the amounts so objected to by Mortgagee. If Mortgagee has failed to object as aforesaid within ten (10) days after notice from Mortgagor in accordance with the first sentence of this Section 2.12L(iv), Mortgagor may proceed to offset the amounts set forth in Mortgagor's notice.

(v) If any action, proceeding, motion or notice shall be commenced or filed in respect of any lessor or the Land or any portion thereof in connection with any case under the Bankruptcy Code, Mortgagee and Mortgagor shall cooperatively conduct and control any such litigation (provided that after the occurrence and during the continuance of an Event of Default, Mortgagee shall have the exclusive right (but not the obligation) to control such litigation, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest and with full power of substitution for such purpose) with counsel agreed upon between Mortgagor and Mortgagee (or, if an Event of Default shall then have occurred and be continuing, counsel selected by Mortgagee) in connection therewith. Within ten (10) days after Mortgagee's written demand upon Mortgagor Mortgagor shall pay to Mortgagee, as applicable, all reasonable costs and expenses (including reasonable attorneys' fees and costs) actually paid or incurred by Mortgagee in connection with the cooperative prosecution or conduct of any such proceedings. All such costs and expenses shall be secured by the Lien of this Mortgage.

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

M. The occurrence of any of the following events shall, at Mortgagee's option, constitute an "Event of Default" hereunder in which event Mortgagee shall have all of the rights and remedies available to it under Section 5 hereof:

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(i) A breach or default under any material condition or obligation contained in the Subject Lease which is not cured within any applicable cure period provided therein to Mortgagor (~~provided, however,~~ that upon the occurrence and during the continuance of any breach or default under any condition or obligation contained in the Subject Lease, and prior to the expiration of all applicable cure periods, Mortgagee shall have the cure rights set forth in Section 2.12E of this Mortgage);

(ii) The occurrence of any event or condition which gives the lessor under the Subject Lease a right to terminate or cancel, as against Mortgagor, the Subject Lease and the expiration of any notice, grace or cure period with respect thereto; or

(iii) Mortgagor's failure to permit Mortgagee and/or its representatives at all reasonable times upon reasonable prior written notice to make investigation or examination concerning Mortgagor's performance and observance of the terms, covenants and conditions of the Subject Lease.

N. To the extent permitted by Applicable Law, the price payable by Mortgagor or any other party in the exercise of the right of redemption, if any (which right Mortgagor has waived), from any sale under or decree of foreclosure of this Mortgage shall include all rents and other amounts paid and other sums advanced by Mortgagee on behalf of Mortgagor as the lessee under the Subject Lease in accordance with the provisions of this Mortgage and the other Loan Documents.

O. Mortgagor hereby grants and assigns to Mortgagee a security interest in all prepaid rent and security deposits and all other security which the lessor under the Subject Lease may hold now or later for the performance of Mortgagor's obligations as the lessee under the Subject Lease.

P. Mortgagor shall not, without Mortgagee's written consent, fail to exercise any option or right to renew or extend the term of the Subject Lease if such renewal or extension is necessary to extend the term of the Subject Lease to a date which is at least twelve (12) months after the Maturity Date (any such renewal or extension, a "Required Extension"). Mortgagor shall effect each Required Extension at least six (6) months (or the earliest date permitted under the Subject Lease, if later) prior to the date of termination of any such option or right, shall give immediate written notice thereof to Mortgagee, and shall execute, acknowledge, deliver and record any document reasonably requested by Mortgagee to evidence the Lien of this Mortgage on such extended or renewed lease term; ~~provided, however,~~ Mortgagor shall not be required to effect any particular Required Extension to the extent Mortgagor shall have received the prior written consent of Mortgagee (which consent may be withheld by Mortgagee in its sole and absolute discretion) allowing Mortgagor to forego effecting such Required Extension. If Mortgagor shall fail to exercise any such option or right to effect any Required Extension (provided that

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unless an Event of Default shall have occurred and be continuing, Mortgagee shall have no right to determine the amount of rent payable under the Subject Lease during any such extension period without Mortgagor's prior written consent thereto, which consent shall not be unreasonably withheld or delayed) as aforesaid, Mortgagee may exercise the option or right to effect any Required Extension as Mortgagor's agent and attorney-in-fact pursuant to Section 2.121 of this Mortgage, or in Mortgagee's own name or in the name of and on behalf of a nominee of Mortgagee, as Mortgagee may determine in the exercise of its sole and absolute discretion.

Q. Except with respect to concessions, food and beverage operations and similar matters, and subject to the provisions of the Credit Agreement, Mortgagor shall not assign or sublease its interest in the Subject Lease or any of the other Mortgagee Property without the prior written consent of Mortgagee, which consent may be withheld by Mortgagee in its sole discretion. All subleases entered into by Mortgagor after the date of this Mortgage shall provide, and Mortgagor shall use reasonable effort to ensure that all existing subleases modified, amended or renewed by Mortgagor after the date of this Mortgage shall provide, that such subleases are, at the option and election of Mortgagee, subordinate to the Lien of this Mortgage and any extensions, replacements and modifications of this Mortgage and the Obligations and that if Mortgagee forecloses under this Mortgage or enters into a new lease with the lessor under the Subject Lease whether or not pursuant to the provisions for a new lease, if any, contained in the Subject Lease, then the sublessee shall attorn to Mortgagee or its assignee(s) and the sublease will remain in full force and effect in accordance with its terms notwithstanding the termination of the Subject Lease.

R. Mortgagor hereby represents that the Subject Lease has not been amended, modified, extended, renewed, substituted or assigned except as described in Exhibit A-2 hereto and that Mortgagor has delivered to Mortgagee true, accurate and complete copies of all items noted in Exhibit A-2. Upon the request of Mortgagee, Mortgagor shall deposit with Mortgagee the tenant's original fully executed copy of the Subject Lease, as further security to Mortgagee, until this Mortgage is released of record or all of the Obligations are fully paid and performed. Mortgagor hereby represents that the Subject Lease or a legally valid memorandum thereof has been properly filed or recorded in the city, town, county or parish records (as appropriate) in which the Land covered thereby is located and that the filing and recording data for the same is accurately set forth in Exhibit A-2 hereto.

S. Mortgagor shall not waive, excuse, condone or in any way release or discharge the lessor under the Subject Lease of or from such lessor's material obligations, covenants and/or conditions under the Subject Lease without the prior written consent of Mortgagee.

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The generality of the provisions of this Section 2.12 relating to the Subject Lease shall not be limited by other provisions of this Mortgage setting forth particular obligations of Mortgagor which are also required of Mortgagor with respect to the Subject Lease or the Land.

SECTION 3 ASSIGNMENT OF RENTS AND LEASES

3.1 Assignment of Rents and Leases.

In furtherance of and in addition to the assignment made by Mortgagor in Granting Clause Third of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. It is the intention of Mortgagor and Mortgagee that this assignment be treated and construed as an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to observe, perform, comply with and discharge all of the obligations of the landlord thereunder, the right to demand and receive performance under the Leases, the right to enforce all rights and exercise all remedies under the Leases, the right to terminate or amend any Lease and the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same; provided, however, that such rights may be exercised by Mortgagor only to the extent they are not restricted under Section 7.19 of the Credit Agreement. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor). Mortgagee shall have all rights granted to the Assignee pursuant to the Assignment of Rents. The provisions set forth in the Assignment of Rents are hereby incorporated by reference into this Mortgage with the same effect as if set forth in full herein. In the event of a conflict between the provisions of Section 3 of this Mortgage and the Assignment of Rents, it is the intention of Mortgagor and Mortgagee that both such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of a conflict that cannot be resolved as aforesaid, the provisions of the Assignment of Rents shall control and govern and Mortgagor shall comply therewith.

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3.2 No Limitation of Rights.

The assignment of Rents and Leases herein made shall not be construed to limit in any way Mortgagee's other rights hereunder, including the right to accelerate the Obligations upon an Event of Default. Monies received under the assignments herein made shall not be deemed to have been applied in payment of any portion of the Obligations unless and until such monies actually are applied thereto by Mortgagee.

3.3 Sale of Mortgaged Property.

A. **Free and Clear of Assignments.** Upon any sale of any of the Mortgaged Property by or for the benefit of Mortgagee pursuant to Section 5 hereof, the Rents attributable to the part of the Mortgaged Property so sold shall be included in such sale and shall pass to the purchaser free and clear of (i) the assignment by Mortgagor in Granting Clause Third of this Mortgage and (ii) the provisions of this Section 3.

B. **No Obligations on Mortgagee.** It is neither the intent nor the effect of this Mortgage nor the other Loan Documents (other than any Subordination, Non-Disturbance and Attornment Agreement between Mortgagee and any Tenant) to impose any obligation on Mortgagee, including (i) any liability under the covenant of quiet enjoyment contained in any Lease or contained in any Applicable Laws, in the event of a sale of the Mortgaged Property or any part thereof pursuant to this Mortgage or (ii) any liability to any Tenant arising (whether in connection with the elimination of such Tenant's equity of redemption in the Mortgaged Property or otherwise) out of the naming of such Tenant as a party defendant in any action to foreclose this Mortgage. Notwithstanding anything herein to the contrary, under no circumstances shall Mortgagee be subject to any offsets, claims or defenses which a Tenant might have against Mortgagor or any prior landlord with respect to any Lease, whether or not Mortgagee shall have succeeded to the interests of landlord under any such Lease.

3.4 Term of Assignment.

The assignment and grant made in Granting Clause Third of this Mortgage and in this Section 3 shall continue in effect until release of this Mortgage of record or indefeasible payment in full of the Obligations. The execution of this Mortgage constitutes and evidences the irrevocable consent of Mortgagor to the entry upon and the taking possession of the Premises, or any part thereof, by Mortgagee pursuant to such grant in accordance with the terms set forth in this Mortgage and the terms hereof whether by foreclosure or other remedy and at Mortgagee's option and election, with or without application for a receiver. Mortgagor represents and warrants to Mortgagee that Mortgagee has taken all actions necessary to obtain, and Mortgagee shall (upon recordation of this Mortgage) have, as and to the extent permitted under Applicable Law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases, including cash or securities deposited as security under such Leases subject to the prior right of the Tenants making such deposits. Mortgagee has no obligation

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whichever in respect of security for any Leases except and only to the extent such security is actually delivered to Mortgagee, whether or not Mortgagor now has or previously had possession of such security.

3.5 Perfection Upon Recordation.

Mortgagor acknowledges and agrees that, upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of (a) commencing a foreclosure action with respect to this Mortgage, (b) furnishing notice to Mortgagor or Tenants under the Leases, (c) making formal demand for the Rents, (d) taking possession of the Premises as a lender-in-possession, (e) obtaining the appointment of a receiver of the rents and profits of the Premises, (f) sequestering or impounding the Rents or (g) taking any other affirmative action.

3.6 Bankruptcy Provisions

Without limitation of the provisions of Section 4 hereof or the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy. Without limitation of the absolute nature of the assignment of the Rents hereunder, to the extent Mortgagor (or Mortgagor's bankruptcy estate) shall be deemed to hold any interest in the Rents after the commencement of a voluntary or involuntary bankruptcy case, Mortgagor hereby acknowledges and agrees that such Rents are and shall be deemed to be "cash collateral" under Section 363 of the Bankruptcy Code. Mortgagor may not use the cash collateral without the consent of Mortgagee and/or an order of any bankruptcy court pursuant to 11 U.S.C. 363(c)(2), and Mortgagor hereby waives any right it may have to assert that such Rents do not constitute cash collateral. No consent by Mortgagee to the use of cash collateral by Mortgagor shall be deemed to constitute Mortgagee's approval, as the case may be, of the purpose for which such cash collateral was expended.

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SECTION 4 SECURITY AGREEMENT

4.1 Grant of Security; Incorporation by Reference.

This Mortgage shall, in addition to constituting a mortgage Lien as to those parts of the Mortgaged Property classified as real property (including fixtures to the extent they are real property), constitute a security agreement within the meaning of the Uniform Commercial Code or within the meaning of the common law with respect to those parts of the Mortgaged Property classified as personal property (including fixtures to the extent they are personal property). Mortgagor hereby grants Mortgagee a security interest in and to those parts of the Mortgaged Property classified as personal property (including (a) fixtures to the extent they are personal property and (b) personal property and fixtures that are leased, but only to the extent Mortgagor can grant to Mortgagee a security interest therein without breaching the terms of such lease) (collectively, the "Personal Property Collateral") for the benefit of Mortgagee to further secure the payment and performance of the Obligations and the performance of all of Mortgagor's Obligations, covenants and agreements under the other Loan Documents. Mortgagee shall have all rights granted to the Secured Party pursuant to the Security Agreement. The provisions set forth in the Security Agreement are hereby incorporated by reference into this Mortgage with the same effect as if set forth in full herein. In the event of a conflict between the provisions of Section 4 of this Mortgage and the Security Agreement, it is the intention of Mortgagor and Mortgagee that both such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of a conflict that cannot be resolved as aforesaid, the provisions of the Security Agreement shall control and govern and Mortgagor shall comply therewith.

4.2 Fixture Filing Financing Statements.

Portions of the Mortgaged Property are goods which are or are to become fixtures, and Mortgagor expressly covenants and agrees that the filing of this Mortgage in the real property records of the county where the Premises is located shall operate, at the time of filing therein, as a financing statement filed as a fixture filing in accordance with Section 9-401(1)(b) of the Uniform Commercial Code of the state in which the Premises is located. The address of Mortgagor (the debtor) and the address of Mortgagee (the secured party) appear in Exhibit C attached to this Mortgage. The name of the record owner of the Land appears in Exhibit A attached hereto.

4.3 Mortgagee as Secured Party.

If and to the extent that Mortgagee shall act as the secured party for any security interest created in the Mortgaged Property, Mortgagor acknowledges and agrees that Mortgagee may do so. As such, Mortgagee shall have all the rights of the secured party, and shall observe all of the requirements of the secured party, contained in this Section 4 and the Security Agreement.

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SECTION 5 DEFAULTS AND REMEDIES

5.1 Events of Default.

The occurrence of any of the following events ("Events of Default") shall, as provided in the Credit Agreement, make all amounts then remaining unpaid on the Obligations due and payable, all without further demand, presentment, notice or other requirements of any kind, all of which are hereby expressly waived by Mortgagor, and this Mortgage and the Lien evidenced or created hereby shall be subject to foreclosure and may be foreclosed in any manner provided for herein or provided for by law:

A. Any "Event of Default" as defined in the Credit Agreement shall occur (after giving effect to any applicable notice or grace periods provided therein), including, without limitation, any such event caused by a failure to pay when due any fee due under the Credit Agreement or any installment of principal or interest on the Obligations; or

B. Any "Event of Default" described in Section 2.12M hereof shall occur, if Mortgagor is the tenant under a Subject Lease.

5.2 Fixtures.

Upon the occurrence and during the continuance of any of the Events of Default, Mortgagee may, to the extent permitted under Applicable Law, elect to treat the fixtures included in the Mortgaged Property either as real property or as personal property, or both, and proceed to exercise such rights as apply thereto. With respect to any sale of real property included in the Mortgaged Property, Mortgagee may, to the extent permitted by Applicable Law, include in such sale any personal property and fixtures included in the Mortgaged Property and relating to such real property.

5.3 Remedies.

A. **Rights of Mortgagee; Rights of Entry; Rights of Sale.** Upon the occurrence and during the continuance of any of the Events of Default, in addition to all other powers, rights and remedies herein granted or by law or at equity conferred, Mortgagee, in its sole discretion and at its sole election and without further demand, may do any one or more of the following in any order or manner that Mortgagee elects, it being expressly understood that no remedy provided herein is intended to be exclusive of any other remedy provided herein or in any of the other Loan Documents, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing under Applicable Law (including all rights and remedies provided under the applicable provisions of the laws of the state in which the Premises is located):

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(i) Mortgagee may foreclose and sell upon all or any portion of the Mortgaged Property, provided that Mortgagee may proceed as to both real and personal property in accordance with its and their rights and remedies as to real property as required by Applicable Law, and no such foreclosure sale shall affect any other rights which Mortgagee may have or enjoy at law or pursuant to this Mortgage, including, without limitation, the right to seek a personal or deficiency judgment against Mortgagor. And in addition Mortgagee shall have all of the rights and remedies of a mortgagee under a mortgage granted, conferred or permitted by Applicable Law, and shall, to the extent permitted by Applicable Law, have the right and power, but not the obligation, to enter upon and take immediate possession of the Premises or any part thereof, without interference from Mortgagor to exclude Mortgagor therefrom, to hold, use, operate, manage and control such real property, to make all such repairs, replacements, additions and improvements to the same as Mortgagor in its sole discretion deems necessary, and to demand, collect and retain the Rents as provided in Section 3 hereof.

(ii) Mortgagee, with respect to any or all of the Mortgaged Property, in lieu of or in addition to exercising any other power, right or remedy herein granted or by law or equity conferred, may, without notice, demand or declaration of default, which are hereby waived by Mortgagor, and without regard to the solvency of Mortgagor and without regard to the then value of the Mortgaged Property or waste, proceed by an action or actions in equity or at law for the seizure and sale of the Mortgaged Property or any part thereof, for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power, right or remedy herein granted or by law or equity conferred, for the foreclosure or sale of the Mortgaged Property or any part thereof under the judgment or decree of any court of competent jurisdiction, for the appointment of a receiver (without any requirement to post a receiver's bond and without regard to the value of the Mortgaged Property or solvency of Mortgagor) pending any foreclosure hereunder or the sale of any Mortgaged Property or any part thereof or for the enforcement of any other appropriate equitable or legal remedy. Such receiver shall have the power to collect the rents, issues, profits, earnings, and income from the Mortgaged Property and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. Such receiver may apply the net income from the Mortgaged Property as payment of the Obligations secured hereby in the manner and order set forth in the applicable Loan Documents. Mortgagor agrees that a receiver may be appointed without any notice to Mortgagor whatsoever and hereby waives notice.

(iii) Mortgagee shall have all of the rights and remedies of an assignee and secured party granted by Applicable Law, including the Uniform Commercial Code, and shall, to the extent permitted by Applicable Law, have the right and power, but not the obligation, to take possession of the Personal Property Collateral, and for that purpose Mortgagee may enter upon any premises on which

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any or all of the Personal Property Collateral is located and take possession of and operate such Personal Property Collateral or remove the same therefrom. Mortgagee, pursuant to Section 9-501(4) of the Uniform Commercial Code, as such Section is currently constituted or may be hereafter amended, shall have the option of proceeding under the Uniform Commercial Code as to that portion of the Mortgaged Property constituting personal property or of proceeding as to the Mortgaged Property and without regard to the adequacy of Mortgagee's security for the Obligations, or any part or component thereof, including both the real and personal property, in accordance with Mortgagee's rights and remedies in respect of the real property. Mortgagee may require Mortgagor to assemble the Personal Property Collateral and make it available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to both parties. The following presumptions shall exist and shall be deemed conclusive with regard to the exercise by Mortgagee of any of its remedies with respect to the Personal Property Collateral:

(a) If notice is required by Applicable Law, ten (10) days' prior written notice of the time and place of any public sale or of the time after which any private sale or any other intended disposition thereof is to be made shall be reasonable notice to Mortgagor. No such notice is necessary if such property is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(b) Without in any way limiting the right and authority of Mortgagee to sell or otherwise dispose of Personal Property Collateral in a commercially reasonable manner, the following, or any of them, shall be considered commercially reasonable: (1) Mortgagee may hold a public sale of the Personal Property Collateral in New York, New York or in the city, town or county where the Personal Property Collateral is located or in the city, town or county where the Premises to which such Personal Property Collateral relates, if any, is located, after having provided Mortgagor with ten (10) days' notice of such sale and after having published notice of such sale by an advertisement not less than three inches in height and one column in width in a newspaper of general circulation where the Personal Property Collateral is located or where the Premises to which such Personal Property Collateral relates, if any, is located, as Mortgagee determines to be appropriate (which advertisement may be placed in the "classified" section), for a period of not less than five issues commencing not more than ten days prior to the sale; (2) the Personal Property Collateral may be sold for cash; and (3) Mortgagee or any other person owning, directly or indirectly, any interest in any of the Obligations may be a purchaser at such sale.

(c) If Mortgagee in good faith believes that the Securities Act of 1933 or any other state or Federal law prohibits or restricts the customary manner of sale or distribution of any of such property, Mortgagee may sell such property privately in a commercially reasonable

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manner or in any other commercially reasonable manner deemed advisable by Mortgagee at such price or prices as Mortgagee determines in the sole discretion of Mortgagee. Mortgagor recognizes that such prohibition or restriction may cause such property to have less value than it otherwise would have and that, consequently, such sale or disposition by Mortgagee may result in a lower sales price than if the sale were otherwise held.

(iv) Mortgagee shall, subject to any mandatory requirements of Applicable Law, sell or have sold the Mortgaged Property or interests therein or any part thereof at one or more sales, as an entirety or in separate parcels, at such place or places and otherwise in such manner and upon such notice as may be required by law or by this Mortgage, or, in the absence of any such requirement, as Mortgagee may deem appropriate. Mortgagee shall make a conveyance to the purchaser or purchasers thereof without, to the extent permitted by Applicable Law, any warranties express or implied. Subject to Applicable Laws, Mortgagee may postpone the sale of such Mortgaged Property or interests therein or any part thereof by public announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement. Sale of a part of the Mortgaged Property or interests therein or any defective or irregular sale hereunder will not exhaust Mortgagee's remedies hereunder, and sales may be made from time to time until all such property is sold without defect or irregularity or the Obligations are paid and performed in full. Mortgagee shall have the right to appoint one or more auctioneers or attorneys-in-fact to act in conducting the foreclosure sale and executing a deed to the purchaser. It shall not be necessary for any of the Mortgaged Property at any such sale to be physically present or constructively in the possession of Mortgagee and, subject to Applicable Laws, Mortgagor shall deliver all of the Mortgaged Property to the purchaser at such sale. If it should be impossible or impracticable to take actual delivery of the Mortgaged Property, then the title and right of possession to the Mortgaged Property shall pass to the purchaser at such sale as completely as if the same had been actually present and delivered.

(v) Mortgagee may, personally or by its agents or attorneys, take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Affiliate Guaranty, in this Mortgage or in any of the other Loan Documents or in aid of the execution of any power herein or therein granted, or sale of the Mortgaged Property as herein permitted or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

(vi) In the event Mortgagor shall fail to pay any amounts due and owing in accordance with the terms of this Mortgage, the Affiliate Guaranty or the other Loan Documents, Mortgagee, at its right and option, may institute an action or proceeding at law or in equity for the collection of any sums due and

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unpaid and may prosecute any such action or proceeding to judgment or final decree. Mortgagee may enforce any such judgment or final decree against Mortgagor as provided in this Mortgage, and against any guarantor of the Obligations, as provided in any guarantee. Mortgagee may collect moneys adjudged or decreed to be payable to Mortgagee and shall be entitled to recover such judgment either before, after or during the pendency of any proceeding for the enforcement of the provisions of this Mortgage or any such guarantee. The right of Mortgagee to recover such judgment shall not be affected by any entry or sale, by the exercise of any other right, power or remedy provided by and for the enforcement of the provisions of this Mortgage or of the Loan Documents or the foreclosure of the Lien hereof or sale of the Mortgaged Property hereunder. In case of insolvency or bankruptcy proceedings against Mortgagor or any reorganization or liquidation proceedings, Mortgagee shall be entitled to prove the whole amount of Obligations due and owing under this Mortgage and any of the other Loan Documents without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no instance shall Mortgagee receive a greater amount than the Obligations and any other payments, charges or costs due and owing to Mortgagee under any of the Loan Documents from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estates of Mortgagor.

B. Right to Purchase. Mortgagee (or any other person owning, directly or indirectly, any interest in any of the Obligations) and its agents and attorneys shall have the right to become the purchaser at any sale made pursuant to the provisions of this Section 5.3 and shall have the right to credit upon the amount of the bid made therefor the amount payable to it out of the net proceeds of such sale. All other sales shall be, to the extent permitted by Applicable Law, on a cash basis. Recitals contained in any conveyance to any purchaser at any sale made hereunder will conclusively establish the truth and accuracy of the matters therein stated, including without limitation nonpayment of the Obligations and advertisement and conduct of such sale in the manner provided herein or provided by law. Mortgagor does hereby ratify and confirm all legal acts that Mortgagee may do in carrying out the provisions of this Mortgage.

C. Conveyance of Title Upon Sale. Any sale of the Mortgaged Property or any part thereof in accordance with the provisions of this Section 5.3 will operate to divest all right, title, interest, claim and demand of Mortgagor in and to the property sold and will be a perpetual bar against Mortgagor. Nevertheless, if requested by Mortgagee so to do, Mortgagor shall join in the execution, acknowledgement and delivery of all proper conveyances, assignments and transfers of the property so sold. Subject to Applicable Law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased, and Mortgagor agrees that if Mortgagor retains possession of the property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be guilty of forcible detainer and will be subject to eviction and removal, forcible or otherwise,

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with or without process of law, and all damages to Mortgagor by reason thereof are hereby expressly waived by Mortgagor.

D. Waiver of Rights and Defenses. Mortgagor acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights under Applicable Law with respect to this Mortgage, the Obligations and the Mortgaged Property. Nevertheless, Mortgagor hereby (i) waives and relinquishes (to the maximum extent permitted by Applicable Law) and (ii) agrees that Mortgagor shall not (subject to any mandatory requirements of Applicable Law) at any time hereafter have or assert, any right under any Applicable Law pertaining to: marshalling, whether of assets or Liens, the sale of property in the inverse order of alienation, the exemption of homesteads, the administration of estates of decedents, appraisal, valuation, stay, extension, redemption, statutory right of redemption, the maturing or declaring due of the whole or any part of the Obligations, notice of intention of such maturing or declaring due, other notice (whether of defaults, advances, the creation, existence, extension or renewal of any of the Obligations or otherwise, except for rights to notices expressly granted in the Credit Agreement, herein or in the other Loan Documents), subrogation, or abatement, suspension, deferment, diminution or reduction of any of the Obligations (including, without limitation, set-off), now or hereafter in force.

E. Right to Subordinate. Mortgagee, at its option, is authorized to foreclose this Mortgage or sell the Mortgaged Property or any portion thereof, subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure or sale proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the Obligations.

F. Right to Preserve Obligations. Mortgagee shall, to the extent permitted by Applicable Laws, have the option to proceed with foreclosure in satisfaction of any installment or part of the Obligations that has not been paid or performed without declaring the whole of the Obligations as immediately mature, and such foreclosure may be made subject to the unmatured part of the Obligations, and it is agreed that such foreclosure, if so made, shall not in any manner affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations, this Mortgage, the Affiliate Guaranty and the Credit Agreement shall remain in full force and effect just as though no foreclosure or sale had been made. Several foreclosures may be made without exhausting the right of foreclosure for any unmatured part of the Obligations, it being the purpose to provide for a foreclosure and sale of the security for any matured portion of the Obligations without exhausting the power of foreclosure for any other part of the Obligations.

G. No Waiver. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such right or power or any such Event of Default or an acquiescence thereto. Every power and remedy provided by this Mortgage may be exercised, from time to time, as often as may be deemed expedient by Mortgagee. Nothing

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in this Mortgage, the Affiliate Guaranty or any of the other Loan Documents shall affect the obligation of Mortgagor to pay and perform the Obligations in the manner and at the time and place, respectively, expressed therein.

H. Right to Discontinue Proceedings. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason or such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, power and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

I. Notices to Third Parties. Mortgagee shall have the right, but not the obligation, to notify franchisors or ground lessors of any Event of Default or any exercise of remedies by Mortgagee hereunder, and Mortgagee shall have the right, but not the obligation, to notify other third parties of any Event of Default or exercise of remedies by Mortgagee hereunder, whether or not Mortgagee has agreed with any franchisor, ground lessor or other third party to provide such notice.

5.4 Costs and Expenses.

All costs and expenses (including, without limitation, reasonable attorneys' fees, legal expenses, title premiums, title report and work charges, filing fees, general intangible taxes and mortgage, mortgage registration, transfer, stamp and other excise taxes) actually incurred by Mortgagee in perfecting, protecting, or enforcing its rights hereunder, whether or not an Event of Default shall have occurred, shall be payable by Mortgagor within ten (10) days after written demand by Mortgagee accompanied by (upon Mortgagor's request) such reasonable documentation of such costs and expenses as is reasonably available to Mortgagee, as the case may be, and shall bear interest at the Agreed Rate from the date such cost or expense is incurred until the date of payment. All such costs, expenses and interest, shall be part of the Obligations and shall be secured by this Mortgage.

5.5 Additional Rights of Mortgagee.

Mortgagee shall have the right, at its election, to exercise any and all other remedies in the Affiliate Guaranty, in the Credit Agreement or in any of the Loan Documents or available at law or in equity, including, but not limited to, the additional rights if any set forth on Schedule I attached hereto and by this reference incorporated herein.

5.6 Application of Proceeds.

A. The proceeds of any sale of the Mortgaged Property or any part thereof made pursuant to this Section 5 shall be applied as follows:

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- FIRST:** to the payment of all costs and expenses incident to the enforcement of this Mortgage, including, a reasonable compensation to the agents, attorneys and in-house counsel of Mortgagee;
- SECOND:** to the payment or prepayment of the Obligations, in such order as Mortgagee shall elect; and
- THIRD:** the remainder, if any, after full and final payment of the Obligations shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law;

provided, however, that if Applicable Laws require such proceeds to be paid or applied in a manner other than as set forth above in this Section 5.6A, then such proceeds shall be paid or applied in accordance with such Applicable Laws.

B. Upon any sale hereunder by Mortgagee of all or any portion of the Mortgaged Property, the receipt of Mortgagee will be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and the heirs, devisees, personal representatives, successors and assigns thereof will not, after paying such purchase money and receiving such receipt of Mortgagee, be obligated to see to the application thereof or be in any way answerable for any loss, misapplication or non-application thereof.

SECTION 6 INDEMNIFICATION

Pursuant to and in accordance with the provisions set forth more fully in Section 9.3 of the Credit Agreement, Mortgagor shall defend, indemnify, pay and hold harmless Mortgagee and the other Indemnified Persons (as defined in the Credit Agreement) from and against any and all claims, liabilities, losses, damages, penalties, fines, forfeitures, judgments, and expenses or other Obligations of any kind or nature whatsoever (including reasonable fees and disbursements of counsel to such Indemnified Person) incurred on account of any matter or thing or alleged action or failure to act by Mortgagee, whether in suit or not, arising out of the operation, leasing, management, maintenance, repair, use or occupancy of the Premises (should Mortgagee elect to enter upon and assume the same upon an Event of Default), the construction of Improvements on or about the Premises, any accident, injury, death or damage to any Person or property occurring in, on or about the Premises or any street, drive, sidewalk, curb or passageway adjacent thereto, any misappropriation by Mortgagor of any prepayments of Rent or Security Deposits paid or payable by Mortgagor pursuant to this Mortgage, prior to payment in full of the Obligations of Mortgagor to Mortgagee or in connection therewith, except to the extent that such suit, claim or damage is caused by the gross negligence or willful misconduct of Mortgagee.

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SECTION 7 TERMINATION

If all of the Obligations shall be paid in full pursuant to the terms and conditions of this Mortgage and the other Loan Documents, or if this Mortgage shall be released of record in accordance with the provisions of the Credit Agreement or the other Loan Documents, then Mortgagee shall, promptly after the request of Mortgagor, execute, acknowledge and deliver to Mortgagor proper instruments evidencing the termination and release of this Mortgage. Mortgagor shall pay all reasonable legal fees and other expenses incurred by Mortgagee for preparing and reviewing such instruments and the execution and delivery thereof, and Mortgagee may require payment of the same prior to delivery of such instruments. Upon the receipt by Mortgagor of terminations or releases signed by Mortgagee, and in recordable form and evidencing the termination of this Mortgage, Mortgagor shall promptly and at its own expense record or file such terminations or releases in each of the cities, towns, counties and parishes, as appropriate, in which portions of the Mortgaged Property may be located, in such a manner so as to effect a release of all of the Mortgaged Property of record. Upon the request of Mortgagee, Mortgagor shall promptly deliver to Mortgagee evidence reasonably satisfactory to Mortgagee of such recordation or filing. The obligations of Mortgagor under this Section 7 shall survive the termination of this Mortgage.

SECTION 8 MISCELLANEOUS COVENANTS AND AGREEMENTS

8.1 Cumulative Rights; Waivers; Modifications.

Each and every right, power and remedy hereby granted to Mortgagee shall be cumulative and not exclusive, and each and every right, power and remedy whether specifically hereby granted or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Mortgagee, and the exercise of any such right, power or remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No delay or omission by Mortgagee in the exercise of any right, power or remedy will impair any such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing. All changes to and modifications of this Mortgage must be in writing and signed by Mortgagor and Mortgagee.

8.2 Partial Releases.

No release from the Lien of this Mortgage of any part of the Mortgaged Property by Mortgagee shall in any way alter, vary or diminish the force or effect of this Mortgage on the balance of the Mortgaged Property or the priority of the Lien of this Mortgage on the balance of the Mortgaged Property.

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8.3 Severability.

In case any provision in or obligation under this Mortgage shall be invalid, illegal or unenforceable in any jurisdiction or under any set of circumstances, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction or under any other set of circumstances, shall not in any way be affected or impaired thereby. If any Lien evidenced or created by this Mortgage is invalid or unenforceable, in whole or in part, as to any part of the Obligations, or is invalid or unenforceable, in whole or in part, as to any part of the Mortgaged Property, such portion, if any, of the Obligations as is not secured by all of the Mortgaged Property hereunder shall be paid prior to the payment of the portion of the Obligations secured by all of the Mortgaged Property, and all payments made on the Obligations (including, without limitation, cash and/or property received in connection with sales of Mortgaged Property pursuant to Section 5 hereof) shall, unless prohibited by Applicable Laws or unless Mortgagee, in its sole and absolute discretion, otherwise elects, be deemed to have been first paid on and applied to payment in full of the unsecured or partially secured portion of the Obligations, and the remainder to the secured portion of the Obligations.

8.4 Subrogation.

This Mortgage is made with full substitution and subrogation of Mortgagee in and to all covenants and warranties by others heretofore given or made in respect of the Mortgaged Property or any part thereof. If any or all of the proceeds of the indebtedness secured hereby have been used to extinguish, extend or renew any indebtedness heretofore existing against all or any portion of the Mortgaged Property or to satisfy any indebtedness or obligation secured by a Lien of any kind (including Liens securing the payment of any taxes), such proceeds have been advanced by Mortgagee at Mortgagor's request and, to the extent of such funds so used, the indebtedness and obligations in this Mortgage shall be subrogated to and extend to all of the rights, claim, Liens, titles and interests heretofore existing against the Mortgaged Property (or such portion thereof) to secure the indebtedness or obligation so extinguished, paid, extended or renewed, and the former rights, claims, Liens, titles and interests, if any, shall not be waived but rather shall be continued in full force and effect and in favor of Mortgagee and shall be merged with the Lien created herein as cumulative security for the repayment of the indebtedness and satisfaction of the Obligations, but the terms of the Loan Documents shall govern and control the relationship between Mortgagor and Mortgagee.

8.5 Mortgagee's Powers.

Without affecting the liability of any other Person liable for the payment of any obligations herein mentioned and without affecting the Lien of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid Obligations, from time to time, regardless of consideration and without notice to or consent by the holder of any subordinate Lien, right, title or interest in or to the Mortgaged Property, Mortgagee may, (a) release any persons liable, (b) extend the

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maturity or alter any of the terms of any such Obligation, (c) modify the interest rate payable on the principal balance of the Obligations, (d) grant other indulgences, (e) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (f) take or release any other or additional security for any obligations herein mentioned, or (g) make compositions or other arrangements with debtors in relation thereto.

8.6 Enforceability of Mortgage.

This Mortgage is deemed to be and may be enforced from time to time as an assignment, chattel mortgage, contract, deed of trust, deed to secure debt, financing statement, real estate mortgage, or security agreement, and from time to time as any one or more thereof, as is appropriate under Applicable Laws. A carbon, photographic or other reproduction of this Mortgage or any financing statement in connection herewith shall be sufficient as a financing statement for any and all purposes.

8.7 Interest.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE AMOUNT OF INTEREST REQUIRED HEREUNDER OR UNDER THE CREDIT AGREEMENT, THE NOTES OR ANY OF THE OTHER LOAN DOCUMENTS SHALL BE LIMITED TO THE MAXIMUM AMOUNT IN ACCORDANCE WITH SECTION 9.14 OF THE CREDIT AGREEMENT. ONE OF THE PURPOSES OF THIS PARAGRAPH IS TO PROVIDE RECORD NOTICE OF THE RIGHT OF MORTGAGEE TO INCREASE OR DECREASE THE INTEREST RATE ON ANY OF THE OBLIGATIONS IN ACCORDANCE WITH THE TERMS OF THE LOAN DOCUMENTS WHERE THE TERMS AND PROVISIONS OF SUCH LOAN DOCUMENTS PROVIDE FOR A VARIABLE INTEREST RATE.

8.8 Choice of Law.

Insofar as permitted by otherwise Applicable Law, this Mortgage and the Obligations shall be and the other Loan Documents provide that they are to be construed under and governed by the laws of the State of New York without regard to conflict of law rules and principles; ~~provided, however,~~ that the laws of the place in which the Mortgaged Property is located shall apply to the extent, and only to the extent, necessary to permit Mortgagor to create the Lien of this Mortgage and to permit Mortgagee to perfect the Lien of this Mortgage, to establish the priority of Liens, and to enforce or realize upon their rights and remedies hereunder with respect to such Mortgaged Property.

8.9 Counterparts.

This Mortgage and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed and acknowledged in any number of counterparts and by different parties hereto in separate counterparts, each of which when

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so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature and acknowledgement pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature and acknowledgement pages are physically attached to the same document. Mortgagee shall also have the option to exercise all rights and remedies available to Mortgagee hereunder and under Applicable Laws as though each counterpart hereof were a separate mortgage, deed of trust, deed to secure debt, chattel mortgage or other security instrument covering only the portions of the Mortgaged Property located in the city, town, county or parish wherein such counterpart is recorded.

8.10 Recording References.

Unless otherwise specified in Exhibit A hereto, all recording references in Exhibit A are to the official real property records of the city, town, county or parish, as appropriate, in which the Land is located.

8.11 Notices.

All notices, requests and demands to be made hereunder shall be made in accordance with Section 9.8 of the Credit Agreement.

8.12 Successors and Assigns.

This Mortgage shall be the joint and several obligation of Mortgagor and all of its heirs, devisees, representatives, trustees, successors and assigns, including successors in interest of Mortgagor in and to any part of the Mortgaged Property, and all references in this Mortgage to Mortgagor shall be deemed to include all of the foregoing Persons. This Mortgage shall be assignable by Mortgagee in accordance with the provisions for assignment of the Loans set forth in the Credit Agreement and shall inure to the benefit of Mortgagee, and all of its heirs, successors, substitutes and assigns including, without limitation, (a) any other Eligible Assignee under the terms of the Credit Agreement, and (b) any and all other banks, lending institutions and parties which may participate in the indebtedness evidenced by the Notes or any of them (all such banks, lending institutions and parties who participate in the indebtedness evidenced by the Notes or any of them being referred to herein as the "Participants"). The Participants may, by agreement among them, provide for and regulate the exercise of their rights and remedies hereunder, but Mortgagor and all others shall be entitled to rely on the releases, waivers, consents, approvals, notifications and other acts of Mortgagee, without inquiry into any such agreements or the existence of required consents or approvals of the Participants therefor. As used herein, the term "Mortgagee" shall mean, at any particular time, any Person holding any interest of Mortgagee hereunder (as provided in and subject to the provisions of Section 9.1 of the Credit Agreement) at that time including, without limitation, any Eligible Assignee designated as Agent under the Credit Agreement. Any waiver, consent, approval, notification or other action required or permitted to be obtained from or taken by Mortgagee may be obtained from or taken by the agent or agents of Mortgagee appointed from time to time for that purpose. Mortgagor

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and all others shall be entitled to rely on the waivers, consents, approvals, notifications and other acts of Mortgagee. As of the date of this Mortgage, Mortgagee is the Person identified as Mortgagee in the introductory paragraph of this Mortgage. Notwithstanding any other provision contained herein, if any property interest granted by this Mortgage does not vest on the execution and delivery of this Mortgage, it shall vest, if at all, no later than 20 years and 364 days after the death of the last surviving descendant of Joseph P. Kennedy (the late father of the former President of the United States) who is alive on the execution and delivery of this Mortgage.

8.13 Expenses.

The provisions set forth in Section 9.2 of the Credit Agreement are incorporated herein by this reference and shall apply with the same force and effect as if the terms of such section was set forth herein in full.

8.14 Nonforeign Entity

Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Mortgagee that the withholding of tax will not be required in the event of the disposition of the Premises, or any portion thereof, pursuant to the terms of this Mortgage, Mortgagor hereby certifies, under penalty of perjury, that:

(i) Mortgagor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder; and

(ii) Mortgagor's U.S. employer identification number is 52-1925238; and

(iii) Mortgagor's principal place of business is 1010 Wisconsin Avenue, N.W., Washington, D.C. 20007.

It is understood that Mortgagee may disclose the contents of this certification to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. Mortgagor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Mortgagee shall reasonably require. The covenant set forth herein shall survive the foreclosure of the Lien of this Mortgage or acceptance of a deed in lieu thereof.

8.15 Purpose of the Loans.

Mortgagor hereby represents and agrees that the Loans evidenced or guaranteed by the Loan Documents and secured by this Mortgage are being obtained for

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business or commercial purposes, and the proceeds thereof will not be used for personal, family, residential, household or agricultural purposes.

8.16 No Joint Venture or Partnership.

The provisions set forth in Section 9.4 of the Credit Agreement are incorporated herein by this reference and shall apply with the same force and effect as if the terms of such section was set forth herein in full.

8.17 Amendments and Waivers.

No amendment, modification, termination or waiver of any provision of this Mortgage or consent to any departure by any Loan Party therefrom, shall in any event be effective without the written concurrence of Mortgagee. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Mortgagor in any case shall entitle Mortgagor to any other or further notice or demand in similar or other circumstances.

8.18 Covenants and Agreements Run with Land.

All of Mortgagor's covenants and agreements hereunder shall run with the land.

8.19 Statements by Mortgagor.

Mortgagor shall, within ten (10) days after written notice thereof from Mortgagee, deliver to Mortgagee a written statement stating the outstanding principal amount of the Guaranteed Obligations under the Affiliate Guaranty, any accrued and unpaid interest thereon and any other amounts secured by this Mortgage and stating whether any offset or defense then known to Mortgagor after inquiry exists against such principal and interest.

8.20 Non-Waiver.

A. **Certain Actions Not a Release of Mortgagor.** Mortgagor shall not be relieved of Mortgagor's obligation to pay and perform the Obligations at the time and in the manner provided in the Affiliate Guaranty and the other Loan Documents by reason of, and the rights of Mortgagee hereunder shall not be affected by, (i) any failure of Mortgagee to comply with any request of Mortgagor or any guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions of the Affiliate Guaranty, the Credit Agreement or any other Loan Document, (ii) any release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Obligations, (iii) any alteration, extension, renewal, change, modification, release, amendment, compromise or cancellation, in whole or in part, of any term, covenant or provision of any of the Loan Documents, including any increase or decrease in the principal

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amount of the Obligations or any increase or decrease in the rate of interest applicable thereto or any extension of time for payment thereof, or (iv) any agreement or stipulation between Mortgagee and any subsequent owner or owners of the Mortgaged Property or other Person extending the time of payment or otherwise modifying or supplementing the terms of this Mortgage, the Affiliate Guaranty, the Credit Agreement or any other Loan Document, without first having obtained the consent of Mortgagor, and in the latter event, Mortgagor shall continue to be obligated to pay and perform the Obligations at the time and in the manner provided in the Affiliate Guaranty and the other Loan Documents, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by Mortgagee in writing.

B. Priority Over Subordinate Liens. Without affecting the liability of any other Person liable for the payment and performance of the Obligations and without affecting the Lien of this Mortgage or of any other Loan Document upon any portion of the Mortgaged Property not then or theretofore released as security for the payment and performance in full of all of the Obligations, from time to time, regardless of consideration and without notice to or consent by the holder of any subordinate Lien, encumbrance, right, title or interest in or to the Mortgaged Property, Mortgagee may, (i) release any persons liable for the payment or performance of the Obligations, (ii) extend the maturity or alter any of the terms of any of the Obligations as provided in the Loan Documents, (iii) modify the interest rate payable on the principal balance of the Obligations as provided in the Loan Documents, (iv) grant other indulgence, (v) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (vi) take or release any other or additional security for the Obligations herein mentioned, or (vii) make compositions or other arrangements with debtors in relation thereto.

8.21 Survival of Obligations.

This Mortgage shall continue to secure the entire Obligations until the entire Obligations are paid in full or until this Mortgage has been released, of record by Mortgagee pursuant to the terms of the Credit Agreement or any of the other Loan Documents.

8.22 Consent to Jurisdiction and Service of Process.

ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST MORTGAGOR ARISING OUT OF OR RELATING TO THE AFFILIATE GUARANTY, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY OBLIGATIONS THEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. MORTGAGE FORECLOSURES AND OTHER IN REM PROCEEDINGS AGAINST MORTGAGOR MAY BE BROUGHT IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT OF COMPETENT JURISDICTION IN ILLINOIS. BY EXECUTING AND DELIVERING THIS MORTGAGE, MORTGAGOR, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY:

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(i) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(ii) WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*;

(iii) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO MORTGAGOR AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.8 OF THE CREDIT AGREEMENT;

(iv) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER MORTGAGOR IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT;

(v) AGREES THAT MORTGAGEE RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST MORTGAGOR IN THE COURTS OF ANY OTHER JURISDICTION; AND

(vi) AGREES THAT THE PROVISIONS OF THIS SECTION 8.22 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1402 OR OTHERWISE.

8.23 Waiver of Jury Trial.

EACH OF THE PARTIES TO THIS MORTGAGE HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE AFFILIATE GUARANTY, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/GUARANTOR RELATIONSHIP THAT IS BEING ESTABLISHED HEREBY AND THEREBY. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Mortgage and the other Loan Documents, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER**

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SPECIFICALLY REFERRING TO THIS SECTION 8.23 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE UNDER THE CREDIT AGREEMENT OR GUARANTEED UNDER THE AFFILIATE GUARANTY. In the event of litigation, this Mortgage may be filed as a written consent to a trial by the court.

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IN WITNESS WHEREOF, Mortgagor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED.

Mortgagor:

EQUISTAR SCHAUMBURG COMPANY, L.L.C.,
a Delaware limited liability company

By: **CAPSTAR MANAGEMENT COMPANY, L.P.,**
a Delaware limited partnership
Managing Member

By: **CAPSTAR HOTEL COMPANY,**
a Delaware corporation
General Partner

By: *William M. Karnes*
Name: William M. Karnes
Title: Senior Executive Vice President

Attest: *John Emory*
Name: John Emory
Title: Treas./Sec.

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DISTRICT OF COLUMBIA)

I, Cynthia Mulligan, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that William M. Karnes, personally known to me to be the Senior Executive Vice President of CAPSTAR HOTEL COMPANY, a Delaware corporation and John Frey, personally known to me to be the Treas Secretary of said corporation, which corporation is the general partner of CAPSTAR MANAGEMENT COMPANY, L.P., a Delaware limited partnership, which partnership is the managing member of ECUSTAR SCHAUMBURG COMPANY, L.L.C., whose names are subscribed to the within instrument, appeared before me this day in person and severally acknowledged that as such Senior Executive Vice President and Treas Secretary they signed and delivered the said instrument as Senior Executive Vice President and Treas Secretary of said Corporation as their free and voluntary act and as the free and voluntary act and deed of said corporation, said partnership and said limited liability company, for the uses and purposes therein set forth.

1996

GIVEN under my hand and Notarial Seal, this 26 day of Sept, A.D.

Cynthia J Mulligan
Notary Public

My Commission Expires:

6-14-2001

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EXHIBIT A

LEGAL DESCRIPTION OF LAND

The Name of the Record Owner of the Land is EquiStar Schaumburg Company, L.L.C.

The permanent tax index number for the Land is 07-12-200-011.

THAT PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 AND THAT PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LOCATED 368.55 FEET NORTH OF THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SECTION 12 ON THE WEST LINE OF THE EAST 1/2 OF FRACTIONAL SECTION 1, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN THENCE FROM SAID POINT SOUTH 59 DEGREES 58 MINUTES 38 SECONDS EAST, A DISTANCE OF 2.29 FEET, TO A POINT; THENCE SOUTHEASTERLY FROM SAID POINT ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 703.98 FEET FOR AN ARC DISTANCE OF 334.82 FEET TO A POINT, SAID CURVE HAVING A CHORD LENGTH OF 331.67 FEET BEARING SOUTH 73 DEGREES 36 MINUTES 06 SECONDS EAST; THENCE EASTERLY FROM SAID POINT ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 539.96 FEET FOR AN ARC DISTANCE OF 65.18 FEET TO A POINT; SAID CURVE HAVING A CHORD LENGTH OF 65.14 FEET BEARING SOUTH 03 DEGREES 46 MINUTES 10 SECONDS EAST; THENCE SOUTH FROM SAID POINT, A DISTANCE OF 626.08 FEET TO A POINT; THENCE DUE EAST FROM SAID POINT, A DISTANCE OF 137.41 FEET TO A POINT; THENCE DUE SOUTH FROM SAID POINT A DISTANCE OF 484.58 FEET TO A POINT; THENCE FROM SAID POINT NORTH 89 DEGREES 46 MINUTES 31 SECONDS EAST, A DISTANCE OF 397.05 FEET TO A POINT 1.33 FEET EAST OF THE WEST LINE OF THE EAST 1/2 OF SECTION 12, WHICH IS 177.870 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH 0 DEGREES 09 MINUTES 09 SECONDS WEST IN SAID WEST LINE 924.596 FEET TO ITS POINT OF INTERSECTION WITH THE SOUTHWESTERLY RIGHT OF WAY LINE OF ALGONQUIN ROAD; THENCE SOUTH 58 DEGREES 55 MINUTES 28 SECONDS EAST IN SAID RIGHT OF WAY LINE 470.96 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY ON THE ARC OF A CIRCLE CONVEX SOUTHWESTERLY AND HAVING A RADIUS OF 5779.65 FEET, A DISTANCE OF 678.600 FEET TO THE INTERSECTION OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF ALGONQUIN ROAD AND THE NORTHWESTERLY RIGHT OF WAY LINE OF ARBOR DRIVE; THENCE SOUTH 24 DEGREES 20 MINUTES 46 SECONDS WEST ON A RADIAL LINE OF 83.0 FEET TO A POINT OF CURVE; THENCE SOUTHERLY AND EASTERLY ON THE ARC OF A CIRCLE HAVING A RADIUS OF 87 FEET AND BEING CONVEX SOUTHWESTERLY 137.163 FEET TO A POINT; SAID CURVE HAVING A CHORD LENGTH OF 123.321 FEET BEARING SOUTH 20 DEGREES 49 MINUTES 06 SECONDS EAST, THENCE NORTHWESTERLY FROM SAID POINT ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 549.817 FEET FOR AN ARC DISTANCE OF 188.143 FEET TO A POINT; SAID CURVE HAVING A CHORD LENGTH OF 187.226 FEET, BEARING NORTH 56 DEGREES 10 MINUTES 51 SECONDS WEST, THENCE NORTH 46 DEGREES 22 MINUTES 40 SECONDS WEST, A DISTANCE OF 159.576 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 46 DEGREES 22 MINUTES 40 SECONDS WEST, A DISTANCE OF 21.903 FEET TO A POINT; THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 561.694 FEET FOR A DISTANCE OF 149.118 FEET TO A POINT, SAID CURVE HAVING A CHORD LENGTH OF 148.681 FEET BEARING NORTH 53 DEGREES 59 MINUTES 01 SECONDS WEST, THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1721.978 FEET FOR AN ARC DISTANCE OF 99.972

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