

AFTER RECORDING MAIL TO:

Edward J. Grzelakowski
Kemp & Grzelakowski, Ltd.
1900 Spring Road, Suite 500
Oak Brook, IL 60523



99064115

RECORDER'S STAMP

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ABSOLUTE ASSIGNMENT OF RENTS AND LESSOR'S INTEREST IN LEASES

THIS ASSIGNMENT is made as of December 21st, 1998 by MARQUETTE NATIONAL BANK, not personally, but solely as Trustee under Trust Agreement dated May 30, 1996 and known as Trust No. 13696, ("Assignor"), to and for the benefit of MARQUETTE NATIONAL BANK, a national bank ("Assignee").

RECITALS:

WHEREAS, Assignor is the owner of the fee simple estate in and to the real estate described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"); and

WHEREAS, Leona's Pizzeria, Inc., an Illinois corporation ("Borrower") has executed and delivered to Assignee that certain Secured Promissory Note, dated of even date herewith, in the principal amount of Six Hundred Thousand (\$600,000.00) Dollars (the "Note"); and

WHEREAS, Borrower has also executed and delivered to Mortgagee that certain Commercial Loan and Security Agreement, dated of even date herewith (said Commercial Loan and Security Agreement and any and all renewals, extensions for any period, increased or rearrangements thereof is referred to as the "Loan Agreement"), providing for the extension of certain and other financial accommodations by Assignee to Borrower, which, combined with the outstanding principal balance of the Note will not exceed Six Hundred Thousand (\$600,000.00) Dollars; and

WHEREAS, as a condition to Assignee's extension of certain financial accommodations to Borrower including, without limitation, the extension of credit evidenced by the Note and pursuant to the Loan Agreement (this Assignment, the Mortgage, the Note, the Loan Agreement and any other document or

BOX 333-CT1

instrument at any time executed pursuant to or in connection with any of them are hereinafter sometimes collectively referred to as "Loan Documents"), Assignee has required that Assignor (which is beneficially owned by Toia Building Properties Partnership Limited Partnership ("Beneficiary"), an affiliate of Borrower (Mortgagee, Borrower and Beneficiary hereinafter individually an "Obligor" and collectively "Obligors") enter into this Assignment and grant to Assignee the liens and security interests referred to herein to secure: (i) the payment of the principal amount evidenced by the Note together with interest thereon; (ii) payment of the principal amount, together with interest thereon, of all present and future advances of money made by the Assignee to Borrower or Assignor, including without limitation, the re-borrowing of principal previously repaid pursuant to the Loan Agreement, as well as all other Liabilities (as defined and provided in the Loan Agreement) of Borrower to Assignee; and (iii) other payment and performance obligations related to this Mortgage; and

NOW, THEREFORE, for the purpose of securing payment of the indebtedness evidenced by the Note and the payment of all advances and other sums with interest thereon becoming due and payable to Assignee under the provisions hereof or of the Note and the Loan Documents, or any sums secured by said instruments, and the performance and discharge of each and every obligation, covenant and agreement of Assignor herein or arising from the Note and the Loan Documents, and also in consideration of ONE AND NO/100 (\$1.00) DOLLAR, the receipt whereof is hereby acknowledged, Assignor hereby agrees as follows:

1. Assignment Clause. Assignor, intending to be legally bound and in consideration of the making of the loan represented by the Note, does hereby sell, assign, transfer and set over unto Assignee all right, title and interest of Assignor in and to all rents, issues and profits of the Property, including but not limited to all right, title and interest of Assignor, in and to those leases of all or of portions of the Property, as may be listed in Exhibit "B" attached hereto and made a part hereof and any leases which may be hereafter entered into for all or any portion of the Property (hereinafter referred to as the "Leases"), and any and all extensions and renewals thereof, and including any security deposits or interests therein now or hereafter held by Assignor and the benefit of any guarantees executed in connection with any of the Leases. This Assignment is absolute and is effective immediately; provided, however, that until notice is sent by Assignee to Assignor in writing that an Event of Default has occurred under the Note or under any other Loan Document (each such notice is hereinafter referred to as the "Notice"), Assignor may receive, collect and enjoy the rents, income and profits accruing from the Property. The security of this Assignment is and shall be primary and on a parity with the Property conveyed by the Mortgage, and not secondary. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the Mortgage or in any other Loan Document.

2. Representations and Warranties. Assignor represents and warrants to Assignee, that: (i) there is no lease in effect with respect to the Property which is not listed on the aforesaid Exhibit "B"; (ii) it has made no prior assignment or pledge of the rents assigned hereby or of the Assignor's interest in any of the Leases; (iii) no default exists in any of the Leases and there exists no state of facts which, with the giving of Notice or lapse of time or both, would constitute a default under any of the Leases; (iv) none of the Leases have been modified or extended except as may be noted in Exhibit "B"; (v) Assignor is the sole owner of the lessor's interest in the Leases; (vi) the Leases are valid and enforceable in accordance with their terms and (vii) no prepayment of any installment of rent for more than one (1) month due under any of the Leases has been received by Assignor.

3. Negative Covenants of Assignor. Assignor will not, without Assignee's prior written consent: (i) execute an assignment or pledge of the rents from the Property or any part thereof, or of Assignor's interest in any of the Leases, except to Assignee; or (ii) modify, extend or otherwise alter the material terms of any of the Leases or of any guarantees of any of the Leases; or (iii) accept prepayments of any installments

of rents to become due under any of the Leases for more than one (1) month; or (iv) execute any lease of all or any portion of the Property; or (v) in any manner impair the value of the Property; or (vi) permit the Leases to become subordinate to any lien other than a lien created by the Loan Documents or a lien for general real estate taxes not delinquent; or (vii) consent to any assignment of any Leases or any subletting thereunder.

4. Affirmative Covenants of Assignor. Assignor will at its sole cost and expense: (i) fulfill and perform each and every covenant and condition of each of the Leases by the lessor thereunder to be fulfilled or performed; (ii) enforce or secure the performance of all of the material covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of Assignor, as lessor, and of the lessees thereunder, and pay all costs and expenses of Assignee, including reasonable attorneys' fees in any such action or proceeding in which Assignee may appear; (iv) transfer and assign to Assignee any and all Leases subsequently entered into, upon the same terms and conditions as are herein contained, and make, execute and deliver to Assignee upon demand any and all instruments required to effectuate said assignment; (v) furnish to Assignee, within ten (10) days after a request by Assignee to do so, a written statement containing the names of all lessees of the Property or any part thereof, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder; (vi) exercise within five (5) days of the demand therefor by Assignee any right to request from the lessee under any of the Leases a certificate with respect to the status thereof; (vii) furnish Assignee promptly with copies of any notices of default which Assignor may at any time forward to any lessee of the Property or any part thereof; (viii) pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the Default Rate provided in the Note; and (ix) furnish loss of rents insurance in accordance with the provisions of the Mortgage.

5. Agreement of Assignor.

A. Should Assignor fail to make any payment or to do any act as herein provided for, then Assignee, but without obligation so to do, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor in the Leases contained, and in exercising any such powers to incur and pay necessary costs and expenses, including attorneys' fees, all at the expense of Assignor.

B. This Assignment shall not operate to place responsibility for the control, management, care and/or repair of the Property upon Assignee and Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except any such claims or demands resulting from the acts or actions of Assignee. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby, and

Assignor shall reimburse Assignee therefor with interest at the default rate provided in the Note immediately upon demand.

C. Nothing herein contained shall be construed as constituting Assignee a "Mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee, pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

D. A demand on any lessee by Assignee for the payment of the rent on any default claimed by Assignee shall be sufficient warrant to the lessee to make future payment of rents to Assignee without the necessity for further consent by Assignor.

E. Assignor does further specifically authorize and instruct each and every present and future lessee of the whole or any part of the Property to pay all unpaid rental agreed upon in any tenancy to Assignee upon receipt of demand from Assignee to pay the same, and Assignor hereby waives the right, claim or demand it may now or hereafter have against any such lessee by reason of such payment of rental to Assignee or compliance with other requirements of Assignee pursuant to this Assignment.

F. Upon issuance of a deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor. Assignor hereby irrevocably appoints Assignee and its successors and assigns, as its agent and attorney-in-fact, to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose.

G. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification, or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Assignor as rents, income, issues, or profits from the Property from and after the date of any default or Event of Default under the Note or under any of the Loan Documents, which default or Event of Default shall not have been cured within the time periods, if any, expressly established therefor, shall be held by Assignor as trustee for Assignee and all such amounts shall be accounted for to Assignee and shall not be commingled with other funds of Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Assignee as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds of the county in which the Property is located stating that Assignor has received or will receive such amounts in trust for Assignee.

H. Assignor hereby irrevocably appoints Assignee as its true and lawful attorney with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor, from and after the service of the Notice of any default or Event of Default under the Note or under any of the Loan Documents, which default or Event of Default shall not have been cured within the time periods, if any, expressly established therefor, to demand, collect, receive and give complete acquittance for any and all rents, income and profits accruing from the Property, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits and lessees of the Property are hereby expressly authorized and directed to pay

any and all amounts due Assignor pursuant to the Leases directly to Assignee or such nominee as Assignee may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

I. In the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Assignment Assignee may elect.

6. Default. Upon, or at any time after, default in the payment of any indebtedness secured hereby or in the performance of any other obligation, covenant, or agreement herein or default or Event of Default under the Note or under any of the Loan Documents, Assignee may, at its option, from and after the Notice and expiration of applicable period of grace, if any, and without regard to the adequacy of the security for the indebtedness hereby secured, either in person, or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Property or any part thereof; and do any acts which Assignee deems proper to protect the security hereof; and, either with or without taking possession of the Property, in the name of Assignor or in its own name sue for or otherwise collect and receive such rents, issues, profits, and advances, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, but not being limited to, attorneys' fees, management fees and broker's commissions, upon any indebtedness secured hereby, and in such order as Assignee may determine. Assignee reserves, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, and shall not be accountable for more monies than it actually receives from the Property. The entering upon and taking possession of the Property or the collection of such rents, issues, profits and advances and the application thereof, as aforesaid, shall not cure or waive any default under the Loan Documents or the Note. Assignor agrees that it will facilitate in all reasonable ways Assignee's collection of said rents, and will, upon request by Assignee, promptly execute a written notice to each lessee directing the lessee to pay rent to Assignee.

7. Assignee's Right to Exercise Remedies. No remedy conferred upon or reserved to Assignee herein or in the Loan Documents or the Note or in any other agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy, and all representations herein and in the Note or the Loan Documents, contained shall be cumulative and concurrent, and shall be in addition to every other remedy given hereunder and thereunder or now or hereafter existing at law or in equity or by statute. The remedies may be pursued singly, successively or together against Assignor and/or the Property at the sole discretion of Assignee. No delay or omission of Assignee to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and every power and remedy given by this Assignment to Assignee may be exercised from time to time as often as may be deemed expedient by Assignee.

8. Defeasance. As long as Assignor shall not have defaulted in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant, or agreement herein, or in the Note or

Loan Documents, Assignor shall have the right to collect upon, but not prior to accrual, all rents, issues, profits and advances from the Property and to retain, use and enjoy the same. Upon the payment in full of all indebtedness secured hereby and the compliance with all obligations, covenants and agreements herein and in the Note and the Loan Documents, this Assignment shall become and be void and of no effect, but the affidavit of any officer of Assignee showing any part of said indebtedness remaining unpaid or showing non-compliance with any such terms or conditions shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

9. Miscellaneous.

A. This Assignment may not be modified, amended, discharged or waived orally, except by an agreement in writing and signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

B. The covenants of this Assignment shall bind Assignor, the successors and assigns of Assignor, all present and subsequent encumbrances, lessees and sub-lessees of the Property or any part thereof, and shall inure to the benefit of Assignee, its successors and assigns.

C. As used herein the singular shall include the plural as the context requires, and all obligations of each Assignor shall be joint and several.

D. The article headings in this instrument are used for convenience in finding the subject matters, and are not to be taken as part of this instrument, or to be used in determining the intent of the parties or otherwise in interpreting this instrument.

E. In the event any one or more of the provisions contained in this Assignment or in the Note or in the Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or un-enforceability shall, at the option of Assignee, not affect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

F. This Assignment shall be governed by and construed in accordance with the laws of the State in which the Property is located.

G. All notices, demands and requests given hereunder by Assignor or Assignee, shall be in writing and shall be by: (a) hand delivery to the address for notices; or (b) delivery by overnight courier service to the address for notices; or (c) by certified mail, return receipt requested, addressed to the address for notices by United States mail, postage prepaid. All notices shall be deemed received upon the earliest to occur of: (i) the hand delivery of such notice to the address for notices; or (ii) one day after the deposit of such notice with any overnight courier service addressed to the address for notices; or (iii) three days after depositing the notice in the United States mail as set forth in (c) above. All notices shall be addressed to the following addresses:

Assignor: Marquette National Bank
a/t/u Trust No. 13696
6155 S. Pulaski
Chicago, IL 60629

With a copy to: Thomas S. Moore, Esq.
Anderson & Moore, P.C.
111 West Washington Street
Suite 1100
Chicago, IL 60602

Assignee: MARQUETTE NATIONAL BANK
8020 S. Harlem Avenue
Bridgeview, IL 60455
Attention: Peter M. Hueser

With a copy to: Edward J. Grzelakowski, Esq.
Kemp & Grzelakowski, Ltd.
1900 Spring Road, Suite 500
Oak Brook, IL 60523

or to such other person or at such other place as any party hereto may by notice designate as a place for service of notice.

H. The terms "Assignor" and "Assignee" shall be construed to include the personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by the day and year first above written.

This instrument is executed by the Marquette National Bank, not personally, but only as Trustee, and no personal liability is assumed by or shall be enforced against said Marquette National Bank because of or on account of the making of this instrument.

MARQUETTE NATIONAL BANK
not personally, but solely as
Trustee under Trust Agreement
dated May 30, 1996 and known
as Trust No. 13696

Diane Katsiboulas

By: Lorraine A. Lachowicz
Name: LORRAINE A. LACHOWICZ
Title: TRUST OFFICER

UNOFFICIAL COPY

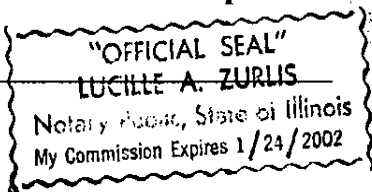
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STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Lorraine Lockwood President of MARQUETTE NATIONAL BANK, and Doris Katsabubas Secretary of said Bank are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank as Trustee as aforesaid for the uses and purposes therein set forth; and the said Assist. Secretary then and there acknowledged that Assist. Sec. as Custodian of the seal of said Bank, did affix the seal to said instrument as their own free and voluntary act and as the free and voluntary act of said Bank as trustee as aforesaid, for the purposes therein set forth.

GIVEN under my hand and Notarial Seal this 15 day of January 1998.

My Commission Expires:



Lucille A. Zurlic
NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1: TAX #17-30-120-001

LOTS 19 AND 20 IN WALKER'S SUBDIVISION OF THAT PART LYING NORTHWESTERLY OF BLUE ISLAND AVENUE OF BLOCK 7 IN LAUGHTON AND RICE'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART OF SAID LOTS 19 AND 20 LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 30), IN COOK COUNTY, ILLINOIS.

PARCEL 2: TAX #17-30-119-005,006-008

LOTS 28, 29, 30 AND 31 (EXCEPT PART TAKEN FOR WIDENING WESTERN AVENUE) IN P.M. THOMPSON'S SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 6 IN LAUGHTON'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: TAX #17-30-119-022

LOTS 24 AND 25 AS A TRACT ON P.M. THOMPSON'S SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 6 IN LAUGHTON'S SUBDIVISION OF WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 2501 S. WESTERN AVENUE, CHICAGO, ILLINOIS

UNOFFICIAL COPY 99064115

EXHIBIT B

LEASES

Property of Cook County Clerk's Office