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**MORTGAGE AND SECURITY  
AGREEMENT WITH COLLATERAL  
ASSIGNMENT OF RENTS  
AND LEASES**

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1998-07-20 12:33:04  
Cook County Recorder 71.50

**THIS MORTGAGE AND SECURITY AGREEMENT WITH COLLATERAL ASSIGNMENT OF RENTS AND LEASES** (this "Mortgage") is being executed and delivered as of this 15th day of July, 1998, by **BC REAL ESTATE INVESTMENTS, INC.**, a Delaware corporation ("BCRE"), whose business address is 14103 Denver West Parkway, Golden, Colorado 80401 to **BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION** (in its individual capacity, "BoFA", and as Common Collateral Agent for the secured parties hereto, in such capacity, together with its successors and assigns, the "Common Collateral Agent"), whose business address is 231 South LaSalle Street, Chicago, Illinois 60697.

**RECITALS**

WHEREAS, Boston Chicken, Inc., a Delaware corporation (the "Company"), the "Loan Agent," the "1996 Lease Agent" (each as defined in the Intercreditor Agreement referred to below) and the Common Collateral Agent entered into that certain Intercreditor Agreement, dated as of December 9, 1996, as amended and restated by that certain Amended and Restated Intercreditor Agreement dated as of October 24, 1997 (as so amended and restated, the "Original Intercreditor Agreement");

WHEREAS, concurrently herewith, the Loan Agent, the 1996 Lease Agent, the "Revolving Lenders," the "Liquidity Lenders," the "1996 Lease Lenders," the "Other Creditors," the "Cash Management Banks" (each as defined in the Intercreditor Agreement) (referred to below) and certain other parties have entered into that certain Second Amended and Restated Intercreditor Agreement (the "Intercreditor Amendment") pursuant to which the Original Intercreditor Agreement has been amended and restated in its entirety (as so amended and restated, and as the same may be further amended, modified, supplemented and/or restated from time to time, the "Intercreditor Agreement"), which sets forth certain agreements with respect to, among other things, voting rights and collateral issues between the parties thereto (capitalized terms used herein and not otherwise defined herein shall have the meaning assigned thereto in the Intercreditor Agreement);

WHEREAS, the Other Creditors (also sometimes referred to herein as the "Secured Creditors") have entered into and may hereafter enter into various agreements and arrangements (as amended, supplemented, modified, restated, refinanced, refunded or renewed from time to time the "Supplemental Arrangements") with the Company and certain of its Subsidiaries (the Company and its Subsidiaries being referred to collectively as, the "BCI Group") pursuant to which one or more members of the BCI Group have heretofore incurred and may hereafter from time to time incur certain liquidated, contingent, matured and unmatured obligations, liabilities, fees, expenses and indemnities to such Other Creditors;

WHEREAS, it is a condition to the execution and delivery of the Intercreditor Amendment and the continued provision of the Supplemental Arrangements and other financial accommodations by the Secured Creditors, that BCRE execute and deliver this Mortgage to secure the "Supplemental Obligations" together with all losses, fees, costs and expenses (including, without limitation, all court costs and reasonable fees, costs and expenses of all attorneys, paralegals, appraisers, experts and consultants) paid or incurred by the Common Collateral Agent or any of the Secured Creditors in: (1) endeavoring to collect all or any part of the Supplemental Obligations from, or in prosecuting any action against, any member of the BCI Group relating to the Supplemental Arrangements or the transactions contemplated thereby; (2) taking any action with respect to any security or collateral securing the Supplemental Obligations or the obligations of BCRE hereunder; (3) preserving, protecting or defending the enforceability of, or enforcing, this Mortgage or the Supplemental Arrangements or

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their respective rights hereunder, and (4) representing their respective rights, claims and interests in any manner in any Insolvency Proceeding (as defined in the Intercreditor Agreement) (all such costs and expenses are hereinafter referred to as the "Expenses") (the Supplemental Obligations, together with the Expenses being hereinafter referred to as the "Secured Obligations").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Secured Creditors to execute and deliver the Intercreditor Amendment and to induce the Secured Creditors to continue to provide Supplemental Arrangements and other future financial accommodations, **BCRE**, to secure payment of the Secured Obligations, does hereby **IRREVOCABLY MORTGAGE, GRANT, CONVEY, ASSIGN and TRANSFER** unto **Common Collateral Agent**, the real estate described in Exhibit A attached hereto and made a part hereof:

TOGETHER with all easements, rights of way, licenses, privileges, tenements, hereditaments and appurtenances belonging thereto, all minerals, oil, gas and hydrocarbon substances located on or thereunder, all development rights, air rights, water, water rights and water stock relating thereto, and all rents, issues, proceeds and profits therefrom, including all right, title, estate and interest of **BCRE** therein at law or in equity;

TOGETHER with all improvements now or hereafter erected thereon and all materials intended for construction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the real estate immediately upon the delivery thereof to the premises, and also all machinery, apparatus, equipment, systems and fixtures now or hereafter located in or upon or affixed to said real estate or any part thereof, owned or hereafter acquired by **BCRE** and used or useable in connection with any present or future operation of the improvements on the real estate, including all heating, lighting, refrigerating, ventilating, air conditioning, air cooling, lifting, fire extinguishing, plumbing, cleaning, communications, and power equipment, systems and apparatus; all gas, water and electrical equipment, systems and apparatus; all engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors, and all items of furniture, furnishings, equipment and personal property owned by **BCRE** and used in the operation of said real estate, excluding, however, the property described in Exhibit B attached hereto and hereby made a part hereof (the "Excluded Property"),

TOGETHER WITH all of the rights and claims of **BCRE**, wherever located and whether now or hereafter owned by, existing in favor of, in the possession of or in the control of **BCRE**, including: all accounts, accounts receivable, security deposits, writings evidencing a monetary obligation, contract rights and other creditor's interests with respect to the property conveyed hereby; all contracts relating to the use, operation, occupation, maintenance, repair or construction of the property conveyed hereby; all permits, licenses, franchises benefitting the property conveyed hereby, together with the benefit of any deposits or payments now or hereafter made by **BCRE** or on its behalf in connection with the foregoing; and all books and records, including all lease documents, relating to the property conveyed hereby.

TOGETHER WITH all judgments, awards of damages or settlements related to and all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including proceeds of insurance and/or condemnation, and all products, additions, accessions, attachments, parts, replacements and substitutes therefor.

ALL OF THE FOREGOING, taken together with the real estate (but exclusive of the Excluded Property), are hereinafter sometimes collectively or severally, as the context requires, referred to as the "Property". It is understood and agreed that all such machinery, equipment, apparatus, goods, systems and fixtures that are or will become a part of the real estate are acknowledged to be a portion of the security for the indebtedness secured hereby and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part of the real estate or does not constitute a "Fixture" as defined in the Uniform Commercial Code of the State of Illinois (or, if the security interest in any of such property is governed by the law of a State other than Illinois, then, as to the matter in question, the Uniform Commercial Code in effect in that State, in any case, the "Code"), this Mortgage is hereby deemed to be a Security Agreement under the Code for the purpose of creating a continuing security interest in such property, which **BCRE** hereby grants to **Common Collateral Agent** as "Secured Party" (as defined in the Code).

TO HAVE AND TO HOLD the Property unto **Common Collateral Agent**, its successors and assigns, forever, for the uses and purposes set forth herein. **BCRE** represents that at the time of the execution and delivery of this Mortgage it holds a good and valid fee title to that portion of the Property which is real estate and good and valid title to that portion of

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the Property for which a security interest pursuant to the Code has been granted to Common Collateral Agent, that it has the right and power to grant, mortgage, and convey the same in the manner and form herein provided; that the actions required to authorize the execution, delivery and performance of this Mortgage have been taken; that the Property is free from all Liens whatsoever excepting only the lien of general real estate taxes not yet due and payable, Liens permitted pursuant to the terms of the Facilities Agreement, and any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Common Collateral Agent's interest in the Property, and that BCRE will defend the rights and privileges accruing to Common Collateral Agent on account of this Mortgage forever against all lawful claims and demands whatsoever.

THIS MORTGAGE IS GIVEN TO SECURE THE SECURED OBLIGATIONS, WHICH SECURED OBLIGATIONS SECURED HEREBY SHALL NOT EXCEED \$13,000,000.00.

BCRE, for itself, its legal representatives, successors and assigns, hereby covenants and agrees with Common Collateral Agent that:

1. **PAYMENT AND COMPLIANCE.** BCRE will duly and punctually pay and perform all liabilities and obligations of BCRE with respect to the Supplemental Obligations and will otherwise comply with all of its obligations under the Supplemental Arrangements, at the times and in the manner therein provided.

2. **PAYMENT OF IMPOSITIONS.** BCRE shall pay, prior to delinquency, all property and other taxes, assessments and governmental charges or levies imposed upon (each an "Imposition"), and pay when due all claims (including claims for labor, materials and supplies) against the Property, except to the extent the validity thereof is being contested in good faith, provided, that BCRE shall in any event pay such Impositions and claims no later than five (5) days prior to the date of any proposed sale of which it receives notice under any judgment, writ or warrant of attachment entered or filed against BCRE as a result of the failure to make such payment. If any Imposition is payable, or may at the option of the payor thereof be paid, in installments, BCRE may pay such Imposition, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same may become due.

3. **INSURANCE.**

A BCRE will maintain or cause to be maintained, with commercially reasonable and reputable insurers, insurance with respect to the Property against loss or damage of the kind customarily insured by corporations of established reputation engaged in the same or similar businesses and similarly situated, of such types and in such amounts as are customarily carried under similar circumstances by such other corporations. Such insurance shall include property damage insurance and liability insurance and may provide for reasonable deductibility from coverage thereof. All policies carried by BCRE may be in one or more blanket, umbrella or excess liability policies covering other locations and activities of BCRE. Each policy for property damage insurance shall provide for all losses (except for losses of less than \$100,000 per occurrence) to be paid jointly to Common Collateral Agent and BCRE. Each policy shall in addition (1) name BCRE and Common Collateral Agent as insured parties thereunder (without any representation or warranty by or obligation upon Common Collateral Agent) as their interests may appear, (2) contain an agreement by the insurer that any loss in excess of \$100,000 thereunder shall be payable jointly to Common Collateral Agent and BCRE notwithstanding any action, inaction or breach of representation or warranty by BCRE, (3) have attached thereto a lender's loss payable endorsement or its equivalent, in form and substance reasonably acceptable to Common Collateral Agent, (4) provide that there shall be no recourse against Common Collateral Agent for payment of premiums or other amounts with respect thereto, and (5) provide that at least 30 days' prior written notice of cancellation, material amendment, reduction in scope or limits of coverage or of lapse shall be given to Common Collateral Agent by the insurer. BCRE shall deliver evidence of the coverage required by this Paragraph 3 contemporaneously with delivery of this Mortgage and, thereafter, within 30 days of the renewal or extension of such coverage. BCRE shall, if so requested by Common Collateral Agent, deliver to Common Collateral Agent original or duplicate policies of such insurance and, as often as Common Collateral Agent may reasonably request, but not more than once per fiscal quarter of BCRE, a report of one or more reputable insurance brokers with respect to such insurance. Further, BCRE shall, if requested by Common Collateral Agent, duly execute and deliver to Common Collateral Agent instruments of assignment of such insurance policies and cause the respective insurers to acknowledge notice of such assignment. In the event of a foreclosure action or other transfer of title to the Property in extinguishment of the debt secured hereby, all right, title and interest of BCRE in and to any proceeds of insurance relating to the Property will pass to the purchaser or grantee thereof.

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B Reimbursement under any liability insurance maintained by BCRE pursuant to this Paragraph 3 may be paid directly to the Person who shall have incurred liability covered by such insurance. In the event of any loss to or damage of the Property by fire or other casualty, BCRE will give prompt notice thereof to Common Collateral Agent and Common Collateral Agent may thereupon make proof of loss or damage if the same is not promptly made by BCRE. In the case of any loss involving damage to the Property when Paragraph 3 C is not applicable, BCRE shall have the right to and may make or cause to be made the necessary repairs to the Property and if BCRE so chooses to repair the Property any proceeds of insurance maintained by BCRE with respect thereto pursuant to this Paragraph 3 shall, to the extent paid to Common Collateral Agent, be paid by Common Collateral Agent to BCRE as reimbursement for the costs of such repairs or replacements. As appropriate to each stage of construction, BCRE shall obtain all permits, licenses and authorizations from any Governmental Authority (as such term is defined in the Credit Agreement) having jurisdiction over the Property and, upon Common Collateral Agent's request, deliver copies thereof to Common Collateral Agent. Under no circumstances shall Common Collateral Agent become personally liable for the fulfillment of the terms, covenants, and conditions contained in any lease with respect to the Property nor become obligated to take any action to restore the improvements.

C Upon (1) the occurrence and during the continuance of any Event of Default, or (2) the actual or constructive total loss of the Property and BCRE's failure to repair the Property within a reasonable period of time thereafter, all insurance proceeds in respect of such Property shall be paid to and applied by Common Collateral Agent as required pursuant to the terms of the Intercreditor Agreement. If under Paragraph 14, the Property is acquired by Common Collateral Agent, all right, title and interest of BCRE in and to the proceeds of any insurance policies resulting from damage to the Property prior to the sale or acquisition shall pass to Common Collateral Agent to the extent of sums secured by this Mortgage immediately prior to such sale or acquisition.

4. **CONDEMNATION.** All awards made or to be made to BCRE by any Governmental Authority or other Person for any taking, by condemnation or eminent domain, of the whole or any part of the Property or any easement therein or appurtenant thereto are hereby assigned by BCRE to Common Collateral Agent. Any award in excess of \$100,000 shall be paid jointly to Common Collateral Agent and BCRE. Common Collateral Agent and BCRE shall use or apply the proceeds of such award or awards in the same manner, and subject to the same limitations, as is set forth in Paragraph 3 with respect to insurance proceeds received subsequent to a fire or other casualty affecting the Property; provided, however, that in the event of a taking of all or substantially all of the Property at any Store location, such proceeds shall be applied first to the indebtedness secured by this Mortgage and the balance, if any, shall be paid to BCRE. BCRE agrees to give prompt notice to Common Collateral Agent of the commencement of any such proceedings under condemnation or eminent domain affecting all or any material part of the Property, such notice to be given to Common Collateral Agent promptly after BCRE's receipt of notice of such proceedings. So long as an Event of Default has not occurred and is not continuing, BCRE shall have the right to conduct and settle all condemnation proceedings with regard to the Property; provided, however, that, if BCRE does not settle all condemnation proceedings, collect and receive the award from the condemnation authorities, and give appropriate receipts and acquittances therefor with reasonable promptness following notice from Common Collateral Agent, Common Collateral Agent is hereby authorized to do so on behalf of BCRE.

5. **MAINTENANCE OF PROPERTY.** BCRE will keep and maintain, or cause to be kept and maintained, the Property in good order, condition and repair, ordinary wear and tear excepted, and will make, or cause to be made, as and when necessary, all repairs and replacements; provided, however, that BCRE and Company shall be permitted to close Stores as provided pursuant to the terms of the Facilities Agreement. BCRE shall use diligence in the conduct of its business to maintain and protect the Property. BCRE will refrain therefrom and shall not permit or suffer the commission of waste in or about the Property. Except as otherwise permitted pursuant to the terms of the Facilities Agreement or the Credit Agreement, BCRE shall not remove, demolish or alter in any material respect the structural character of any improvements constituting a portion of the Property except upon the prior written consent of Common Collateral Agent; provided, however, that fixtures may be removed from the Property if BCRE concurrently replaces the same with similar items of equal value, free of any Lien other than that of this Mortgage.

6. **COMPLIANCE WITH LAWS.** Except as otherwise permitted pursuant to the terms of the Facilities Agreement, the Property shall be used as a Store and for no other purpose without the prior written consent of Common Collateral Agent. BCRE will comply, or cause compliance with, in all material respects, all applicable present and future laws, rules, ordinances, regulations and other requirements of any Governmental Authority having jurisdiction over the Property with respect to the construction, rehabilitation, use or operation of the Property or any portion thereof and with the provisions of any covenants, conditions or restrictions affecting the Property except to the extent the validity thereof is being contested.

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in good faith and by appropriate legal proceedings, which proceedings have the effect of staying or preventing any forfeiture of title to the Property.

7. **ENVIRONMENTAL MATTERS.**

A. As used herein, the following terms have the meanings indicated:

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(1) "Environmental Laws" means any and all federal, state, local laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment including ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes.

(2) "Hazardous Substances" means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, (b) asbestos or asbestos-containing materials, (c) polychlorinated biphenyls (pcbs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, or (h) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any Governmental Authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

B. BCRE represents and warrants, as of the date hereof, to Common Collateral Agent and the Secured Creditors with respect to the Property as follows:

(1) BCRE has obtained all permits, licenses and other authorizations which are required under all Environmental Laws, except to the extent failure to have any such permit, license or authorization would not result in a Material Adverse Change. Except as disclosed pursuant to the terms of the Facilities Agreement, BCRE is in compliance with the terms and conditions of all such permits, licenses and authorizations, and is also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, except to the extent that any such failure to comply would not result in a Material Adverse Change.

(2) There have been no material environmental investigations, studies, audits, tests, reviews or other analyses conducted by or which are in the possession of the Company or BCRE in relation to the Property which have not been made available to the Secured Creditors.

(3) Company or BCRE have informed Common Collateral Agent in writing of all material non-compliance of BCRE with the terms and conditions of all (a) permits, licenses or authorizations required under all Environmental Laws and (b) other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any applicable regulation, code, plan, order, decree, judgment, injunction notice or demand letter issued, entered, promulgated or approved thereunder, except for such instances of noncompliance which would not result in a Material Adverse Change.

(4) No civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or, to BCRE's knowledge, been threatened, nor have any settlements been reached by or with any parties or any liens imposed in connection with the Property concerning Hazardous Substances or Environmental Laws.

C. BCRE shall (1) comply in all material respects with applicable Environmental Laws, except to the extent the failure to comply would not result in a Material Adverse Change, (2) notify Common Collateral Agent promptly upon BCRE's discovery of any spill, discharge, release or presence of any Hazardous Substances at, upon, under, within, contiguous to or otherwise affecting the Property, (3) take all reasonable action required by Environmental Laws and any

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Governmental Authority that administers such Environmental Laws to remove such Hazardous Substances and remediate the Property in compliance with Environmental Laws, and (4) promptly forward to Common Collateral Agent copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Substances or any other material matters relating to the Environmental Laws as they may affect the Property or BCRE.

D BCRE shall not cause, shall prohibit any other person within the control of BCRE from causing, and shall use prudent, commercially reasonable efforts to prohibit other persons (including tenants) from (1) causing any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Substances at, upon, under, within or about the Property or the transportation of any Hazardous Substances to or from the Property (except for cleaning and other products used in connection with routine maintenance or repair of the Property in compliance with Environmental Laws), (2) installing any underground storage tanks at the Property, or (3) conducting any activity on the Property that requires a permit or other authorization under Environmental Laws, other than those required to conduct the business that BCRE is conducting thereon.

E BCRE shall provide to Common Collateral Agent, at BCRE's expense promptly upon the written request of Common Collateral Agent from time to time, a Site Assessment or, if required by Common Collateral Agent, an update to any existing Site Assessment, to assess the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Property, provided, however, that only Phase I tests may be conducted to determine the presence of Hazardous Substances unless there is reasonable evidence that Hazardous Substances are present justifying Phase II tests. BCRE shall pay the cost of no more than one such Site Assessment or update in any twelve (12) month period, unless Common Collateral Agent's request for a Site Assessment is based on information provided under Paragraph 7 C, a reasonable suspicion of Hazardous Substances at or near the Property, a breach of representations under Paragraph 7 B, or an Event of Default, in which case any such Site Assessment or update shall be at BCRE's expense. BCRE's obligations under this Paragraph 7 E shall arise upon the discovery of the presence of any Hazardous Substances, whether or not any Governmental Authority has taken or threatened any action in connection with the presence of any Hazardous Substances, and whether or not the existence of any such Hazardous Substances or potential liability on account thereof is disclosed in the Site Assessment.

F As between BCRE and Common Collateral Agent, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Substances at, upon, within, contiguous to or otherwise affecting the Property, shall lie solely with BCRE. Accordingly, BCRE shall bear all risks and costs associated with any loss (including any loss in value attributable to Hazardous Substances) damage or liability therefrom, including all costs of removal of Hazardous Substances or other remediation required by Environmental Laws. BCRE shall indemnify, defend and hold Common Collateral Agent and the Secured Creditors, and their respective directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Substances on, under or about the Property, the non-compliance with Environmental Laws, or a breach of any representation, warranty or covenant contained in this Mortgage, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including: (1) all foreseeable consequential damage; (2) the costs of any required or necessary repair, cleanup or detoxification of the Property, and the preparation and implementation of any closure, remedial or other required plans; and (3) all reasonable costs and expenses incurred by the indemnified parties in connection with clauses (1) and (2), including Attorney Costs; provided, BCRE's indemnity obligation shall not apply to the extent such loss, damage, cost, expense or liability arises out of the gross negligence or willful misconduct of any of the indemnified parties, nor shall it apply to any use, generation, storage, release, threatened release, discharge, disposal or presence in violation of any Environmental Laws of any Hazardous Substances proved by Company or BCRE to have been introduced onto the Property after any foreclosure of the Mortgage or any conveyance by BCRE in lieu of such foreclosure. At the election of any indemnified party, BCRE shall defend such indemnitee using legal counsel satisfactory to such indemnitee in such Person's sole discretion, at the sole cost and expense of BCRE. Any loss, damage, cost, expense or liability incurred by the indemnified parties for which BCRE is responsible or for which BCRE has indemnified them shall be paid to Common Collateral Agent on demand, and failing prompt reimbursement shall, together with interest thereon at the per annum rate applicable to delinquent principal under the Credit Agreement (the "Default Rate") from the date incurred by until paid by BCRE and be added to the indebtedness secured by the Credit Documents.

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G Common Collateral Agent and its respective agents and representatives shall have the right to enter and visit the Property at any reasonable time for the purpose of observing it, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of it. Common Collateral Agent agrees to give BCRE not less than forty-eight (48) hours prior notice of Common Collateral Agent's entry onto the Property unless the need therefor is the result of an emergency condition, in which case Common Collateral Agent shall give such advance notice as may be reasonable under the circumstances. To the extent practicable, Common Collateral Agent shall conduct such visits to the Property and such tests so as to minimize any interference with BCRE's business operations. Any costs or expenses reasonably incurred in connection with any of the activities referred to in the preceding sentence shall be paid by BCRE to Common Collateral Agent on demand, subject to the limitations on costs contained in Paragraph 7 E. Common Collateral Agent is not under any duty, however, to visit or observe the Property or to conduct tests, and any such acts by Common Collateral Agent shall be solely for the purposes of protecting Common Collateral Agent's security and preserving Common Collateral Agent's rights under the Credit Documents. In no event shall any site visit, observation or testing by Common Collateral Agent be a representation that Hazardous Substances are or are not present in, on, or under the Property, or that the construction is free from defective materials or workmanship, or that there has been or shall be compliance with all Federal, state, county and local laws, regulations and ordinances, including Environmental Laws. Neither BCRE nor any other party is entitled to rely on any site visit, observation or testing by Common Collateral Agent. Common Collateral Agent does not owe any duty of care to protect BCRE or any other party against, or to inform BCRE or any other party of, any Hazardous Substances, or any other adverse condition affecting the Property. Common Collateral Agent shall not be obligated to disclose to BCRE or any other party any report or findings made as a result of, or in connection with, any site visit, observation or testing by Common Collateral Agent; provided, however, that if Common Collateral Agent is obligated to disclose the results of any such report or findings to any Governmental Authority under Environmental Laws, Common Collateral Agent agrees that it shall, prior to such disclosure, notify BCRE of such report or finding and obligation.

H Notwithstanding any provision in this Mortgage or elsewhere in the Credit Documents, or any rights or remedies granted by the Credit Documents, Common Collateral Agent and the Secured Creditors do not waive and expressly reserve all rights and benefits now or hereafter accruing to any of them under the "security interest" or "secured creditor" exception under applicable Environmental Laws, as the same may be amended. No action taken by Common Collateral Agent or the Secured Creditors pursuant to the Credit Documents shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under the "security interest exception." All obligations in this Paragraph 7 shall survive any termination or satisfaction of this Mortgage.

I Without Common Collateral Agent's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed, BCRE shall not take any remedial action in response to the presence of any Hazardous Substances in, on, under, or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect of any claimed violation of any Environmental Law, which remedial action, settlement, consent or compromise might, in Common Collateral Agent's reasonable judgment, materially impair the value of Common Collateral Agent's security interest under the Mortgage; provided, however, that Common Collateral Agent's prior consent shall not be necessary in the event that the presence of Hazardous Substances in, on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Common Collateral Agent's consent before taking such action, provided that in each such instance BCRE shall notify Common Collateral Agent as soon as practicable of any action taken.

**8. SALE, TRANSFER, ASSIGNMENT OR ADDITIONAL ENCUMBRANCE.** Except to the extent that BCRE or Company are otherwise expressly permitted to do so without Common Collateral Agent's consent pursuant to the terms of any of the Credit Documents and except as otherwise permitted pursuant to Paragraph 27 B, BCRE shall not, without the prior written consent of Common Collateral Agent, which consent Common Collateral Agent may withhold in its sole discretion, option, sell, contract to sell, assign, transfer mortgage pledge, hypothecate or otherwise dispose of or encumber, whether by operation of law or otherwise, any or all of its interest in the Property, including any option or contract for deed or similar instrument providing for retention of title during sale.

**9. PRIORITY OF LIEN AFTER-ACQUIRED PROPERTY.**

A This Mortgage is and will be maintained as a valid lien on and a valid, binding and enforceable security interest in the Property. Except as otherwise permitted pursuant to the terms of the Facilities Agreement, BCRE will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Property, or any portion thereof, or

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against the rents, issues and profits therefrom, any lien, security interest, encumbrance or charge either prior or subordinate to or on a parity with the lien of this Mortgage. BCRE hereby represents and warrants that: (1) no effective financing statement or other similar instrument covering all or any part of the Property is on file in any recording office except those in favor of Common Collateral Agent, Company or 1996 Lease Agent or otherwise identified in Exhibit C attached hereto and hereby made a part hereof, and (2) no authorization, approval or other action by, and no notice to or filing (other than financing statements) with, any Governmental Authority is required for either (a) the grant by BCRE of the security interest granted hereby, (b) the execution, delivery or performance of this Mortgage by BCRE or, (c) the perfection of or the exercise by Common Collateral Agent of its rights and remedies hereunder, subject to the provisions of bankruptcy, insolvency and similar laws.

B Except as otherwise permitted pursuant to the terms of the Facilities Agreement, BCRE will keep and maintain the Property free from all Liens. If any such Liens shall be filed against the Property, BCRE agrees to immediately cause the same to be discharged of record; provided, however, that BCRE shall have the right to contest, in good faith and with reasonable diligence, the validity of any such Lien, subject to the conditions that: (1) upon an Authorized Officer becoming aware of such Lien, BCRE shall promptly give Common Collateral Agent notice of the filing of any such Lien and of BCRE's intent to contest the same and evidence of any reserves required pursuant to the terms of the Facilities Agreement with respect to such Lien; and (2) on final determination of such Lien, BCRE shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the Lien released and any judgment satisfied.

C In no event shall BCRE do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing of which, or omission to do which, would impair the security of this Mortgage. Except as otherwise permitted pursuant to the terms of the Facilities Agreement, BCRE shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement materially adversely affecting the uses which may be made of the Property or any part thereof without the prior written consent of Common Collateral Agent, which consent shall not be unreasonably withheld or delayed.

D All property of every kind acquired by BCRE after the date hereof which is required or intended by the terms of this Mortgage to be subjected to the lien and security interest of this Mortgage shall, immediately upon the acquisition thereof by BCRE, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security interest of this Mortgage. BCRE will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, security agreements, financing statements and assurances as Common Collateral Agent shall reasonably require for accomplishing the intent and purposes of this Mortgage.

10. **COMMON COLLATERAL AGENT'S RIGHT TO CURE; BCRE REMAINS LIABLE.**

A If BCRE defaults in the performance or observance of any term, covenant, condition or obligation required to be performed or observed by BCRE under this Mortgage and such default shall remain uncured for a period of fifteen (15) Business Days after written notice from Common Collateral Agent, then, without waiving or releasing BCRE from any of its obligations hereunder, Common Collateral Agent shall have the right, but shall be under no obligation, to make any payment and/or perform any act or take such action as may be appropriate to cause such term, covenant, condition or obligation to be promptly performed or observed on behalf of BCRE; provided, however, that if such default is of a nature that it cannot be cured within said fifteen (15) Business Day period, Common Collateral Agent shall take no action so long as BCRE commences within said period to cure such default and diligently thereafter proceeds to cure such default. Notwithstanding anything to the contrary herein contained, if such default results in a hazardous or emergency situation, Common Collateral Agent shall have the right to cure such default without giving the foregoing fifteen (15) Business Days notice if BCRE does not immediately after the occurrence of such default or after notice from Common Collateral Agent commence to cure such default and to diligently proceed until such default is cured. All reasonable sums expended by Common Collateral Agent in connection therewith, including Attorney Costs, shall become immediately due and payable by BCRE upon written demand therefor with interest at the Default Rate from the date of advancement until paid and shall be secured by the Credit Documents. Common Collateral Agent shall have the same rights and remedies in the event of nonpayment of any such sums by BCRE as in the case of a Default by the Company or any other member of the BCI Group in the payment of the Supplemental Obligations. Common Collateral Agent is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any term, covenant, condition or obligation that BCRE has failed to perform or observe, such authorization to be exercised only after expiration of any applicable cure period afforded to BCRE, without thereby becoming liable to BCRE or any person holding under BCRE.

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except to the extent such liability arises from the gross negligence or willful misconduct of Common Collateral Agent or such other person acting pursuant to Common Collateral Agent's authorization. Performance or payment by Common Collateral Agent of any obligation of BCRE hereunder shall not relieve BCRE of said obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default.

B Anything herein to the contrary notwithstanding, (1) BCRE shall remain liable under the contracts and agreements included in the Property to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Mortgage had not been executed, (2) the exercise by Common Collateral Agent of any of its rights and remedies hereunder shall not release BCRE from any of its duties or obligations under the contracts and agreements included in the Property, and (3) Common Collateral Agent shall not have any obligation or liability under the contracts and agreements included in Property by reason of this Mortgage, nor shall Common Collateral Agent be obligated to perform any of the obligations or duties of BCRE thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

11. **INDEMNIFICATION.** Except where resulting from Common Collateral Agent's gross negligence or willful misconduct, BCRE will protect, indemnify and save harmless Common Collateral Agent from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including Attorney Costs), imposed upon or incurred by or asserted against Common Collateral Agent by reason of (1) the lien and security interest of this Mortgage upon the Property or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (2) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; (3) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (4) any failure on the part of BCRE to perform or comply with any of the terms of this Mortgage; or (5) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof. Any amounts payable by reason of the application of this paragraph shall become immediately due and payable upon demand therefor and shall bear interest at the Default Rate from the date loss or damage is sustained until paid. The obligations of BCRE under this paragraph shall survive any termination or satisfaction of this Mortgage.

12. **ASSIGNMENT OF RENTS AND LEASES.** As additional security for the obligations secured by this Mortgage, BCRE hereby transfers and assigns to Common Collateral Agent, all the right, title and interest of BCRE, as lessor, in and to all current leases of the Property, if any, and any guarantees, amendments, renewals or extensions thereof, and all future leases made by BCRE with respect to the Property, and all of the rents, issues, proceeds and profits therefrom; provided that BCRE shall have the right to collect and retain such rents so long as an Event of Default has not occurred and is not continuing. Notwithstanding the foregoing, the assignment of rents and leases made by BCRE hereunder shall be deemed a present assignment.

Except as otherwise permitted pursuant to the terms of the Facilities Agreement, BCRE hereby covenants and agrees that it shall not, without Common Collateral Agent's prior written consent, which consent shall not be unreasonably withheld or delayed: (1) accept any payment of any installment of rent more than thirty (30) days in advance of the due date therefor; (2) enter into any assignment of any lease, license or concession pertaining to the Property; or (3) modify or amend any lease in any material respect or cancel or terminate any lease except for the non-payment of rent. BCRE further covenants and agrees that it shall, at its sole cost and expense (1) promptly abide by, discharge and perform all of the material covenants, conditions and agreements contained in all leases of the Property, on the part of the landlord thereunder; (2) enforce or secure the performance of all of the material covenants, conditions and agreements contained in any lease of the Property on the part of any tenant thereunder; and (3) appear in and defend any action or proceeding arising out of or related to such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder.

Common Collateral Agent shall not be obligated to perform or discharge, nor does Common Collateral Agent hereby undertake to perform or discharge, any obligation, duty or liability under any of such leases, and BCRE hereby agrees to indemnify and hold Common Collateral Agent harmless from and from all liability, loss or damage which it may incur under said leases or under or by reason of the assignment thereof and all claims and demands whatsoever which may be asserted against Common Collateral Agent except to the extent any such claims or demands arise from the gross negligence or willful misconduct of Common Collateral Agent. Should Common Collateral Agent incur any liability, loss or damage under said leases or under or by reason of the assignment thereof in the defense of any claims or demands made in connection

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therewith, except to the extent any such claims or demands arise from the gross negligence or willful misconduct of Common Collateral Agent, the amount thereof, including Attorney Costs, shall be secured hereby, and shall become immediately due and payable upon demand with interest at the Default Rate from the date of advancement until paid

Upon the occurrence and continuance of an Event of Default and subject to the terms of the Intercreditor Agreement, Common Collateral Agent, or any authorized agent of Common Collateral Agent or any judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents therefrom, if any, including any rents past due, all as more specifically provided in Paragraph 14. All rents collected by any of the foregoing parties shall be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums or bonds and Attorney Costs, and then to the sums secured by this Mortgage in the manner provided in the Intercreditor Agreement. Any such party shall be liable to account only for the rents actually received.

13. **EVENTS OF DEFAULT.** In case one or more of the following events (an "Event of Default") shall occur or exist, to-wit:

A. If BCRE should fail to pay any amounts required under the terms of this Mortgage as and when due and payable and such failure shall continue for two (2) Business Days, or

B. If a default occurs in the performance or observance of any covenant, term, provision or condition of this Mortgage (relating to other than the payment of money) to be performed or observed by BCRE, which default shall remain uncured for a period of fifteen (15) Business Days after written notice from Common Collateral Agent, provided, however, that if such default is of such a nature that it cannot be cured within said fifteen (15) Business Day period, then BCRE shall not be held in default so long as it commences within said period to cure such default and diligently thereafter proceeds to cure such default; provided further, however, that if any such default results in a hazardous or emergency condition, BCRE shall be in default hereunder if BCRE does not immediately after the occurrence of such default or after notice from Common Collateral Agent commence to cure such default and to diligently proceed until such default is cured; or

C. If an Event of Default or Default (as therein defined) shall have occurred under the other Credit Documents, or

D. Any action by any holder of any Lien, whether approved by Common Collateral Agent or not, to take possession, to collect rents, to foreclose, or to otherwise enforce rights against BCRE or the Property;

then, in any such event and at the option of Common Collateral Agent but subject to the terms of the Intercreditor Agreement, the entire amount of the Supplemental Obligations and any other sums required to be paid under the Supplemental Arrangements shall become due and payable and thereafter, each of said amounts shall bear interest at the Default Rate. All costs and expenses incurred by, or on behalf of, Common Collateral Agent (including Attorney Costs) which are occasioned by any Event of Default by BCRE hereunder shall become immediately due and payable, shall bear interest at the Default Rate from the date of advancement until paid and shall become additional indebtedness secured hereby. After the occurrence or existence of an Event of Default, Common Collateral Agent and the Secured Creditors may institute, or cause to be instituted, proceedings for the realization of their respective rights under the Credit Documents subject to the terms of the Intercreditor Agreement.

14. **RIGHTS, POWERS AND REMEDIES OF COMMON COLLATERAL AGENT.** Upon the occurrence of an Event of Default, Common Collateral Agent may at any time thereafter, at its election and to the extent permitted by applicable law and the terms of the Intercreditor Agreement

A. Declare all sums secured by this Mortgage immediately due and payable without further notice and to proceed at law or in equity to foreclose the lien of this Mortgage as against all or any part of the Property and to have the same sold under the judgment or decree of a court of competent jurisdiction.

B. Declare all sums secured by this Mortgage to be due and payable without further notice and advertise the Property or any part thereof for sale and thereafter sell, assign, transfer and deliver the whole, or from time to time any part, of the Property, or any interest therein, on such terms and in such manner as Common Collateral Agent

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may, in its discretion, deem appropriate or as may be required by applicable law. The exercise of this power of sale by Common Collateral Agent shall be in accordance with and subject to the terms of any statute of the state in which the Property is located, now or hereafter in effect, which authorizes the satisfaction of a lien and security interest by power of sale.

C. Exercise all remedies available to Common Collateral Agent as a secured party under the Code with respect to the Property, in such manner and in such order as Common Collateral Agent determines, in its sole discretion. At Common Collateral Agent's request, BCRE shall cause all Property which is personal property to be assembled at one or more reasonably convenient locations. Any sale under the Code shall be made in accordance with Article 9 of the Code relating to the sale of collateral after default by a debtor (as the same may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments of the same. With respect to any notices required or permitted under the Code, BCRE agrees that ten (10) days' prior written notice shall be deemed commercially reasonable.

D. Enter upon and take possession of the Property or any part thereof by summary proceedings, ejectment or otherwise, and remove BCRE and all other persons and property therefrom, and take actual possession of the Property or any part thereof, personally or by its agents or attorneys, together with all documents, books, records, papers and accounts of BCRE and may exclude BCRE, its agents or servants, wholly therefrom and may, as attorney in fact and agent of BCRE (and for which BCRE hereby irrevocably appoints Common Collateral Agent its attorney in fact and agent), or in its own name and stead and under the powers herein granted: (1) hold, operate, manage, and control the Property and conduct the business thereof (which right does not include the right to operate the Store), either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns, may be deemed proper or necessary to enforce the payment or security of the loans, rents, issues, and profits of the Property, including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to BCRE; (2) cancel or terminate any lease for any cause or on any ground which would entitle BCRE to cancel the same; (3) elect to disaffirm any lease made subsequent to this Mortgage or subordinated to the lien hereof to the extent permitted by law without constituting a breach of such lease; (4) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at any sale of the Property, it being understood and agreed that any such leases, and the options or other such provisions contained therein, shall be binding upon BCRE and all persons whose interest in the Property are subject to the lien hereof and also upon the purchaser or purchasers at any sale of the Property, notwithstanding any discharge of the mortgage indebtedness, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any purchaser; (5) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as Common Collateral Agent may reasonably deem judicious, to insure and reinsure in reasonable amounts the Property and all risks incidental to Common Collateral Agent's possession, operation, and management thereof and to receive all avails, rents, issues, and profits; (6) insofar as any of the Property shall consist of accounts receivable, insurance policies, instruments, chattel paper, things in action or the like, demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon such Property as Common Collateral Agent may reasonably determine, and for the further purpose of realizing Common Collateral Agent's rights therein, Common Collateral Agent may receive, open and dispose of mail addressed to BCRE and endorse notes, checks, drafts, money orders, documents or title or other evidences of payment, shipment or storage or any form of such Property on behalf of and in the name of BCRE, and (7) file any claims, in the name of BCRE or Common Collateral Agent, including any proof of claim in a bankruptcy proceeding, or take any action or institute any proceedings which Common Collateral Agent may deem necessary or desirable for the collection of any of the Property or otherwise to enforce the rights of Common Collateral Agent with respect to any of the Property. Common Collateral Agent shall not be under any liability for or by reason of such entry, taking of possession, removal, holding, operation or management, except to the extent any such claims or demands arise from the gross negligence or willful misconduct of Common Collateral Agent and except that any amounts so received shall be applied as hereinafter provided in this paragraph, and

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E. Make application for the appointment of a receiver for the Property, whether such receivership be incident to a proposed sale of the Property or otherwise, and BCRE hereby consents to the appointment of a receiver and agrees not to oppose any such appointment and, further, agrees that Common Collateral Agent may be appointed the receiver of the Property. Each receiver shall have the power to take possession and maintain control over the Property and to collect the rents, issues and profits during the pendency of a foreclosure suit, as well as during any further times when BCRE, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits and all other powers which may be necessary or are useful for the protection, possession, control, management, and operation of the Property during the whole of said period. To the extent permitted by law, any receiver may be authorized by the court to extend or modify any then-existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire beyond the maturity date of the indebtedness secured hereunder, it being understood and agreed that any such leases and the options or other provisions contained therein shall be binding upon BCRE and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any sale of the Property, notwithstanding any discharge of the mortgage indebtedness, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any purchaser.

F. Apply any monies or securities on deposit with Common Collateral Agent or any depository designated by Common Collateral Agent as required to be maintained under this Mortgage to the obligations of BCRE under the Credit Documents in the order and manner as set forth in the Intercreditor Agreement.

G. Exercise any and all rights and remedies of Common Collateral Agent with respect to the Property or any part thereof as are available at law or in equity.

At the request of Common Collateral Agent, after the occurrence of any Event of Default, BCRE agrees promptly to give notice to all persons (including tenants of the Property and banking institutions) holding any moneys or securities of BCRE or owing any moneys to BCRE in which Common Collateral Agent has a security interest and to instruct such persons to pay such moneys or securities directly to or to the order of Common Collateral Agent for application to the obligations secured hereby. In lieu of the foregoing, Common Collateral Agent may give such notice itself on behalf of BCRE and BCRE agrees to cooperate with Common Collateral Agent in connection with such action.

To the extent permitted by applicable law and the terms of the Intercreditor Agreement, the Property (whether real, personal or mixed) may be sold in such portions, order or parcels as Common Collateral Agent, in its sole discretion, may determine, with or without having first taken possession of same, and in such manner and order as Common Collateral Agent, in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales or attempted sales, any other action, proceeding or other exercise of a remedy, and the lien and security interest granted by this Mortgage shall continue unimpaired. BCRE agrees that Common Collateral Agent or any of the Secured Creditors may be a purchaser of the Property or any part thereof or any interest therein at any sale, whether public or private or whether pursuant to foreclosure, power of sale or otherwise, and may apply upon the purchase price the indebtedness secured hereby. Upon any sale, Common Collateral Agent or an officer of any court empowered to do so, as may be appropriate, shall deliver to the purchaser a good and sufficient instrument conveying, assigning and transferring the Property so sold without any covenant or warranty, express or implied, subject, however, to any applicable law requiring special warranty of title. Any purchaser at a sale of the Property shall acquire good title to the property so purchased, free of the lien of this Mortgage and free and clear of all the estate, title, interest, claim or demand of BCRE. The receipt of the officer making the sale under judicial proceedings or of Common Collateral Agent shall be sufficient discharge to the purchaser for the purchase money and such purchaser shall not be responsible for the proper application thereof. Common Collateral Agent shall not be required to take possession of the Property prior to the sale thereof or to deliver possession of the Property to the purchaser at such sale unless applicable law otherwise provides. To the extent permitted by law and subject to the terms of the Intercreditor Agreement, any action may be maintained by Common Collateral Agent to recover a deficiency judgment for any balance due under the Supplemental Arrangements.

BCRE hereby waives, to the extent permitted by law, all rights to direct the order in which any of the Property may be sold and the benefit of all homestead, appraisalment, valuation, stay, extension and reinstatement laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein on behalf of BCRE and each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage. Further, BCRE hereby expressly waives, to the extent permitted by law, any and all rights of redemption.

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before, at or after sale under any order or decree of foreclosure of this Mortgage on behalf of BCRE and each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage. Further, BCRE hereby expressly waives, to the extent permitted by law, all present and future statutes of limitations as a defense to any action to enforce this Mortgage.

The proceeds of any sale of the Property or any part thereof or interest therein, whether pursuant to foreclosure or power of sale or otherwise, and all amounts received by Common Collateral Agent by reason of any possession, operation or management of the Property or any part thereof, together with any other sums at the time held by Common Collateral Agent, shall, unless otherwise required by applicable law, be applied in the following order

First To all costs and expenses of the sale of the Property or any part thereof or any interest therein, or entering upon, taking possession of, removal from, holding, operating and managing the Property or any part thereof, together with (1) the costs and expenses of any receiver of the Property or any part thereof appointed pursuant hereto; (2) Attorney Costs and the reasonable fees and expenses of accountants and other professionals employed by Common Collateral Agent or those engaged by any receiver; (3) any indebtedness, taxes, assessments or other charges prior to the lien of this Mortgage, which Common Collateral Agent may consider necessary or desirable to pay; and (4) any amounts as may be sufficient to indemnify Common Collateral Agent against any liability, loss or damage on account of any matter or thing done in good faith in pursuance of the rights and powers of Common Collateral Agent hereunder;

Second To any indebtedness secured by this Mortgage (whether at maturity or on a date fixed for any installment payment or by declaration of acceleration or otherwise) in the order and manner as set forth in the Intercreditor Agreement;

Third The balance, if any, to the Person then entitled thereto pursuant to applicable state law

15. **FEES AND EXPENSES.** If Common Collateral Agent incurs or expends any sums, including Attorney Costs, whether or not in connection with any action or proceeding, in order to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Common Collateral Agent's rights hereunder, or to recover any indebtedness secured hereby, all such sums shall become immediately due and payable to BCRE with interest at the Default Rate. All such sums shall be secured by this Mortgage and be a lien on the Property prior to any right, title, interest or claim in, to or upon the Property attaching or accruing subsequent to the lien of this Mortgage. Without limiting the generality of the foregoing, in any sale or suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness secured hereby in the notice or decree for sale all costs and expenses which may be paid or incurred by or on behalf of Common Collateral Agent for Attorney Costs and reasonable appraiser's fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Property, stenographer's charges, securities and examinations, guarantee policies and similar data and assurances with respect to title as Common Collateral Agent may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such notice or decree the true condition of the title to or value of the Property or for any other reasonably necessary purpose. The amount of any such costs and expenses which may be paid or incurred after the sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby.

16. **EXERCISE OF RIGHTS.** If any of Common Collateral Agent or the Secured Creditors: (1) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage; (2) takes other or additional security for the payment thereof; (3) waives or fails to exercise any right granted under the Credit Documents; (4) grants any release, with or without consideration of the whole or any part of the security held for the payment of the indebtedness secured hereby; (5) amends or modifies in any respect with the consent of Company any of the terms and provisions of the Credit Documents, then, and in any such event, such act or omission to act shall not release BCRE under any covenant of this Mortgage, nor preclude Common Collateral Agent from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence or existence of an Event of Default or otherwise and shall not in any way impair or affect the lien or priority of this Mortgage. No right or remedy of Common Collateral Agent or the Secured Creditors shall be exclusive of, but shall be in addition to, every other right or remedy, now or hereafter existing at law or in equity. No delay in exercising, or omission to exercise, any right or remedy accruing upon the occurrence or existence of an Event of Default shall impair any such right or remedy, or shall be construed to be a waiver of any such Event of Default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Any waiver by

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Common Collateral Agent hereunder shall be effective only if expressed in a writing signed by Common Collateral Agent and then only for the time and to the extent stated therein. Every such right or remedy may be exercised concurrently or independently and when and as often as may be deemed expedient by Common Collateral Agent. All rights and remedies of Common Collateral Agent hereunder and all obligations of BCRE shall be absolute and unconditional, irrespective of any lack of validity or enforceability of the Credit Documents or any other circumstance which might otherwise constitute a defense available to, or a discharge of, BCRE in respect of its obligations secured hereby.

17. **INSPECTION.** BCRE will keep, or cause to be kept, proper books and records with respect to the Property and the operations thereof. BCRE hereby grants to Common Collateral Agent or any person authorized to act on behalf of Common Collateral Agent the right to enter on the Property or any place where the books and records are kept, at all reasonable times, and to inspect the same, including the right to make photocopies or extracts from the books and records, provided, however, nothing contained herein shall be construed as an obligation on the part of Common Collateral Agent to make such inspections. Common Collateral Agent agrees that it shall, in connection with any rights granted to Common Collateral Agent under this Mortgage to enter upon the Property, give BCRE not less than forty-eight (48) hours prior notice of any such entry onto the Property unless the need therefor is the result of an emergency condition, in which case Common Collateral Agent shall give such advance notice as may be reasonable under the circumstances.

18. **BUSINESS PURPOSE.** BCRE represents and agrees that the Supplemental Arrangements are for business purposes and that the Supplemental Obligations constitute a "business loan" within the purview of 815 ILCS 205/4.

19. **TAXES ON INDEBTEDNESS.** In the event of the passage of any law which deducts from the value of real property, for purposes of taxation, any lien thereon and which, in turn, imposes a tax, whether directly or indirectly, on the Supplemental Obligations or any of the Supplemental Arrangements, BCRE shall, upon demand from Common Collateral Agent, reimburse Common Collateral Agent for the maximum portion that BCRE is permitted to contribute under applicable law to the payment thereof, together with interest thereon at the Default Rate from the date such taxes were paid by Common Collateral Agent until the date of reimbursement from BCRE.

20. **SUBORDINATION.** At the option of Common Collateral Agent, this Mortgage shall become subject and subordinate (except with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Property upon the execution by Common Collateral Agent of a unilateral declaration of subordination and the recording thereof in the Office of the Recorder of the County in which the Real Estate described in Exhibit A is located.

21. **FUTURE ADVANCES.** It is further covenanted and agreed by the parties hereto that this Mortgage also secures the payment of and includes all future advances as shall be made by the Other Creditors or their successors or assigns as provided in the Supplemental Arrangements to and for the benefit of the Company or any other member of the BCI Group to the same extent as if such future advances were made on the date of the execution of this Mortgage ("Future Advances"). The total amount of indebtedness that may be secured by this Mortgage may decrease or increase from time to time and shall include any and all disbursements made by Common Collateral Agent for the payment of taxes, levies or insurance on the Property with interest on such disbursements at the Default Rate and for Attorney Costs incurred in the collection of any or all of such sums. The maximum aggregate principal amount of the indebtedness that may be secured hereby is \$ \_\_\_\_\_.

22. **MODIFICATION.** No change, amendment, modification, cancellation or discharge hereof, or any part hereof, shall be valid unless in writing and signed by BCRE and Common Collateral Agent or their respective successors and assigns.

23. **NOTICES.** Any notices, demands, deliveries or other communications required or permitted hereunder shall be in writing and shall be deemed properly served if served in the manner provided in the Facilities Agreement.

24. **FURTHER ASSURANCES.** BCRE, at its expense, will execute, acknowledge where necessary, deliver, record, file or refile such instruments and take such actions as Common Collateral Agent from time to time may reasonably request for the further assurance to Common Collateral Agent of the properties and rights intended to be now or hereafter subjected to the lien hereof or assigned hereunder or intended to be. BCRE hereby authorizes Common Collateral Agent to file financing statements and continuations relative to all or any part of the Property for which a security interest is granted

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hereunder without the signature of BCRE where permitted by law. BCRE further agrees that a photocopy or other reproduction of this Mortgage or a financing statement is sufficient as a financing statement.

25. **BINDING ON SUCCESSORS AND ASSIGNS; CAPTIONS; GENDER.** Subject to the provisions hereof restricting or limiting BCRE's rights of assignment and transfer, all of the terms, covenants, conditions and agreements herein set forth shall be binding upon and inure to the benefit of the respective heirs, devisees, legal representatives, successors and assigns of the parties hereto. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret, limit or define the provisions hereof. In this Mortgage, whenever and wherever the context so requires, the neuter shall include the feminine and masculine and the singular shall include the plural, where appropriate. The terms "including" and "includes" shall be construed, where appropriate, as though followed by the words "without limitation."

26. **APPLICABLE LAW; SEVERABILITY.** This Mortgage shall be governed by the internal laws of the State of New York (without regard to conflicts of laws), except that the laws of the State of Illinois shall govern the validity, priority and enforcement hereof. Every provision hereof is intended to be severable. If any term of this Mortgage or the application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, the remaining terms of this Mortgage shall not be affected or impaired thereby, but each such remaining term shall be valid and enforceable to the fullest extent permitted by law.

27. **RELEASE OF LIEN.**

A. If Company and/or BCRE pay all sums due under the Credit Documents in accordance with the terms thereof or if the requirements of Paragraph 27.B are satisfied, then this Mortgage and the estate and rights hereby created shall cease, terminate and become void, and thereupon Common Collateral Agent, upon the written request and at the expense of BCRE, shall execute and deliver to BCRE such instruments as shall be required to evidence of record the satisfaction of this Mortgage and the lien thereon.

B. Without causing an acceleration of the indebtedness secured by this Mortgage, Common Collateral Agent shall from time to time, upon not less than five (5) Business Days' prior notice from BCRE or Company, execute and deliver to BCRE a release of the lien of this Mortgage upon all or any portion of the Property for which the release is requested (the "Released Property"), on the following terms and conditions:

- (1) No release shall be permitted at any time when an Event of Default shall exist and be continuing.
- (2) No release shall be given except in connection with the transfer, sale or encumbrance of the Released Property as permitted pursuant to the terms of the Facilities Agreement and then only after BCRE and Company have satisfied any conditions precedent contained in the Credit Documents; and
- (3) The cost of each release, including Attorney Costs of Common Collateral Agent's counsel, shall be paid by BCRE.

28. **TIME OF THE ESSENCE.** Time is of the essence to this Mortgage, and all provisions pertaining thereto shall be strictly construed.

29. **SUBMISSION TO JURISDICTION; WAIVER OF VENUE.** BCRE HEREBY (1) IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN NEW YORK CITY, NEW YORK AND TO THE JURISDICTION OF ANY ILLINOIS STATE COURT OR FEDERAL COURT SITTING IN OR NEAREST TO THE ILLINOIS COUNTY IN WHICH THE PROPERTY IS LOCATED OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE, (2) IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE, ILLINOIS STATE OR FEDERAL COURT AND (3) AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST COMMON COLLATERAL AGENT OR ANY SECURED CREDITOR OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY OF ANY THEREOF, ARISING OUT OF OR RELATING TO THIS AGREEMENT, IN ANY COURT OTHER THAN AS HEREINABOVE SPECIFIED IN THIS PARAGRAPH 29. BCRE HEREBY IRREVOCABLY WAIVES, TO THE

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FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUCH ACTION OR PROCEEDING (WHETHER BROUGHT BY SUCH PARTY OR OTHERWISE) IN ANY COURT HEREINABOVE SPECIFIED IN THIS PARAGRAPH 29 AS WELL AS ANY RIGHT IT MAY NOW OR HEREAFTER HAVE, TO REMOVE ANY SUCH ACTION OR PROCEEDING, ONCE COMMENCED, TO ANOTHER COURT ON THE GROUNDS OF FORUM NON CONVENIENS OR OTHERWISE. BCRE AGREES THAT A FINAL, NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW

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30. **WAIVER OF JURY TRIAL.** BCRE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS MORTGAGE OR UNDER ANY OTHER DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY, THIS PROVISION IS A MATERIAL INDUCEMENT FOR COMMON COLLATERAL AGENT AND OTHER CREDITORS ENTERING INTO THE CREDIT DOCUMENTS.

31. **SERVICE OF PROCESS.** BCRE HEREBY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MEANS OF CERTIFIED MAIL AT THE ADDRESS SPECIFIED FOR COMPANY IN THE FACILITIES AGREEMENT. NOTHING IN THIS MORTGAGE WILL AFFECT THE RIGHT OF COMMON COLLATERAL AGENT TO SERVE SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

32. **PRIORITY.** Notwithstanding the date, manner, or order of grant, attachment, or perfection of the liens and security interests of this Mortgage, the priority of said liens and security interests, and Common Collateral Agent's exercise of any rights or remedies with respect thereto, shall be subject to the provisions of the Intercreditor Agreement; provided, however, that nothing in this Mortgage shall create or be deemed to create any claims, rights, or defenses in BCRE pursuant to the Intercreditor Agreement or to excuse or modify any obligations of BCRE under the Credit Documents, and BCRE's execution of this Mortgage shall confirm its agreement to be bound by the terms and conditions of the Intercreditor Agreement.

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IN WITNESS WHEREOF, BCRE has executed this Mortgage as of the day and year first above written

BC REAL ESTATE INVESTMENTS, INC., a Delaware corporation

By: J. Randall Miller  
Name: J. Randall Miller  
Title: Vice President

[CORPORATE SEAL]

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STATE OF ILLINOIS )

) SS

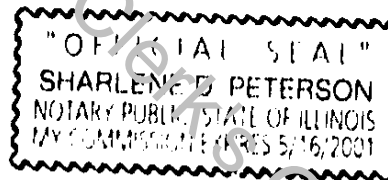
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J. Randall Miller, personally known to me to be the Vice President of **BC REAL ESTATE INVESTMENTS, INC.**, a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President, such person signed, sealed and delivered said instrument as Vice President of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as such person's free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 10<sup>th</sup> day of July, 1998.

Sharlene D. Peterson  
Notary Public

My Commission Expires: 5/16/2001



This Instrument Prepared In Chicago, Illinois By  
And After Recording Should Be Returned To:

Mr. Robert J. Maganuco  
Sidley & Austin  
One First National Plaza  
Chicago, Illinois 60603

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**UNOFFICIAL COPY** 98827770  
**EXHIBIT A**

98827770

**LEGAL DESCRIPTION OF PROPERTY**

**STORE NO:** 158  
**ADDRESS** 7112 W North Avenue  
Chicago, Illinois

**PERMANENT TAX INDEX NUMBER:** 13-31-322-032-0000

**LEGAL DESCRIPTION:**

Lots 93, 94, 95, 96 and 97 in Madsen's North of Oak Park Subdivision of the Southwest quarter of Section 31, Township 40 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

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EXHIBIT A

98827770

## LEGAL DESCRIPTION OF PROPERTY

STORE NO: 184

ADDRESS: 2580 W. Schaumburg Road  
Schaumburg, Illinois

PERMANENT TAX INDEX NUMBER: 07-19-105-006-0000

### LEGAL DESCRIPTION:

#### PARCEL 1:

LOT B IN PRAIRIE TOWNE CENTER, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 9, 1993 AS DOCUMENT 93719477, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, PARKING AND UTILITIES CREATED BY OPERATION AND EASEMENT AGREEMENT BETWEEN KMART CORPORATION, LEAPS & BOUNDS, INC. AND KOHL'S DEPARTMENT STORES, INC., DATED MAY 11, 1993 AND RECORDED MAY 20, 1993 AS DOCUMENT 93582707.

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Exhibit A

## LEGAL DESCRIPTION OF PROPERTY

STORE NO: 237

ADDRESS: 790 W Northwest Highway  
Palatine, Illinois

PERMANENT TAX INDEX NUMBER: 02-10-306-021-0000

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### LEGAL DESCRIPTION:

#### PARCEL 1:

LOT 2 IN QUENTIN CORNERS, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS IN FAVOR OF PARCEL 1, AS CREATED BY QUENTIN CORNERS PLAT OF SUBDIVISION RECORDED MARCH 23, 1988 AS DOCUMENT NUMBER 88120312, OVER THE FOLLOWING DESCRIBED LAND: LOT 1 IN QUENTIN CORNERS, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

PERPETUAL NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS, EGRESS, PASSAGE AND PARKING BY PEDESTRIANS AND MOTOR VEHICLES CREATED BY COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL RIGHTS AGREEMENT DATED OCTOBER 3, 1990 AND RECORDED OCTOBER 10, 1990 AS DOCUMENT NUMBER 90496059 AND AMENDED BY DOCUMENT NUMBER 93838457 OVER AND ACROSS THOSE PARTS OF THE SHOPPING CENTER PROPERTY AS ARE FROM TIME TO TIME IMPROVED FOR USE AS ROADWAYS, PARKING SPACES AND PEDESTRIAN WALKS.

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Exhibit A

## LEGAL DESCRIPTION OF PROPERTY

STORE NO: 515  
ADDRESS: 1330 Torrence Avenue  
Calumet City, Illinois  
PERMANENT TAX INDEX NUMBER: 29-24-200-051-0000  
29-24-200-061-0000

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### LEGAL DESCRIPTION:

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#### PARCEL 1:

LOT 1 (EXCEPT THE SOUTH 2 FEET OF THE EAST 16 FEET THEREOF) AND THE SOUTH 128.51 FEET OF LOT 2 IN VENTURE URBAN SUBDIVISION, BEING RESUBDIVISION OF LOT 3 (EXCEPTING THEREFROM THAT PART TAKEN FOR ADDITIONAL RIGHT OF WAY FOR 159TH STREET IN CASE NO. 80L10516 IN CIRCUIT COURT OF COOK COUNTY, ILLINOIS) AND ALSO LOT 4 OF THE RESUBDIVISION OF LOT 2 IN RIVER OAKS WEST UNIT NUMBER 2 IN PART OF THE NORTHEAST 1/4 OF SECTION 24, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 20, 1981 AS DOCUMENT 25944971, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 FOR ACCESS, INGRESS AND EGRESS AS CREATED BY DECLARATION OF EASEMENT RECORDED DECEMBER 30, 1983 AS DOCUMENT 26913329 MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER AGREEMENT DATED SEPTEMBER 10, 1974 AND KNOWN AS TRUST NUMBER 48200 TO LUTHER'S BAR-B-QUE, INC., OVER AND ACROSS LOT 10 IN VENTURE URBAN SUBDIVISION, BEING A RESUBDIVISION OF LOT 3 (EXCEPTING THEREFROM THAT PART TAKEN FOR ADDITIONAL RIGHT-OF-WAY FOR 159TH STREET IN CASE NO. 80L10516 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS) AND ALSO LOT 4 OF THE RESUBDIVISION OF LOT 2 IN RIVER OAKS WEST UNIT NO. 2, IN PART OF THE NORTH EAST 1/4 OF SECTION 24, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID VENTURE URBAN SUBDIVISION RECORDED AS DOCUMENT NO. 25944971.

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Exhibit A

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## LEGAL DESCRIPTION OF PROPERTY

STORE NO: 518  
ADDRESS: 4221 N Harlem Avenue  
Norridge, Illinois  
PERMANENT TAX INDEX NUMBER: 13-18-318-009-0000  
13-18-318-010-0000  
13-18-318-011-0000

### LEGAL DESCRIPTION:

THE WEST 137.36 FEET OF THE SOUTH 137.36 FEET OF LOT 17 IN FULLER'S SUBDIVISION, A SUBDIVISION OF THE SOUTH 478.10 FEET OF THE NORTH 1430.40 FEET OF THE WEST 1548.80 FEET OF THE SOUTHWEST FRACTIONAL 1/4 NORTH OF THE INDIAN BOUNDARY LINE, IN SECTION 18, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN; AND

THE EAST 137.36 FEET OF THE WEST 187.36 FEET OF THE SOUTH 105.0 FEET OF THE NORTH 1535.40 FEET OF THE SOUTHWEST FRACTIONAL 1/4 NORTH OF THE INDIAN BOUNDARY LINE OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN; AND

THE WEST 137.36 FEET OF LOT 17 (EXCEPT THE SOUTH 137.36 FEET THEREOF), AND THE WEST 137.36 FEET OF THE SOUTH 10.83 FEET OF LOT 16, ALL IN FULLER'S SUBDIVISION, A SUBDIVISION OF THE SOUTH 478.10 FEET OF THE NORTH 1430.40 FEET OF THE WEST 1548.80 FEET OF THE SOUTHWEST FRACTIONAL 1/4 NORTH OF THE INDIAN BOUNDARY LINE, IN SECTION 18, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

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## EXHIBIT B

### Excluded Property

All items of furniture, furnishings, equipment and personal property which constitute 1995 Collateral (as defined in the Intercreditor Agreement)

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## EXHIBIT C

### Financing Statements

Financing statements, if any, in favor of the 1995  
Lease Agent (as defined in the Intercreditor Agreement)

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**EXHIBIT B**

**Excluded Property**

All items of furniture, furnishings, equipment and personal property which constitute 1995 Collateral (as defined in the Intercreditor Agreement)

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## EXHIBIT C

### Financing Statements

Financing statements, if any, in favor of the 1995  
Lease Agent (as defined in the Intercreditor Agreement)

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