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This instrument was prepared by
and, when recorded, should be
returned to:



ATHERTON CAPITAL
PARTNERS, L.P.
1001 Bayhill Drive, Suite 155
San Bruno, California 94066
Attn: David Elder

95-05910B

Restaurant No. 1172

MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

6550

dated as of March 12 1996

from

MCKENZIE COOK @ 8300 S. ASHLAND AVENUE, INC.,
an Illinois corporation,

as Mortgagor,

for the benefit of

ATHERTON CAPITAL PARTNERS, L.P.,
a California limited partnership,

as Mortgagee

Property: Cook County, Illinois (Restaurant # 1172)

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (herein called this "Mortgage") dated as of March 19, 1996, is executed by MCKENZIE COOK @ 8300 S. ASHLAND AVENUE, INC., an Illinois corporation, as the mortgagor (herein, together with its successors and assigns, called "Mortgagor"), with a mailing address at c/o McKenzie Cook, 5307 South Hyde Park Boulevard, Suite 101, Chicago, Illinois 60615, for the benefit of ATHERTON CAPITAL PARTNERS, L.P., a California limited partnership, as the mortgagee (herein, together with its successors and assigns, called "Mortgagee"), with a mailing address at: 1001 Bayhill Drive, Suite 155, San Bruno, California 94066.

RECITALS:

A. **Loan Agreement.** Reference is hereby made to that certain Loan Agreement (the "Loan Agreement") dated as of the date hereof by and between Mortgagor, as borrower, and Mortgagee, as lender. Pursuant to the Loan Agreement, Mortgagee has agreed to loan certain funds to Mortgagor (the "Loan") and Mortgagor has executed and delivered to Mortgagee that certain Note evidencing Mortgagor's obligation to repay the Loan (the "Note").

B. **Secured Obligations.** The obligations secured by this Mortgage (the "Obligations") are comprised at any time of the following:

(i) the full and punctual payment by Mortgagor when due of (a) all principal of and interest on the Loan and the Note, which principal amount as of the date hereof is Seven Hundred Twenty-Five Thousand Dollars and No/100 (\$725,000.00); and (b) all other amounts payable by Mortgagor pursuant to the Loan Agreement, the Note or any other Loan Document. The maturity date of the Note is March 12, 2008;

(ii) the full and punctual payment when due of all amounts payable by Mortgagor under this Mortgage, including, without limitation, indemnification obligations and advances made pursuant to the Loan Documents;

(iii) the performance and observance by Mortgagor of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Mortgagor under any Loan Document; and

(iv) the performance and observance by Mortgagor of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Mortgagor under all amendments, supplements, consolidations, replacements, renewals, extensions or other modifications of the foregoing, in each case whether now existing or hereafter arising; and

(v) the payment of all other sums, with interest thereon, in connection with a \$675,000 loan to Mortgagor by Mortgagee ("Concurrent Loan Financing") made pursuant to a Loan Agreement between MCKENZIE COOK @ 8645 S. STONY ISLAND AVENUE, INC., ("Mortgagor 86th") and Mortgagee dated of even date herewith relating to Wendy's Restaurant No. 1171 located at 8645 Stony Island Avenue, Chicago, Illinois (the "Cross-Collateral Restaurant"), together with, among other documents, a Mortgage executed by Mortgagor 86th encumbering Mortgagor 86th's interest in the Cross-Collateral Restaurant ("Concurrent Loan Transaction Documents"), and the performance of every other obligation, covenant and agreement of Mortgagor 86th contained in such Concurrent Loan Transaction Documents.

The Obligations shall include, without limitation, any interest, Yield Maintenance Amount, costs, fees and expenses which accrue on or with respect to any of the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Mortgagor.

GRANTING CLAUSES

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, for the purpose of securing the due and punctual payment, performance and observance of the Obligations and intending to be bound hereby, Mortgagor hereby grants, conveys, mortgages, transfers and assigns to Mortgagee, for the purpose and upon the terms and

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conditions hereinafter set forth, with power of sale and right of entry and possession, all of the property and rights described in the following Granting Clauses (all of which property and rights are herein collectively called the "Subject Property"), to wit:

GRANTING CLAUSE I.

Land. All estate, right, title and interest of Mortgagor in, to, under or derived from those certain lots, pieces, tracts or parcels of land located in certain cities and/or counties in the State of Illinois, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Land").

GRANTING CLAUSE II.

Improvements. All right, title and interest of Mortgagor in, to, under or derived from all buildings, structures, facilities and other improvements of every kind and description now or hereafter located on the Land or attached to the improvements which by the nature of their location thereon or attachment thereto are real property under applicable law (the foregoing being collectively the "Improvements"; and the Land with the Improvements thereon and Equipment therein and Appurtenant Rights thereto being collectively called the "Property").

GRANTING CLAUSE III.

Equipment. All estate, right, title and interest of Mortgagor in, to, under or derived from all machinery, equipment, fixtures and accessions thereof and renewals, replacements thereof and substitutions therefor, and all other customary franchises, fast food restaurant equipment and other tangible property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land, or used exclusively in connection with the present or future operation and occupancy of the Land or the Improvement (hereinafter collectively called the "Equipment").

GRANTING CLAUSE IV.

Appurtenant Rights. All estate, right, title and interest of Mortgagor in, to, under or derived from all tenements, hereditaments and appurtenances now or hereafter relating to the Property; all development, operating or similar rights appurtenant to the Land (including, without limitation, all rights arising from reciprocal access agreements, use or development agreements, and parking agreements); and all easements, licenses and rights of way now or hereafter appertaining to the Property (hereinafter collectively called "Appurtenant Rights").

GRANTING CLAUSE V.

General Intangibles, Payment Rights and Agreements. All estate, right, title and interest of Mortgagor in, to, under or derived from all contract rights, chattel paper, instruments, general intangibles, accounts, guaranties and warranties, letters of credit, and documents, in each case relating to the Property or to the present or future operation or occupancy of the Property, and all plans, specifications, maps, surveys, studies, records, insurance policies, guaranties and warranties, all relating to the Property or to the present or future operation or occupancy of the Property, all management contracts, all supply and service contracts for water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utilities relating to the Property (the foregoing being herein collectively called the "Agreements") and all other agreements affecting or relating to the use, enjoyment or occupancy of the Land or the Equipment.

GRANTING CLAUSE VI.

Leases. All estate, right, title and interest of Mortgagor in, to, under and derived from any lease, tenancy, subtenancy, license, concession or other occupancy agreement relating to the Property (together with all amendments, supplements, consolidations, replacements, restatements, extensions, renewals and other modifications of any thereof) (the "Leases"), now or hereafter in effect, whether or not of record; and the right to bring actions and proceedings under the Lease or for the enforcement thereof and to do anything which Mortgagor or any lessor is or may become entitled to do under the Lease.

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GRANTING CLAUSE VII.

Rents, Issues and Profits. All estate, right, title and interest of Mortgagor in, to, under or derived from all rents, royalties, issues, profits, receipts, revenue, income, earnings and other benefits now or hereafter accruing with respect to all or any portion of the Property, including all rents and other sums now or hereafter payable pursuant to the Leases; and all other claims, rights and remedies now or hereafter belonging or accruing with respect to the Property, including oil, gas and mineral royalties (herein collectively called the "Rents"), all of which Mortgagor hereby irrevocably directs be paid to Mortgagee, subject to the license granted to Mortgagor pursuant to Section 5.07, to be held, applied and disbursed as provided in this Mortgage.

GRANTING CLAUSE VIII.

Permits. All estate, right, title and interest of Mortgagor in, to, under or derived from all licenses, certificates, variances, consents and other permits now or hereafter pertaining to the Property and all estate, right, title and interest of Mortgagor in, to, under or derived from all tradenames or business names relating to the Property or the present or future operation or occupancy of the Property (herein collectively called the "Permits"), excluding, however, from the grant under this Granting Clause (but not the definition of the term "Permits" for the other purposes hereof) any Permits which cannot be transferred or encumbered by Mortgagor without causing a default thereunder or a termination thereof.

GRANTING CLAUSE IX.

Proceeds and Awards. All estate, right, title and interest of Mortgagor in, to, under or derived from all proceeds of any sale, transfer, taking by Condemnation (or any proceeding or purchase in lieu thereof), whether voluntary or involuntary, of any of the Subject Property described above, including all Insurance Proceeds and awards and life insurance proceeds, now or hereafter relating to any of the Subject Property, all of which Mortgagor hereby irrevocably directs be paid to Mortgagee to the extent provided hereunder, to be held, applied and disbursed as provided in this Mortgage.

TO HAVE AND TO HOLD the Subject Property unto Mortgagee, its successors and assigns, under and subject to the terms and conditions of this Mortgage, and for the security and enforcement of the prompt and complete payment and performance when due of all of the Obligations and the performance and observance by Mortgagor of all covenants, obligations and conditions to be performed or observed by Mortgagor pursuant to the Loan Agreement, the Note, and the other Loan Documents; Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

PROVIDED, HOWEVER, that this Mortgage is upon the condition that, if Mortgagor shall pay in full all of the Obligations and perform and observe all such covenants, obligations and conditions, this Mortgage shall cease, terminate pursuant to and in accordance with Section 5.02 and, thereafter, be of no further force effect (except as provided in Sections 4.01, 4.02 and 5.06 hereof); otherwise this Mortgage shall remain and be in full force and effect.

FURTHER PROVIDED, that Mortgagee may from time to time release or reconvey all or a portion of the Subject Property, in accordance with the terms and conditions of the Loan Agreement and applicable law.

MORTGAGOR ADDITIONALLY COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Capitalized terms used, but not otherwise defined herein, are defined in, or by reference to the Loan Agreement and have the same meanings herein as therein.

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ARTICLE II

CERTAIN WARRANTIES AND COVENANTS OF MORTGAGOR

SECTION 2.01. Authority and Effectiveness. (a) Mortgagor represents, warrants and covenants that (i) Mortgagor is and shall be a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, and qualified to do business and in good standing in the state in which the Property is located and has and will have all governmental licenses, authorizations, consents and other qualifications required to carry on its business as now conducted, to own the Subject Property and to execute, deliver and perform this Mortgage; (ii) the execution, delivery and performance by Mortgagor of this Mortgage are within Mortgagor's corporate power, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not and will not contravene, or constitute a default under, any provision of the organizational documents of Mortgagor or of any agreement, judgment, injunction, order, decree or other instrument binding upon Mortgagor or relating to the Property; and (iii) this Mortgage constitutes a legal, valid, binding and enforceable agreement of Mortgagor.

(b) Mortgagor shall cause the representations and warranties in subsection (a) of this Section to continue to be true in each and every respect at all times prior to the termination of this Mortgage.

SECTION 2.02. Title and Further Assurances. (a) Mortgagor hereby represents and warrants to Mortgagee that:

(i) Mortgagor is the owner of the fee simple interest in the Land and the Improvements free from all liens, security interests, Leases, charges or encumbrances whatsoever, except for such liens as are permitted under the Loan Agreement;

(ii) Mortgagor is the owner of the other Subject Property, free and clear of all liens except for such liens as are permitted under the Loan Agreement;

(iii) Mortgagor has good and lawful right to mortgage the Subject Property to Mortgagee without the consent of any Person other than those consents which have been obtained;

(iv) the lien created by this Mortgage constitutes a valid, binding and enforceable lien on the Subject Property; and

(v) the Permitted Property Liens do not materially interfere with or materially adversely affect the use, value or operation of the Property.

(b) Mortgagor shall (i) cause the representations and warranties in subsection (a) of this Section to continue to be true in each and every respect at all times prior to the termination of this Mortgage; and (ii) preserve, protect, warrant and defend (A) the estate, right, title and interest of Mortgagor in and to its Subject Property (B) the validity, enforceability and priority of the lien this Mortgage, and (C) the right, title and interest of Mortgagee and any purchaser at any sale of the Subject Property hereunder or relating hereto.

(c) Upon the recording of this Mortgage in the county recording office of the county in which the Land is located, the lien of this Mortgage shall be a perfected mortgage lien and fixture filing on the Subject Property.

(d) Mortgagor shall perform all acts that may be necessary to continue, maintain, preserve, protect and perfect the Subject Property, the lien granted to Mortgagee therein and the perfected priority of such lien. Upon request by Mortgagee, Mortgagor shall at its sole cost and expense (i) promptly correct any defect or error which may be discovered in this Mortgage or any financing statement or other document relating hereto; and (ii) promptly execute, acknowledge, deliver, record, and re-record, register and re-register, and file and re-file this Mortgage and any fixture filings, financing statements or other documents which Mortgagee may reasonably require from time to time (all in form and substance reasonably satisfactory to Mortgagee) in order (A) to effectuate, complete, perfect, continue or preserve the lien of this Mortgage on the Subject Property, whether now owned or hereafter acquired, (B) to correct or change the name of Mortgagor following any change in its identity, sale of the Subject Property, or assumption of the Loan pursuant to Section 2.07(b), or (C) to effectuate, complete, perfect, continue or preserve any right, power or privilege granted or intended to be granted to Mortgagee hereunder.

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SECTION 2.03. Secured Obligations. Mortgagor shall duly and punctually pay, perform and observe the Obligations binding upon Mortgagor.

SECTION 2.04. Impositions. Subject to Section 2.06 and Section 2.09, Mortgagor shall (i) duly and punctually pay all Impositions before any fine, penalty, interest or cost may be added for nonpayment; and (ii) promptly notify Mortgagee of the receipt by Mortgagor of any notice of default in the payment of any Imposition. The term "Impositions" means all taxes, assessments and other governmental charges, ground rents, or other rents, charges, excises, levies, fees and other charges (public or private) which may be assessed, levied or imposed on, or in respect of or be a lien upon the Subject Property or any part thereof or any interest therein.

SECTION 2.05. Compliance with Legal and Insurance Requirements. (a) Mortgagor represents and warrants that (i) as of the date hereof, the Property and the use and operation thereof comply in all material respects with all Legal Requirements (as defined below), Insurance Requirements (as defined below) and Contractual Obligations; (ii) there is no material default under any Legal Requirement, Insurance Requirement and Contractual Obligation; and (iii) the execution, delivery and performance of this Mortgage does not require any consent the failure of which to obtain would contravene any provision of and constitute a material default under any Legal Requirement, Insurance Requirement or Contractual Obligation. Notwithstanding the limitations set forth in the preceding sentence, Mortgagor represents and warrants that as of the date hereof, the Property and the use thereof comply with all Environmental Laws and that Mortgagor has complied and shall comply with all Environmental Laws.

(b) Subject to Section 2.06 and Section 2.09, Mortgagor shall promptly perform and observe, or cause to be performed and observed and cause the Property to comply with, if the failure to so perform and observe would have a Material Adverse Effect, (i) all laws, rules, regulations, judgments, orders, permits, licenses, authorizations and other requirements of and agreements with all governments, department agencies, courts and officials, which now or hereafter shall be applicable to the Subject Property or any part thereof or any use or condition thereof including, without limitation, all Environmental Laws (herein collectively called the "Legal Requirements"); (ii) all terms of any insurance policy covering or applicable to the Subject Property or any part thereof as required by the Loan Agreement, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to the Subject Property or any part thereof or any use or condition thereof (herein collectively called the "Insurance Requirements"); and (iii) all Permits required for any construction, reconstruction, repair, renovation, addition, improvement, maintenance, use and operation of the Property.

(c) Mortgagor shall promptly notify Mortgagee of the receipt by Mortgagor of any notice of default under any Legal Requirement, Insurance Requirement, Contractual Obligation, Permitted Property Lien or Permit or of the receipt by Mortgagor of any notice of any threatened or actual termination of any Permit or Insurance Policy or Franchise Agreement and furnish to Mortgagee a copy of such notice of default or termination.

SECTION 2.06. Impound and Security Account. At Mortgagee's option and upon its demand and except where and to the degree prohibited by law, Mortgagor shall, until all Obligations have been paid in full, pay to Mortgagee each month an amount estimated by Mortgagee to be equal to (i) the Impositions, (ii) all payments and premiums with respect to the Insurance Requirements, and (iii) any payments required under Permitted Property Liens. Estimated payments of Impositions, Insurance Requirements and Permitted Property Lien payments shall be calculated by dividing the amount next due by, in each instance, the number of months to lapse preceding the month in which the same, respectively, will become due. All sums so paid shall not bear interest, except to the extent and in the minimum amount required by law, and Mortgagee shall, unless Mortgagor is otherwise in default hereunder or under any obligation secured hereby, apply said funds to the payment of, or at the sole option of Mortgagee release said funds to Mortgagor for application to and payment of, such Impositions, Insurance Requirements and Permitted Property Lien payments. However, upon the occurrence of an Event of Default by Mortgagor hereunder or under any obligation secured hereby, Mortgagee may, at its sole option, apply all or any part of said sums to any Obligations or to advance sums to pay such Imposition, Insurance Requirement or Permitted Property Lien payment, which advance shall not cure Mortgagor's Default hereunder.

SECTION 2.07. Sale; Liens. (a) Except as otherwise provided in the Loan Agreement, Mortgagor shall not sell, assign, transfer, convey, lease or permit to be sold, assigned, transferred, conveyed,

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leased or otherwise disposed of, the Subject Property (other than Inventory sold in the normal course of business) or any part thereof or interest therein (for the purposes of this Section, a "Transfer"), and shall not create, suffer or permit to be created or exist any lien attaching to the Subject Property or any part thereof or interest therein, except the Permitted Property Liens or as permitted by the Loan Agreement. In the event of any Transfer or the creation, suffering, permitting to be created of any lien attaching to the Subject Property or any part thereof, that is not expressly permitted hereunder or under the terms of the Loan Agreement and is without the prior written consent of Mortgagee, Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all of the Obligations immediately due and payable and pursue its rights and remedies under Article 5. Consent to one such Transfer or lien shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers or liens. Mortgagee shall have the right to grant or deny such consent in its absolute discretion. If consent should be given to a Transfer and if this Mortgage is not released to the extent of the Subject Property transferred or subjected to a lien by a writing signed by Mortgagee and recorded in the proper city, town, county or parish records, then any such Transfer or lien shall be subject to this Mortgage and any such transferee shall assume all obligations hereunder and agree to be bound by all of the provisions contained hereunder.

(b) The Loan may be assumed by a new borrower provided each of the conditions set forth in Section 2.08 of the Loan Agreement are met.

SECTION 2.08. Status and Care of the Property.

(a) Mortgagor represents and warrants that (i) the Property is served by all necessary water, sanitary and storm sewer, electric, gas, telephone and other utility facilities which facilities have capacities which are sufficient to serve the current and anticipated future use and occupancy of the Property as presently constructed; (ii) the Property has legal access to public streets or roads sufficient to serve the current and anticipated future use and operation of the Property as presently constructed; (iii) to the extent that the Property is located in an area identified by the Secretary of Housing and Urban Development or a successor thereto as an area having special flood hazards or as an area designated as "flood prone" or a "flood risk area" pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, and any amendments or supplements thereto or substitutions therefor, Mortgagor has purchased flood insurance to the extent available; and (iv) all activities and conditions on the Property are currently in compliance with all Legal Requirements.

(b) Mortgagor (i) shall use and operate the Property, or cause the same to be used and operated, pursuant to the terms and provisions of a Franchise Agreement with Burger King Corporation, a true and correct copy of which has been previously delivered to Mortgagee, and Mortgagor shall continue to operate the Property as a Burger King Restaurant and shall not permit or suffer any default to occur under said Franchise Agreement; (ii) agrees that all activities on the Property shall at all times comply with all Legal Requirements; (iii) shall operate and maintain the Property, or cause the same to be operated and maintained, in good order, repair and condition except (subject to the provisions of this Section) for reasonable wear and tear; (iv) subject to the provisions of Section 3.02, shall promptly make, or cause to be made, all repairs, replacements, alterations, additions and improvements of and to the Property necessary or appropriate to keep the Property in good order, repair and condition; (v) shall not initiate or affirmatively support any change in the applicable zoning adversely affecting the Property, seek any variance (or any change in any variance), under the zoning adversely affecting the Property; and (vi) shall, promptly after receiving notice or obtaining knowledge of any proposed or threatened change in the zoning affecting the Property which would result in the current use of the Property being a non-conforming use, notify Mortgagee thereof and diligently contest the same at Mortgagor's expense by any action or proceeding deemed appropriate by Mortgagor or requested by Mortgagee.

SECTION 2.09. Permitted Contests. After prior notice to Mortgagee, Mortgagor may contest at Mortgagor's expense, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Imposition or lien therefor, any Legal Requirement, or any lien of any laborer, mechanic, materialman, supplier or vendor, provided that (a) the Subject Property, or any part thereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (b) in the case of (i) liens of laborers, mechanics, materialmen, suppliers or vendors or (ii) the Impositions, or liens therefor, such proceedings shall suspend the foreclosure of any such lien or any other collection thereof from the Subject Property; (c) in the case of a Legal Requirement, Mortgagee shall not be in any danger of any criminal liability or, unless Mortgagor shall have furnished a bond or other security therefor reasonably satisfactory to Mortgagee, any additional civil liability for failure to comply therewith, and the Subject Property, or any part thereof or estate or interest therein, shall not be

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subject to the imposition of any lien as a result of such failure which is not properly contested pursuant to this Section 2.09; and (d) if reasonably required by Mortgagee, Mortgagor shall have furnished to Mortgagee a bond or other security reasonably satisfactory to Mortgagee.

SECTION 2.10. Inspection. Mortgagee and its authorized agents and employees and any person designated by Mortgagee shall have the right to enter on and into the Property at all reasonable times and, except in the event of an emergency, after reasonable notice for the purpose of inspecting the same, provided such inspection shall not unreasonably disturb business activities at the Property.

SECTION 2.11. Compliance with Instruments. Mortgagor shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all other instruments affecting the Property if the failure to so perform or observe would have a Material Adverse Effect and shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Subject Property if the failure to do would have a Material Adverse Effect.

SECTION 2.12. Improvements. All improvements on the Land lie wholly within the boundary and building restriction lines of the Land and no improvements on adjoining properties encroach upon the Land in any respect so as to have a Material Adverse Effect on the use, operation or value of the Property.

SECTION 2.13. Casualty; Condemnation. The Subject Property is free of material damage and waste and, to Mortgagor's knowledge, there is no proceeding pending or threatened for the total or partial Condemnation thereof.

SECTION 2.14. Zoning and Other Laws. The Property and the use thereof, separate and apart from any other properties, constitute a legal and conforming use in compliance with the zoning regulations for which the Property is located. The Property complies with all applicable subdivision laws, ordinances and regulations, such that failure to comply would not have a Material Adverse Effect. All inspections, licenses and certificates required, whether by law, ordinance, regulation or insurance standards, to be made or issued with respect to the Property have been made by or issued by appropriate authorities, such that a failure to obtain such inspections, licenses or certificates would not have a Material Adverse Effect.

SECTION 2.15. Use of Loan Proceeds. Mortgagor shall use the proceeds of the Loan only for the purposes set forth in the Loan Agreement which uses are not primarily for personal, family or household purposes.

ARTICLE III

INSURANCE, CASUALTY AND CONDEMNATION

SECTION 3.01. Insurance. Mortgagor shall comply with all of the terms and provisions and shall maintain, or cause to be maintained, with respect to the Property the insurance required by the Loan Agreement. If Mortgagor fails to maintain the insurance policies required to be maintained under this Section, Mortgagee shall have the right (but not the obligation) to obtain such insurance policies and pay the premiums therefor. If Mortgagee obtains such insurance policies or pays the premiums therefor, upon demand, Mortgagor shall reimburse Mortgagee for its expenses in connection therewith, together with interest thereon pursuant to Section 4.03.

SECTION 3.02. Casualty and Condemnation. Mortgagor's right to collect or use any Insurance Proceeds or awards resulting from any casualty loss or Condemnation shall be subject to, and applied in accordance with, the terms and provisions of the Loan Agreement. Mortgagor hereby authorizes and directs any affected insurance company and any affected governmental body responsible for such Condemnation to make payment of the Insurance Proceeds or awards directly to Mortgagee. Mortgagor hereby irrevocably assigns to Mortgagee all Insurance Proceeds and awards to which Mortgagor may become entitled by reason of its interests in the Property if a loss occurs.

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ARTICLE IV

EXPENSES AND INDEMNIFICATION

SECTION 4.01. Expenses. Upon written demand, Mortgagor (a) shall reimburse Mortgagee for all out-of-pocket expenses, including reasonable attorneys' fees and expenses, paid or incurred by Mortgagee in connection with (i) any Default or alleged Default, (ii) the perfection, protection, exercise or enforcement of any right or remedy under or with respect to this Mortgage or any other Loan Document, and (iii) the execution, delivery, administration or performance of this Mortgage or any other Loan Document and any consent or waiver thereunder and any amendment thereof, or (b) if an Event of Default occurs, shall reimburse Mortgagee for all out-of-pocket expenses, including reasonable attorneys' fees and expenses, (i) paid or incurred by Mortgagee in connection with (A) such Event of Default and collection, bankruptcy, insolvency and enforcement proceedings resulting therefrom or (B) the exercise or enforcement of any right or remedy under or with respect to this Mortgage or any other Loan Document or (ii) otherwise paid or incurred with respect to this Mortgage or any other Loan Document, together, in each case, with interest thereon at the Default Rate from the date paid by Mortgagee through the date repaid to Mortgagee, as the case may be. All such funds advanced in the reasonable exercise of Mortgagee's judgment that the same are needed to protect the Subject Property, the lien of this Mortgage, or the Obligations are to be deemed obligatory advances hereunder and shall constitute additional indebtedness secured by this Mortgage. The obligations of Mortgagor under this Section shall be part of the Obligations and shall survive any foreclosure or transfer in lieu of foreclosure of this Mortgage and the release of this Mortgage. The maximum amount to be secured by this Mortgage is \$1,450,000.

SECTION 4.02. Indemnification. To the fullest extent permitted by law, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee, and its stockholders, members, directors, managers, officers, employees, beneficial owners, attorneys, agents and other representatives or affiliates of, and partners in, Mortgagee (each an "Indemnified Person") from and against any and all liabilities, losses, actions, fines, injunctions, obligations, claims, damages (whether direct or consequential), penalties, causes of action, costs and expenses of any kind or nature (including, without limitation, in respect of or for reasonable attorneys' fees and expenses whether incurred within or outside the judicial process), imposed upon or incurred by or asserted against any such Indemnified Person including, without limitation, by reason of (i) this Mortgage or the Subject Property or any interest therein or receipt of any Rents; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Subject Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (iv) any violation or failure to comply with any Legal Requirement by Mortgagor or the Property in any way; and (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Subject Property or any part thereof, provided that any claims arising out of the willful misconduct or gross negligence of any Indemnified Person or act of any Indemnified Person after taking title to the Property shall be excluded from the foregoing indemnification of such Indemnified Person. Any amounts payable to Mortgagee by reason of the application of this Section 4.02 shall be secured by this Mortgage as an Obligation and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this Section 4.02 shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage and the exercise of any rights or remedies by Mortgagee.

SECTION 4.03. Interest. If any Obligation arising hereunder (including, to the extent permitted under applicable law, any interest obligation) shall not be paid when due, such Obligation shall bear interest at the Default Rate commencing from the due date through the date paid. Such interest shall be part of the Obligations and shall be secured by this Mortgage.

SECTION 4.04. Increased Costs. In the event of the enactment after the date hereof of any applicable law deducting from the value of the Property for the purpose of taxation of any lien thereon or changing in any way the applicable taxation of mortgages, deeds of trust or other liens or obligations secured thereby, or the manner of collection of such taxes, so as to affect this Mortgage, the Obligations or Mortgagee, upon demand by Mortgagee, to the extent permitted under applicable law, Mortgagor shall pay or reimburse Mortgagee for all taxes, assessments or other charges which Mortgagee is obligated to pay as a result thereof. Such taxes, assessments or other charges shall be part of the Obligations and shall be secured by this Mortgage.

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ARTICLE V

DEFAULTS, REMEDIES AND RIGHTS

SECTION 5.01. Events of Default. The occurrence of any of the following events shall be deemed an event of default ("Event of Default") hereunder and shall, at the option of Mortgagee make all amounts then remaining unpaid on the Obligations immediately due and payable, all without further demand, presentment, notice or other requirements of any kind, all of which are expressly waived by Mortgagor, and the lien, encumbrance and security interest evidenced or created hereby shall be subject to foreclosure in any manner provided for herein or provided for by law and all other remedies available at law or in equity:

- (a) The occurrence of any Event of Default (as defined in the Loan Agreement) under the Loan Agreement; or
- (b) Mortgagor shall default in the performance or observance of any term, covenant or condition required to be observed by Mortgagor under this Mortgage; or
- (c) Mortgagor shall be in default under any Concurrent Loan Financing or Concurrent Loan Transaction Documents.

SECTION 5.02. Fixtures. Upon the occurrence of any Event of Default, or at any time thereafter, Mortgagee may, to the extent permitted under applicable law, elect to treat the fixtures included in the Subject Property either as real property or personal property, or both, and proceed to exercise such rights as apply thereto. With respect to the sale of real property included in the Subject Property made under the power of sale herein granted and conferred, Mortgagee may to the extent permitted by applicable law, include in such sale any personal property and fixtures included in the Subject Property relating to such real property.

SECTION 5.03. Remedies Cumulative. All notice and cure periods provided in this Mortgage, the Loan Agreement or any other Loan Document shall run concurrently with any notice or cure periods provided under applicable law. No remedy or right of Mortgagee hereunder, under the Loan Agreement and any other Loan Document or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or in equity under any such document or under applicable law. No failure or delay by Mortgagee in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor, and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to, and not in limitation of, those provided by law, equity or in the Loan Agreement and any other Loan Document.

SECTION 5.04. Possession of Property. Mortgagor hereby waives, while any Event of Default exists, all right to the possession, income, earnings, revenues, issues, profits and Rents of the Property. Mortgagee or a Receiver (as the case may be as the Person exercising the rights under this Section) is hereby expressly authorized and empowered to the extent permitted by the Illinois Mortgage Foreclosure Act, Ill. Rev. Stat. ch. 110, para. 15-1101 (1987), 735 ILCS 5/15-1101 (1992), et seq. (the "Act") and other applicable law, but not obligated, while any Event of Default exists, (i) to enter into and upon and take possession of, and operate all facilities on, the Property or any part thereof, personally, or by its agents or attorneys, and exclude Mortgagor therefrom without liability for trespass, damages or otherwise; (ii) to enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating to the possession and operation of the Subject Property; (iii) to conduct, either personally or by its agents, the business of the Property; (iv) to exercise all rights of Mortgagee with respect to the Subject Property, including, without limitation, the right to sue for or otherwise collect the Rents, including those that are unpaid; (v) to complete any alteration or restoration in progress on the Property at the expense of Mortgagor at reasonable and customary cost or at such cost previously agreed to by Mortgagor, and (vi) to apply all income of the Property less the necessary or appropriate expenses of collection thereof, either for the operation, care and preservation of the Property, or, at the election of the Person exercising the rights under this Section in its sole discretion, as provided in Section 5.09 hereof. The Person exercising the rights under this Section is also hereby granted full and complete authority while any Default exists (vii) to employ watchmen to protect the Subject Property; (viii) to continue any and all outstanding contracts for the erection

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and completion of Improvements to the Property; (ix) to make all necessary and proper repairs, renewals, replacements, alterations, additions, betterments and improvements to the Property that, in its sole discretion, it may deem appropriate; (x) to insure and reinsure the Property for all risks incidental to Mortgagee's possession, operation and management thereof; (xi) to make and enter into any contracts obligations wherever necessary in its own name for the operation, care and preservation of the Subject Property, and (xii) to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Mortgagor. The Person exercising the rights under this Section shall not be liable to account for any action taken hereunder, and shall not be liable for any loss sustained by Mortgagor resulting from any act or omission of such Person, except to the extent such loss is caused by such Person's willful misconduct or gross negligence. All such expenditures by the Person exercising the rights under this Section shall be Obligations hereunder.

SECTION 5.05. Foreclosure; Receiver. While any Event of Default exists, Mortgagee, with or without entry, in accordance with the Act, shall also have the following rights:

(a) to institute a proceeding or proceedings, by advertisement, judicial process or otherwise, as provided under applicable law, for the complete or partial foreclosure of this Mortgage or the complete or partial sale of the Subject Property under the power of sale hereunder or under any applicable provision of law;

(b) to sell the Subject Property and all estate, right, title and interest of Mortgagor therein as a whole or in separate parcels, at one or more sales, at such time and place and upon such terms and conditions as may be required by applicable law;

(c) to take such steps to protect and enforce rights, whether by action, suit or proceeding in equity or at law, for the specific performance of any provision in the Loan Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy Mortgagee shall elect;

(d) to apply for the appointment of a receiver, supervisor, trustee, liquidator, conservator or other custodian (a "Receiver") of the Subject Property or any part thereof and all earnings, revenues, Rents, issues, profits and income thereof, to the extent permitted by law without giving notice to any other party and without regard to the adequacy or inadequacy of the security of the Subject Property or the solvency of either Mortgagor or any other Person and Mortgagor agrees that it shall not oppose the appointment of a Receiver; and

(e) to take all such other steps and to assert all such other rights and remedies as shall be permitted by applicable law.

The purchase money, proceeds or avails of any foreclosure or sale after default and any other sums which then may be held by Mortgagee under this Mortgage shall be applied as provided in Section 5.09 hereof.

SECTION 5.06. No Liability on Mortgagee. Notwithstanding anything contained herein, this Mortgage is only intended as security for the Obligations and Mortgagee shall not be obligated to perform or discharge, and Mortgagee need not perform or discharge, any obligation, duty or liability of Mortgagor with respect to any of the Subject Property. Mortgagee shall not have responsibility for the control, care, management or repair of the Property nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any licensee, employee, tenant or stranger. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted to it, and Mortgagor expressly waives and releases any such liability. Should Mortgagee or any Person exercising rights on its behalf incur any such liability, loss or damage, under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee and such Person, immediately upon demand (provided such demand is accompanied by an itemized statement) for the amount thereof, including costs, expenses and reasonable attorneys' fees, and any such obligations of Mortgagor shall be Obligations hereunder and shall survive any foreclosure or transfer in lieu of foreclosure of this Mortgage and the release of this Mortgage.

SECTION 5.07. Assignment of Leases. (a) Subject to paragraph (d) below, the assignments of the Leases and the Rent under Granting Clauses VI and VII are and shall be present, absolute and irrevocable assignments by Mortgagor to Mortgagee and, subject to the license to Mortgagor under Section 5.07(b), Mortgagee or a Receiver appointed pursuant to Section 5.05(d) (as the case may be as the Person exercising the rights under this Section) shall have the absolute, immediate and continuing right to collect and

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receive all Rents now or hereafter, including during any period of redemption, accruing with respect to the Property. At the request of Mortgagee or such Receiver, Mortgagor shall promptly execute, acknowledge, deliver, record, register and file any additional general assignment of the Leases or specific assignment of any Lease which Mortgagee or such Receiver may require from time to time (all in form and substance reasonably satisfactory to Mortgagee or such Receiver) to effectuate, complete, perfect, continue or preserve the assignments of the Leases and the Rents under Granting Clauses VI and VII.

(b) As long as no Event of Default exists, Mortgagor shall have the right under a license granted hereby, subject to Section 5.07(c), to collect all Rents upon, but not prior to fifteen (15) days before, the due date thereof.

(c) If any Event of Default exists, Mortgagee or Receiver appointed pursuant to Section 5.05(d) (as the case may be as the Person exercising the rights under this Section) shall have the right to do any of the following: (i) terminate the license granted under Section 5.07(b) by notice to Mortgagor; (ii) exercise the rights and remedies provided under Section 5.04, Section 5.05 or under applicable law; (iii) as attorney-in-fact or agent of Mortgagor, or in its own name as the Person exercising the rights under this Section and under the powers herein granted, hold, operate, manage and control the Property and all other Subject Property, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper and necessary to enforce the payment of any Rents, the Leases and other Subject Property relating thereto (including actions for the recovery of Rent, actions in forcible detainer and actions in distress of Rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; and (vi) perform such other acts in connection with the management and operation of the Subject Property as the Person exercising the rights under this Section in its discretion may deem proper, Mortgagor hereby granting full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times while an Event of Default exists without notice to Mortgagor.

(d) Nothing in this Section 5.07 shall be construed to be an assumption by the Person exercising the rights under this Section, or to otherwise make such Person liable for the performance, of any of the obligations of Mortgagor under the Leases.

SECTION 5.08. Sales. Except as otherwise provided herein, to the extent permitted under applicable law, at the election of Mortgagee, the following provisions shall apply to any sale of the Subject Property hereunder, whether made pursuant to the power of sale hereunder, any judicial proceeding, or any judgment or decree of foreclosure or sale or otherwise:

(a) Mortgagee or the court officer (as the case may be as the Person conducting any sale) may conduct any number of sales as Mortgagee may direct from time to time. The power of sale hereunder or with respect hereto shall not be exhausted by any sale as to any part or parcel of the Subject Property which is not sold, unless and until the Obligations shall have been paid in full, and shall not be exhausted or impaired by any sale which is not completed or is defective. A sale may be as a whole or in part or parcels and Mortgagor hereby waives its right to direct the order in which the Subject Property or any part or parcel thereof is sold.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or such postponed or adjourned sale without further notice.

(c) Any statement of fact or other recital made in any instrument given by the Person conducting any sale as to the nonpayment of any Obligation, the existence of an Event of Default, the amount of the Obligations due and payable, the request to Mortgagee to sell, the notice of the time, place and terms of sale and of the Subject Property to be sold having been duly given, or any other act or thing having been duly done or not done by Mortgagor, Mortgagee or any other Person, shall be taken as conclusive and binding against all other Persons as evidence of the truth of the facts so stated or recited.

(d) Any sale shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the Subject Property sold, and (to the extent permitted under applicable law) shall be a perpetual bar both at law and in equity against Mortgagor and any and all Persons claiming such Subject Property or any interest therein by, through or under Mortgagor.

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(e) At any sale, Mortgagee may bid for and acquire the Subject Property sold and, in lieu of paying cash therefor may make settlement for the purchase price by causing the Secured Parties to credit against the Obligations, including the expenses of the sale and the cost of any enforcement proceeding hereunder, the amount of the bid made therefor to the extent necessary to satisfy such bid.

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

(g) Upon any sale, it shall not be necessary for the Person conducting such sale to have any Subject Property being sold present or constructively in its possession.

(h) To the extent permitted under applicable law, in the event that a foreclosure hereunder shall be commenced by Mortgagee, Mortgagee may at any time before the sale abandon the sale, and may institute suit for the collection of the Obligations or for the foreclosure of this Mortgage; or in the event that Mortgagor should institute a suit for collection of the Obligations or the foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment in said suit dismiss the same and sell the Subject Property in accordance with the provisions of this Mortgage.

SECTION 5.09. Application of Proceeds. The proceeds of any sale of any of the Subject Property made pursuant to this Article V shall be applied as follows:

(a) First, to the payment of all costs and expenses incident to the enforcement of this Mortgage paid or incurred by Mortgagee or the agent for enforcement, protection or collection, including, without limitation, reasonable costs, attorneys' fees, stenographers' fees, costs of advertising, costs of documentary evidence of title (including title search and insurance), all other related charges and costs, and a reasonable compensation to the agents, attorneys, and in-house counsel of Mortgagee and of agent, to the fullest extent permitted by the Act;

(b) Second, to the payment or prepayment of the Obligations, in such order as Mortgagee shall elect; and

(c) Third, the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law;

provided, however, if applicable law requires such proceeds to be paid or applied in a manner other than as set forth above in this Section 5.09, then such proceeds shall be paid or applied in accordance with such applicable law.

ARTICLE VI

GENERAL

SECTION 6.01. Security Agreement; Fixture Filing. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit or the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage or the other Loan Documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Land or Improvements or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Obligations. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Subject Property; and the following provisions of this section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

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(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by Mortgagor solely for business purposes.

(c) The Collateral will be kept at the Land and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). "Obsolete Collateral" shall mean any Collateral no longer useful in connection with the operation of the Subject Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to such Obsolete Collateral. The Collateral may be affixed to the Land but will not be affixed to any other real estate.

(d) The only persons having any interest in the Subject Property are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby.

(e) No financing statement (other than financing statements showing Mortgagee as the sole secured party or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Obligations, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.

(f) Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to realize the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Subject Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Subject Property. If Mortgagee so elects, the Subject Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Obligations in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Section 6.01, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

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(h) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

(i) To the extent that the Subject Property includes items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing of this Mortgage in the real estate records of the county in which such Subject Property is located shall also operate from the time of filing as a fixture filing with respect to such Subject Property pursuant to Section 9-402(6) of the Code, and the following information is applicable for the purpose of such fixture filing, to wit:

(a) Name and Address of the Debtor:

McKenzie Cook @ 8300 S. Ashland Avenue, Inc.
5307 South Hyde Park Boulevard
Suite 101
Chicago, Illinois 60615
Attention: William C. Goodall

(b) Name and Address of the Secured Party:

Atherton Capital Partners, L.P.
1001 Bayhill Drive, Suite 155
San Bruno, California 94066
Attention: David Elder

(c) This financing statement covers goods or items of personal property which are or are to become fixtures upon the Property.

(d) Name and address of record owners:

McKenzie Cook @ 8300 S. Ashland Avenue, Inc.
5307 South Hyde Park Boulevard
Suite 101
Chicago, Illinois 60615
Attention: William C. Goodall

SECTION 6.02. Defeasance. If all of the Obligations shall have been paid in full, and if Mortgagor shall have performed and observed all the covenants, obligations and conditions to be performed by Mortgagor pursuant to the Loan Documents, and each of the Loan Documents shall have been terminated, then this Mortgage shall cease, terminate and, thereafter, be of no further force or effect (except as provided in Sections 4.01, 4.02 and 5.06). Upon such termination and Mortgagor's request, appropriate release shall promptly be made by Mortgagee to the Person or Persons legally entitled thereto at Mortgagor's expense.

SECTION 6.03. Notices. Each notice, demand or other communication given to Mortgagor or Mortgagee in connection with this Mortgage shall be given in the manner set forth in the Loan Agreement and shall be sent to the addresses shown below or such other addresses which the parties may provide to one another in accordance with the Loan Agreement.

To Mortgagee:

Atherton Capital Partners, L.P.
1001 Bayhill Drive, Suite 155
San Bruno, California 94066
Attention: David Elder
Telephone No.: (415) 827-7800
Telecopy No.: (415) 827-7950

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with a copy to
Loan Servicer:

Bankers Trust Company
4 Albany Street
New York, New York 10006
Attention: Christopher Pohl
Telephone No.: (212) 250-4984
Telecopy No.: (212) 250-6151

To Mortgagor:

McKenzie Cook @ 8300 S. Ashland Avenue, Inc.
5307 South Hyde Park Boulevard
Suite 101
Chicago, Illinois 60615
Attention: William C. Goodall
Telephone No.: (312) 288-8000
Telecopy No.: (312) 288-0920

SECTION 6.04. Amendments in Writing. No amendment, consent, waiver or supplement in any way affecting Mortgagor's obligations or Mortgagee's rights under this Mortgage shall in any event be effective unless contained in a writing signed by Mortgagee.

SECTION 6.05. Governing Law; Construction. The place of negotiation, execution and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

SECTION 6.06. Successors and Assigns. The covenants and agreements of Mortgagor hereunder, and the provisions hereof affecting Mortgagor, shall bind Mortgagor hereunder, its successors and assigns and all Persons claiming by, through or under Mortgagor and shall inure to the benefit of Mortgagor and its successors and permitted assigns. The rights and privileges of Mortgagee hereunder, and the provisions hereof affecting Mortgagee, shall inure to the benefit of Mortgagee hereunder and its successors and assigns.

SECTION 6.07. Waiver. Mortgagor waives, on behalf of itself and all Persons now or hereafter interested in the Property or the other Subject Property, to the fullest extent permitted by applicable law, (i) all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, redemption, single action, election of remedies and marshalling statutes, laws or equities now or hereafter existing, (ii) any benefit of any law providing for the valuation or appraisal of the Property or the other Subject Property or any part thereof prior to any sale thereof; (iii) after any such sale, claim or exercise any right to redeem the property so sold or any part thereof; (iv) all benefit or advantage of any such law and covenants not to hinder, delay or impede the execution by Mortgagee of any power or remedy herein granted or available at law or in equity, but to suffer and permit the execution of every power and remedy as though no such law existed and (v) any and all requirements that at any time any action may be taken against any other Person. Mortgagor hereby acknowledges and agrees that no defense based on any of the foregoing will be asserted in any action enforcing this Mortgage. Mortgagor acknowledges that the Subject Property does not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

SECTION 6.08. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE, THE NOTE OR ANY OTHER LOAN DOCUMENT OR FOR ANY COUNTERCLAIM THEREIN.

SECTION 6.09. No Redemption. Mortgagor hereby waives, to the fullest extent permitted by applicable law, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

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SECTION 6.10. Limitation by Law. All rights, remedies and powers provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage illegal, invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered, or filed under the provisions of any applicable law.

SECTION 6.11. Mortgagee's Performance. If Mortgagor shall fail to pay or perform any of its obligations herein contained (including, without limitation, payment of expenses of foreclosure and court costs) or under the Loan Documents each with respect to the Subject Property, Mortgagee upon five (5) days prior written notice to Mortgagor (except as otherwise expressly permitted by any Loan Document in the event of an emergency when no notice need be given) may, but need not, make (or cause to be made) any such payment or perform (or cause to be performed) any such obligation of Mortgagor hereunder or thereunder (provided Mortgagor is not contesting such payment or performance in accordance with Section 2.09 and the failure to so perform such obligation would have a Material Adverse Effect), in any form and manner deemed reasonably expedient by Mortgagee as agent or attorney-in-fact of Mortgagor, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses (including legal expenses) for each matter for which it acts under this Mortgage), with interest thereon at the Default Rate, shall be added to the Obligations and shall be repaid to Mortgagee upon demand. No such action of Mortgagee shall be considered as a waiver of any right accruing to it on account of the occurrence of any default on the part of Mortgagor under this Mortgage, any Default, any Event of Default, or any default or event of default under any other Loan Document.

SECTION 6.12. Subrogation. To the extent that Mortgagee, after the date hereof, pays pursuant to the terms of this Mortgage any sum due under any provision of law or any instrument or documents creating any lien prior or superior to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on the Subject Property equal in priority to that discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence for the benefit of Mortgagee to secure the amount expended by Mortgagee on account of or in connection with such lien.

SECTION 6.13. Conflicting Provisions. To the extent there exists any conflict or inconsistency between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern.

SECTION 6.14. Counterparts. This Mortgage may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

SECTION 6.15. Recourse. Except as otherwise expressly set forth in this Section 6.15, Mortgagee shall have no recourse against any shareholder, owner, partner, officer, director, agent or employee of or in Mortgagor or of or in any partner in or shareholder of Mortgagor (all such Persons, except to the extent any such Person is obligated under a Guaranty, referred to collectively as "Exculpated Persons") for the repayment of the Loan. Notwithstanding the provisions of this Section 6.15, nothing herein or in any other Loan Document shall: (i) prevent Mortgagee's recourse to Mortgagor, the Restaurant, the Collateral or the Property or against any Guarantor under a Guaranty; (ii) constitute a waiver, release or discharge of any indebtedness or Obligation evidenced by the Loan or arising under or secured by this Mortgage or any of the other Loan Documents, but the same shall continue until fully paid or discharged; (iii) affect or in any way limit the rights and remedies of Mortgagee under this Mortgage or under any other Loan Document.

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(iv) limit the personal liability of any Exculpated Person for misappropriation or misallocation of any funds, fraud, misrepresentation or willful damage to the Restaurant, the Property or any portion thereof or for any environmental indemnity under the Loan Documents.

SECTION 6.16. Business Loan. The proceeds of the Note will be used for the purposes specified in Ill. Rev. Stat. ch. 17, para. 6404 (1987), 815 ILCS 205/4 (1992), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

SECTION 6.17. Anti-Forfeiture. Mortgagor hereby expressly represents and warrants to Mortgagee that there has not been committed by Mortgagor or any other person involved with the Subject Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Subject Property or any part thereof or any monies paid in performance of its obligations under the Note, Mortgage or under any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Mortgagee (at Mortgagor's sole cost) and hold Mortgagee harmless from and against any claim or other cost (including, without limitation, reasonable attorneys' fees and costs incurred by Mortgagee), damage, liability or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, the Mortgagee or all or any part of the Subject Property under any federal or state law in which forfeiture of the Subject Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result, at the election of Mortgagee, shall constitute a Default hereunder without notice or opportunity to cure.

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage as of the date first written above.

MCKENZIE COOK @ 8300 S. ASHLAND AVENUE,
INC.,

an Illinois corporation

By: William C. Goodall

Name: William C. Goodall

Title: President

This instrument was prepared
by and when recorded should
be returned to:

ATHERTON CAPITAL PARTNERS, L.P.
1001 Bayhill Drive, Suite 155
San Bruno, California 94066
Attn: David Elder

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ACKNOWLEDGEMENT FOR MORTGAGOR

STATE OF ILLINOIS

COUNTY OF

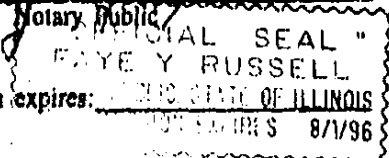
SS.

James Y Russell

I, James Y Russell, a Notary Public, in and for said County, in the State aforesaid, DO
 HEREBY CERTIFY that William C. Goodell President of Metropolitan Life Insurance Co. and John J. [unclear] Secretary of said corporation, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such William C. Goodell President and John J. [unclear] Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and said John J. [unclear] Secretary then and there acknowledged that he/she, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 7 day of April, 1996

James Y Russell
Notary Public



My Commission expires:

OFFICE OF COOK COUNTY CLERK'S OFFICE

16:20:2557

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Exhibit A

Legal Description

The land referred to is situated in the State of Illinois, County of Cook and is described as follows:

Lots 1, 2, 3, 4, 5 and 6 in Block 1 (except that part of said Lots taken for widening of Ashland Avenue) in the Subdivision of Blocks 1, 2 and 3 of the Newmann and Hart's Addition to Englewood Heights, a subdivision of the North 1/2 of the Southeast 1/4 of Section 31, Township 38 North, Range 14 East of the Third Principal Meridian (except the West 10 acres thereof), in Cook County, Illinois.

PROPERTY ADDRESS:

8300 S. ASHLAND AVENUE
CHICAGO, ILLINOIS

PERMANENT REAL ESTATE INDEX NOS.:

20-31-406-019
20-31-406-020
20-31-406-021
20-31-406-022
20-31-406-023
20-31-406-024

8300 South Ashland

160202557

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EXHIBIT B

To Mortgage

PERMITTED PROPERTY LIENS

- (1) Encroachments, overlaps, boundary line disputes and any matters which would be disclosed by an accurate survey and inspection of the land.
- (2) Easements, or claims of easements, not shown by the public records
- (3) Taxes for second installment 1995 and 1996 not yet due or payable.

Property of Cook County Clerk's Office

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