EXHIBIT K-2(A)  
 FORM OF FRANCHISEE NOTE  
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 NOTE  
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$\_\_\_\_\_\_\_\_\_\_\_\_ (U.S.) \_\_\_\_\_\_\_ \_\_\_, 199\_\_  
  
  
 FOR VALUE RECEIVED, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having an office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
("MAKER") promises to pay to the order of BANCO POPULAR DE PUERTO RICO, having  
an office at 0 Xxxx 00/xx/ Xxxxxx, Xxx Xxxx, Xxx Xxxx 00000 (hereinafter  
referred to as "PAYEE"), or at such place as the holder hereof may from time to  
time designate in writing, the principal sum of  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DOLLARS ($\_\_\_\_\_\_\_\_\_\_) or so much thereof as  
may be outstanding (THE "PRINCIPAL AMOUNT") in lawful money of the United States  
of America with interest on the Principal Amount outstanding from time to time  
to be computed from the date the funds are advanced by Payee at the Applicable  
Interest Rate (hereinafter defined) as provided herein. Defined terms used in  
this Note shall have the meanings ascribed thereto in paragraph 1 hereof.  
  
 1. DEFINITIONS. The following terms shall have the following meanings:  
  
"APPLICABLE INTEREST  
RATE" (i) During the Initial Period, the Initial Period  
 Interest Rate,  
 (ii) during the Second Period, the Second Period  
 Interest Rate, [and (iii) during the Third Period, the  
 Third Period Interest Rate.]  
  
   
"APPLICABLE TREASURY  
RATE" The Treasury Rate plus \_\_\_\_\_\_ basis points.  
  
"FIRST PERIODIC  
AMORTIZATION DATE" [First day of month occurring six (6) months after  
 closing date.]  
  
"FIRST PERIODIC  
INTEREST DATE" [First day of first month after closing date].  
  
"INITIAL PERIOD" The period commencing on the date of this Note and  
 ending on [date preceding first (1/st/) anniversary of  
 closing date].  
  
"INITIAL PERIOD INTEREST   
RATE" A per annum rate equal to the Prime Rate in effect  
 from time to time.  
  
"LOAN DOCUMENTS" As defined in the Mortgage.  
  
   
"MATURITY DATE" \_\_\_\_\_\_\_\_\_\_\_\_.  
  
"MORTGAGE" The Mortgage, Security Agreement and Assignment of  
 Leases and Rents, dated as of the date hereof, made by  
 Maker, as mortgagor, to Xxxxx, as mortgagee, as the  
 same may be amended or supplemented from time to time.  
  
"PERIODIC AMORTIZATION  
AMOUNT" $\_\_\_\_\_\_\_\_\_\_.  
  
"PERIODIC AMORTIZATION  
DATE" The first (1st) day of each calendar month occurring  
 after the First Periodic Amortization Date and prior  
 to the Maturity Date.  
  
"PERIODIC AMORTIZATION  
PAYMENT" A periodic payment of a portion of the Principal  
 Amount equal to the Periodic Amortization Amount.  
  
"PERIODIC INTEREST DATE" The first (1st) day of each calendar month occurring  
 after the First Periodic Interest Date and prior to  
 the Maturity Date.  
  
"PRIME RATE" The prime commercial lending rate of Payee as publicly  
 announced (or published internally) by Payee to be in  
 effect from time to time, or, if the actual cost to  
 Payee of its overnight federal funds borrowings  
 exceeds the announced or published prime rate, the  
 overnight federal funds rate. The Prime Rate is not  
 the lowest rate charged by Payee for commercial or  
 other types of loans, it being understood that the  
 Prime Rate is only one of the bases for computing  
 interest on loans made by Payee and that, by basing  
 interest on the Prime Rate, Xxxxx has not committed to  
 charge and Maker has not in any way bargained for  
 interest based on a lower or the lowest rate at which  
 Payee may now or in the future make loans to other  
 borrowers. Any interest rate based on the Prime Rate  
 shall be adjusted on and as of the effective date of  
 any change in the Prime Rate.  
  
"PRINCIPAL AMOUNT" \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_(U.S.)) or so much  
 thereof as may be outstanding from time to time.  
  
"SECOND PERIOD" The period commencing on (first (1/st/) anniversary of  
 closing date) and ending on [(the Maturing Date/date  
 preceding 7/th/ anniversary of closing date)].  
  
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"SECOND PERIOD  
INTEREST RATE" [To be elected by Maker as of closing date] Either (i)  
 a floating per annum rate equal to the Prime Rate plus  
 \_\_\_\_ basis points, or (ii) a fixed per annum rate  
 equal to the Applicable Treasury Rate. The Second  
 Period Interest Rate shall remain in effect for the  
 entire Second Period.  
  
["THIRD PERIOD" The period commencing on [the 7/th/ anniversary of the  
 closing date] and ending on the Maturity Date.]  
  
["THIRD PERIOD  
INTEREST RATE" \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]  
  
"TREASURY RATE" The yield on United States Treasury notes having a  
 maturity closest to the Maturity Date as in effect on  
 the date of this Note based on the rate published on  
 such date in The Wall Street Journal.  
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 2. INTEREST RATE. During the entire period of this Note occurring prior  
to maturity (whether such maturity occurs by acceleration or otherwise), this  
Note shall bear interest commencing on the date hereof at the Applicable  
Interest Rate.  
  
 3. INTEREST PAYMENTS. Xxxxx agrees to pay interest from the date hereof  
on the Principal Amount at a rate per annum equal to the Applicable Interest  
Rate by periodic payments of interest in arrears commencing on the First  
Periodic Interest Date and continuing on each Periodic Interest Date thereafter  
until the entire Principal Amount is paid. Interest shall also be due on the  
Maturity Date at the Applicable Interest Rate for the period from the Periodic  
Interest Date immediately preceding the Maturity Date up to and including the  
Maturity Date. Interest shall be calculated on the basis of a 360-day year for  
the actual number of days involved. After maturity, the Principal Amount and  
accrued interest thereon, shall, at Xxxxxx's option, be payable on demand.  
  
 4. PRINCIPAL PAYMENTS. In addition to the payment of interest hereunder,  
Xxxxx agrees to pay the Principal Amount now or hereafter owing under this Note  
prior to the Maturity Date by making Periodic Amortization Payments that are due  
and payable during the term of this Note commencing on the First Periodic  
Amortization Date, and thereafter on each succeeding Periodic Amortization Date,  
and the entire unpaid Principal Amount, and all accrued and unpaid interest  
thereon, shall be due and payable on the Maturity Date.  
  
 5. EVENTS OF DEFAULT; ATTORNEY'S FEES. The whole of the principal sum of  
this Note, together with all interest accrued and unpaid thereon and all other  
sums due under this Note and the other Loan Documents (all such sums hereinafter  
collectively referred to as the "Debt") shall without notice become immediately  
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due and payable at the option of Payee if any   
  
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payment required in this Note is not paid within five (5) days of the date when  
due or on the happening of any other default, after the expiration of any  
applicable notice and grace periods, herein or under the terms of the Mortgage  
or any other Loan Document (hereinafter collectively an "Event of Default"). All  
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of the terms, covenants and conditions contained in the Mortgage and the other  
Loan Documents are hereby made a part of this Note to the same extent and with  
the same force as if they were fully set forth herein. In the event that it  
should become necessary to employ counsel to collect the Debt or to protect or  
foreclose the security hereof, Maker also agrees to pay reasonable attorney's  
fees for the services of such counsel whether or not suit is brought.  
  
 6. PREPAYMENT. (a) The Note may be prepaid in whole or in part, together  
with interest on the amount being prepaid up to the date of such payment and, in  
the case of prepayment in full, all others amounts due and payable by Maker  
under this Note, the Mortgage and the other Loan Documents, at any time upon  
giving Payee not less than sixty (60) days prior written notice, provided that,  
at the time of such prepayment (whether by voluntary prepayment, involuntary  
prepayment following acceleration, or otherwise), Maker shall pay to Payee an  
additional prepayment consideration [IF PRIME RATE IN EFFECT AT TIME OF PAYOFF -  
equal to (i) three percent (3%) of the Principal Amount being prepaid, if  
prepayment occurs prior to [1st four years of Loan term], (ii) two percent (2%)  
of the Principal Amount being prepaid, if prepayment occurs prior to [period  
between 4/th/ anniversary of closing and date preceding 7/th/ anniversary of  
closing], and (iii) one percent (1%) of the Principal Amount being prepaid, if  
prepayment occurs at any time on or after [7/th/ anniversary of closing date and  
prior to Maturity Date]/IF APPLICABLE TREASURY RATE IN EFFECT AT TIME OF PAYOFF-  
calculated as follows: (i) the present value as of the date of prepayment of the  
remaining scheduled payments of principal and interest (including any ballon  
payment) determined by discounting such payments at the "Monthly Equivalent  
Treasury Note Rate" (hereinafter defined) less (ii) the amount of principal  
being prepaid, provided such difference shall not be less than zero. The Monthly  
Equivalent Treasury Note Rate for purposes of this provision shall be the rate  
which when compounded monthly results in a yield that is equivalent to the yield  
on the U.S. Treasury Note plus \_\_\_ percent (\_\_%) which is compounded semi-  
annually, having a maturity date closest to the Maturity Date. In no event shall  
the prepayment consideration be less than one percent (1%) of the then  
outstanding Principal Amount.]  
  
 (b) Any prepayment of the Principal Amount, whether in whole or in part,  
shall be accompanied by payment of all accrued interest on the Principal Amount  
being prepaid and shall be applied to installments of the Periodic Amortization  
Payments in inverse order of maturity. Sums prepaid shall not be readvanced by  
Xxxxx.  
  
 7. DEFAULT RATE. Maker does hereby agree that upon the occurrence of an  
Event of Default or upon the failure of Maker to pay the Debt in full on the  
Maturity Date, Payee shall be entitled to receive and Maker shall pay interest  
on the entire unpaid principal sum from the date of an Event of Default at the  
rate (the "Default Rate") equal to the Applicable Interest Rate then in effect  
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plus five hundred (500) basis points. Interest shall accrue hereunder at the  
Default Rate from the occurrence of the Event of Default until the actual  
  
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receipt and collection of the Debt. This charge shall be added to the Debt, and  
shall be deemed secured by the Mortgage. This clause, however, shall not be  
construed as an agreement or privilege to extend the date of the payment of the  
Debt, nor as a waiver of any other right or remedy accruing to Payee by reason  
of the occurrence of any Event of Default. In the event the Default Rate is  
above the maximum rate permitted by applicable law, the Default Rate shall be  
the maximum rate permitted by applicable law.  
  
 8. LOAN DOCUMENTS. This Note is secured by the Mortgage and the other  
Loan Documents. Whenever used, the singular number shall include the plural, the  
plural the singular, and the words "Payee" and "Maker" shall include their  
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respective successors, assigns, heirs, executors and administrators.  
  
 9. NO USURY. This Note is subject to the express condition that at no  
time shall Maker be obligated or required to pay interest on the Debt at a rate  
which could subject Payee to either civil or criminal liability as a result of  
being in excess of the maximum interest rate which Maker is permitted by  
applicable law to contract or agree to pay. If by the terms of this Note, Maker  
is at any time required or obligated to pay interest on the Debt at a rate in  
excess of such maximum rate, the rate of interest due under this Note shall be  
deemed to be immediately reduced to such maximum rate and all previous payments  
in excess of the maximum rate shall be deemed to have been payments in reduction  
of principal and not on account of the interest due hereunder.  
  
 10. LATE CHARGE. If any sum payable under this Note is not paid within  
fifteen (15) days after the date on which it is due, Maker shall pay to Payee  
upon demand an amount equal to the lesser of two percent (2%) of such unpaid sum  
or the maximum amount permitted by applicable law to defray the expenses  
incurred by Payee in handling and processing such delinquent payment and to  
compensate Payee for the loss of the use of such delinquent payment and such  
amount shall be secured by the Mortgage and the other Loan Documents.  
  
 11. NO ORAL MODIFICATIONS. This Note may not be modified, amended, waived,  
extended, changed, discharged or terminated orally or by any act or failure to  
act on the part of Maker or Payee, but only by an agreement in writing signed by  
the party against whom enforcement of any modification, amendment, waiver,  
extension, change, discharge or termination is sought.  
  
 12. WAIVER. Maker and all others who are or who may become liable for the  
payment of all or any part of the Debt do hereby severally waive presentment and  
demand for payment, notice of dishonor, protest, notice of protest, and non-  
payment, and notice of intent to accelerate the maturity hereof (and of such  
acceleration). No release of any security for the Debt or extension of time for  
payment of this Note or any installment hereof, and no alteration, amendment or  
waiver of any provision of this Note, the Mortgage or the other Loan Documents  
made by agreement between Payee and any other person or party shall release,  
modify, amend, waive, extend, change, discharge, terminate or affect the  
liability of Maker, and any other who may become liable for the payment of all  
or any part of the Debt, under this Note, the Mortgage or the other Loan  
Documents.  
  
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 13. AUTHORITY OF MAKER. Maker (and the undersigned representative of  
Maker, if any) represents that Maker has full power, authority and legal right  
to execute, deliver and perform its obligations pursuant to this Note, the  
Mortgage and the other Loan Documents and that this Note, the Mortgage and the  
other Loan Documents constitute valid and binding obligations of Maker.  
  
 14. GOVERNING LAW. This Note shall be governed and construed in accordance  
with the laws of the State of New York without regard to principles of conflict  
of laws.  
  
 15. NOTICES. Any notice, demand, statement, request or consent made  
hereunder shall be in writing to the other party hereto at its address set forth  
below or at such other address as such party may designate by notice to the  
other party hereto and shall be deemed given (i) on receipt, if mailed, by  
certified or registered U.S. mail, return receipt requested, postage prepaid;  
(ii) on receipt, if delivered, fee prepaid, to a national overnight delivery  
service (such as Federal Express, Purolater Courier, U.P.S. Next Day Air); (iii)  
when delivered, if delivered by hand, as evidenced by a signed receipt; or (iv)  
the date of transmission of notice sent by telecopier or facsimile machine (with  
a copy thereof sent in accordance with clause (ii) above) provided notice was  
transmitted on a Business Day (hereinafter defined) otherwise notice shall be  
deemed given on the next Business Day:  
  
 To Maker:  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Attention:\_\_\_\_\_\_\_\_\_   
 Telephone: ( )\_\_-\_\_  
 Telecopy: ( )\_\_-\_\_  
   
 With a courtesy copy to:  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
 Attention:\_\_\_\_\_\_\_\_\_  
 Telephone: ( )\_\_-\_\_  
 Telecopy: ( )\_\_-\_\_  
  
 To Payee:  
 Banco Popular de Puerto Rico  
 0 Xxxx 00/xx/ Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xx. Xxxxxxx Xxx  
 Vice President  
 Telephone: (000) 000-0000  
 Telecopy: (000) 000-0000  
  
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 With a courtesy copy to:  
  
 XxXxxxxxx Xxxxxx LLP  
 0000 Xxxxxx xx xxx Xxxxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xxxxx X. Xxxxx, Esq.  
 Telephone: (000) 000-0000  
 Telecopy: (000) 000-0000  
  
A "Business Day" is any day other than a Saturday or Sunday, or a day on which  
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banking and savings and loan institutions in the State of New York are  
authorized or obligated by law or executive order to remain closed. Refusal to  
accept delivery of any notice shall be deemed to be receipt of such notice.  
  
 16. MISCELLANEOUS. (a) The rights and remedies of Payee as provided in  
this Note, the Mortgage or in the other Loan Documents shall be cumulative and  
concurrent; may be pursued separately, successively, or together at the sole  
discretion of Payee, may be exercised as often as occasion for their exercise  
shall arise; and in no event shall the failure to exercise any such right or  
remedy be construed as a waiver or release of it.  
  
 (b) If any provision of this Note is held to be invalid or  
unenforceable by a court of competent jurisdiction, the other provisions of this  
Note shall remain in full force and effect.  
  
 (c) Any failure by Xxxxx to insist upon strict performance by Maker  
of any of the provisions of this Note, the Mortgage or the other Loan Documents  
shall not be deemed to be a waiver of any of the terms or provisions of this  
Note, the Mortgage or the other Loan Documents, and Payee shall have the right  
thereafter to insist upon strict performance by Maker of any and all of them.  
  
 (d) All times, wherever stated herein, shall be of the essence of  
this Note.  
  
 17. ASSIGNMENT BY PAYEE. Payee shall have the right, exercisable at any  
time and from time to time, to sell, transfer or assign this Note, the Mortgage  
and the other Loan Documents, or grant participations therein, or issue  
certificates or securities evidencing a beneficial interest therein in a rated  
or unrated public offering or private placement, and Payee may forward to any  
purchaser, transferee, assignee, servicer, participant, investor or credit  
rating agency rating such securities (collectively, an "Investor") or  
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prospective Investor all documents and information in Xxxxx's possession with  
respect to Maker, the Mortgaged Property (as defined in the Mortgage) and the  
Loan Documents as such Investor or prospective Investor may request.  
  
 18. WAIVER OF TRIAL BY JURY. MAKER AND PAYEE HEREBY KNOWINGLY, VOLUNTARILY  
AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF  
ANY LITIGATION BASED ON   
  
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THE LOAN EVIDENCED BY THIS NOTE OR ARISING OUT OF, UNDER OR IN CONNECTION WITH  
THIS NOTE, THE MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF  
CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF  
MAKER OR PAYEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR XXXXX'S MAKING OF  
THE LOAN SECURED BY THE MORTGAGE AND THE OTHER LOAN DOCUMENTS.  
  
 IN WITNESS WHEREOF, Xxxxx has duly executed this Note, intending to be  
legally bound, the day and year first above written.  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  
 a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
   
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 EXHIBIT K-2(B)  
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 FORM OF FRANCHISEE OWNED PROPERTY MORTGAGE  
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 MORTGAGE, SECURITY AGREEMENT AND  
 ASSIGNMENT OF LEASES AND RENTS  
  
 BY AND BETWEEN  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 ("MORTGAGOR")  
  
 AND  
  
 BANCO POPULAR DE PUERTO RICO  
 0 XXXX 00XX XXXXXX  
 XXX XXXX, XXX XXXX 00000  
 ("MORTGAGEE")  
  
 DATED AS OF \_\_\_\_\_\_\_\_\_, 199\_\_  
  
 LOCATION OF PREMISES:  
  
  
  
 RECORDING REQUESTED BY AND  
 WHEN RECORDED - RETURN TO:  
 Xxxxx X. Xxxxx, Esq.  
 XxXxxxxxx Xxxxxx LLP  
 0000 Xxxxxx xx xxx Xxxxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
  
   
 THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (the  
"Mortgage"), made as of the \_\_ day of \_\_\_\_\_, 199\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a  
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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having an office at \_\_\_\_\_\_\_\_\_\_\_\_  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Mortgagor") and BANCO  
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POPULAR DE PUERTO RICO, having offices at 0 Xxxx 00xx Xxxxxx, Xxx Xxxx, Xxx  
Xxxx 00000 ("Mortgagee").  
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 W I T N E S S E T H:  
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 To secure the payment of an indebtedness in the principal sum of  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DOLLARS ($\_\_\_\_\_\_\_\_\_\_\_), lawful money of the  
United States of America, to be paid with interest according to a certain note  
dated the date hereof made by Mortgagor to Mortgagee (the note together with all  
extensions, renewals or modifications thereof being hereinafter collectively  
called the "Note") (said indebtedness, interest and all other sums due hereunder  
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and under the Note being collectively called the "Debt"), Xxxxxxxxx has  
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mortgaged, given, granted, bargained, sold, aliened, conveyed, confirmed,  
pledged, assigned, and hypothecated and by these presents does hereby mortgage,  
give, grant, bargain, sell, alien, convey, confirm, pledge, assign and  
hypothecate unto Mortgagee the real property described in Exhibit A attached  
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hereto (the "Land") and the buildings, structures, fixtures, additions,  
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enlargements, extensions, modifications, repairs, replacements and improvements,  
now or hereafter located thereon (the "Improvements");  
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 TOGETHER WITH: all right, title, interest and estate of Xxxxxxxxx now  
owned, or hereafter acquired, in and to the following property, rights,  
interests and estates (the Land and the Improvements together with the following  
property, rights, interests and estates being hereinafter described are  
collectively referred to herein as the "Mortgaged Property"):  
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 (a) all easements, rights-of-way, strips and gores of land, streets,  
ways, alleys, passages, sewer rights, water, water courses, water rights and  
powers, air rights and development rights, and all estates, rights, titles,  
interests, privileges, liberties, tenements, hereditaments and appurtenances of  
any nature whatsoever, in any way belonging, relating or pertaining to the Land  
or the Improvements and the reversion and reversions, remainder and remainders,  
and all land lying in the bed of any street, road or avenue, opened or proposed,  
in front of or adjoining the Land, to the center line thereof and all the  
estates, rights, titles, interests, dower and rights of dower, curtesy and  
rights of curtesy, property, possession, claim and demand whatsoever, both at  
law and in equity, of Mortgagor of, in and to the Land and the Improvements and  
every part and parcel thereof, with the appurtenances thereto;  
  
 (b) all machinery, equipment, fixtures, furniture, equipment, cooking  
supplies, stoves, refrigerators, dishes, glassware, utensils and inventories and  
other property of every kind and nature, whether tangible or intangible,  
whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an  
interest, now or hereafter located upon the Land or the Improvements, or  
appurtenant thereto, and usable in connection with the present or future  
  
   
operation and occupancy of the Land or the Improvements and all building  
equipment, materials and supplies and construction equipment, materials and  
supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has  
or shall have an interest, now or hereafter located upon the Land or the  
Improvements, or appurtenant thereto, or usable in connection with the present  
or future construction, renovation, operation, enjoyment and occupancy of the  
Land or the Improvement (hereinafter collectively called the "Equipment"),  
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including the proceeds of any sale or transfer of the foregoing, and the right,  
title and interest of Mortgagor in and to any of the Equipment which may be  
subject to any security interests, as defined in the Uniform Commercial Code, as  
adopted and enacted by the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Uniform Commercial  
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 Code") superior in lien to the lien of this Mortgage;  
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 (c) all awards or payments, including interest thereon, which may  
heretofore or hereafter be made with respect to the Mortgaged Property, whether  
from the exercise of eminent domain or condemnation (including but not limited  
to any transfer made in lieu of or in anticipation of the exercise of said  
rights), or for a change of grade, or for any other injury to or decrease in the  
value of the Mortgaged Property;  
  
 (d) all leases and other agreements affecting the use, enjoyment or  
occupancy of the Land or the Improvements heretofore or hereafter entered into  
by Mortgagor (collectively, the "Leases") and all income, rents, issues, profits  
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and revenues from the Land or Improvements (collectively, the "Rents") and all  
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proceeds from the sale, surrender, termination or other disposition of the  
Leases and the right to receive and apply the Rents to the payment of the Debt;  
  
 (e) all proceeds of and any unearned premiums on any insurance  
policies covering the Mortgaged Property, including, without limitation, the  
right to receive and apply the proceeds of any insurance, judgments, or  
settlements made in lieu thereof, for damage to the Mortgaged Property; and  
  
 (f) the right, in the name and on behalf of Xxxxxxxxx, to appear in  
and defend any action or proceeding brought with respect to the Mortgaged  
Property and to commence any action or proceeding to protect the interest of  
Mortgagee in the Mortgaged Property.  
  
 TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto  
and to the use and benefit of Mortgagee, and the successors and assigns of  
Mortgagee, forever.  
  
  
AND Xxxxxxxxx represents and warrants to and covenants and agrees with Mortgagee  
as follows:  
  
 1. Payment of Debt and Incorporation of Covenants, Conditions and  
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Agreements. Mortgagor will pay the Debt at the time and in the manner provided  
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in the Note and in this   
  
 -2-  
  
   
Mortgage. All the covenants, conditions and agreements contained in (a) the Note  
and (b) all and any of the documents other than the Note or this Mortgage now or  
hereafter executed by Xxxxxxxxx and/or others and by or in favor of Mortgagee,  
which wholly or partially secure or guaranty payment of the Note (collectively,  
the "Loan Documents"), are hereby made a part of this Mortgage to the same  
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extent and with the same force as if fully set forth herein.  
  
 2. Warranty of Title. Mortgagor warrants that it has good title to the  
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Mortgaged Property and has the right to mortgage, give, grant, bargain, sell,  
alien, convey, confirm, pledge, assign and hypothecate the same and that  
Mortgagor possesses an unencumbered fee estate in the Land and the Improvements  
and that it owns the Mortgaged Property free and clear of all liens,  
encumbrances and charges whatsoever except for those exceptions shown in the  
title insurance policy insuring the lien of this Mortgage. Mortgagor shall  
forever warrant, defend and preserve such title and the validity and priority of  
the lien of this Mortgage and shall forever warrant and defend the same to  
Mortgagee against the claims of all persons whomsoever.  
  
 3. Insurance.  
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 (a) Mortgagor, at its sole cost and expense, will keep the Mortgaged  
Property insured during the entire term of this Mortgage for the mutual benefit  
of Mortgagor and Mortgagee against loss or damage by fire and against loss or  
damage by other risks and hazards covered by a standard extended coverage  
insurance policy including, but not limited to, riot and civil commotion,  
vandalism, malicious mischief, burglary and theft. Such insurance shall be in  
an amount (i) equal to one hundred percent (100%) of the then replacement cost  
of the Improvements and the Equipment, without deduction for physical  
depreciation and (ii) such that the insurer would not deem Mortgagor a co-  
insurer under said policies. The policies of insurance carried in accordance  
with this paragraph shall be paid annually in advance and shall contain the  
"Replacement Cost Endorsement" with a waiver of depreciation.  
  
 (b) Mortgagor, at its sole cost and expense, for the mutual benefit  
of Mortgagor and Mortgagee, shall also obtain and maintain during the entire  
term of this Mortgage the following policies of insurance:  
  
 (i) Flood insurance if any part of the Mortgaged Property is located  
 in an area identified by the Federal Emergency Management Agency as an area  
 having special flood hazards and in which flood insurance has been made  
 available under the National Flood Insurance Act of 1968 (and any successor  
 act thereto) in an amount at least equal to the outstanding principal  
 amount of the Note or the maximum limit of coverage available with respect  
 to the Improvements and Equipment under said Act, whichever is less.  
  
 (ii) Comprehensive public liability insurance, including broad form  
 property damage, blanket contractual and personal injuries (including death  
 resulting therefrom)  
  
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 coverages in an amount not less than $1,000,000 per occurrence and  
 $10,000,000 in the aggregate.  
  
 (iii) Business interruption insurance in an amount equal to the  
 aggregate annual amount of all income from, and revenues and rents payable  
 with respect to, the Mortgaged Property, such business interruption  
 insurance to cover losses for a period of at least twelve (12) months after  
 the date of the fire or casualty in question.  
  
 (iv) During the course of any construction, renovation or equipping  
 of the Improvements, builder's completed value risk insurance against "all  
 risks of physical loss", including collapse and transit coverage, with  
 deductibles reasonably satisfactory to Mortgagee, in non-reporting form,  
 covering the total value of work performed and equipment, supplies and  
 materials furnished. Such policy of insurance shall contain the "permission  
 to occupy upon completion of work or occupancy" endorsement and a waiver of  
 co-insurance or an agreed amount endorsement.  
  
 (v) Such other insurance as may from time to time be reasonably  
 required by Mortgagee in order to protect its interests.  
  
 (c) All policies of insurance (the "Policies") required pursuant to  
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this paragraph 3 shall be issued by an insurer having an A.M. Best rating of A:V  
or better and satisfactory to Mortgagee, (ii) shall contain the standard New  
York mortgagee non-contribution clause naming Mortgagee as the person to which  
all payments made by such insurance company shall be paid, (iii) shall be  
maintained throughout the term of this Mortgage without cost to Mortgagee, (iv)  
original certificates, or copies thereof, certified to be true and correct,  
shall be delivered to Mortgagee, (v) shall contain such provisions as Mortgagee  
deems reasonably necessary or desirable to protect its interest including,  
without limitation, endorsements providing that neither Mortgagor, Mortgagee nor  
any other party shall be a co-insurer under said Policies and that Mortgagee  
shall receive at least thirty (30) days prior written notice of any modification  
or cancellation, and (vi) shall be satisfactory in form and substance to  
Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage,  
deductibles, loss payees and insureds. All such premiums for such Policies (the  
"Insurance Premiums") shall be paid by Mortgagor making payment when due  
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directly to the carrier. Not later than thirty (30) days prior to the expiration  
date of each of the Policies, Xxxxxxxxx will deliver to Mortgagee satisfactory  
evidence of the renewal of each Policy.  
  
 (d) If the Mortgaged Property shall be damaged or destroyed, in  
whole or in part, by fire or other casualty, Mortgagor shall give prompt written  
notice thereof to Mortgagee. Sums paid to Mortgagee by an insurer, after  
deduction of Mortgagee's reasonable costs and expenses of collection (after such  
deduction, the " Insurance Proceeds"), shall be retained and (i) applied by  
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Mortgagee toward payment of the Debt in such priority and proportions as  
Mortgagee in its discretion shall deem proper (any such application for  
repayment to be without any prepayment consideration, except that if any Event  
of Default (hereinafter defined), or an event that with notice and/or the  
passage of time, or both, would constitute an Event of Default, has occurred,  
then such application shall be subject to the  
  
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prepayment consideration computed in accordance with the Note) or, (ii) if the  
conditions set forth in paragraph 3(f) of this Mortgage are satisfied, as  
determined by Mortgagee in its sole discretion, paid to Mortgagor for the  
restoration and repair of the Mortgaged Property in accordance with paragraph  
3(e) of this Mortgage in whole or in such lesser amount as is necessary to pay  
for the costs of such restoration and repair.  
  
 (e) If the Insurance Proceeds are held by Mortgagee to reimburse  
Mortgagor for the cost of restoration and repair of the Mortgaged Property, (i)  
the Mortgaged Property shall be substantially restored to the equivalent of its  
condition prior to such casualty or to such other condition as Mortgagee may  
approve in writing, (ii) such restoration and repair shall be done in compliance  
with all applicable laws, rules and regulations, and (iii) all reasonable costs  
and expenses incurred by Mortgagee in connection with making the Insurance  
Proceeds available for such restoration and repair including, without  
limitation, counsel fees and inspecting engineers' fees incurred by Mortgagee,  
shall be paid by Xxxxxxxxx. Mortgagee may, at Mortgagee's option, condition  
disbursement of said proceeds on Mortgagee's approval of such plans and  
specifications of an architect reasonably satisfactory to Mortgagee,  
contractor's cost estimates, architect's certificates, waivers of liens, sworn  
statements of mechanics and material men and such other evidence of costs,  
percentage completion of construction, application of payments, and satisfaction  
of liens as Mortgagee may reasonably require. If the Insurance Proceeds are  
applied to the payment of the Debt, any such application of proceeds to  
principal shall not extend or postpone the maturity date of the Note or change  
the amount or the due date of any installment payment under the Note. Any  
surplus Insurance Proceeds, after payment of the Debt, shall be paid to  
Mortgagor. If the Mortgaged Property is sold pursuant to paragraph 28 of this  
Mortgage or if Mortgagee acquires title to the Mortgaged Property, Mortgagee  
shall have all of the right, title and interest of Mortgagor in and to any  
insurance policies and unearned premiums thereon and in and to the Insurance  
Proceeds resulting from any damage to the Mortgaged Property prior to such sale  
or acquisition.  
  
 (f) Mortgagee shall not exercise Mortgagee's option to apply  
Insurance Proceeds to the payment of the sums secured by this Mortgage if all  
the following conditions are met, as determined by Mortgagee in its sole  
discretion: (i) no Event of Default is then continuing under this Mortgage, the  
Note or any other Loan Document; (ii) Mortgagee determines that there will be  
sufficient funds (whether consisting of Insurance Proceeds and/or other sums  
made available by Mortgagor for restoration) to restore and repair the Mortgaged  
Property to the condition required under paragraph 3(e) above; (iii) the  
Franchise Agreement (hereinafter defined) shall not have been terminated as a  
result of such damage or destruction and the Franchise Agreement shall continue  
in full force and effect notwithstanding such damage or destruction; (iv)  
Mortgagee determines that the income of the Mortgaged Property, after  
restoration and repair of the Mortgaged Property to the condition required under  
paragraph 3(e) above, will be sufficient to meet all operating costs and other  
expenses, payments for reserves and loan repayment obligations relating to the  
Mortgaged Property; (v) Mortgagee determines that restoration and repair of the  
Mortgaged Property to the condition required under paragraph 3(e) above will be  
completed within the greater of (A) three (3) months or (B) the period of time  
covered by the business interruption insurance, if any, then in effect from  
  
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the date of the loss or casualty to the Mortgaged Property; and (vi) Mortgagee  
shall have received evidence reasonably satisfactory to it that during the  
period of restoration and repair of the Mortgaged Property to the condition  
required under subparagraph 3(e) above, the sum of (A) income derived from the  
Mortgaged Property, as reasonably determined by Mortgagee, plus (B) proceeds of  
business interruption insurance, if any, to be paid, plus (C) amounts that  
Mortgagor demonstrates to Mortgagee's reasonable satisfaction will be made  
available by Mortgagor from other sources during such period will equal or  
exceed the sum of (D) expenses in connection with the operation of the Mortgaged  
Property and (E) the debt service under the Note.  
  
 4. Payment of Taxes, etc.  
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 (a) All taxes, assessments and water and sewer rents, now or  
hereafter levied or assessed or imposed against the Mortgaged Property or any  
part thereof (the "Taxes"") shall be paid when due in the manner provided in  
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paragraph 5 of this Mortgage. Mortgagor shall pay all ground rents, maintenance  
charges, other governmental impositions, and other charges, including without  
limitation vault charges and license fees for the use of vaults, chutes and  
similar areas adjoining the Mortgaged Property, now or hereafter levied or  
assessed or imposed against the Mortgaged Property or any part thereof (the  
"Other Charges") as the same become due and payable. Mortgagor will deliver to  
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Mortgagee, promptly upon Mortgagee's request, tax certificates or receipted tax  
bills issued by the relevant taxing authority or other evidence satisfactory to  
Mortgagee that the Taxes and Other Charges have been so paid or are not then  
delinquent. Mortgagor shall not suffer and shall promptly cause to be paid or  
discharged any lien or charge whatsoever which may be or become a lien or charge  
against the Mortgaged Property, and shall promptly pay for all utility services  
provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee or its  
designee receipts for the payment of Taxes and Other Charges prior to the date  
the same shall become delinquent.  
  
 (b) Mortgagor, at its own expense, may contest by appropriate legal  
proceeding, promptly initiated and conducted in good faith and with due  
diligence, the amount or validity or application in whole or in part of any of  
the Taxes or Other Charges, provided that (i) Mortgagor is not in default under  
the Note, this Mortgage or any other Loan Document, (ii) such proceeding shall  
be permitted under and be conducted in accordance with the provisions of any  
other instrument to which Mortgagor is subject and shall not constitute a  
default thereunder, (iii) neither the Mortgaged Property nor any part thereof or  
interest therein will be in danger of being sold, forfeited, terminated,  
cancelled or lost, (iv) Mortgagor shall have paid the Taxes under protest or set  
aside adequate reserves for the payment of the Taxes or Other Charges, together  
with all interest and penalties thereon and (v) Mortgagor shall have furnished  
such security as may be required in the proceeding, or as may be requested by  
Mortgagee to insure the payment of any such Taxes or Other Charges, together  
with all interest and penalties thereon.  
  
 (c) Upon demand by Mortgagee, Mortgagor, at Xxxxxxxxx's sole cost and  
expense, shall contest any increase in any assessment for the Mortgaged Property  
with respect to Taxes or Other Charges or seek a reduction in such assessment in  
the event of a casualty,   
  
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condemnation or other event which could result in a reduction of the assessment  
with respect to Taxes or Other Charges for the Mortgaged Property by  
instituting, or causing to be instituted, a proceeding to reduce such  
assessment, conducted in accordance with the recognized procedure therefore (a  
"Tax Appeal"). If, after demand by Mortgagee, Xxxxxxxxx shall fail to commence a  
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Tax Appeal, Mortgagee shall be entitled, at its option, to commence, appear in  
and prosecute any Tax Appeal either in its own name or in the name of Mortgagor,  
for which Mortgagee is hereby appointed as attorney-in-fact for Mortgagor, which  
appointment, being for security and coupled with an interest, is irrevocable. If  
no Event of Default under this Mortgage or any other Loan Document shall have  
occurred and be continuing, Mortgagor shall be entitled to participate with  
Mortgagee in the settlement or compromise of any claim in connection with any  
such Tax Appeal. Upon the occurrence of an Event of Default and the continuance  
thereof, Mortgagee shall be entitled to make any compromise or settlement in  
connection with any such Tax Appeal without the participation of Mortgagor. All  
such refunds, compensation, awards, damages, rights of action and proceeds  
awarded to Xxxxxxxxx, less the reasonable costs and expenses incurred by  
Xxxxxxxxx in prosecuting such Tax Appeal (the "Refund Proceeds") are hereby  
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assigned to Mortgagee as additional security for the payment of Taxes and Other  
Charges as they become due. Upon the occurrence of an Event of Default and the  
continuance thereof, Mortgagee shall be entitled to apply the Refund Proceeds to  
the repayment of the Debt in such order and in such amount as Mortgagee may  
determine. If there are any excess Refund Proceeds after repayment of the Debt,  
Mortgagee shall pay such excess Refund Proceeds to Mortgagor.  
  
 5. Escrow Fund. (a) Mortgagor shall, on the first day of each calendar  
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month, pay to Mortgagee one--twelfth (1/12th) of an amount which would be  
sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable,  
during the next twelve (12) months and also provide for an additional reserve  
equal to one-sixth (1/6th) of the Taxes payable (said amounts being hereinafter  
called the "Tax Escrow Fund.")  
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 (b) The Tax Escrow Fund and the payments of interest or principal or  
both, payable pursuant to the Note, shall be added together and shall be paid as  
an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to  
Mortgagee any and all monies now or hereafter deposited in the Tax Escrow Fund  
as additional security for the payment of the Debt. Mortgagee will apply the Tax  
Escrow Fund to payments of Taxes to be made by Mortgagor pursuant to paragraph 4  
hereof. If the amount of the Tax Escrow Fund shall exceed the amounts due for  
Taxes pursuant to paragraph 4 hereof, Mortgagee shall, in its discretion, return  
any excess to Mortgagor or credit such excess against future payments to be made  
to the Tax Escrow Fund. In allocating such excess, Mortgagee may deal with the  
person shown on the records of Mortgagee to be the owner of the Mortgaged  
Property. If the balance in the Tax Escrow Fund on the first day of the month  
which is one full month prior to the due date of any Taxes is not sufficient to  
pay the Taxes, Mortgagor shall pay to Mortgagee, upon demand, an amount which  
Mortgagee shall estimate as sufficient to make up the deficiency. Upon the  
occurrence of an Event of Default, Mortgagee may apply any sums then present in  
the Tax Escrow Fund to the payment of the following items in any order in its  
sole discretion:  
  
 (i) Taxes and Other Charges;  
  
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 (ii) Interest on the unpaid principal balance of the Note;  
  
 (iii) Amortization of the unpaid principal balance of the Note; or  
  
 (iv) All other sums payable pursuant to the Note, this Mortgage and  
 the other Loan Documents, including without limitation, advances made by  
 Mortgagee pursuant to the terms of this Mortgage.  
  
 (c) Until expended or applied as above provided, any amounts in the  
Tax Escrow Fund shall constitute additional security for the Debt. The Tax  
Escrow Fund shall not constitute a trust fund and may be commingled with other  
monies held by Mortgagee. No earnings or interest on the Tax Escrow Fund shall  
be paid to Mortgagor, unless applicable law requires interest on the Tax Escrow  
Fund to be paid to Mortgagor. Any such required interest shall be deposited in  
the Tax Escrow Fund as additional security for the payment of the Debt.  
  
 6. Condemnation.  
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 (a) Mortgagor shall promptly give Mortgagee written notice of the  
actual or threatened commencement of any condemnation or eminent domain  
proceeding and shall deliver to Mortgagee copies of any and all papers served in  
connection with such proceedings. Notwithstanding any taking by any public or  
quasi-public authority through eminent domain or otherwise (including but not  
limited to any transfer made in lieu of or in anticipation of the exercise of  
such taking), Xxxxxxxxx shall continue to pay the Debt at the time and in the  
manner provided for its payment in the Note, this Mortgage and the other Loan  
Documents and the Debt shall not be reduced until any award or payment therefor  
shall have been actually received after expenses of collection and applied by  
Mortgagee to the discharge of the Debt. Mortgagee shall not be limited to the  
interest paid on the award by the condemning authority but shall be entitled to  
receive out of the award interest at the rate or rates provided herein and in  
the Note. Mortgagor shall cause the award or payment made in any condemnation or  
eminent domain proceeding, which is payable to Mortgagor, to be paid directly to  
Mortgagee. Sums paid to Mortgagee for such condemnation or action of eminent  
domain, after deduction of Mortgagee's reasonable costs and expenses of  
collection (after such deduction, the "Condemnation Proceeds"), shall be  
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retained and (i) applied by Mortgagee toward payment of the Debt in such  
priority and proportions as Mortgagee in its discretion shall deem proper (any  
such application for repayment to be without any prepayment consideration,  
except that if any Event of Default, or an event that with notice and/or the  
passage of time, or both, would constitute an Event of Default, has occurred,  
then such application shall be subject to the prepayment consideration computed  
in accordance with the Note), or (ii) if the conditions set forth in paragraph  
6(c) of this Mortgage are satisfied, as determined by Mortgagee in its sole  
discretion, paid to Mortgagor for the restoration and repair of the Mortgaged  
Property in accordance with paragraph 6(b) of this Mortgage in whole or in such  
lesser amount as is necessary to pay for the costs of such restoration and  
repair. If the Mortgaged Property is sold pursuant to paragraph 28 of this  
Mortgage or if Mortgagee acquires title to the Mortgaged Property, Mortgagee  
shall have all of the right, title and interest of Mortgagor in and to any  
  
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Condemnation Proceeds resulting from any condemnation or eminent domain  
proceeding of the Mortgaged Property prior to such sale or acquisition.  
  
 (b) If the Condemnation Proceeds are held by Mortgagee to reimburse  
Mortgagor for the cost of restoration and repair of the Mortgaged Property, (i)  
the Mortgaged Property shall be substantially restored to the equivalent of its  
condition prior to such condemnation or to such other condition as Mortgagee may  
approve in writing, (ii) such restoration and repair shall be done in compliance  
with all applicable laws, rules and regulations, and (iii) all reasonable costs  
and expenses incurred by Mortgagee in connection with making the Condemnation  
Proceeds available for such restoration and repair including, without  
limitation, counsel fees and inspecting engineers' fees incurred by Mortgagee,  
shall be paid by Xxxxxxxxx. Mortgagee may, at Mortgagee's option, condition  
disbursement of said proceeds on Mortgagee's approval of such plans and  
specifications of an architect reasonably satisfactory to Mortgagee,  
contractor's cost estimates, architect's certificates, waivers of liens, sworn  
statements of mechanics and material men and such other evidence of costs,  
percentage completion of construction, application of payments, and satisfaction  
of liens as Mortgagee may reasonably require. If the Condemnation Proceeds are  
applied to the payment of the Debt, any such application of proceeds to  
principal shall not extend or postpone the maturity date of the Note or change  
the amount or the due date of any installment payment under the Note. Any  
surplus Condemnation Proceeds, after payment of the Debt, shall be paid to  
Mortgagor. If the Mortgaged Property is sold pursuant to paragraph 28 of this  
Mortgage or if Mortgagee acquires title to the Mortgaged Property, Mortgagee  
shall have all of the right, title and interest of Mortgagor in and to any  
Condemnation Proceeds resulting from any condemnation or eminent domain  
proceeding of the Mortgaged Property prior to such sale or acquisition.  
  
 (c) Mortgagee shall not exercise Mortgagee's option to apply  
Condemnation Proceeds to the payment of the sums secured by this Mortgage if all  
the following conditions are met, as determined by Mortgagee in its sole  
discretion: (i) no Event of Default is then continuing under this Mortgage, the  
Note or any other Loan Document; (ii) Mortgagee determines that there will be  
sufficient funds (whether consisting of Condemnation Proceeds and/or other sums  
made available by Mortgagor for restoration) to restore and repair the Mortgaged  
Property to the condition required under paragraph 6(b) above; (iii) the  
Franchise Agreement shall not have been terminated as a result of such  
condemnation or eminent domain proceeding and the Franchise Agreement shall  
continue in full force and effect notwithstanding such condemnation or eminent  
domain proceeding; (iv) Mortgagee determines that the income of the Mortgaged  
Property, after restoration and repair of the Mortgaged Property to the  
condition required under paragraph 6(b) above, will be sufficient to meet all  
operating costs and other expenses, payments for reserves and loan repayment  
obligations relating to the Mortgaged Property; (v) Mortgagee determines that  
restoration and repair of the Mortgaged Property to the condition required under  
paragraph 6(b) above will be completed within the greater of (A) three (3)  
months or (B) the period of time covered by the business interruption insurance,  
if any, then in effect from the date of the loss or casualty to the Mortgaged  
Property; and (vi) Mortgagee shall have received evidence reasonably  
satisfactory to it that during the period of restoration and repair of the  
Mortgaged Property to the condition required  
  
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under subparagraph 6(b) above, the sum of (A) income derived from the Mortgaged  
Property, as reasonably determined by Mortgagee, plus (B) proceeds of business  
interruption insurance, if any, to be paid, plus (C) amounts that Mortgagor  
demonstrates to Mortgagee's reasonable satisfaction will be made available by  
Mortgagor from other sources during such period will equal or exceed the sum of  
(D) expenses in connection with the operation of the Mortgaged Property and (E)  
the debt service under the Note.  
  
 7. Leases and Rents.  
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 (a) Xxxxxxxxx does hereby absolutely and unconditionally assign to  
Mortgagee its right, title and interest in all current and future Leases and  
Rents, it being intended by Xxxxxxxxx that this assignment constitutes a  
present, absolute assignment and not an assignment for additional security only.  
Such assignment to Mortgagee shall not be construed to bind Mortgagee to the  
performance of any of the covenants, conditions or provisions contained in any  
such Lease or otherwise to impose any obligation upon Mortgagee. Xxxxxxxxx  
agrees to execute and deliver to Mortgagee such additional instruments, in form  
and substance reasonably satisfactory to Mortgagee, as may hereafter be  
requested by Mortgagee to further evidence and confirm such assignment.  
Nevertheless, subject to the terms of this paragraph 7, Mortgagee grants to  
Mortgagor a revocable license to operate and manage the Mortgaged Property and  
to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof  
sufficient to discharge all current sums due on the Debt, in trust for the  
benefit of Mortgagee for use in the payment of such sums. Upon an Event of  
Default, the license granted to Mortgagor herein shall be automatically revoked  
and Mortgagee shall immediately be entitled to possession of all Rents, whether  
or not Mortgagee enters upon or takes control of the Mortgaged Property.  
Mortgagee is hereby granted and assigned by Xxxxxxxxx the right, at its option,  
upon the revocation of the license granted herein to enter upon the Mortgaged  
Property in person, by agent or by court-appointed receiver to collect the  
Rents. Any Rents collected after the revocation of the license herein granted  
may be applied toward payment of the Debt in such priority and proportion as  
Mortgagee in its discretion shall deem proper.  
  
 (b) Upon request, Mortgagor shall furnish Mortgagee with copies of  
all Leases and all amendments or modifications of any Lease. All Leases shall  
provide that each such Lease is subordinate to this Mortgage and that the lessee  
agrees to attorn to Mortgagee. Mortgagor (i) shall observe and perform all the  
obligations imposed upon the lessor under the Leases and shall not do or permit  
to be done anything to impair the value of the Leases as security for the Debt;  
(ii) shall upon request by Mortgagee, send Mortgagee copies of all notices of  
default sent or received by Mortgagee under the Leases; (iii) shall enforce all  
of the terms, covenants and conditions contained in the Leases on the part of  
the lessee thereunder to be observed or performed; (iv) shall not collect any of  
the Rents more than one (1) month in advance (except with respect to collection  
of the final month's rent as security); (v) shall not execute any other  
assignment of xxxxxx's interest in the Leases or the Rents; and (vi) shall  
execute and deliver at the request of Mortgagee all such further assurances,  
confirmations and assignments in connection with the Mortgaged Property as  
Mortgagee shall from time to time require.  
  
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 (c) Mortgagor shall not, without the prior written consent of  
Mortgagee (i) amend or modify any Lease, (ii) execute a new Lease, (iii) permit  
use of the demised premises under any Lease for use or uses other than quick  
service restaurant use; or (iv) terminate, cancel or accept a surrender of any  
Lease.  
  
 8. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged  
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Property to be maintained in a good and safe condition and repair. The  
Improvements and the Equipment shall not be removed, demolished or materially  
altered (except for normal replacement of the Equipment) without the written  
consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and  
ordinances affecting the Mortgaged Property and the use thereof. Mortgagor shall  
promptly repair, replace or rebuild any part of the Mortgaged Property that (i)  
is damaged or destroyed by any casualty (subject to the provisions of paragraph  
3 hereof), (ii) becomes damaged, worn or dilapidated, or (iii) is affected by  
any proceeding of the character referred to in paragraph 6 hereof (subject to  
the provision of such paragraph 6) and Mortgagor shall complete and pay for any  
structure at any time in the process of construction, renovation or repair on  
the Land. Mortgagor shall not initiate, join in, acquiesce in, or consent to any  
change in any private restrictive covenant, zoning law or other public or  
private restriction, limiting or defining the uses which may be made of the  
Mortgaged Property or any part thereof. If under applicable zoning provisions  
the use of all or any portion of the Mortgaged Property is or shall become a  
nonconforming use, Mortgagor will not cause or permit such nonconforming use to  
be discontinued or abandoned without the express written consent of Mortgagee.  
  
 9. Transfer or Encumbrance of the Mortgaged Property.  
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 (a) Mortgagor acknowledges that Mortgagee has examined and relied on  
the creditworthiness of Mortgagor and experience of Mortgagor in owning and  
operating properties such as the Mortgaged Property in agreeing to make the Loan  
secured hereby, and that Mortgagee will continue to rely on Xxxxxxxxx's  
ownership of the Mortgaged Property as a means of maintaining the value of the  
Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges  
that Mortgagee has a valid interest in maintaining the value of the Mortgaged  
Property so as to ensure that, should Mortgagor default in the repayment of the  
Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property.  
Mortgagor shall not, without the prior written consent of Mortgagee, sell,  
convey, alien, lease, mortgage, encumber, pledge or otherwise transfer the  
Mortgaged Property or any part thereof, or permit the Mortgaged Property or any  
part thereof to be sold, conveyed, aliened, leased, mortgaged, encumbered,  
pledged or otherwise transferred (any of the foregoing, a "Transfer").  
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 (b) A Transfer of the Mortgaged Property within the meaning of this  
paragraph 9 shall be deemed to include:  
  
 (i) an installment sales agreement wherein Xxxxxxxxx agrees to sell  
 the Mortgaged Property or any part thereof for a price to be paid in  
 installments;  
  
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 (ii) an agreement by Mortgagor selling, leasing, assigning or  
 otherwise transferring all or a substantial part of the Mortgaged Property,  
 or a sale, assignment or other transfer of, or the grant of a security  
 interest in, Xxxxxxxxx's right, title and interest in and to any Leases or  
 any Rents; and  
  
 (iii) any voluntary or involuntary Transfer of a Control Individual's  
 (hereinafter defined) Controlling Interests (hereinafter defined) or any  
 voluntary or involuntary event whereby a Control Individual's Controlling  
 Interests are diluted or his or her Control over Mortgagor is otherwise  
 diminished.  
  
 (c) Mortgagee shall not be required to demonstrate any actual  
impairment of its security or any increased risk of default hereunder in order  
to declare the Debt immediately due and payable upon Xxxxxxxxx's Transfer of the  
Mortgaged Property without Mortgagee's consent; this provision shall apply to  
every Transfer of the Mortgaged Property regardless of whether voluntary or not,  
or whether or not Mortgagee has consented to any previous Transfer of the  
Mortgaged Property.  
  
 (d) For purposes of this paragraph 9, the following terms shall have  
the following meanings: "Control" when used with respect to Mortgagor means the  
power to direct the respective management and policies of Mortgagor, directly or  
indirectly, whether through the ownership of voting securities, membership  
interests, partnership interests or any other beneficial interest, by contract  
or otherwise, whether acting alone or with others, but an individual does not  
have "Control" if he or she has only the right to take those actions that a  
limited partner may take without participating in the business of a limited  
partnership, as set forth in Article \_\_\_\_\_\_ of the Uniform Limited Partnership  
Law of the State of \_\_\_\_\_\_\_\_\_\_, the terms "Controlling" and "Controlled" shall  
have the meanings correlative to the foregoing; "Control Individual" shall mean  
any one of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; "Controlling Interests" shall  
mean those beneficial interests or contract rights in or with respect to the  
Mortgagor (or any entity that has a direct or indirect beneficial interest in  
Mortgagor) that give a Control Individual his or her Control over Mortgagor;  
"Non-controlling Interests" shall mean any beneficial interests in Mortgagor (or  
any entity that has a direct or indirect beneficial interest in the Mortgagor)  
that are not Controlling Interests and shall include, without limitation,  
limited partnership interests.  
  
 10. Estoppel Certificates and No Default Affidavits.  
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 (a) After request by Mortgagee, Mortgagor shall within ten (10) days  
furnish Mortgagee with a statement, duly acknowledged and certified, setting  
forth (i) the amount of the original principal amount of the Note, (ii) the  
unpaid principal amount of the Note, (iii) the rate of interest of the Note,  
(iv) the date installments of interest and/or principal were last paid, (v) any  
offsets or defenses to the payment of the Debt, if any and (vi) that the Note  
and this Mortgage are valid, legal and binding obligations and have not been  
modified or if modified, giving the particulars of such modification.  
  
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 (b) Within ten (10) days after request by Xxxxxxxxx, Xxxxxxxxx will  
request lessees under the Leases to furnish Mortgagee with estoppel certificates  
as required by such lessees' respective Lease and Xxxxxxxxx will use diligent  
efforts to obtain such estoppel certificates.  
  
 11. Changes in the Laws Regarding Taxation. If any law is enacted or  
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adopted or amended after the date of this Mortgage which deducts the Debt from  
the value of the Mortgaged Property for the purpose of taxation or which imposes  
a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the  
Mortgaged Property, Mortgagor will pay such tax, with interest and penalties  
thereon, if any. In the event Mortgagee is advised by counsel chosen by it that  
the payment of such tax or interest and penalties by Xxxxxxxxx would be unlawful  
or taxable to Mortgagee or unenforceable or provide the basis for a defense of  
usury, then in any such event, Mortgagee shall have the option, by written  
notice of not less than ninety (90) days, to declare the Debt immediately due  
and payable.  
  
 12. No Credits on Account of the Debt. Mortgagor will not claim or demand  
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or be entitled to any credit or credits on account of the Debt for any part of  
the Taxes or Other Charges assessed against the Mortgaged Property, or any part  
thereof, and no deduction shall otherwise be made or claimed from the assessed  
value of the Mortgaged Property, or any part thereof, for real estate tax  
purposes by reason of this Mortgage or the Debt. In the event such claim, credit  
or deduction shall be required by law, Mortgagee shall have the option, by  
written notice of not less than ninety (90) days, to declare the Debt  
immediately due and payable.  
  
 13. Documentary Stamps. If at any time the United States of America, the  
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State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or any subdivision thereof shall require revenue or  
other stamps to be affixed to the Note or this Mortgage, or impose any other tax  
or charge on the same, Mortgagor will pay for the same, with interest and  
penalties thereon, if any.  
  
 14. Usury Laws. This Mortgage and the Note are subject to the express  
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condition that at no time shall Mortgagor be obligated or required to pay  
interest on the Debt at a rate which could subject Mortgagee to either civil or  
criminal liability as a result of being in excess of the maximum interest rate  
which Mortgagor is permitted by law to contract or agree to pay. If by the terms  
of this Mortgage or the Note, Mortgagor is at any time required or obligated to  
pay interest on the Debt at a rate in excess of such maximum rate, the rate of  
interest under the same shall be deemed to be immediately reduced to such  
maximum rate and the interest payable shall be computed at such maximum rate and  
all previous payments in excess of such maximum rate shall be deemed to have  
been payments in reduction of the principal and not on account of the interest  
due hereunder.  
  
 15. Performance of Franchise Agreement and Leases; Security Agreement  
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 (a) Mortgagor will duly comply with the terms and conditions of the  
franchise agreement, dated \_\_\_\_\_\_\_\_\_\_\_\_, 199\_\_, between AFC Enterprises, Inc.,  
as franchisor, and mortgagor, as franchisee (the "Franchise Agreement") and will  
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faithfully perform all of its   
  
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obligations under the Franchise Agreement and promptly cure any default by it  
under any of the provisions thereof. Mortgagor shall promptly send to Mortgagee  
a true and correct copy of any notice, report, certificate or other  
communication that Mortgagor is obligated to deliver under the Franchise  
Agreement.  
  
 (b) Xxxxxxxxx will comply with the terms and provisions of the Leases  
and will faithfully perform all of its obligations under the Leases and promptly  
cure any default by it under any of the provisions thereof. Mortgagor shall  
promptly send to Mortgagee a true and correct copy of any notice, report,  
certificate or other communication that Mortgagor is obligated to deliver in  
connection with any Lease.  
  
 (c) Mortgagor hereby assigns and transfers to Mortgagee and creates a  
security interest in all of Xxxxxxxxx's right, title and interest in and to the  
consideration, in whatever form delivered, for the sale, transfer or conveyance  
of Xxxxxxxxx's interest in the Franchise Agreement and the Leases.  
  
 16. Performance of Other Agreements. Mortgagor shall observe and perform  
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each and every term to be observed or performed by Mortgagor pursuant to the  
terms of any agreement or recorded instrument affecting or pertaining to the  
Mortgaged Property.  
  
 17. Books and Records; Financial Statements; Financial Covenants.  
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 (a) Mortgagor shall keep adequate books and records of account in  
accordance with generally accepted accounting principles consistently applied  
and shall furnish to Mortgagee (i) within sixty (60) days after the end of each  
second (2/nd/) and fourth (4/th/) fiscal quarter of Mortgagor, semiannual  
internally-prepared financial statements, certified by the chief financial  
officer of Mortgagor; (ii) within ninety (90) days after the end of each fiscal  
year of Mortgagor, (x) annual internally-prepared financial statements,  
certified by the chief financial officer of Xxxxxxxxx, and (y) a certificate,  
executed by a financial officer of Mortgagor acceptable to Mortgagee, as to the  
absence of any default or Event of Default hereunder or under any other Loan  
Document or under the Franchise Agreement; (iii) copies of Xxxxxxxxx's federal  
tax returns (together with any extension filed) within fifteen (15) days after  
filing of same but in no event later than April 30 of each year; (x) and (iv)  
such other financial information with respect to Xxxxxxxxx, Guarantor  
(hereinafter defined) or the Mortgaged Property at may be reasonably requested  
by Mortgagee from time to time.  
  
 (b) Mortgagor shall cause each of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_  
(collectively, "Guarantor") to furnish to Mortgagee (i) within thirty (30) days  
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after the end of each calendar year, updated annual financial statements in form  
similar to that previously provided to Mortgagee; (ii) copies of their federal  
tax returns (together with any extensions filed) within fifteen (15) days after  
filing of same but in no event later than April 30 of each year; and (iii) such  
other financial information with respect to Guarantor as may be reasonably  
requested by Mortgagee from time to time.  
  
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 (c) Mortgagor shall promptly provide Mortgagee with written notice of  
any pending or threatened litigation against Mortgagor or any Guarantor or the  
commencement of any proceedings or investigations by any governmental or  
regulatory agency involving Mortgagor or any Guarantor.  
  
 (d) Mortgagor shall maintain a Minimum Cash Flow Coverage Ratio of  
not less than \_\_\_\_\_\_ for each fiscal year of Mortgagor. The term "Minimum Cash  
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Flow Coverage Ratio" shall be calculated annually and shall mean:  
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 Cash Flow Before Debt Service  
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 Debt Service  
  
 For purposes of this paragraph 17(d), "Cash Flow Before Debt Service"  
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shall mean annual operating income of the Mortgaged Property plus depreciation,  
amortization and interest expense. "Debt Service" shall mean the total required  
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annual principal and interest payments under the Note.  
  
 (e) Any and all debt incurred by Mortgagor to its shareholders,  
officers, partners, members and/or affiliates shall be incurred only with  
Mortgagee's prior written consent and Mortgagor shall cause any such debt  
approved by Mortgagee to be expressly subordinated to the Debt.  
  
 (f) At any time while all or any portion of the Debt remains  
outstanding, Mortgagor shall not, directly or indirectly, convey, transfer or  
assign any property or asset of any nature, whether real property, personal  
property or mixed, tangible or intangible, or any interest therein, without the  
prior written consent of Mortgagee, and any such conveyance, transfer or  
assignment shall occur solely in the ordinary course of Xxxxxxxxx's business.  
  
 (g) At any time while all or any portion of the Debt remains  
outstanding, Mortgagor shall not, directly or indirectly, (i) make any loans to  
any partners, shareholders, officers, members or affiliates of Mortgagor, nor  
guarantee any indebtedness of any such party without the prior written consent  
of Mortgagee; or (ii) make any advances or distributions to Mortgagor or any  
partners, shareholders, officers, members or affiliates of Mortgagor.  
  
 (h) At any time while all or any portion of the Debt remains  
outstanding, Mortgagor shall not enter into any additional Indebtedness  
(hereinafter defined) nor guarantee any additional Indebtedness, without the  
prior written consent of Mortgagee, other than (i) unsecured Indebtedness  
constituting trade debt and (ii) other Indebtedness incurred in the ordinary  
course of business in connection with the ownership, management and operation of  
the Mortgaged Property.  
  
 18. Further Acts, etc. Mortgagor will, at the cost of Xxxxxxxxx, and  
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without expense to Mortgagee, do, execute, acknowledge and deliver all and every  
such further acts, deeds, conveyances, mortgages, assignments, notices of  
assignment, transfers and assurances as Mortgagee shall, from time to time,  
require, for the better assuring, conveying, assigning, transferring, and  
confirming unto Mortgagee the property and rights hereby mortgaged, given,  
  
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granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged,  
assigned and hypothecated or intended now or hereafter so to be, or which  
Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee,  
or for carrying out the intention or facilitating the performance of the terms  
of this Mortgage or for filing, registering or recording this Mortgage.  
Xxxxxxxxx, on demand, will execute and deliver and hereby authorizes Mortgagee  
to execute in the name of Xxxxxxxxx or without the signature of Mortgagor to the  
extent Mortgagee may lawfully do so, one or more financing statements, chattel  
mortgages or other instruments, to evidence more effectively the security  
interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee  
an irrevocable power of attorney coupled with an interest for the purpose of  
exercising and perfecting any and all rights and remedies available to Mortgagee  
at law and in equity, including without limitation such rights and remedies  
available to Mortgagee pursuant to this paragraph 18.  
  
 19. Trust Fund. Mortgagor shall receive the advances secured hereby and  
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shall hold the right to receive the advances as a trust fund to be applied first  
for the purpose of paying the cost of any improvement and shall apply the  
advances first to the payment of the cost of any such improvement on the  
Mortgaged Property before using any part of the total of the same for any other  
purpose.  
  
 20. Recording of Mortgage, etc. Mortgagor forthwith upon the execution and  
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delivery of this Mortgage and thereafter, from time to time, will cause this  
Mortgage, and any security instrument creating a lien or security interest or  
evidencing the lien hereof upon the Mortgaged Property and each instrument of  
further assurance to be filed, registered or recorded in such manner and in such  
places as may be required by any present or future law in order to publish  
notice of and fully to protect the lien or security interest hereof upon, and  
the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all  
filing, registration or recording fees, and all expenses incident to the  
preparation, execution and acknowledgment of this Mortgage, any mortgage  
supplemental hereto, any security instrument with respect to the Mortgaged  
Property and any instrument of further assurance, and all federal, state, county  
and municipal, taxes, duties, imposts, assessments and charges arising out of or  
in connection with the execution and delivery of this Mortgage, any mortgage  
supplemental hereto, any security instrument with respect to the Mortgaged  
Property or any instrument of further assurance, except where prohibited by law  
so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors  
and assigns, against any liability incurred by reason of the imposition of any  
tax on the making and recording of this Mortgage.  
  
 21. Prepayment. The Debt may be prepaid subject to the terms of paragraph  
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\_\_\_ of the Note.  
  
 22. Events of Default. The Debt shall become immediately due and payable  
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at the option of Mortgagee, without notice or demand, upon any one or more of  
the following events ("Events of Default"):  
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 (a) if any portion of the Debt is not paid within five (5) days after  
the same is due;  
  
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 (b) if any of the Taxes or Other Charges is not paid when the same is  
due and payable, subject to the provisions of paragraphs 4 and 5;  
  
 (c) if the Policies are not kept in full force and effect, or if the  
Policies are not delivered to Mortgagee upon request;  
  
 (d) if Mortgagor violates or does not comply with any of the  
provisions of paragraphs 7, 9, 15, 17(c), 17(d), 17(e), 17(f), 17(g) or 17(h);  
  
 (e) if a default under the Franchise Agreement shall continue beyond  
any applicable notice or grace period, or if the Franchise Agreement shall be  
modified, amended, terminated, surrendered or assigned without the prior written  
consent of Mortgagee;  
  
 (f) if a default by Mortgagor under any Lease shall continue beyond  
any applicable notice or grace period, or if any Lease shall be modified,  
amended, terminated, surrendered or assigned by Xxxxxxxxx, without the prior  
written consent of Mortgagee;  
  
 (g) if the Mortgaged Property becomes subject to any mechanic's,  
materialman's or other lien other than a lien for local real estate taxes and  
assessments not then due and payable and such lien shall remain undischarged of  
record (by payment, bonding or otherwise) for a period of thirty (30) calendar  
days after the filing of such lien;  
  
 (h) if Xxxxxxxxx fails to cure promptly any violations of laws or  
ordinances affecting the Mortgaged Property and such failure continues for a  
period of thirty (30) calendar days after Xxxxxxxxx's receipt of notice thereof;  
  
 (i) if any representation or warranty of Mortgagor or any Guarantor,  
made herein or in the Environmental Indemnity Agreement, dated as of the date  
hereof, made by Mortgagor and Guarantor, jointly and severally, for the benefit  
of Mortgagee (the "Environmental Indemnity Agreement"), or by any Guarantor in  
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the Guarantee of Payment and Performance, dated as of the date hereof, made by  
Guarantor for the benefit of Mortgagee (the "Guarantee"), or in any certificate,  
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report, financial statement or other instrument or document furnished to  
Mortgagee by Mortgagor or any Guarantor shall have been false or misleading in  
any material respect when made;  
  
 (j) if Mortgagor or any Guarantor shall make an assignment for the  
benefit of creditors or if Mortgagor or any Guarantor shall generally not be  
paying its debts as they become due;  
  
 (k) if a receiver, liquidator or trustee of Mortgagor or any  
Guarantor shall be appointed or if Mortgagor or any Guarantor shall be  
adjudicated a bankrupt or insolvent, or if any petition for bankruptcy,  
reorganization or arrangement pursuant to federal bankruptcy law, or any similar  
federal or state law, shall be filed by or against, consented to, or acquiesced  
in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or  
liquidation of  
  
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Mortgagor or any Guarantor shall be instituted; however, if such appointment,  
adjudication, petition or proceeding was involuntary and not consented to by  
Mortgagor or any Guarantor, upon the same not being discharged, stayed or  
dismissed within sixty (60) days;  
  
 (l) If Mortgagor or any Guarantor shall be in default (beyond any  
applicable grace period) in the payment of any amount of any Indebtedness  
(hereinafter defined) other than the Debt; or if Mortgagor or any Guarantor  
shall default (beyond any applicable grace period) in the performance of any  
agreement under which such Indebtedness is created or evidenced, if the effect  
of such default is to cause, or permit the holder of such Indebtedness to cause,  
such Indebtedness to become due prior to its stated maturity. The term  
"Indebtedness" shall mean, as at any date (i) all indebtedness of Mortgagor or  
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any Guarantor for borrowed money or for the deferred purchase price of property  
or services (except such indebtedness the existence of which is being contested  
by Mortgagor or any Guarantor in good faith and by appropriate action); (ii) all  
obligations of Mortgagor or any Guarantor evidenced by bonds, debentures, notes  
or other similar instruments; (iii) all obligations under leases which shall  
have been or should be, in accordance with generally accepted accounting  
principles consistently applied, recorded as capital leases of which Mortgagor  
or any Guarantor is liable as lessee (except such obligations the existence of  
which is being contested by Mortgagor or any Guarantor in good faith and by  
appropriate action); (iv) any Guaranteed Indebtedness (hereinafter defined); and  
(v) any other indebtedness required to be recorded as indebtedness on the  
financial statements of Mortgagor or any Guarantor in accordance with generally  
accepted accounting principles consistently applied. The term "Guaranteed  
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Indebtedness" shall mean any indebtedness which is guaranteed directly or  
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indirectly in any manner by Mortgagor or any Guarantor, or in effect guaranteed  
directly or indirectly in any manner by Mortgagor or any Guarantor;  
  
 (m) (i) if Mortgagor or any Control Individual shall engage in any  
"prohibited transaction" (as defined in Section 406 of the Employee Retirement  
Income Security Act of 1974, as amended from time to time ("ERISA") or Section  
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4975 of the Internal Revenue Code of 1986, as amended from time to time (the  
"Code") involving any employee benefit plan covered by ERISA (a "Plan"), (ii)  
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any "accumulated funding deficiency" (as defined in Section 302 of ERISA),  
whether or not waived, shall occur with respect to any Plan or any lien in favor  
of the Pension Benefit Guaranty Corporation ("PBGC") or a Plan shall arise on  
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the assets of Mortgagor or any Control Individual, or (iii) a "reportable event"  
(as defined in Section 4043(b) of ERISA) shall occur with respect to, or  
proceedings shall commence to have a trustee appointed, or a trustee shall be  
appointed, to administer or to terminate, any Plan, which reportable event or  
commencement of proceedings or appointment of a trustee is, in the reasonable  
opinion of Mortgagee, likely to result in the termination of such Plan for  
purposes of Title IV of ERISA;  
  
 (n) if one or more judgments or decrees shall be entered against  
Mortgagor or any Guarantor involving an aggregate liability (not paid or fully  
covered by insurance) of $\_\_\_\_\_\_\_\_\_\_\_\_ or more, and any such judgment or decree  
shall not have been vacated, discharged, stayed or bonded pending appeal within  
thirty (30) days from the entry thereof;  
  
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 (o) Mortgagor shall be in default beyond any applicable notice and  
cure period under any other term, covenant or condition of the Note, this  
Mortgage or any of the other Loan Documents; or  
  
 (p) if at any time while this Mortgage is of record \_\_\_\_\_\_\_\_\_\_\_\_\_ and  
\_\_\_\_\_\_\_\_\_\_\_\_ shall fail to own in the aggregate one hundred percent (100%) of  
the ownership interests in Mortgagor or shall cease to have sole responsibility  
for the day-to-day management and Control of Mortgagor.  
  
 23. Default Interest. Upon the occurrence of any Event of Default,  
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Mortgagor shall pay interest on the unpaid principal balance of the Note at the  
Default Rate (as defined in the Note). The Default Rate shall be computed from  
the occurrence of the Event of Default until the actual receipt and collection  
of the Debt. This charge shall be added to the Debt, and shall be deemed secured  
by this Mortgage. This clause, however, shall not be construed as an agreement  
or privilege to extend the date of the payment of the Debt, nor as a waiver of  
any other right or remedy accruing to Mortgagee by reason of the occurrence of  
any Event of Default. If the Default Rate is above the maximum rate permitted by  
applicable law, the Default Rate shall be the maximum rate permitted by  
applicable law.  
  
 24. Right to Cure Defaults. Upon the occurrence of any Event of Default or  
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if Mortgagor fails to make any payment or to do any act as herein provided,  
Mortgagee may, but without any obligation to do so and without notice to or  
demand on Mortgagor and without releasing Mortgagor from any obligation  
hereunder, make or do the same in such manner and to such extent as Mortgagee  
may deem necessary to protect the security hereof. Mortgagee is authorized to  
enter upon the Mortgaged Property for such purposes or appear in, defend, or  
bring any action or proceeding to protect its interest in the Mortgaged Property  
or to foreclose this Mortgage or collect the Debt, and the reasonable cost and  
expense thereof (including reasonable attorneys' fees to the extent permitted by  
law and any appraisal fees), with interest calculated at the Default Rate, shall  
constitute a portion of the Debt and shall be secured by this Mortgage and the  
other Loan Documents and shall be due and payable to Mortgagee upon demand. All  
such costs and expenses incurred by Mortgagee in remedying such Event of Default  
or in appearing in, defending, or bringing any such action or proceeding shall  
bear interest at the Default Rate, for the period after notice from Mortgagee  
that such cost or expense was incurred to the date of payment of Mortgagee.  
  
 25. Late Payment Charge. If any portion of the Debt is not paid within  
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fifteen (15) calendar days after the date on which it is due, Mortgagor shall  
pay to Mortgagee upon demand a late charge equal to the lesser of two percent  
(2%) of such unpaid portion of the Debt or the maximum amount permitted by  
applicable law, to defray the expense incurred by Mortgagee in handling and  
processing such delinquent payment and to compensate Mortgagee for the loss of  
the use of such delinquent payment, and such amount shall be secured by this  
Mortgage.  
  
 26. Prepayment After Event of Default. If following the occurrence of any  
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Event of Default, Mortgagor shall tender payment of an amount sufficient to  
satisfy the Debt at any   
  
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time prior to a sale of the Mortgaged Property either through foreclosure or the  
exercise of other remedies available to Mortgagee under this Mortgage, such  
tender by Mortgagor shall be deemed to be a voluntary prepayment under the Note  
and this Mortgage in the amount tendered, and Mortgagor shall, in addition to  
the entire Debt, also pay to Mortgagee the applicable prepayment consideration  
specified in paragraph \_\_\_ of the Note.  
  
 27. Right of Entry. Mortgagee and its agents shall have the right to enter  
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and inspect the Mortgaged Property at all reasonable times.  
  
 28. Remedies.  
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 (a) Upon the occurrence of any Event of Default, Mortgagee may take  
such action, without notice or demand, as it deems advisable to protect and  
enforce its rights against Mortgagor and in and to the Mortgaged Property,  
including, but not limited to, the following actions, each of which may be  
pursued concurrently or otherwise, at such time and in such order as Mortgagee  
may determine, in its sole discretion, without impairing or otherwise affecting  
the other rights and remedies of Mortgagee:  
  
 (i) declare the entire Debt to be immediately due and payable;  
  
 (ii) institute proceedings for the complete foreclosure of this  
 Mortgage, in which case the Mortgaged Property or any interest therein may  
 be sold for cash or upon credit in one or more parcels or in several  
 interests or portions and in any order or manner;  
  
 (iii) with or without entry, to the extent permitted and pursuant to  
 the procedures provided by applicable law, institute proceedings for the  
 partial foreclosure of this Mortgage for the portion of the Debt then due  
 and payable, subject to the continuing lien of this Mortgage for the  
 balance of the Debt not then due;  
  
 (iv) sell for cash or upon credit the Mortgaged Property or any part  
 thereof and all estate, claim, demand, right, title and interest of  
 Mortgagor therein and rights of redemption thereof, pursuant to power of  
 sale or otherwise, at one or more sales, as an entity or in parcels, at  
 such time and place, upon such terms and after such notice thereof as may  
 be required or permitted by law;  
  
 (v) institute an action, suit or proceeding in equity for the  
 specific performance of any covenant, condition or agreement contained  
 herein or in the Note;  
  
 (vi) recover judgment on the Note either before, during or after any  
 proceedings for the enforcement of this Mortgage;  
  
 (vii) apply for the appointment of a receiver of the Mortgaged  
 Property, without notice and without regard for the adequacy of the  
 security for the Debt and without regard for the solvency of the Mortgagor  
 or of any person, firm or other entity liable for the payment of the Debt;  
  
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 (viii) enforce Mortgagee's interest in the Leases and Rents and enter  
 into or upon the Mortgaged Property, either personally or by its agents,  
 nominees or attorneys and dispossess Mortgagor and its agents and servants  
 therefrom, and thereupon Mortgagee may (A) use, operate, manage, control,  
 insure, maintain, repair, restore and otherwise deal with all and every  
 part of the Mortgaged Property and conduct the business thereat; (B) make  
 alterations, additions, renewals, replacements and improvements to or on  
 the Mortgaged Property; (C) exercise all rights and powers of Mortgagor  
 with respect to the Mortgaged Property, whether in the name of Mortgagor or  
 otherwise, including, without limitation, the right to make, cancel,  
 enforce or modify Leases, obtain and evict tenants, and demand, sue for,  
 collect and receive all earnings, revenues, rents, issues, profits and  
 other income of the Mortgaged Property and every part thereof; and (D)  
 apply the receipts from the Mortgaged Property to the payment of the Debt,  
 after deducting therefrom all reasonable expenses (including reasonable  
 attorneys' fees) incurred in connection with the aforesaid operations and  
 all amounts necessary to pay the Taxes, assessments, insurance and Other  
 Charges in connection with the Mortgaged Property, as well as just and  
 reasonable compensation for the services of Mortgagee, its counsel, agents  
 and employees; or  
  
 (ix) pursue such other rights and remedies as may be available at  
 law and in equity.  
  
 In the event of a sale, by foreclosure or otherwise, of less than all of  
the Mortgaged Property, this Mortgage shall continue as a lien on the remaining  
portion of the Mortgaged Property.  
  
 (b) The proceeds of any sale made under or by virtue of this  
paragraph, together with any other sums which then may be held by Mortgagee  
under this Mortgage, whether under the provisions of this paragraph or  
otherwise, shall be applied by Mortgagee to the payment of the Debt in such  
priority and proportion as Mortgagee in its discretion shall deem proper.  
  
 (c) To the extent permitted by applicable law, Mortgagee may  
adjourn from time to time any sale by it to be made under or by virtue of this  
Mortgage by announcement at the time and place appointed for such sale or for  
such adjourned sale or sales; and, except as otherwise provided by any  
applicable provision of law, Mortgagee, without further notice or publication,  
may make such sale at the time and place to which the same shall be so  
adjourned.  
  
 (d) Upon the completion of any sale or sales made by Mortgagee  
under or by virtue of this paragraph, Mortgagee, or an officer of any court  
empowered to do so, shall execute and deliver to the accepted purchaser or  
purchasers a good and sufficient instrument, or good and sufficient instruments,  
conveying, assigning and transferring all estate, right, title and interest in  
and to the property and rights sold. Mortgagee is hereby irrevocably appointed  
the true and lawful attorney of Xxxxxxxxx, in its name and stead, to make all  
necessary conveyances, assignments, transfers and deliveries of the Mortgaged  
Property and rights so  
  
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sold and for that purpose Mortgagee may execute all necessary instruments of  
conveyance, assignment and transfer, and may substitute one or more persons with  
like power, Xxxxxxxxx hereby ratifying and confirming all that its said attorney  
or such substitute or substitutes shall lawfully do by virtue hereof. Any such  
sale or sales made under or by virtue of this paragraph shall operate to divest  
all the estate, right, title, interest, claim and demand whatsoever, whether at  
law or in equity, of Mortgagor in and to the properties and rights so sold, and  
shall be a perpetual bar both at law and in equity against Mortgagor and against  
any and all persons claiming or who may claim the same, or any part thereof  
from, through or under Xxxxxxxxx.  
  
 (e) Upon any sale made under or by virtue of this paragraph,  
Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and  
in lieu of paying cash therefor may make settlement for the purchase price by  
crediting upon the Debt the net sales price after deducting therefrom the  
expenses of the sale and costs of the action and any other sums which Mortgagee  
is authorized to deduct under this Mortgage.  
  
 (f) No recovery of any judgment by Xxxxxxxxx and no levy of an  
execution under any judgment upon the Mortgaged Property or upon any other  
property of Mortgagor shall affect in any manner or to any extent the lien of  
this Mortgage upon the Mortgaged Property or any part thereof, or any liens,  
rights, powers or remedies of Mortgagee hereunder, but such liens, rights,  
powers and remedies of Mortgagee shall continue unimpaired as before.  
  
 29. Reasonable Use and Occupancy. In addition to the rights which  
 ----------------------------   
Mortgagee may have herein, upon the occurrence of any Event of Default,  
Mortgagee, at its option, may require Mortgagor to pay monthly in advance to  
Mortgagee, or any receiver appointed to collect the Rents, the fair and  
reasonable rental value for the use and occupation of such part of the Mortgaged  
Property as may be occupied by Mortgagor or may require Mortgagor to vacate and  
surrender possession of the Mortgaged Property to Mortgagee or to such receiver  
and, in default thereof, Mortgagor may be evicted by summary proceedings or  
otherwise.  
  
 30. Security Agreement. This Mortgage is both a real property mortgage and  
 ------------------   
a "security agreement" within the meaning of the Uniform Commercial Code. The  
Mortgaged Property includes both real and personal property and all other rights  
and interests, whether tangible or intangible in nature, of Mortgagor in the  
Mortgaged Property. Mortgagor by executing and delivering this Mortgage has  
granted and hereby grants to Mortgagee, as security for the Debt, a security  
interest in the Mortgaged Property to the full extent that the Mortgaged  
Property may be subject to the Uniform Commercial Code (said portion of the  
Mortgaged Property so subject to the Uniform Commercial Code being called in  
this paragraph 30 the "Collateral"). If an Event of Default shall occur,  
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Mortgagee, in addition to any other rights and remedies which it may have, shall  
have and may exercise immediately and without demand, any and all rights and  
remedies granted to a secured party upon default under the Uniform Commercial  
Code, including, without limiting the generality of the foregoing, the right to  
take possession of the Collateral or any part thereof, and to take such other  
measures as Mortgagee may deem necessary for the care, protection and  
preservation of the Collateral. Upon the request or demand of Mortgagee,  
Mortgagor shall at its expense assemble the  
  
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Collateral and make it available to Mortgagee at a convenient place acceptable  
to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses,  
including legal expenses and reasonable attorneys' fees, incurred or paid by  
Mortgagee in protecting the interest in the Collateral and in enforcing the  
rights hereunder with respect to the Collateral. Any notice of sale, disposition  
or other intended action by Mortgagee with respect to the Collateral sent to  
Mortgagor in accordance with the provisions hereof at least ten (10) days prior  
to such action, shall constitute commercially reasonable notice to Mortgagor.  
The proceeds of any disposition of the Collateral, or any part thereof, may be  
applied by Mortgagee to the payment of the Debt in such priority and proportions  
as Mortgagee in its discretion shall deem proper.  
  
 31. Actions and Proceedings. Mortgagee has the right to appear in and  
 -----------------------  
defend any action or proceeding brought with respect to the Mortgaged Property  
and to bring any action or proceeding, in the name and on behalf of Mortgagor,  
which Mortgagee, in its discretion, decides should be brought to protect their  
interest in the Mortgaged Property. Mortgagee shall, at its option, be  
surrogated to the lien of any mortgage or other security instrument discharged  
in whole or in part by the Debt, and any such subrogation rights shall  
constitute additional security for the payment of the Debt.  
  
 32. Waiver of Counterclaim. Mortgagor hereby waives the right to assert a  
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counterclaim, other than a mandatory or compulsory counterclaim, in any action  
or proceeding brought against it by Mortgagee.  
  
 33. Recovery of Sums Required to Be Paid. Mortgagee shall have the right  
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from time to time to take action to recover any sum or sums which constitute a  
part of the Debt as the same become due, without regard to whether or not the  
balance of the Debt shall be due, and without prejudice to the right of  
Mortgagee thereafter to bring an action of foreclosure, or any other action, for  
a default or defaults by Mortgagor existing at the time such earlier action was  
commenced.  
  
 34. Marshalling and Other Matters. Mortgagor hereby waives, to the extent  
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permitted by law, the benefit of all appraisement, valuation, stay, extension,  
reinstatement and redemption laws now or hereafter in force and all rights of  
marshalling in the event of any sale hereunder of the Mortgaged Property or any  
part thereof or any interest therein. Further, Mortgagor, to the extent  
permitted by law, hereby expressly waives any and all rights of redemption from  
sale under any order or decree of foreclosure of this Mortgage on behalf of  
Mortgagor, and on behalf of each and every person acquiring any interest in or  
title to the Mortgaged Property subsequent to the date of this Mortgage and on  
behalf of all persons to the extent permitted by applicable law.  
  
 35. Hazardous Waste and Asbestos. Mortgagor hereby represents and warrants  
 ----------------------------   
to Mortgagee that (a) the Mortgaged Property is not in direct or indirect  
violation of any local, state, federal or other governmental authority, statute,  
ordinance, code, order, decree, law, rule or regulation pertaining to or  
imposing liability or standards of conduct concerning environmental regulation,  
contamination or clean-up including, without limitation, the Comprehensive  
Environmental Response, Compensation and Liability Act, as amended  
  
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("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), and  
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any state super-lien and environmental clean-up statutes (collectively,  
"Environmental Laws"); (b) the Mortgaged Property is not subject to any private  
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or governmental lien or judicial or administrative notice or action relating to  
hazardous and/or toxic, dangerous and/or regulated, substances, wastes,  
materials, pollutants or contaminants, petroleum, tremolite, anthlophylie or  
actinolite or polychlorinated biphenyls (including, without limitation, any raw  
materials which include hazardous constituents) and any other substances or  
materials which are included under or regulated by Environmental Laws  
(collectively, "Hazardous Materials"); (c) no Hazardous Materials are or have  
 -------------------   
been, prior to Mortgagor's acquisition of the Mortgaged Property, discharged,  
generated, treated, disposed of or stored on, incorporated in, or removed or  
transported from the Mortgaged Property otherwise than in compliance with all  
Environmental Laws and (d) there is no asbestos present in, and no underground  
storage tanks exist on, any of the Mortgaged Property. So long as Mortgagor owns  
or is in possession of the Mortgaged Property, Mortgagor shall keep or cause the  
Mortgaged Property to be kept free from Hazardous Materials and in compliance  
with all Environmental Laws, shall promptly notify Mortgagee if Mortgagor shall  
become aware of any Hazardous Materials on the Mortgaged Property and/or if  
Mortgagor shall become aware that the Mortgaged Property is in direct or  
indirect violation of any Environmental Laws and Mortgagor shall remove such  
Hazardous Materials and/or cure such violations, as applicable, as required by  
law, promptly after Xxxxxxxxx becomes aware of same, at Xxxxxxxxx's sole  
expense. Nothing herein shall prevent Mortgagor from recovering such expenses  
from any other party that may be liable for such removal or cure. The  
obligations and liabilities of Mortgagor under this paragraph 35 shall survive  
any termination, satisfaction, or assignment of this Mortgage, any Transfer  
and/or any exercise by Mortgagee of any of its rights or remedies hereunder,  
including but not limited to, the acquisition of the Mortgaged Property by  
foreclosure or a conveyance in lieu of foreclosure.  
  
 36. Handicapped Access.  
 ------------------   
  
 (a) Xxxxxxxxx agrees that the Mortgaged Property shall at all times  
comply to the extent applicable with the requirements of the Americans with  
Disabilities Act of 1990, all state and local laws and ordinances related to  
handicapped access and all rules, regulations, and orders issued pursuant  
thereto including, without limitation, the Americans with Disabilities Act  
Accessibility Guidelines for Buildings and Facilities (collectively, "Access  
 ------  
Laws").  
----   
  
 (b) Xxxxxxxxx agrees to give prompt notice to Mortgagee of the  
receipt by Xxxxxxxxx of any complaints related to violations of any Access Laws  
and of the commencement of any proceedings or investigations which relate to  
compliance with applicable Access Laws.  
  
 37. Indemnification. In addition to any other indemnifications provided  
 ---------------  
herein or in the Note or the other Loan Documents, Mortgagor shall protect,  
defend, indemnify and save harmless Mortgagee from and against all liabilities,  
obligations, claims, demands, damages, penalties, causes of action, losses,  
fines, costs and expenses (including, without limitation,  
  
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reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted  
against Mortgagee, except to the extent resulting from Mortgagee's gross  
negligence or wilful misconduct, by reason of (a) ownership of this Mortgage or  
the Mortgaged Property or any interest therein; (b) the construction or  
renovation of any Improvements; (c) any accident, injury to or death of persons  
or loss of or damage to property occurring in, on or about the Mortgaged  
Property or any part thereof or on the adjoining sidewalks, curbs, adjacent  
property or adjacent parking areas, streets or ways; (d) any use, nonuse or  
condition in, on or about the Mortgaged Property or any part thereof or on  
adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets  
or ways; (e) any failure on the part of Mortgagor to perform or comply with any  
of the terms of this Mortgage; (f) performance of any labor or services or the  
furnishing of any materials or other property in respect of the Mortgaged  
Property or any part thereof; (g) the presence, disposal, escape, seepage,  
leakage, spillage, discharge, emission, release, or threatened release of any  
Hazardous Materials on, from, or affecting the Mortgaged Property or any other  
property; (h) any personal injury (including wrongful death) or property damage  
(real or personal) arising out of or related to such Hazardous Materials; (i)  
any lawsuit brought or threatened, settlement reached, or government order  
relating to such Hazardous Materials; (j) any violation of the Environmental  
Laws, which are based upon or in any way related to such Hazardous Materials  
including, without limitation, the costs and expenses of any remedial action,  
attorney and consultant fees, investigation and laboratory fees, court costs and  
litigation expenses; and (k) any failure of the Mortgaged Property to comply  
with any Access Laws. Any amounts payable to Mortgagee by reason of the  
application of this paragraph 37 shall be secured by this Mortgage and shall  
become immediately due and payable and shall bear interest at the Default Rate  
from the date any payment is made by Mortgagee hereunder until such payment is  
reimbursed by Xxxxxxxxx. The obligations and liabilities of Mortgagor under this  
paragraph 37 shall survive any termination, satisfaction or assignment of this  
Mortgage, any Transfer and/or any exercise by Mortgagee of any of its rights and  
remedies hereunder, including but not limited to, the acquisition of the  
Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.  
  
 38. Notices. Any notice, demand, statement, request or consent made  
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hereunder shall be in writing to the other party hereto at its address set forth  
below or at such other address as such party may designate by notice to the  
other party hereto and shall be deemed given (i) on receipt, if mailed, by  
certified or registered U.S. mail, return receipt requested, postage prepaid;  
(ii) on receipt, if delivered, fee prepaid, to a national overnight delivery  
service (such as Federal Express, Purolater Courier, U.P.S. Next Day Air); or  
(iii) when delivered, if delivered by hand, as evidenced by a signed receipt:  
  
 To Mortgagor:  
   
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Attention:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Telephone: (\_\_\_\_) \_\_\_\_\_\_\_\_\_\_  
  
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 with a courtesy copy to:  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Telephone: (\_\_\_) \_\_\_\_\_\_\_\_\_\_\_  
   
 To Mortgagee:  
  
 Banco Popular de Puerto Rico  
 0 Xxxx 00/xx/ Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xx. Xxxxxxx Xxx  
 Vice President  
 Telephone: (000) 000-0000  
  
 with a courtesy copy to:  
  
 XxXxxxxxx Xxxxxx LLP  
 0000 Xxxxxx xx xxx Xxxxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xxxxx X. Xxxxx, Esq.  
 Telephone: (000) 000-0000  
  
  
A "Business Day" is any day other than a Saturday or Sunday, or a day on which  
banking and savings and loan institutions in the State of New York are  
authorized or obligated by law or executive order to remain closed. Refusal to  
accept delivery of any notice shall be deemed to be receipt of such notice.  
  
 39. Authority. (a) Mortgagor (and the undersigned representative of  
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Mortgagor, if any) has full power, authority and right to execute, deliver and  
perform its obligations pursuant to this Mortgage, and to mortgage, give, grant,  
bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign  
the Mortgaged Property pursuant to the terms hereof and to keep and observe all  
of the terms of this Mortgage on Xxxxxxxxx's part to be performed and (b)  
Mortgagor represents and warrants that Mortgagor is not a "foreign person"  
within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986,  
as amended and the related Treasury Department regulations, including temporary  
regulations.  
  
 40. Waiver of Notice. Mortgagor shall not be entitled to any notices of  
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any nature whatsoever from Mortgagee except with respect to matters for which  
this Mortgage specifically and expressly provides for the giving of notice by  
Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is  
required by applicable law to give notice, and Mortgagor hereby expressly waives  
the right to receive any notice from Mortgagee  
  
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with respect to any matter for which this Mortgage does not specifically and  
expressly provide for the giving of notice by Mortgagee to Mortgagor.  
  
 41. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage,  
 ----------------------------   
Mortgagee exercises any right given to it to approve or disapprove, or any  
arrangement or term is to be satisfactory to Mortgagee, the decision of  
Mortgagee to approve or disapprove or to decide that arrangements or terms are  
satisfactory or not satisfactory shall be in the sole discretion of Mortgagee  
and shall be final and conclusive, except as may be otherwise expressly and  
specifically provided herein.  
  
 42. Non-Waiver. The failure of Mortgagee to insist upon strict performance  
 ----------   
of any term hereof shall not be deemed to be a waiver of any term of this  
Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder  
by reason of (a) the failure of Mortgagee to comply with any request of  
Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any  
of the provisions hereof or of the Note or the other Loan Documents, (b) the  
release, regardless of consideration, of the whole or any part of the Mortgaged  
Property, or of any person liable for the Debt or any portion thereof or (c) any  
agreement or stipulation by Mortgagee extending the time of payment or otherwise  
modifying or supplementing the terms of the Note, this Mortgage or the other  
Loan Documents. Mortgagee may resort for the payment of the Debt to any other  
security held by Mortgagee in such order and manner as Mortgagee, in its  
discretion, may elect. Mortgagee may take action to recover the Debt, or any  
portion thereof, or to enforce any covenant hereof without prejudice to the  
right of Mortgagee thereafter to foreclose this Mortgage. The rights and  
remedies of Mortgagee under this Mortgage shall be separate, distinct and  
cumulative and none shall be given effect to the exclusion of the others. No act  
of Mortgagee shall be construed as an election to proceed under any one  
provision herein to the exclusion of any other provision. Mortgagee shall not be  
limited exclusively to the rights and remedies herein stated but shall be  
entitled to every right and remedy now or hereafter afforded at law or in  
equity.  
  
 43. No Oral Change. This Mortgage, and any provisions hereof, may not be  
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modified, amended, waived, extended, changed, discharged or terminated orally or  
by any act or failure to act on the part of Mortgagor or Mortgagee, but only by  
an agreement in writing signed by the party against whom enforcement of any  
modification, amendment, waiver, extension, change, discharge or termination is  
sought.  
  
 44. Successors and Assigns. This Mortgage shall be binding upon and inure  
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to the benefit of Mortgagor and Mortgagee and their respective heirs, personal  
representatives, successors and assigns forever.  
  
 45. Inapplicable Provisions. If any term, covenant or condition of the  
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Note or this Mortgage is held to be invalid, illegal or unenforceable in any  
respect, the Note and this Mortgage shall be construed without such provision.  
  
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 46. Headings, etc. The headings and captions of various paragraphs of this  
 -------------   
Mortgage are for convenience of reference only and are not to be construed as  
defining or limiting, in any way, the scope or intent of the provisions hereof.  
  
 47. Governing Law. This Mortgage shall be governed by and construed in  
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accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_ without regard to  
principles of conflict of laws.  
  
 48. Definitions. Unless the context clearly indicates a contrary intent or  
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unless otherwise specifically provided herein, words used in this Mortgage may  
be used interchangeably in singular or plural form and the word "Mortgagor"  
shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged  
Property or any part thereof or any interest therein," the word "Mortgagee"  
shall mean "Mortgagee and any subsequent holder of the Note," the word "Note"  
shall mean "the Note and any other evidence of indebtedness secured by this  
Mortgage," the word "person" shall include an individual, corporation,  
partnership, trust, unincorporated association, government, governmental  
authority, and any other entity, and the words "Mortgaged Property" shall  
include any portion of the Mortgaged Property and any interest therein. Whenever  
the context may require, any pronouns used herein shall include the  
corresponding masculine, feminine or neuter forms and the singular form of nouns  
and pronouns shall include the plural and vice versa.  
  
 49. Waiver of Trial by Jury. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY,  
 -----------------------   
VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY  
IN RESPECT OF ANY LITIGATION BASED ON THE LOAN EVIDENCED BY THE NOTE OR ARISING  
OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THIS MORTGAGE OR ANY OF THE OTHER  
LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER  
VERBAL OR WRITTEN) OR ACTION OF MORTGAGOR OR MORTGAGEE. THIS PROVISION IS A  
MATERIAL INDUCEMENT FOR MORTGAGEE'S MAKING OF THE LOAN SECURED BY THIS MORTGAGE  
AND THE OTHER LOAN DOCUMENTS.  
  
 50. Assignment. Mortgagee shall have the right, exercisable at any time  
 ----------   
and from time to time, to sell, transfer or assign the Mortgage and the other  
Loan Documents, or grant participations therein, or issue certificates or  
securities evidencing a beneficial interest therein in a rated or unrated public  
offering or private placement, and Mortgagee may forward to any purchaser,  
transferee, assignee, servicer, participant, investor or credit rating agency  
rating such securities (collectively, an "Investor") or prospective Investor all  
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documents and information in Mortgagee's possession with respect to Mortgagor,  
the Mortgaged Property and the Loan Documents as such Investor or prospective  
Investor may request.  
  
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 IN WITNESS WHEREOF, Xxxxxxxxx has executed this Mortgage, intending to be  
legally bound, the day and year first above written.  
  
  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  
 a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
   
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 (ACKNOWLEDGMENT)  
  
   
 EXHIBIT A  
  
 LEGAL DESCRIPTION  
  
   
 EXHIBIT K-2(C)  
 --------------  
  
 FORM OF FRANCHISEE LEASED PROPERTY MORTGAGE  
 -------------------------------------------  
  
  
  
 LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND  
 ASSIGNMENT OF LEASES AND RENTS  
  
 BY AND BETWEEN  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 ("MORTGAGOR")  
  
 AND  
  
 BANCO POPULAR DE PUERTO RICO  
 0 XXXX 00/XX/ XXXXXX  
 XXX XXXX, XXX XXXX 00000  
 ("MORTGAGEE")  
  
 DATED AS OF \_\_\_\_\_\_\_\_\_, 199\_\_  
  
 LOCATION OF PREMISES:  
  
  
  
 RECORDING REQUESTED BY AND  
 WHEN RECORDED - RETURN TO:  
 Xxxxx X. Xxxxx, Esq.  
 XxXxxxxxx Xxxxxx LLP  
 0000 Xxxxxx xx xxx Xxxxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
  
   
 THIS LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES  
AND RENTS (the "Mortgage"), made as of the \_\_ day of \_\_\_\_\_, 199\_, by  
 --------   
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having an office at  
\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Mortgagor") and  
 ---------   
BANCO POPULAR DE PUERTO RICO, having offices at 0 Xxxx 00/xx/ Xxxxxx, Xxx Xxxx,  
Xxx Xxxx 00000 ("Mortgagee").  
 ---------   
  
  
 W I T N E S S E T H:  
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 To secure the payment of an indebtedness in the principal sum of  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DOLLARS ($\_\_\_\_\_\_\_\_\_\_\_), lawful money of the  
United States of America, to be paid with interest according to a certain note  
dated the date hereof made by Mortgagor to Mortgagee (the note together with all  
extensions, renewals or modifications thereof being hereinafter collectively  
called the "Note") (said indebtedness, interest and all other sums due hereunder  
 ----   
and under the Note being collectively called the "Debt"), Xxxxxxxxx has  
 ----   
mortgaged, given, granted, bargained, sold, aliened, conveyed, confirmed,  
pledged, assigned, and hypothecated and by these presents does hereby mortgage,  
give, grant, bargain, sell, alien, convey, confirm, pledge, assign and  
hypothecate unto Mortgagee all right, title, interest and estate of Mortgagor  
now owned, or hereafter acquired, in and to the following property, rights,  
interests and estates (such property, rights, interests and estates being  
hereinafter described are collectively referred to herein as the "Mortgaged  
 ---------  
Property"):  
--------   
  
 (a) that certain lease dated \_\_\_\_\_\_\_\_\_, 199\_\_, between \_\_\_\_\_\_\_\_\_, as  
landlord, and Mortgagor, as tenant (the "Lease") affecting the real property  
 -----   
described in Exhibit A attached hereto (the "Property"), and the leasehold  
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estate created thereby (and all other interests of Mortgagor presently owned or  
hereafter acquired in the Property) and all modifications, renewals or  
extensions of the Lease and all rights of Mortgagor to renew or extend the term  
of the Lease and all of Mortgagor's right, title and interest in and to the  
Property;  
  
 (b) all machinery, equipment, fixtures, furniture, equipment, cooking  
supplies, stoves, refrigerators, dishes, glassware, utensils and inventories and  
other property of every kind and nature, whether tangible or intangible,  
whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an  
interest, now or hereafter located upon the Property, or appurtenant thereto,  
and usable in connection with the present or future operation and occupancy of  
the Property and all building equipment, materials and supplies and construction  
equipment, materials and supplies of any nature whatsoever owned by Mortgagor,  
or in which Mortgagor has or shall have an interest, now or hereafter located  
upon the Property, or appurtenant thereto, or usable in connection with the  
present or future construction, renovation, operation, enjoyment and occupancy  
of the Property (hereinafter collectively called the "Equipment"), including the  
 ---------   
proceeds of any sale or transfer of the foregoing, and the right, title and  
interest of Xxxxxxxxx in and to any of the Equipment which may be subject to any  
security interests, as defined in the Uniform Commercial Code, as adopted and  
enacted by the   
  
   
State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Uniform Commercial Code") superior in lien to the  
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lien of this Mortgage;  
  
  
  
 (c) all subleases and other agreements affecting the use, enjoyment  
or occupancy of the Land or the Improvements (hereinafter defined) heretofore or  
hereafter entered into by Mortgagor (collectively, the "Subleases") and all  
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income, rents, issues, profits and revenues from the Property (collectively, the  
"Rents") and all proceeds from the sale, surrender, termination or other  
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disposition of the Subleases and the right to receive and apply the Rents to the  
payment of the Debt;  
  
 (d) all proceeds of and any unearned premiums on any insurance  
policies covering the Mortgaged Property, including, without limitation, the  
right to receive and apply the proceeds of any insurance, judgments, or  
settlements made in lieu thereof, for damage to the Mortgaged Property; and  
  
 (e) the right, in the name and on behalf of Xxxxxxxxx, to appear in  
and defend any action or proceeding brought with respect to the Mortgaged  
Property and to commence any action or proceeding to protect the interest of  
Mortgagee in the Mortgaged Property.  
  
 TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto  
and to the use and benefit of Mortgagee, and the successors and assigns of  
Mortgagee, forever.  
  
AND Xxxxxxxxx represents and warrants to and covenants and agrees with Mortgagee  
as follows:  
  
 1. PAYMENT OF DEBT AND INCORPORATION OF COVENANTS, CONDITIONS AND  
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AGREEMENTS. Mortgagor will pay the Debt at the time and in the manner provided  
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in the Note and in this Mortgage. All the covenants, conditions and agreements  
contained in (a) the Note and (b) all and any of the documents other than the  
Note or this Mortgage now or hereafter executed by Xxxxxxxxx and/or others and  
by or in favor of Mortgagee, which wholly or partially secure or guaranty  
payment of the Note (collectively, the "Loan Documents"), are hereby made a part  
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of this Mortgage to the same extent and with the same force as if fully set  
forth herein.  
  
 2. THE LEASE. The Lease is in full force and effect and has not been  
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modified, amended or altered as of the date hereof and there are no defaults by  
any party thereto.  
  
 3. WARRANTY OF TITLE. Mortgagor warrants that it has good title to the  
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leasehold estate created by the Lease and a good and marketable interest in such  
leasehold, and that Mortgagor owns the Equipment, in each case free and clear of  
liens, claims and encumbrances.  
  
 -2-  
  
   
 4. Insurance.  
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 (a) Mortgagor, at its sole cost and expense, will keep the Mortgaged  
Property insured during the entire term of this Mortgage for the mutual benefit  
of Mortgagor and Mortgagee against loss or damage by fire and against loss or  
damage by other risks and hazards covered by a standard extended coverage  
insurance policy including, but not limited to, riot and civil commotion,  
vandalism, malicious mischief, burglary and theft. Such insurance shall be in an  
amount (i) equal to one hundred percent (100%) of the then replacement cost of  
the buildings, structures, fixtures and improvements now or hereafter located on  
the Property (collectively, the "Improvements") and the Equipment, without  
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deduction for physical depreciation and (ii) such that the insurer would not  
deem Mortgagor a co-insurer under said policies. The policies of insurance  
carried in accordance with this paragraph shall be paid annually in advance and  
shall contain the "Replacement Cost Endorsement" with a waiver of depreciation.  
  
 (b) Mortgagor, at its sole cost and expense, for the mutual benefit  
of Mortgagor and Mortgagee, shall also obtain and maintain during the entire  
term of this Mortgage the following policies of insurance:  
  
 (i) Flood insurance if any part of the Mortgaged Property is located  
 in an area identified by the Federal Emergency Management Agency as an area  
 having special flood hazards and in which flood insurance has been made  
 available under the National Flood Insurance Act of 1968 (and any successor  
 act thereto) in an amount at least equal to the outstanding principal  
 amount of the Note or the maximum limit of coverage available with respect  
 to the Improvements and Equipment under said Act, whichever is less.  
  
 (ii) Comprehensive public liability insurance, including broad form  
 property damage, blanket contractual and personal injuries (including death  
 resulting therefrom) coverages in an amount not less than $1,000,000 per  
 occurrence and $10,000,000 in the aggregate.  
  
 (iii) Business interruption insurance in an amount equal to the  
 aggregate annual amount of all income from, and revenues and rents payable  
 with respect to, the Mortgaged Property, such business interruption  
 insurance to cover losses for a period of at least twelve (12) months after  
 the date of the fire or casualty in question.  
  
 (iv) During the course of any construction, renovation or equipping  
 of the Improvements, builder's completed value risk insurance against "all  
 risks of physical loss", including collapse and transit coverage, with  
 deductibles reasonably satisfactory to Mortgagee, in non-reporting form,  
 covering the total value of work performed and equipment, supplies and  
 materials furnished. Such policy of insurance shall contain the "permission  
 to occupy upon completion of work or occupancy" endorsement and a waiver of  
 co-insurance or an agreed amount endorsement.  
  
 -3-  
  
   
 (v) Such other insurance as may from time to time be reasonably  
 required by Mortgagee in order to protect its interests.  
  
 (c) All policies of insurance (the "Policies") required pursuant to  
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this paragraph 4 shall be issued by an insurer having an A.M. Best rating of A:V  
or better and satisfactory to Mortgagee, (ii) shall contain the standard New  
York mortgagee non-contribution clause naming Mortgagee as the person to which  
all payments made by such insurance company shall be paid, (iii) shall be  
maintained throughout the term of this Mortgage without cost to Mortgagee, (iv)  
original certificates, or copies thereof, certified to be true and correct,  
shall be delivered to Mortgagee, (v) shall contain such provisions as Mortgagee  
deems reasonably necessary or desirable to protect its interest including,  
without limitation, endorsements providing that neither Mortgagor, Mortgagee nor  
any other party shall be a co-insurer under said Policies and that Mortgagee  
shall receive at least thirty (30) days prior written notice of any modification  
or cancellation, and (vi) shall be satisfactory in form and substance to  
Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage,  
deductibles, loss payees and insureds. All such premiums for such Policies (the  
"Insurance Premiums") shall be paid by Mortgagor making payment when due  
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directly to the carrier. Not later than thirty (30) days prior to the expiration  
date of each of the Policies, Xxxxxxxxx will deliver to Mortgagee satisfactory  
evidence of the renewal of each Policy.  
  
 (d) If the Mortgaged Property shall be damaged or destroyed, in  
whole or in part, by fire or other casualty, Mortgagor shall give prompt written  
notice thereof to Mortgagee. Sums paid to Mortgagee by an insurer, after  
deduction of Mortgagee's reasonable costs and expenses of collection (after such  
deduction, the "Insurance Proceeds"), shall be retained and (i) applied by  
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Mortgagee toward payment of the Debt in such priority and proportions as  
Mortgagee in its discretion shall deem proper (any such application for  
repayment to be without any prepayment consideration, except that if any Event  
of Default (hereinafter defined), or an event that with notice and/or the  
passage of time, or both, would constitute an Event of Default, has occurred,  
then such application shall be subject to the prepayment consideration computed  
in accordance with the Note) or, (ii) if the conditions set forth in paragraph  
4(f) of this Mortgage are satisfied, as determined by Mortgagee in its sole  
discretion, paid to Mortgagor for the restoration and repair of the Mortgaged  
Property in accordance with paragraph 4(e) of this Mortgage in whole or in such  
lesser amount as is necessary to pay for the costs of such restoration and  
repair.  
  
 (e) If the Insurance Proceeds are held by Mortgagee to reimburse  
Mortgagor for the cost of restoration and repair of the Mortgaged Property, (i)  
the Mortgaged Property shall be substantially restored to the equivalent of its  
condition prior to such casualty or to such other condition as Mortgagee may  
approve in writing, (ii) such restoration and repair shall be done in compliance  
with all applicable laws, rules and regulations, and (iii) all reasonable costs  
and expenses incurred by Mortgagee in connection with making the Insurance  
Proceeds available for such restoration and repair including, without  
limitation, counsel fees and inspecting engineers' fees incurred by Mortgagee,  
shall be paid by Xxxxxxxxx. Mortgagee may, at Mortgagee's option, condition  
disbursement of said proceeds on Mortgagee's approval   
  
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of such plans and specifications of an architect reasonably satisfactory to  
Mortgagee, contractor's cost estimates, architect's certificates, waivers of  
liens, sworn statements of mechanics and material men and such other evidence of  
costs, percentage completion of construction, application of payments, and  
satisfaction of liens as Mortgagee may reasonably require. If the Insurance  
Proceeds are applied to the payment of the Debt, any such application of  
proceeds to principal shall not extend or postpone the maturity date of the Note  
or change the amount or the due date of any installment payment under the Note.  
Any surplus Insurance Proceeds, after payment of the Debt, shall be paid to  
Mortgagor. If the Mortgaged Property is sold pursuant to paragraph 29 of this  
Mortgage or if Mortgagee acquires title to the Mortgaged Property, Mortgagee  
shall have all of the right, title and interest of Mortgagor in and to any  
insurance policies and unearned premiums thereon and in and to the Insurance  
Proceeds resulting from any damage to the Mortgaged Property prior to such sale  
or acquisition.  
  
  
 (f) Mortgagee shall not exercise Mortgagee's option to apply  
Insurance Proceeds to the payment of the sums secured by this Mortgage if all  
the following conditions are met, as determined by Mortgagee in its sole  
discretion: (i) no Event of Default is then continuing under this Mortgage, the  
Note or any other Loan Document; (ii) Mortgagee determines that there will be  
sufficient funds (whether consisting of Insurance Proceeds and/or other sums  
made available by Mortgagor for restoration) to restore and repair the Mortgaged  
Property to the condition required under paragraph 4(e) above; (iii) the  
Franchise Agreement (hereinafter defined) shall not have been terminated as a  
result of such damage or destruction and the Franchise Agreement shall continue  
in full force and effect notwithstanding such damage or destruction; (iv)  
Mortgagee determines that the income of the Mortgaged Property, after  
restoration and repair of the Mortgaged Property to the condition required under  
paragraph 4(e) above, will be sufficient to meet all operating costs and other  
expenses, payments for reserves and loan repayment obligations relating to the  
Mortgaged Property; (v) Mortgagee determines that restoration and repair of the  
Mortgaged Property to the condition required under paragraph 4(e) above will be  
completed within the greater of (A) three (3) months or (B) the period of time  
covered by the business interruption insurance, if any, then in effect from the  
date of the loss or casualty to the Mortgaged Property; and (vi) Mortgagee shall  
have received evidence reasonably satisfactory to it that during the period of  
restoration and repair of the Mortgaged Property to the condition required under  
subparagraph 4(e) above, the sum of (A) income derived from the Mortgaged  
Property, as reasonably determined by Mortgagee, plus (B) proceeds of business  
interruption insurance, if any, to be paid, plus (C) amounts that Xxxxxxxxx  
demonstrates to Mortgagee's reasonable satisfaction will be made available by  
Xxxxxxxxx from other sources during such period will equal or exceed the sum of  
(D) expenses in connection with the operation of the Mortgaged Property and (E)  
the debt service under the Note.  
  
 5. Payment of Taxes, etc.  
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 (a) All taxes, assessments and water and sewer rents, now or  
hereafter levied or assessed or imposed against the Mortgaged Property or any  
part thereof (the "Taxes"") shall be paid when due in the manner provided in  
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paragraph 6 of this Mortgage. Mortgagor shall pay all ground rents, maintenance  
charges, other governmental impositions, and other charges,   
  
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including without limitation vault charges and license fees for the use of  
vaults, chutes and similar areas adjoining the Mortgaged Property, now or  
hereafter levied or assessed or imposed against the Mortgaged Property or any  
part thereof (the "Other Charges") as the same become due and payable. Mortgagor  
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will deliver to Mortgagee, promptly upon Mortgagee's request, tax certificates  
or receipted tax bills issued by the relevant taxing authority or other evidence  
satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or  
are not then delinquent. Mortgagor shall not suffer and shall promptly cause to  
be paid or discharged any lien or charge whatsoever which may be or become a  
lien or charge against the Mortgaged Property, and shall promptly pay for all  
utility services provided to the Mortgaged Property. Mortgagor shall furnish to  
Mortgagee or its designee receipts for the payment of Taxes and Other Charges  
prior to the date the same shall become delinquent.  
  
 (b) Mortgagor, at its own expense, may contest by appropriate legal  
proceeding, promptly initiated and conducted in good faith and with due  
diligence, the amount or validity or application in whole or in part of any of  
the Taxes or Other Charges, provided that (i) Mortgagor is not in default under  
the Note, this Mortgage or any other Loan Document, (ii) such proceeding shall  
be permitted under and be conducted in accordance with the provisions of any  
other instrument to which Mortgagor is subject and shall not constitute a  
default thereunder, (iii) neither the Mortgaged Property nor any part thereof or  
interest therein will be in danger of being sold, forfeited, terminated,  
cancelled or lost, (iv) Mortgagor shall have paid the Taxes under protest or set  
aside adequate reserves for the payment of the Taxes or Other Charges, together  
with all interest and penalties thereon and (v) Mortgagor shall have furnished  
such security as may be required in the proceeding, or as may be requested by  
Mortgagee to insure the payment of any such Taxes or Other Charges, together  
with all interest and penalties thereon.  
  
 (c) Upon demand by Mortgagee, Mortgagor, at Mortgagor's sole cost  
and expense, shall contest any increase in any assessment for the Mortgaged  
Property with respect to Taxes or Other Charges or seek a reduction in such  
assessment in the event of a casualty, condemnation or other event which could  
result in a reduction of the assessment with respect to Taxes or Other Charges  
for the Mortgaged Property by instituting, or causing to be instituted, a  
proceeding to reduce such assessment, conducted in accordance with the  
recognized procedure therefore (a "Tax Appeal"). If, after demand by Mortgagee,  
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Mortgagor shall fail to commence a Tax Appeal, Mortgagee shall be  
entitled, at its option, to commence, appear in and prosecute any Tax Appeal  
either in its own name or in the name of Mortgagor, for which Mortgagee is  
hereby appointed as attorney-in-fact for Mortgagor, which appointment, being for  
security and coupled with an interest, is irrevocable. If no Event of Default  
under this Mortgage or any other Loan Document shall have occurred and be  
continuing, Mortgagor shall be entitled to participate with Mortgagee in the  
settlement or compromise of any claim in connection with any such Tax Appeal.  
Upon the occurrence of an Event of Default and the continuance thereof,  
Mortgagee shall be entitled to make any compromise or settlement in connection  
with any such Tax Appeal without the participation of Mortgagor. All such  
refunds, compensation, awards, damages, rights of action and proceeds awarded to  
Xxxxxxxxx, less the reasonable costs and expenses incurred by Xxxxxxxxx in  
prosecuting such Tax Appeal (the "Refund Proceeds") are hereby assigned to  
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Mortgagee as additional security for the   
  
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payment of Taxes and Other Charges as they become due. Upon the occurrence of an  
Event of Default and the continuance thereof, Mortgagee shall be entitled to  
apply the Refund Proceeds to the repayment of the Debt in such order and in such  
amount as Mortgagee may determine. If there are any excess Refund Proceeds after  
repayment of the Debt, Mortgagee shall pay such excess Refund Proceeds to  
Mortgagor.  
  
 6. Escrow Fund. (a) Mortgagor shall, on the first day of each calendar  
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month, pay to Mortgagee one--twelfth (1/12th) of an amount which would be  
sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable,  
during the next twelve (12) months and also provide for an additional reserve  
equal to one-sixth (1/6th) of the Taxes payable (said amounts being hereinafter  
called the "Tax Escrow Fund.")  
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 (b) The Tax Escrow Fund and the payments of interest or principal or  
both, payable pursuant to the Note, shall be added together and shall be paid as  
an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to  
Mortgagee any and all monies now or hereafter deposited in the Tax Escrow Fund  
as additional security for the payment of the Debt. Mortgagee will apply the Tax  
Escrow Fund to payments of Taxes to be made by Mortgagor pursuant to paragraph 5  
hereof. If the amount of the Tax Escrow Fund shall exceed the amounts due for  
Taxes pursuant to paragraph 5 hereof, Mortgagee shall, in its discretion, return  
any excess to Mortgagor or credit such excess against future payments to be made  
to the Tax Escrow Fund. In allocating such excess, Mortgagee may deal with the  
person shown on the records of Mortgagee to be the owner of the Mortgaged  
Property. If the balance in the Tax Escrow Fund on the first day of the month  
which is one full month prior to the due date of any Taxes is not sufficient to  
pay the Taxes, Mortgagor shall pay to Mortgagee, upon demand, an amount which  
Mortgagee shall estimate as sufficient to make up the deficiency. Upon the  
occurrence of an Event of Default, Mortgagee may apply any sums then present in  
the Tax Escrow Fund to the payment of the following items in any order in its  
sole discretion:  
  
 (i) Taxes and Other Charges;  
  
 (ii) Interest on the unpaid principal balance of the Note;  
  
 (iii) Amortization of the unpaid principal balance of the Note; or  
  
 (iv) All other sums payable pursuant to the Note, this Mortgage and  
 the other Loan Documents, including without limitation, advances made by  
 Mortgagee pursuant to the terms of this Mortgage.  
  
 (c) Until expended or applied as above provided, any amounts in the  
Tax Escrow Fund shall constitute additional security for the Debt. The Tax  
Escrow Fund shall not constitute a trust fund and may be commingled with other  
monies held by Mortgagee. No earnings or interest on the Tax Escrow Fund shall  
be paid to Mortgagor, unless applicable law requires interest on the Tax Escrow  
Fund to be paid to Mortgagor. Any such required interest shall be deposited in  
the Tax Escrow Fund as additional security for the payment of the Debt.  
  
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 7. Condemnation.  
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 (a) Mortgagor shall promptly give Mortgagee written notice of the  
actual or threatened commencement of any condemnation or eminent domain  
proceeding and shall deliver to Mortgagee copies of any and all papers served in  
connection with such proceedings. Notwithstanding any taking by any public or  
quasi-public authority through eminent domain or otherwise (including but not  
limited to any transfer made in lieu of or in anticipation of the exercise of  
such taking), Xxxxxxxxx shall continue to pay the Debt at the time and in the  
manner provided for its payment in the Note, this Mortgage and the other Loan  
Documents and the Debt shall not be reduced until any award or payment therefor  
shall have been actually received after expenses of collection and applied by  
Mortgagee to the discharge of the Debt. Mortgagee shall not be limited to the  
interest paid on the award by the condemning authority but shall be entitled to  
receive out of the award interest at the rate or rates provided herein and in  
the Note. Mortgagor shall cause the award or payment made in any condemnation or  
eminent domain proceeding, which is payable to Mortgagor, to be paid directly to  
Mortgagee. Sums paid to Mortgagee for such condemnation or action of eminent  
domain, after deduction of Mortgagee's reasonable costs and expenses of  
collection (after such deduction, the "Condemnation Proceeds"), shall be  
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retained and (i) applied by Mortgagee toward payment of the Debt in such  
priority and proportions as Mortgagee in its discretion shall deem proper (any  
such application for repayment to be without any prepayment consideration,  
except that if any Event of Default, or an event that with notice and/or the  
passage of time, or both, would constitute an Event of Default, has occurred,  
then such application shall be subject to the prepayment consideration computed  
in accordance with the Note), or (ii) if the conditions set forth in paragraph  
7(c) of this Mortgage are satisfied, as determined by Mortgagee in its sole  
discretion, paid to Mortgagor for the restoration and repair of the Mortgaged  
Property in accordance with paragraph 7(b) of this Mortgage in whole or in such  
lesser amount as is necessary to pay for the costs of such restoration and  
repair. If the Mortgaged Property is sold pursuant to paragraph 29 of this  
Mortgage or if Mortgagee acquires title to the Mortgaged Property, Mortgagee  
shall have all of the right, title and interest of Mortgagor in and to any  
Condemnation Proceeds resulting from any condemnation or eminent domain  
proceeding of the Mortgaged Property prior to such sale or acquisition.  
  
 (b) If the Condemnation Proceeds are held by Mortgagee to reimburse  
Mortgagor for the cost of restoration and repair of the Mortgaged Property, (i)  
the Mortgaged Property shall be substantially restored to the equivalent of its  
condition prior to such condemnation or to such other condition as Mortgagee may  
approve in writing, (ii) such restoration and repair shall be done in compliance  
with all applicable laws, rules and regulations, and (iii) all reasonable costs  
and expenses incurred by Mortgagee in connection with making the Condemnation  
Proceeds available for such restoration and repair including, without  
limitation, counsel fees and inspecting engineers' fees incurred by Mortgagee,  
shall be paid by Xxxxxxxxx. Mortgagee may, at Mortgagee's option, condition  
disbursement of said proceeds on Mortgagee's approval of such plans and  
specifications of an architect reasonably satisfactory to Mortgagee,  
contractor's cost estimates, architect's certificates, waivers of liens, sworn  
statements of mechanics and material men and such other evidence of costs,  
percentage   
  
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completion of construction, application of payments, and satisfaction of liens  
as Mortgagee may reasonably require. If the Condemnation Proceeds are applied to  
the payment of the Debt, any such application of proceeds to principal shall not  
extend or postpone the maturity date of the Note or change the amount or the due  
date of any installment payment under the Note. Any surplus Condemnation  
Proceeds, after payment of the Debt, shall be paid to Mortgagor. If the  
Mortgaged Property is sold pursuant to paragraph 29 of this Mortgage or if  
Mortgagee acquires title to the Mortgaged Property, Mortgagee shall have all of  
the right, title and interest of Mortgagor in and to any Condemnation Proceeds  
resulting from any condemnation or eminent domain proceeding of the Mortgaged  
Property prior to such sale or acquisition.  
  
 (c) Mortgagee shall not exercise Mortgagee's option to apply  
Condemnation Proceeds to the payment of the sums secured by this Mortgage if all  
the following conditions are met, as determined by Mortgagee in its sole  
discretion: (i) no Event of Default is then continuing under this Mortgage, the  
Note or any other Loan Document; (ii) Mortgagee determines that there will be  
sufficient funds (whether consisting of Condemnation Proceeds and/or other sums  
made available by Mortgagor for restoration) to restore and repair the Mortgaged  
Property to the condition required under paragraph 7(b) above; (iii) the  
Franchise Agreement shall not have been terminated as a result of such  
condemnation or eminent domain proceeding and the Franchise Agreement shall  
continue in full force and effect notwithstanding such condemnation or eminent  
domain proceeding; (iv) Mortgagee determines that the income of the Mortgaged  
Property, after restoration and repair of the Mortgaged Property to the  
condition required under paragraph 7(b) above, will be sufficient to meet all  
operating costs and other expenses, payments for reserves and loan repayment  
obligations relating to the Mortgaged Property; (v) Mortgagee determines that  
restoration and repair of the Mortgaged Property to the condition required under  
paragraph 7(b) above will be completed within the greater of (A) three (3)  
months or (B) the period of time covered by the business interruption insurance,  
if any, then in effect from the date of the loss or casualty to the Mortgaged  
Property; and (vi) Mortgagee shall have received evidence reasonably  
satisfactory to it that during the period of restoration and repair of the  
Mortgaged Property to the condition required under subparagraph 7(b) above, the  
sum of (A) income derived from the Mortgaged Property, as reasonably determined  
by Mortgagee, plus (B) proceeds of business interruption insurance, if any, to  
be paid, plus (C) amounts that Xxxxxxxxx demonstrates to Mortgagee's reasonable  
satisfaction will be made available by Mortgagor from other sources during such  
period will equal or exceed the sum of (D) expenses in connection with the  
operation of the Mortgaged Property and (E) the debt service under the Note.  
  
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 8. Subleases and Rents.  
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 (a) Xxxxxxxxx does hereby absolutely and unconditionally assign to  
Mortgagee its right, title and interest in all current and future Subleases and  
Rents, it being intended by Xxxxxxxxx that this assignment constitutes a  
present, absolute assignment and not an assignment for additional security only.  
Such assignment to Mortgagee shall not be construed to bind Mortgagee to the  
performance of any of the covenants, conditions or provisions contained in any  
such Sublease or otherwise to impose any obligation upon Mortgagee. Xxxxxxxxx  
agrees to execute and deliver to Mortgagee such additional instruments, in form  
and substance reasonably satisfactory to Mortgagee, as may hereafter be  
requested by Mortgagee to further evidence and confirm such assignment.  
Nevertheless, subject to the terms of this paragraph 8, Mortgagee grants to  
Mortgagor a revocable license to operate and manage the Mortgaged Property and  
to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof  
sufficient to discharge all current sums due on the Debt, in trust for the  
benefit of Mortgagee for use in the payment of such sums. Upon an Event of  
Default, the license granted to Mortgagor herein shall be automatically revoked  
and Mortgagee shall immediately be entitled to possession of all Rents, whether  
or not Mortgagee enters upon or takes control of the Mortgaged Property.  
Mortgagee is hereby granted and assigned by Xxxxxxxxx the right, at its option,  
upon the revocation of the license granted herein to enter upon the Mortgaged  
Property in person, by agent or by court-appointed receiver to collect the  
Rents. Any Rents collected after the revocation of the license herein granted  
may be applied toward payment of the Debt in such priority and proportion as  
Mortgagee in its discretion shall deem proper.  
  
 (b) Upon request, Mortgagor shall furnish Mortgagee with copies of  
all Subleases and all amendments or modifications of any Sublease. All Subleases  
shall provide that each such Sublease is subordinate to this Mortgage and that  
the sublessee agrees to attorn to Mortgagee. Mortgagor (i) shall observe and  
perform all the obligations imposed upon the sublessor under the Subleases and  
shall not do or permit to be done anything to impair the value of the Subleases  
as security for the Debt; (ii) shall upon request by Mortgagee, send Mortgagee  
copies of all notices of default sent or received by Mortgagee under the  
Subleases; (iii) shall enforce all of the terms, covenants and conditions  
contained in the Subleases on the part of the sublessee thereunder to be  
observed or performed; (iv) shall not collect any of the Rents more than one (1)  
month in advance (except with respect to collection of the final month's rent as  
security); (v) shall not execute any other assignment of sublessor's interest in  
the Subleases or the Rents; and (vi) shall execute and deliver at the request of  
Mortgagee all such further assurances, confirmations and assignments in  
connection with the Mortgaged Property as Mortgagee shall from time to time  
require.  
  
 (c) Mortgagor shall not, without the prior written consent of  
Mortgagee (i) amend or modify any Sublease, (ii) execute a new Sublease, (iii)  
permit use of the demised premises under any Sublease for use or uses other than  
quick service restaurant use; or (iv) terminate, cancel or accept a surrender of  
any Sublease.  
  
 9. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged  
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Property to be maintained in a good and safe condition and repair. The  
Improvements and the  
  
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Equipment shall not be removed, demolished or materially altered (except for  
normal replacement of the Equipment) without the written consent of Mortgagee.  
Mortgagor shall promptly comply with all laws, orders and ordinances affecting  
the Mortgaged Property and the use thereof. Mortgagor shall promptly repair,  
replace or rebuild any part of the Mortgaged Property that (i) is damaged or  
destroyed by any casualty (subject to the provisions of paragraph 4 hereof),  
(ii) becomes damaged, worn or dilapidated, or (iii) is affected by any  
proceeding of the character referred to in paragraph 7 hereof (subject to the  
provision of such paragraph 7) and Mortgagor shall complete and pay for any  
structure at any time in the process of construction, renovation or repair on  
the Property. Mortgagor shall not initiate, join in, acquiesce in, or consent to  
any change in any private restrictive covenant, zoning law or other public or  
private restriction, limiting or defining the uses which may be made of the  
Mortgaged Property or any part thereof. If under applicable zoning provisions  
the use of all or any portion of the Mortgaged Property is or shall become a  
nonconforming use, Mortgagor will not cause or permit such nonconforming use to  
be discontinued or abandoned without the express written consent of Mortgagee.  
  
 10. Transfer or Encumbrance of the Mortgaged Property.  
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 (a) Mortgagor acknowledges that Mortgagee has examined and relied on  
the creditworthiness of Mortgagor and experience of Mortgagor in owning and  
operating properties such as the Mortgaged Property in agreeing to make the Loan  
secured hereby, and that Mortgagee will continue to rely on Xxxxxxxxx's  
ownership of the Mortgaged Property as a means of maintaining the value of the  
Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges  
that Mortgagee has a valid interest in maintaining the value of the Mortgaged  
Property so as to ensure that, should Mortgagor default in the repayment of the  
Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property.  
Mortgagor shall not, without the prior written consent of Mortgagee, sell,  
convey, alien, lease, mortgage, encumber, pledge or otherwise transfer the  
Mortgaged Property or any part thereof, or permit the Mortgaged Property or any  
part thereof to be sold, conveyed, aliened, leased, mortgaged, encumbered,  
pledged or otherwise transferred (any of the foregoing, a "Transfer").  
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 (b) A Transfer of the Mortgaged Property within the meaning of this  
paragraph 10 shall be deemed to include:  
  
 (i) an installment sales agreement wherein Xxxxxxxxx agrees to sell  
 the Mortgaged Property or any part thereof for a price to be paid in  
 installments;  
  
 (ii) an agreement by Mortgagor selling, leasing, subleasing,  
 assigning or otherwise transferring all or a substantial part of the  
 Mortgaged Property, or a sale, assignment or other transfer of, or the  
 grant of a security interest in, Xxxxxxxxx's right, title and interest in  
 and to any Subleases or any Rents; and  
  
 (iii) any voluntary or involuntary Transfer of a Control Individual's  
 (hereinafter defined) Controlling Interests (hereinafter defined) or any  
 voluntary or involuntary  
  
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 event whereby a Control Individual's Controlling Interests are diluted or his  
 or her Control over Xxxxxxxxx is otherwise diminished.  
  
 (c) Mortgagee shall not be required to demonstrate any actual  
impairment of its security or any increased risk of default hereunder in order  
to declare the Debt immediately due and payable upon Xxxxxxxxx's Transfer of the  
Mortgaged Property without Mortgagee's consent; this provision shall apply to  
every Transfer of the Mortgaged Property regardless of whether voluntary or not,  
or whether or not Mortgagee has consented to any previous Transfer of the  
Mortgaged Property.  
  
 (b) For purposes of this paragraph 10, the following terms shall have  
the following meanings: "Control" when used with respect to Mortgagor means the  
power to direct the respective management and policies of Mortgagor, directly or  
indirectly, whether through the ownership of voting securities, membership  
interests, partnership interests or any other beneficial interest, by contract  
or otherwise, whether acting alone or with others, but an individual does not  
have "Control" if he or she has only the right to take those actions that a  
limited partner may take without participating in the business of a limited  
partnership, as set forth in Article \_\_\_\_\_\_ of the Uniform Limited Partnership  
Law of the State of \_\_\_\_\_\_\_\_\_\_, the terms "Controlling" and "Controlled" shall  
have the meanings correlative to the foregoing; "Control Individual" shall mean  
any one of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; "Controlling Interests" shall  
mean those beneficial interests or contract rights in or with respect to the  
Mortgagor (or any entity that has a direct or indirect beneficial interest in  
Mortgagor) that give a Control Individual his or her Control over Mortgagor;  
"Non-controlling Interests" shall mean any beneficial interests in Mortgagor (or  
any entity that has a direct or indirect beneficial interest in the Mortgagor)  
that are not Controlling Interests and shall include, without limitation,  
limited partnership interests.  
  
 11. Estoppel Certificates and No Default Affidavits.  
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 (a) After request by Mortgagee, Mortgagor shall within ten (10) days  
furnish Mortgagee with a statement, duly acknowledged and certified, setting  
forth (i) the amount of the original principal amount of the Note, (ii) the  
unpaid principal amount of the Note, (iii) the rate of interest of the Note,  
(iv) the date installments of interest and/or principal were last paid, (v) any  
offsets or defenses to the payment of the Debt, if any and (vi) that the Note  
and this Mortgage are valid, legal and binding obligations and have not been  
modified or if modified, giving the particulars of such modification.  
  
 (b) Within ten (10) days after request by Xxxxxxxxx, Xxxxxxxxx will  
request sublessees under the Subleases to furnish Mortgagee with estoppel  
certificates as required by such sublessees' respective Sublease and Mortgagor  
will use diligent efforts to obtain such estoppel certificates.  
  
 12. Changes in the Laws Regarding Taxation. If any law is enacted or  
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adopted or amended after the date of this Mortgage which deducts the Debt from  
the value of the Mortgaged Property for the purpose of taxation or which imposes  
a tax, either directly or  
  
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indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property,  
Mortgagor will pay such tax, with interest and penalties thereon, if any. In the  
event Mortgagee is advised by counsel chosen by it that the payment of such tax  
or interest and penalties by Xxxxxxxxx would be unlawful or taxable to Mortgagee  
or unenforceable or provide the basis for a defense of usury, then in any such  
event, Mortgagee shall have the option, by written notice of not less than  
ninety (90) days, to declare the Debt immediately due and payable.  
  
 13. No Credits on Account of the Debt. Mortgagor will not claim or demand  
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or be entitled to any credit or credits on account of the Debt for any part of  
the Taxes or Other Charges assessed against the Mortgaged Property, or any part  
thereof, and no deduction shall otherwise be made or claimed from the assessed  
value of the Mortgaged Property, or any part thereof, for real estate tax  
purposes by reason of this Mortgage or the Debt. In the event such claim, credit  
or deduction shall be required by law, Mortgagee shall have the option, by  
written notice of not less than ninety (90) days, to declare the Debt  
immediately due and payable.  
  
 14. Documentary Stamps. If at any time the United States of America, the  
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State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or any subdivision thereof shall require revenue or  
other stamps to be affixed to the Note or this Mortgage, or impose any other tax  
or charge on the same, Mortgagor will pay for the same, with interest and  
penalties thereon, if any.  
  
 15. Usury Laws. This Mortgage and the Note are subject to the express  
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condition that at no time shall Mortgagor be obligated or required to pay  
interest on the Debt at a rate which could subject Mortgagee to either civil or  
criminal liability as a result of being in excess of the maximum interest rate  
which Mortgagor is permitted by law to contract or agree to pay. If by the  
terms of this Mortgage or the Note, Mortgagor is at any time required or  
obligated to pay interest on the Debt at a rate in excess of such maximum rate,  
the rate of interest under the same shall be deemed to be immediately reduced to  
such maximum rate and the interest payable shall be computed at such maximum  
rate and all previous payments in excess of such maximum rate shall be deemed to  
have been payments in reduction of the principal and not on account of the  
interest due hereunder.  
  
 16. Performance of Franchise Agreement and Lease; Security Agreement  
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 (a) Mortgagor will duly comply with the terms and conditions of the  
franchise agreement, dated \_\_\_\_\_\_\_\_\_\_\_\_, 199\_\_, between AFC Enterprises, Inc.,  
as franchisor, and mortgagor, as franchisee (the "Franchise Agreement") and will  
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faithfully perform all of its obligations under the Franchise Agreement and  
promptly cure any default by it under any of the provisions thereof. Mortgagor  
shall promptly send to Mortgagee a true and correct copy of any notice, report,  
certificate or other communication that Mortgagor is obligated to deliver under  
the Franchise Agreement.  
  
 (b) Mortgagor will comply with the terms and provisions of the Lease  
and will faithfully perform all of its obligations under the Lease and promptly  
cure any default by it under any of the provisions thereof. Mortgagor shall  
promptly send to Mortgagee a true and  
  
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correct copy of any notice, report, certificate or other communication that  
Mortgagor is obligated to deliver in connection with the Lease.  
  
 (c) Mortgagor hereby assigns and transfers to Mortgagee and creates a  
security interest in all of Xxxxxxxxx's right, title and interest in and to the  
consideration, in whatever form delivered, for the sale, transfer or conveyance  
of Xxxxxxxxx's interest in the Franchise Agreement and the Lease.  
  
 17. Performance of Other Agreements. Mortgagor shall observe and perform  
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each and every term to be observed or performed by Mortgagor pursuant to the  
terms of any agreement or recorded instrument affecting or pertaining to the  
Mortgaged Property.  
  
 18. Books and Records; Financial Statements; Financial Covenants.  
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 (a) Mortgagor shall keep adequate books and records of account in  
accordance with generally accepted accounting principles consistently applied  
and shall furnish to Mortgagee (i) within sixty (60) days after the end of each  
second (2/nd/) and fourth (4/th/) fiscal quarter of Mortgagor, semiannual  
internally-prepared financial statements, certified by the chief financial  
officer of Mortgagor; (ii) within ninety (90) days after the end of each fiscal  
year of Mortgagor, (x) annual internally-prepared financial statements,  
certified by the chief financial officer of Xxxxxxxxx, and (y) a certificate,  
executed by a financial officer of Mortgagor acceptable to Mortgagee, as to the  
absence of any default or Event of Default hereunder or under any other Loan  
Document or under the Franchise Agreement; (iii) copies of Xxxxxxxxx's federal  
tax returns (together with any extension filed) within fifteen (15) days after  
filing of same but in no event later than April 30 of each year; (x) and (iv)  
such other financial information with respect to Xxxxxxxxx, Guarantor  
(hereinafter defined) or the Mortgaged Property at may be reasonably requested  
by Mortgagee from time to time.  
  
 (b) Mortgagor shall cause each of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_  
(collectively, "Guarantor") to furnish to Mortgagee (i) within thirty (30) days  
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after the end of each calendar year, updated annual financial statements in form  
similar to that previously provided to Mortgagee; (ii) copies of their federal  
tax returns (together with any extensions filed) within fifteen (15) days after  
filing of same but in no event later than April 30 of each year; and (iii) such  
other financial information with respect to Guarantor as may be reasonably  
requested by Mortgagee from time to time.  
  
 (c) Mortgagor shall promptly provide Mortgagee with written notice of  
any pending or threatened litigation against Mortgagor or any Guarantor or the  
commencement of any proceedings or investigations by any governmental or  
regulatory agency involving Mortgagor or any Guarantor.  
  
 (d) Mortgagor shall maintain a Minimum Cash Flow Coverage Ratio of  
not less than \_\_\_\_\_\_ for each fiscal year of Mortgagor. The term "Minimum Cash  
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Flow Coverage Ratio" shall be calculated annually and shall mean:  
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 Cash Flow Before Debt Service  
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 Debt Service  
  
 For purposes of this paragraph 18(d), "Cash Flow Before Debt Service"shall  
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mean annual operating income of the Mortgaged Property plus depreciation,  
amortization and interest expense. "Debt Service" shall mean the total required  
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annual principal and interest payments under the Note.  
  
 (e) Any and all debt incurred by Mortgagor to its shareholders, officers,  
partners, members and/or affiliates shall be incurred only with Mortgagee's  
prior written consent and Mortgagor shall cause any such debt approved by  
Mortgagee to be expressly subordinated to the Debt.  
  
 (f) At any time while all or any portion of the Debt remains outstanding,  
Mortgagor shall not, directly or indirectly, convey, transfer or assign any  
property or asset of any nature, whether real property, personal property or  
mixed, tangible or intangible, or any interest therein, without the prior  
written consent of Mortgagee, and any such conveyance, transfer or assignment  
shall occur solely in the ordinary course of Xxxxxxxxx's business.  
  
 (g) At any time while all or any portion of the Debt remains outstanding,  
Mortgagor shall not, directly or indirectly, (i) make any loans to any partners,  
shareholders, officers, members or affiliates of Mortgagor, nor guarantee any  
indebtedness of any such party without the prior written consent of Mortgagee;  
or (ii) make any advances or distributions to Mortgagor or any partners,  
shareholders, officers, members or affiliates of Mortgagor.  
  
 (h) At any time while all or any portion of the Debt remains outstanding,  
Mortgagor shall not enter into any additional Indebtedness (hereinafter defined)  
nor guarantee any additional Indebtedness, without the prior written consent of  
Mortgagee, other than (i) unsecured Indebtedness constituting trade debt and  
(ii) other Indebtedness incurred in the ordinary course of business in  
connection with the ownership, management and operation of the Mortgaged  
Property.  
  
 19. Further Acts, etc. Mortgagor will, at the cost of Xxxxxxxxx, and  
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without expense to Mortgagee, do, execute, acknowledge and deliver all and every  
such further acts, deeds, conveyances, mortgages, assignments, notices of  
assignment, transfers and assurances as Mortgagee shall, from time to time,  
require, for the better assuring, conveying, assigning, transferring, and  
confirming unto Mortgagee the property and rights hereby mortgaged, given,  
granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged,  
assigned and hypothecated or intended now or hereafter so to be, or which  
Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee,  
or for carrying out the intention or facilitating the performance of the terms  
of this Mortgage or for filing, registering or recording this Mortgage.  
Xxxxxxxxx, on demand, will execute and deliver and hereby authorizes Mortgagee  
to execute in the name of Xxxxxxxxx or without the signature of Mortgagor to the  
extent Mortgagee may lawfully do so, one or more financing statements, chattel  
mortgages or other instruments, to evidence more effectively the security  
interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee  
an irrevocable power of attorney  
  
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coupled with an interest for the purpose of exercising and perfecting any and  
all rights and remedies available to Mortgagee at law and in equity, including  
without limitation such rights and remedies available to Mortgagee pursuant to  
this paragraph 19.  
  
 20. Trust Fund. Mortgagor shall receive the advances secured hereby and  
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shall hold the right to receive the advances as a trust fund to be applied first  
for the purpose of paying the cost of any improvement and shall apply the  
advances first to the payment of the cost of any such improvement on the  
Mortgaged Property before using any part of the total of the same for any other  
purpose.  
  
 21. Recording of Mortgage, etc. Mortgagor forthwith upon the execution and  
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delivery of this Mortgage and thereafter, from time to time, will cause this  
Mortgage, and any security instrument creating a lien or security interest or  
evidencing the lien hereof upon the Mortgaged Property and each instrument of  
further assurance to be filed, registered or recorded in such manner and in such  
places as may be required by any present or future law in order to publish  
notice of and fully to protect the lien or security interest hereof upon, and  
the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all  
filing, registration or recording fees, and all expenses incident to the  
preparation, execution and acknowledgment of this Mortgage, any mortgage  
supplemental hereto, any security instrument with respect to the Mortgaged  
Property and any instrument of further assurance, and all federal, state, county  
and municipal, taxes, duties, imposts, assessments and charges arising out of or  
in connection with the execution and delivery of this Mortgage, any mortgage  
supplemental hereto, any security instrument with respect to the Mortgaged  
Property or any instrument of further assurance, except where prohibited by law  
so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors  
and assigns, against any liability incurred by reason of the imposition of any  
tax on the making and recording of this Mortgage.  
  
 22. Prepayment. The Debt may be prepaid subject to the terms of paragraph  
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\_\_\_\_\_\_ of the Note.  
  
 23. Events of Default. The Debt shall become immediately due and payable  
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at the option of Mortgagee, without notice or demand, upon any one or more of  
the following events ("Events of Default"):   
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 (a) if any portion of the Debt is not paid within five (5) days after  
the same is due;  
  
 (b) if any of the Taxes or Other Charges is not paid when the same is  
due and payable, subject to the provisions of paragraphs 5 and 6;  
  
 (c) if the Policies are not kept in full force and effect, or if the  
Policies are not delivered to Mortgagee upon request;  
  
 (d) if Mortgagor violates or does not comply with any of the  
provisions of paragraphs 8, 10, 16, 18(c), 18(d), 18(e), 18(f), 18(g) or 18(h);  
  
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 (e) if a default under the Franchise Agreement shall continue beyond  
any applicable notice or grace period, or if the Franchise Agreement shall be  
modified, amended, terminated, surrendered or assigned without the prior written  
consent of Mortgagee;  
  
 (f) if a default by Mortgagor under the Lease shall continue beyond  
any applicable notice or grace period, or if the Lease shall be modified or  
amended, without the prior written consent of Mortgagee, or if the Lease shall  
be terminated, surrendered or assigned;  
  
 (g) if a default by Mortgagor under any Sublease shall continue  
beyond any applicable notice or grace period, or if any Sublease shall be  
modified, amended, terminated, surrendered or assigned by Xxxxxxxxx, without the  
prior written consent of Mortgagee;  
  
 (h) if the Mortgaged Property becomes subject to any mechanic's,  
materialman's or other lien other than a lien for local real estate taxes and  
assessments not then due and payable and such lien shall remain undischarged of  
record (by payment, bonding or otherwise) for a period of thirty (30) calendar  
days after the filing of such lien;  
  
 (i) if Mortgagor fails to cure promptly any violations of laws or  
ordinances affecting the Mortgaged Property and such failure continues for a  
period of thirty (30) calendar days after Xxxxxxxxx's receipt of notice thereof;  
  
 (j) if any representation or warranty of Mortgagor or any Guarantor,  
made herein or in the Environmental Indemnity Agreement, dated as of the date  
hereof, made by Mortgagor and Guarantor, jointly and severally, for the benefit  
of Mortgagee (the "Environmental Indemnity Agreement"), or by any Guarantor in  
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the Guarantee of Payment and Performance, dated as of the date hereof, made by  
Guarantor for the benefit of Mortgagee (the "Guarantee"), or in any certificate,  
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report, financial statement or other instrument or document furnished to  
Mortgagee by Mortgagor or any Guarantor shall have been false or misleading in  
any material respect when made;  
  
 (k) if Mortgagor or any Guarantor shall make an assignment for the  
benefit of creditors or if Mortgagor or any Guarantor shall generally not be  
paying its debts as they become due;  
  
 (l) if a receiver, liquidator or trustee of Mortgagor or any  
Guarantor shall be appointed or if Mortgagor or any Guarantor shall be  
adjudicated a bankrupt or insolvent, or if any petition for bankruptcy,  
reorganization or arrangement pursuant to federal bankruptcy law, or any similar  
federal or state law, shall be filed by or against, consented to, or acquiesced  
in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or  
liquidation of Mortgagor or any Guarantor shall be instituted; however, if such  
appointment, adjudication, petition or proceeding was involuntary and not  
consented to by Mortgagor or any Guarantor, upon the same not being discharged,  
stayed or dismissed within sixty (60) days;  
  
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 (m) If Mortgagor or any Guarantor shall be in default (beyond any  
applicable grace period) in the payment of any amount of any Indebtedness  
(hereinafter defined) other than the Debt; or if Mortgagor or any Guarantor  
shall default (beyond any applicable grace period) in the performance of any  
agreement under which such Indebtedness is created or evidenced, if the effect  
of such default is to cause, or permit the holder of such Indebtedness to cause,  
such Indebtedness to become due prior to its stated maturity. The term  
"Indebtedness" shall mean, as at any date (i) all indebtedness of Mortgagor or  
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any Guarantor for borrowed money or for the deferred purchase price of property  
or services (except such indebtedness the existence of which is being contested  
by Mortgagor or any Guarantor in good faith and by appropriate action); (ii) all  
obligations of Mortgagor or any Guarantor evidenced by bonds, debentures, notes  
or other similar instruments; (iii) all obligations under leases which shall  
have been or should be, in accordance with generally accepted accounting  
principles consistently applied, recorded as capital leases of which Mortgagor  
or any Guarantor is liable as lessee (except such obligations the existence of  
which is being contested by Mortgagor or any Guarantor in good faith and by  
appropriate action); (iv) any Guaranteed Indebtedness (hereinafter defined); and  
(v) any other indebtedness required to be recorded as indebtedness on the  
financial statements of Mortgagor or any Guarantor in accordance with generally  
accepted accounting principles consistently applied. The term "Guaranteed  
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Indebtedness" shall mean any indebtedness which is guaranteed directly or  
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indirectly in any manner by Mortgagor or any Guarantor, or in effect guaranteed  
directly or indirectly in any manner by Mortgagor or any Guarantor;  
  
 (n) (i) if Mortgagor or any Control Individual shall engage in any  
"prohibited transaction" (as defined in Section 406 of the Employee Retirement  
Income Security Act of 1974, as amended from time to time ("ERISA") or Section  
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4975 of the Internal Revenue Code of 1986, as amended from time to time (the  
"Code") involving any employee benefit plan covered by ERISA (a "Plan"), (ii)  
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any "accumulated funding deficiency" (as defined in Section 302 of ERISA),  
whether or not waived, shall occur with respect to any Plan or any lien in favor  
of the Pension Benefit Guaranty Corporation ("PBGC") or a Plan shall arise on  
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the assets of Mortgagor or any Control Individual, or (iii) a "reportable event"  
(as defined in Section 4043(b) of ERISA) shall occur with respect to, or  
proceedings shall commence to have a trustee appointed, or a trustee shall be  
appointed, to administer or to terminate, any Plan, which reportable event or  
commencement of proceedings or appointment of a trustee is, in the reasonable  
opinion of Mortgagee, likely to result in the termination of such Plan for  
purposes of Title IV of ERISA;  
  
 (o) if one or more judgments or decrees shall be entered against  
Mortgagor or any Guarantor involving an aggregate liability (not paid or fully  
covered by insurance) of $\_\_\_\_\_\_\_\_\_\_\_\_ or more, and any such judgment or decree  
shall not have been vacated, discharged, stayed or bonded pending appeal within  
thirty (30) days from the entry thereof;  
  
 (p) Mortgagor shall be in default beyond any applicable notice and  
cure period under any other term, covenant or condition of the Note, this  
Mortgage or any of the other Loan Documents; or  
  
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 (q) if at any time while this Mortgage is of record \_\_\_\_\_\_\_\_\_\_\_\_\_  
and \_\_\_\_\_\_\_\_\_\_\_\_ shall fail to own in the aggregate one hundred percent (100%)  
of the ownership interests in Mortgagor or shall cease to have sole  
responsibility for the day-to-day management and Control of Mortgagor.  
  
 24. Default Interest. Upon the occurrence of any Event of Default,  
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Mortgagor shall pay interest on the unpaid principal balance of the Note at the  
Default Rate (as defined in the Note). The Default Rate shall be computed from  
the occurrence of the Event of Default until the actual receipt and collection  
of the Debt. This charge shall be added to the Debt, and shall be deemed secured  
by this Mortgage. This clause, however, shall not be construed as an agreement  
or privilege to extend the date of the payment of the Debt, nor as a waiver of  
any other right or remedy accruing to Mortgagee by reason of the occurrence of  
any Event of Default. If the Default Rate is above the maximum rate permitted by  
applicable law, the Default Rate shall be the maximum rate permitted by  
applicable law.  
  
 25. Right to Cure Defaults. Upon the occurrence of any Event of Default or  
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if Mortgagor fails to make any payment or to do any act as herein provided,  
Mortgagee may, but without any obligation to do so and without notice to or  
demand on Mortgagor and without releasing Mortgagor from any obligation  
hereunder, make or do the same in such manner and to such extent as Mortgagee  
may deem necessary to protect the security hereof. Mortgagee is authorized to  
enter upon the Mortgaged Property for such purposes or appear in, defend, or  
bring any action or proceeding to protect its interest in the Mortgaged Property  
or to foreclose this Mortgage or collect the Debt, and the reasonable cost and  
expense thereof (including reasonable attorneys' fees to the extent permitted by  
law and any appraisal fees), with interest calculated at the Default Rate, shall  
constitute a portion of the Debt and shall be secured by this Mortgage and the  
other Loan Documents and shall be due and payable to Mortgagee upon demand. All  
such costs and expenses incurred by Mortgagee in remedying such Event of Default  
or in appearing in, defending, or bringing any such action or proceeding shall  
bear interest at the Default Rate, for the period after notice from Mortgagee  
that such cost or expense was incurred to the date of payment of Mortgagee.  
  
 26. Late Payment Charge. If any portion of the Debt is not paid within  
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fifteen (15) calendar days after the date on which it is due, Mortgagor shall  
pay to Mortgagee upon demand a late charge equal to the lesser of two percent  
(2%) of such unpaid portion of the Debt or the maximum amount permitted by  
applicable law, to defray the expense incurred by Mortgagee in handling and  
processing such delinquent payment and to compensate Mortgagee for the loss of  
the use of such delinquent payment, and such amount shall be secured by this  
Mortgage.  
  
 27. Prepayment After Event of Default. If following the occurrence of any  
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Event of Default, Mortgagor shall tender payment of an amount sufficient to  
satisfy the Debt at any time prior to a sale of the Mortgaged Property either  
through foreclosure or the exercise of other remedies available to Mortgagee  
under this Mortgage, such tender by Mortgagor shall be deemed to be a voluntary  
prepayment under the Note and this Mortgage in the amount  
  
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tendered, and Mortgagor shall, in addition to the entire Debt, also pay to  
Mortgagee the applicable prepayment consideration specified in paragraph \_\_\_ of  
the Note.  
  
 28. Right of Entry. Mortgagee and its agents shall have the right to enter  
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and inspect the Mortgaged Property at all reasonable times.  
  
 29. Remedies.  
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 (a) Upon the occurrence of any Event of Default, Mortgagee may take  
such action, without notice or demand, as it deems advisable to protect and  
enforce its rights against Mortgagor and in and to the Mortgaged Property,  
including, but not limited to, the following actions, each of which may be  
pursued concurrently or otherwise, at such time and in such order as Mortgagee  
may determine, in its sole discretion, without impairing or otherwise affecting  
the other rights and remedies of Mortgagee:  
  
 (i) declare the entire Debt to be immediately due and payable;  
  
 (ii) institute proceedings for the complete foreclosure of this  
 Mortgage, in which case the Mortgaged Property or any interest therein may  
 be sold for cash or upon credit in one or more parcels or in several  
 interests or portions and in any order or manner;  
  
 (iii) with or without entry, to the extent permitted and pursuant to  
 the procedures provided by applicable law, institute proceedings for the  
 partial foreclosure of this Mortgage for the portion of the Debt then due  
 and payable, subject to the continuing lien of this Mortgage for the  
 balance of the Debt not then due;  
  
 (iv) sell for cash or upon credit the Mortgaged Property or any part  
 thereof and all estate, claim, demand, right, title and interest of  
 Mortgagor therein and rights of redemption thereof, pursuant to power of  
 sale or otherwise, at one or more sales, as an entity or in parcels, at  
 such time and place, upon such terms and after such notice thereof as may  
 be required or permitted by law;  
  
 (v) institute an action, suit or proceeding in equity for the  
 specific performance of any covenant, condition or agreement contained  
 herein or in the Note;  
  
 (vi) recover judgment on the Note either before, during or after any  
 proceedings for the enforcement of this Mortgage;  
  
 (vii) apply for the appointment of a receiver of the Mortgaged  
 Property, without notice and without regard for the adequacy of the  
 security for the Debt and without regard for the solvency of the Mortgagor  
 or of any person, firm or other entity liable for the payment of the Debt;  
  
 (viii) enforce Mortgagee's interest in the Leases and Rents and enter  
 into or upon the Mortgaged Property, either personally or by its agents,  
 nominees or attorneys  
  
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 and dispossess Mortgagor and its agents and servants therefrom, and  
 thereupon Mortgagee may (A) use, operate, manage, control, insure,  
 maintain, repair, restore and otherwise deal with all and every part of the  
 Mortgaged Property and conduct the business thereat; (B) make alterations,  
 additions, renewals, replacements and improvements to or on the Mortgaged  
 Property; (C) exercise all rights and powers of Mortgagor with respect to  
 the Mortgaged Property, whether in the name of Mortgagor or otherwise,  
 including, without limitation, the right to make, cancel, enforce or modify  
 Leases, obtain and evict tenants, and demand, sue for, collect and receive  
 all earnings, revenues, rents, issues, profits and other income of the  
 Mortgaged Property and every part thereof; and (D) apply the receipts from  
 the Mortgaged Property to the payment of the Debt, after deducting  
 therefrom all reasonable expenses (including reasonable attorneys' fees)  
 incurred in connection with the aforesaid operations and all amounts  
 necessary to pay the Taxes, assessments, insurance and Other Charges in  
 connection with the Mortgaged Property, as well as just and reasonable  
 compensation for the services of Mortgagee, its counsel, agents and  
 employees; or  
  
 (ix) pursue such other rights and remedies as may be available at law  
 and in equity.  
  
 In the event of a sale, by foreclosure or otherwise, of less than all of  
the Mortgaged Property, this Mortgage shall continue as a lien on the remaining  
portion of the Mortgaged Property.  
  
 (b) The proceeds of any sale made under or by virtue of this  
paragraph, together with any other sums which then may be held by Mortgagee  
under this Mortgage, whether under the provisions of this paragraph or  
otherwise, shall be applied by Mortgagee to the payment of the Debt in such  
priority and proportion as Mortgagee in its discretion shall deem proper.  
  
 (c) To the extent permitted by applicable law, Mortgagee may adjourn  
from time to time any sale by it to be made under or by virtue of this Mortgage  
by announcement at the time and place appointed for such sale or for such  
adjourned sale or sales; and, except as otherwise provided by any applicable  
provision of law, Mortgagee, without further notice or publication, may make  
such sale at the time and place to which the same shall be so adjourned.  
  
 (d) Upon the completion of any sale or sales made by Mortgagee under  
or by virtue of this paragraph, Mortgagee, or an officer of any court empowered  
to do so, shall execute and deliver to the accepted purchaser or purchasers a  
good and sufficient instrument, or good and sufficient instruments, conveying,  
assigning and transferring all estate, right, title and interest in and to the  
property and rights sold. Mortgagee is hereby irrevocably appointed the true and  
lawful attorney of Xxxxxxxxx, in its name and stead, to make all necessary  
conveyances, assignments, transfers and deliveries of the Mortgaged Property and  
rights so sold and for that purpose Mortgagee may execute all necessary  
instruments of conveyance, assignment and transfer, and may substitute one or  
more persons with like power, Mortgagor hereby ratifying and confirming all that  
its said attorney or such substitute or substitutes shall  
  
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lawfully do by virtue hereof. Any such sale or sales made under or by virtue of  
this paragraph shall operate to divest all the estate, right, title, interest,  
claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to  
the properties and rights so sold, and shall be a perpetual bar both at law and  
in equity against Mortgagor and against any and all persons claiming or who may  
claim the same, or any part thereof from, through or under Mortgagor.  
  
 (e) Upon any sale made under or by virtue of this paragraph,  
Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and  
in lieu of paying cash therefor may make settlement for the purchase price by  
crediting upon the Debt the net sales price after deducting therefrom the  
expenses of the sale and costs of the action and any other sums which Mortgagee  
is authorized to deduct under this Mortgage.  
  
 (f) No recovery of any judgment by Xxxxxxxxx and no levy of an  
execution under any judgment upon the Mortgaged Property or upon any other  
property of Mortgagor shall affect in any manner or to any extent the lien of  
this Mortgage upon the Mortgaged Property or any part thereof, or any liens,  
rights, powers or remedies of Mortgagee hereunder, but such liens, rights,  
powers and remedies of Mortgagee shall continue unimpaired as before.  
  
 30. Reasonable Use and Occupancy. In addition to the rights which  
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Mortgagee may have herein, upon the occurrence of any Event of Default,  
Mortgagee, at its option, may require Mortgagor to pay monthly in advance to  
Mortgagee, or any receiver appointed to collect the Rents, the fair and  
reasonable rental value for the use and occupation of such part of the Mortgaged  
Property as may be occupied by Mortgagor or may require Mortgagor to vacate and  
surrender possession of the Mortgaged Property to Mortgagee or to such receiver  
and, in default thereof, Mortgagor may be evicted by summary proceedings or  
otherwise.  
  
 31. Security Agreement. This Mortgage is both a real property mortgage and  
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a "security agreement" within the meaning of the Uniform Commercial Code. The  
Mortgaged Property includes both real and personal property and all other rights  
and interests, whether tangible or intangible in nature, of Mortgagor in the  
Mortgaged Property. Mortgagor by executing and delivering this Mortgage has  
granted and hereby grants to Mortgagee, as security for the Debt, a security  
interest in the Mortgaged Property to the full extent that the Mortgaged  
Property may be subject to the Uniform Commercial Code (said portion of the  
Mortgaged Property so subject to the Uniform Commercial Code being called in  
this paragraph 30 the "Collateral"). If an Event of Default shall occur,  
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Mortgagee, in addition to any other rights and remedies which it may have, shall  
have and may exercise immediately and without demand, any and all rights and  
remedies granted to a secured party upon default under the Uniform Commercial  
Code, including, without limiting the generality of the foregoing, the right to  
take possession of the Collateral or any part thereof, and to take such other  
measures as Mortgagee may deem necessary for the care, protection and  
preservation of the Collateral. Upon the request or demand of Mortgagee,  
Mortgagor shall at its expense assemble the Collateral and make it available to  
Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to  
Mortgagee on demand any and all expenses, including legal expenses and  
reasonable attorneys' fees, incurred or paid by Mortgagee in protecting the  
interest in the Collateral and in enforcing the rights hereunder with respect to  
the Collateral. Any notice of  
  
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sale, disposition or other intended action by Mortgagee with respect to the  
Collateral sent to Mortgagor in accordance with the provisions hereof at least  
ten (10) days prior to such action, shall constitute commercially reasonable  
notice to Mortgagor. The proceeds of any disposition of the Collateral, or any  
part thereof, may be applied by Mortgagee to the payment of the Debt in such  
priority and proportions as Mortgagee in its discretion shall deem proper.  
  
 32. Actions and Proceedings. Mortgagee has the right to appear in and  
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defend any action or proceeding brought with respect to the Mortgaged Property  
and to bring any action or proceeding, in the name and on behalf of Mortgagor,  
which Mortgagee, in its discretion, decides should be brought to protect their  
interest in the Mortgaged Property. Mortgagee shall, at its option, be  
surrogated to the lien of any mortgage or other security instrument discharged  
in whole or in part by the Debt, and any such subrogation rights shall  
constitute additional security for the payment of the Debt.  
  
 33. Waiver of Counterclaim. Mortgagor hereby waives the right to assert a  
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counterclaim, other than a mandatory or compulsory counterclaim, in any action  
or proceeding brought against it by Mortgagee.  
  
 34. Recovery of Sums Required to Be Paid. Mortgagee shall have the right  
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from time to time to take action to recover any sum or sums which constitute a  
part of the Debt as the same become due, without regard to whether or not the  
balance of the Debt shall be due, and without prejudice to the right of  
Mortgagee thereafter to bring an action of foreclosure, or any other action, for  
a default or defaults by Mortgagor existing at the time such earlier action was  
commenced.  
  
 35. Marshalling and Other Matters. Mortgagor hereby waives, to the extent  
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permitted by law, the benefit of all appraisement, valuation, stay, extension,  
reinstatement and redemption laws now or hereafter in force and all rights of  
marshalling in the event of any sale hereunder of the Mortgaged Property or any  
part thereof or any interest therein. Further, Mortgagor, to the extent  
permitted by law, hereby expressly waives any and all rights of redemption from  
sale under any order or decree of foreclosure of this Mortgage on behalf of  
Mortgagor, and on behalf of each and every person acquiring any interest in or  
title to the Mortgaged Property subsequent to the date of this Mortgage and on  
behalf of all persons to the extent permitted by applicable law.  
  
 36. Hazardous Waste and Asbestos. Mortgagor hereby represents and warrants  
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to Mortgagee that (a) the Mortgaged Property is not in direct or indirect  
violation of any local, state, federal or other governmental authority, statute,  
ordinance, code, order, decree, law, rule or regulation pertaining to or  
imposing liability or standards of conduct concerning environmental regulation,  
contamination or clean-up including, without limitation, the Comprehensive  
Environmental Response, Compensation and Liability Act, as amended ("CERCLA"),  
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the Resource Conservation and Recovery Act, as amended ("RCRA"), and any state  
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super-lien and environmental clean-up statutes (collectively, "Environmental  
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Laws"); (b) the Mortgaged Property is not subject to any private or governmental  
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lien or judicial or administrative notice or action relating to hazardous and/or  
toxic, dangerous and/or regulated,   
  
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substances, wastes, materials, pollutants or contaminants, petroleum, tremolite,  
anthlophylie or actinolite or polychlorinated biphenyls (including, without  
limitation, any raw materials which include hazardous constituents) and any  
other substances or materials which are included under or regulated by  
Environmental Laws (collectively, "Hazardous Materials"); (c) no Hazardous  
 -------------------   
Materials are or have been, prior to Mortgagor's acquisition of the Mortgaged  
Property, discharged, generated, treated, disposed of or stored on, incorporated  
in, or removed or transported from the Mortgaged Property otherwise than in  
compliance with all Environmental Laws and (d) there is no asbestos present in,  
and no underground storage tanks exist on, any of the Mortgaged Property. So  
long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor  
shall keep or cause the Mortgaged Property to be kept free from Hazardous  
Materials and in compliance with all Environmental Laws, shall promptly notify  
Mortgagee if Mortgagor shall become aware of any Hazardous Materials on the  
Mortgaged Property and/or if Mortgagor shall become aware that the Mortgaged  
Property is in direct or indirect violation of any Environmental Laws and  
Mortgagor shall remove such Hazardous Materials and/or cure such violations, as  
applicable, as required by law, promptly after Xxxxxxxxx becomes aware of same,  
at Xxxxxxxxx's sole expense. Nothing herein shall prevent Mortgagor from  
recovering such expenses from any other party that may be liable for such  
removal or cure. The obligations and liabilities of Mortgagor under this  
paragraph 35 shall survive any termination, satisfaction, or assignment of this  
Mortgage, any Transfer and/or any exercise by Mortgagee of any of its rights or  
remedies hereunder, including but not limited to, the acquisition of the  
Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.  
  
 37. Handicapped Access.  
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 (a) Xxxxxxxxx agrees that the Mortgaged Property shall at all times  
comply to the extent applicable with the requirements of the Americans with  
Disabilities Act of 1990, all state and local laws and ordinances related to  
handicapped access and all rules, regulations, and orders issued pursuant  
thereto including, without limitation, the Americans with Disabilities Act  
Accessibility Guidelines for Buildings and Facilities (collectively, "Access  
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Laws").  
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 (b) Xxxxxxxxx agrees to give prompt notice to Mortgagee of the  
receipt by Xxxxxxxxx of any complaints related to violations of any Access Laws  
and of the commencement of any proceedings or investigations which relate to  
compliance with applicable Access Laws.  
  
 38. Indemnification. In addition to any other indemnifications provided  
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herein or in the Note or the other Loan Documents, Mortgagor shall protect,  
defend, indemnify and save harmless Mortgagee from and against all liabilities,  
obligations, claims, demands, damages, penalties, causes of action, losses,  
fines, costs and expenses (including, without limitation, reasonable attorneys'  
fees and expenses) imposed upon or incurred by or asserted against Mortgagee,  
except to the extent resulting from Mortgagee's gross negligence or wilful  
misconduct, by reason of (a) ownership of this Mortgage or the Mortgaged  
Property or any interest therein; (b) the construction or renovation of any  
Improvements; (c) any accident,  
  
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injury to or death of persons or loss of or damage to property occurring in, on  
or about the Mortgaged Property or any part thereof or on the adjoining  
sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways;  
(d) any use, nonuse or condition in, on or about the Mortgaged Property or any  
part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent  
parking areas, streets or ways; (e) any failure on the part of Mortgagor to  
perform or comply with any of the terms of this Mortgage; (f) performance of any  
labor or services or the furnishing of any materials or other property in  
respect of the Mortgaged Property or any part thereof; (g) the presence,  
disposal, escape, seepage, leakage, spillage, discharge, emission, release, or  
threatened release of any Hazardous Materials on, from, or affecting the  
Mortgaged Property or any other property; (h) any personal injury (including  
wrongful death) or property damage (real or personal) arising out of or related  
to such Hazardous Materials; (i) any lawsuit brought or threatened, settlement  
reached, or government order relating to such Hazardous Materials; (j) any  
violation of the Environmental Laws, which are based upon or in any way related  
to such Hazardous Materials including, without limitation, the costs and  
expenses of any remedial action, attorney and consultant fees, investigation and  
laboratory fees, court costs and litigation expenses; and (k) any failure of the  
Mortgaged Property to comply with any Access Laws. Any amounts payable to  
Mortgagee by reason of the application of this paragraph 37 shall be secured by  
this Mortgage and shall become immediately due and payable and shall bear  
interest at the Default Rate from the date any payment is made by Mortgagee  
hereunder until such payment is reimbursed by Xxxxxxxxx. The obligations and  
liabilities of Mortgagor under this paragraph 37 shall survive any termination,  
satisfaction or assignment of this Mortgage, any Transfer and/or any exercise by  
Mortgagee of any of its rights and remedies hereunder, including but not limited  
to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in  
lieu of foreclosure.  
  
 39. Notices. Any notice, demand, statement, request or consent made  
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hereunder shall be in writing to the other party hereto at its address set forth  
below or at such other address as such party may designate by notice to the  
other party hereto and shall be deemed given (i) on receipt, if mailed, by  
certified or registered U.S. mail, return receipt requested, postage prepaid;  
(ii) on receipt, if delivered, fee prepaid, to a national overnight delivery  
service (such as Federal Express, Purolater Courier, U.P.S. Next Day Air); or  
(iii) when delivered, if delivered by hand, as evidenced by a signed receipt:  
  
 To Mortgagor:  
   
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Attention:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Telephone: (\_\_\_\_) \_\_\_\_\_\_\_\_  
  
 with a courtesy copy to:  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
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 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Telephone: (\_\_\_) \_\_\_\_\_\_\_\_\_  
   
 To Mortgagee:  
  
 Banco Popular de Puerto Rico  
 0 Xxxx 00/xx/ Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xx. Xxxxxxx Xxx  
 Vice President  
 Telephone: (000) 000-0000  
  
 with a courtesy copy to:  
  
 XxXxxxxxx Xxxxxx LLP  
 0000 Xxxxxx xx xxx Xxxxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xxxxx X. Xxxxx, Esq.  
 Telephone: (000) 000-0000  
  
  
A "Business Day" is any day other than a Saturday or Sunday, or a day on which  
banking and savings and loan institutions in the State of New York are  
authorized or obligated by law or executive order to remain closed. Refusal to  
accept delivery of any notice shall be deemed to be receipt of such notice.  
  
 40. Authority. (a) Mortgagor (and the undersigned representative of  
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Mortgagor, if any) has full power, authority and right to execute, deliver and  
perform its obligations pursuant to this Mortgage, and to mortgage, give, grant,  
bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign  
the Mortgaged Property pursuant to the terms hereof and to keep and observe all  
of the terms of this Mortgage on Xxxxxxxxx's part to be performed and (b)  
Mortgagor represents and warrants that Mortgagor is not a "foreign person"  
within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986,  
as amended and the related Treasury Department regulations, including temporary  
regulations.  
  
 41. Waiver of Notice. Mortgagor shall not be entitled to any notices of  
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any nature whatsoever from Mortgagee except with respect to matters for which  
this Mortgage specifically and expressly provides for the giving of notice by  
Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is  
required by applicable law to give notice, and Mortgagor hereby expressly waives  
the right to receive any notice from Mortgagee with respect to any matter for  
which this Mortgage does not specifically and expressly provide for the giving  
of notice by Mortgagee to Mortgagor.  
  
 42. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage,  
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Mortgagee exercises any right given to it to approve or disapprove, or any  
arrangement or term is to be   
  
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satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or  
to decide that arrangements or terms are satisfactory or not satisfactory shall  
be in the sole discretion of Mortgagee and shall be final and conclusive, except  
as may be otherwise expressly and specifically provided herein.  
  
 43. Non-Waiver. The failure of Mortgagee to insist upon strict performance  
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of any term hereof shall not be deemed to be a waiver of any term of this  
Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder  
by reason of (a) the failure of Mortgagee to comply with any request of  
Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any  
of the provisions hereof or of the Note or the other Loan Documents, (b) the  
release, regardless of consideration, of the whole or any part of the Mortgaged  
Property, or of any person liable for the Debt or any portion thereof or (c) any  
agreement or stipulation by Mortgagee extending the time of payment or otherwise  
modifying or supplementing the terms of the Note, this Mortgage or the other  
Loan Documents. Mortgagee may resort for the payment of the Debt to any other  
security held by Mortgagee in such order and manner as Mortgagee, in its  
discretion, may elect. Mortgagee may take action to recover the Debt, or any  
portion thereof, or to enforce any covenant hereof without prejudice to the  
right of Mortgagee thereafter to foreclose this Mortgage. The rights and  
remedies of Mortgagee under this Mortgage shall be separate, distinct and  
cumulative and none shall be given effect to the exclusion of the others. No act  
of Mortgagee shall be construed as an election to proceed under any one  
provision herein to the exclusion of any other provision. Mortgagee shall not be  
limited exclusively to the rights and remedies herein stated but shall be  
entitled to every right and remedy now or hereafter afforded at law or in  
equity.  
  
 44. No Oral Change. This Mortgage, and any provisions hereof, may not be  
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modified, amended, waived, extended, changed, discharged or terminated orally or  
by any act or failure to act on the part of Mortgagor or Mortgagee, but only by  
an agreement in writing signed by the party against whom enforcement of any  
modification, amendment, waiver, extension, change, discharge or termination is  
sought.  
  
 45. Successors and Assigns. This Mortgage shall be binding upon and inure  
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to the benefit of Mortgagor and Mortgagee and their respective heirs, personal  
representatives, successors and assigns forever.  
  
 46. Inapplicable Provisions. If any term, covenant or condition of the  
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Note or this Mortgage is held to be invalid, illegal or unenforceable in any  
respect, the Note and this Mortgage shall be construed without such provision.  
  
 47. Headings, etc. The headings and captions of various paragraphs of this  
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Mortgage are for convenience of reference only and are not to be construed as  
defining or limiting, in any way, the scope or intent of the provisions hereof.  
  
 48. Governing Law. This Mortgage shall be governed by and construed in  
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accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_ without regard to  
principles of conflict of laws.  
  
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 49. Definitions. Unless the context clearly indicates a contrary intent or  
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unless otherwise specifically provided herein, words used in this Mortgage may  
be used interchangeably in singular or plural form and the word "Mortgagor"  
shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged  
Property or any part thereof or any interest therein," the word "Mortgagee"  
shall mean "Mortgagee and any subsequent holder of the Note," the word "Note"  
shall mean "the Note and any other evidence of indebtedness secured by this  
Mortgage," the word "person" shall include an individual, corporation,  
partnership, trust, unincorporated association, government, governmental  
authority, and any other entity, and the words "Mortgaged Property" shall  
include any portion of the Mortgaged Property and any interest therein. Whenever  
the context may require, any pronouns used herein shall include the  
corresponding masculine, feminine or neuter forms and the singular form of nouns  
and pronouns shall include the plural and vice versa.  
  
 50. Waiver of Trial by Jury. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY,  
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VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY  
IN RESPECT OF ANY LITIGATION BASED ON THE LOAN EVIDENCED BY THE NOTE OR ARISING  
OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THIS MORTGAGE OR ANY OF THE OTHER  
LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER  
VERBAL OR WRITTEN) OR ACTION OF MORTGAGOR OR MORTGAGEE. THIS PROVISION IS A  
MATERIAL INDUCEMENT FOR MORTGAGEE'S MAKING OF THE LOAN SECURED BY THIS MORTGAGE  
AND THE OTHER LOAN DOCUMENTS.  
  
 51. Assignment. Mortgagee shall have the right, exercisable at any time  
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and from time to time, to sell, transfer or assign the Mortgage and the other  
Loan Documents, or grant participations therein, or issue certificates or  
securities evidencing a beneficial interest therein in a rated or unrated public  
offering or private placement, and Mortgagee may forward to any purchaser,  
transferee, assignee, servicer, participant, investor or credit rating agency  
rating such securities (collectively, an "Investor") or prospective Investor all  
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documents and information in Mortgagee's possession with respect to Mortgagor,  
the Mortgaged Property and the Loan Documents as such Investor or prospective  
Investor may request.  
  
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 IN WITNESS WHEREOF, Xxxxxxxxx has executed this Mortgage, intending to be  
legally bound, the day and year first above written.  
  
  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  
 a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
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 (ACKNOWLEDGMENT)  
  
   
 EXHIBIT A  
  
 LEGAL DESCRIPTION  
  
   
 EXHIBIT K-2(d)  
 FORM OF FRANCHISEE ASSIGNMENT OF CONTRACTS,  
 LICENSES, PERMITS AND AGREEMENTS  
 --------------------------------  
  
 ASSIGNMENT OF CONTRACTS, LICENSES,  
 PERMITS AND AGREEMENTS  
  
  
 This ASSIGNMENT OF CONTRACTS, LICENSES, PERMITS AND AGREEMENTS (the  
"Assignment"), dated as of the \_\_\_ day of \_\_\_\_\_\_, 199\_\_ by and between  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having an office at  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Assignor") and BANCO POPULAR DE  
PUERTO RICO, having an office at 0 Xxxx 00xx Xxxxxx, Xxx Xxxx, Xxx Xxxx 00000  
("Assignee"). All capitalized terms appearing herein and not defined herein  
shall have the meanings set forth in that certain Mortgage, Security Agreement  
and Assignment of Leases and Rents, dated as of the date hereof, made by  
Assignor to Assignee (the "Mortgage").  
  
 RECITALS  
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 A. [Assignor is the actual, record and beneficial owner of the real  
property more particularly described in Schedule A attached hereto and by this  
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reference made a part hereof (the "Land"), together with the improvements  
located thereon (the "Improvements"; the Land and the Improvements,  
collectively, the "Premises")./Assignor is the actual, record and beneficial  
owner of the leasehold interest in the real property more particularly described  
in Schedule A attached hereto and by this reference made a part hereof (the  
 ----------   
"Property"), together with the improvements located thereon (the "Improvements";  
the Property and the Improvements, collectively, the "Premises") pursuant to  
that certain lease dated \_\_\_\_\_\_\_\_\_\_, 199\_\_ (the "Lease") between \_\_\_\_\_\_\_\_\_\_\_, as  
landlord, and Assignor, as tenant.]  
  
 B. Assignee has agreed to make a loan to Assignor in the maximum  
principal amount of $\_\_\_\_\_\_\_\_\_ (the "Loan") to, among other things, finance  
Assignor's acquisition of the Premises.  
  
 C. The Loan will be evidenced by the Note and secured by, among other  
 things, the Mortgage.  
  
 X. Xxxxxxxx is the owner and holder of the Note and the Mortgage.  
  
 E. Assignor will derive substantial benefit from the Loan.  
  
 X. Xxxxxxxx may, from time to time, enter into written agreements  
relating to or pertaining to services to the Premises or the management,  
operation, sale, leasing, construction   
  
   
or renovation of the Premises (hereinafter, the aforesaid agreements are  
collectively referred to as the "Agreements").  
  
 G. To induce Assignee to make the Loan to Assignor, and as a precondition  
thereof, Assignee requires that Assignor assign to Assignee all of its right,  
title and interest in and to the Agreements as additional security for the Note  
and the Mortgage on the terms and conditions hereinafter set forth.  
  
 NOW, THEREFORE, in consideration of the mutual promises and covenants  
contained herein, and other good and valuable consideration, receipt of which is  
hereby acknowledged, Xxxxxxxx agrees as follows:  
  
 1. For the purpose set forth below and subject to the terms of this  
Assignment, Assignor hereby assigns and transfers to Assignee, to the extent the  
same are assignable, all of Assignor's rights, privileges, and interests under,  
in and to (i) the Agreements, (ii) any existing or future licenses, operating  
agreements or certificates Assignor may enter into with or receive from any  
Governmental Authority (the "Licenses"), and (iii) any existing or future  
permits, approvals or agreements Assignor may enter into with or receive from  
any Governmental Authority (the "Permits"). Assignor agrees that it will timely  
perform all of its obligations with respect to the Licenses and Permits and that  
it will use its best efforts to keep the Licenses and Permits in full force and  
effect to the extent such Licenses and Permits are required in connection with  
the ownership, use, operation or occupancy of the Premises.  
  
 2. This Assignment is given for the purpose of further securing the  
performance by Assignor of all of its obligations to Assignee under the Note,  
the Mortgage and the other Loan Documents, and accordingly, upon the payment in  
full of all indebtedness evidenced by the Note, and satisfaction of all of  
Assignor's other obligations to Assignee under the Note, the Mortgage and the  
other Loan Documents, this Assignment shall automatically become null and void;  
provided, however, that Assignee shall execute and deliver to Assignor such  
documents as may be reasonably requested by Assignor to evidence such  
termination.  
  
 3. Prior to the earlier to occur of: (i) performance in full of the  
Agreements by Assignor or (ii) Assignee's acquisition of title to the Premises,  
by foreclosure or otherwise, Assignor agrees that it will timely perform all of  
its obligations under the Agreements in accordance with the terms of the  
Agreements unless Assignor shall then be contesting the same in good faith and  
by appropriate proceedings.  
  
 4. For the purposes and subject to the terms set forth herein, this  
Assignment is an absolute, unconditional and presently effective assignment from  
Assignor to Assignee of all of Assignor's rights under, in and to the  
Agreements, the Licenses and the Permits. Notwithstanding the foregoing, prior  
to any Event of Default by Assignor under the Note, the Mortgage or any other  
Loan Document, Assignor shall, subject to the terms and conditions of this  
Assignment, have the right to use, employ and enforce its rights under the  
Agreements, the Licenses and the Permits.  
  
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 5. Upon the occurrence and during the continuance of any Event of Default  
by Assignor under the Note, the Mortgage or any other Loan Document, Assignee  
shall be entitled to exercise all or any of its remedies under the Note, the  
Mortgage or under this Assignment, or as may otherwise be available to Assignee  
at law or in equity, in such order as Assignee may elect.  
  
 6. Notwithstanding any legal presumption to the contrary, it is not the  
intent that Assignee shall be obligated by reason of acceptance of this  
Assignment to perform any obligation of Assignor under the Agreements, the  
Licenses or the Permits, and Assignor hereby agrees to indemnify Assignee and  
save it harmless from and against any loss, liability or damage in connection  
with any claim arising out of the said Agreements, the Licenses, the Permits or  
this Assignment which arise or accrue during the period of Assignor's ownership  
of the Premises and prior to the time, if any, that Assignee becomes a   
mortgagee-in-possession, except for Assignee's gross negligence or willful  
misconduct. However, Assignee may, at its option, and without releasing Assignor  
from any obligation hereunder, discharge any obligation which Assignor fails to  
discharge within any applicable cure period under said Agreements, Licenses or  
Permits, including, without limitation, defending any legal action unless  
Assignor shall then be contesting the same in good faith and by appropriate  
proceedings, and Assignor agrees to pay immediately upon demand all reasonable  
sums expended by Assignee in connection therewith, including reasonable counsel  
fees, together with interest thereon at the Default Rate (as defined in the  
Note), and the same shall be added to the indebtedness evidenced by the Note and  
secured by the Mortgage.  
  
 7. Assignor hereby represents and warrants to Assignee that:  
  
 (a) Assignor has not executed any prior assignment of any of its  
rights under the Agreements, the Licenses or the Permits, except to Assignee  
pursuant to this Assignment.  
  
 (b) The Agreements now existing are in full force and effect and  
unmodified, and there are no defaults, or events which with the giving of notice  
or passage of time, or both, would constitute a default under any Agreement  
except as heretofore disclosed to Assignee;  
  
 (c) Assignor's interest in the Agreements is not subject to any  
claims, setoffs, encumbrances or deductions;  
  
 (d) All covenants, conditions and agreements have been performed as  
required by the Agreements by all parties thereto, except those which are not  
due to be performed until after the date of this Assignment; and  
  
 (e) The Licenses and Permits now existing are in full force and  
effect and have not been rescinded or terminated.  
  
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 8. This Assignment shall be binding upon Assignor and its successors and  
assigns, including any subsequent owner of the Premises and shall inure to the  
benefit of Assignee and its successors and assigns.  
  
 9. All notices or demands hereunder shall be in accordance with the  
provisions of Section \_\_\_ of the Mortgage.  
  
 10. This Assignment shall be construed, interpreted, and enforced  
according to the laws of the State of New York without regard to principles of  
conflict of laws.  
  
 11. No term or condition of this Assignment may be waived, changed,  
terminated, or modified orally, by course of conduct or in any manner other than  
by an agreement in writing signed by the party against whom enforcement is  
sought.  
  
  
 IN WITNESS WHEREOF, Assignor has duly executed this Assignment the day and  
year first above written.  
  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  
 a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
 4  
  
   
 SCHEDULE A  
 ----------  
  
 [LEGAL DESCRIPTION]  
  
 5  
  
   
 EXHIBIT K-2(E)  
 FORM OF FRANCHISEE GUARANTEE OF PAYMENT  
 AND PERFORMANCE  
 ------------------------------------  
  
 GUARANTEE OF PAYMENT AND PERFORMANCE  
 ------------------------------------  
  
 THIS GUARANTEE OF PAYMENT AND PERFORMANCE ("Guarantee") dated as of the \_\_\_  
 ---------   
day of \_\_\_\_\_\_, 199\_, made jointly and severally by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ AND  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (collectively, the "Guarantor") for the benefit of BANCO  
 ---------   
POPULAR DE PUERTO RICO, having offices at 0 Xxxx 00/xx/ Xxxxxx, Xxx Xxxx, Xxx  
Xxxx 00000 ("Lender"). All capitalized terms appearing herein and not defined  
 ------   
herein shall have the meanings set forth in the Mortgage, Security Agreement and  
Assignment of Leases and Rents, dated as of the date hereof (the "Mortgage"),  
 --------   
made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Borrower") in favor of Lender.  
 --------   
  
 R E C I T A L S  
 - - - - - - - -  
  
  
  
 A. [Borrower is the actual, record and beneficial owner of the real  
property more particularly described in Schedule A attached hereto and by this  
 ----------  
reference made a part hereof (the "Land"), together with the improvements  
 ----   
located thereon (the "Improvements"; the Land and the Improvements,  
 ------------  
collectively, the "Premises")./Borrower is the actual, record and beneficial  
 --------   
owner of the leasehold interest in the real property more particularly described  
in Schedule A attached hereto and by this reference made a part hereof (the  
 ----------  
"Property"), together with the improvements located thereon (the   
 --------  
"Improvements"; the Property and the Improvements, collectively, the "Premises")  
 ------------ --------  
pursuant to that certain lease dated \_\_\_\_\_\_\_\_\_, 199\_ (the "Lease") between  
 -----   
 \_\_\_\_\_\_\_\_\_\_, as landlord, and Xxxxxxxx, as tenant.]   
  
 X. Xxxxxxxx has requested that Xxxxxx make a loan to Borrower in the  
maximum principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Loan") to, among other things,  
 ----   
finance Xxxxxxxx's acquisition of the Premises.  
  
 C. The Loan will be evidenced by the Note and secured by, among other  
things, the Mortgage.  
  
 D. The Guarantors are the sole [shareholders/partners/members of  
Borrower] [and own in the aggregate one hundred percent (100%) of the ownership  
interests in Borrower] and will benefit materially from the granting of the Loan  
by Xxxxxx to Borrower.  
  
 E. To induce Lender to make the Loan and accept the Note and the  
Mortgage, each Guarantor has agreed to execute and deliver this Guarantee, which  
Guarantee is to be binding  
  
   
upon each Guarantor, and their respective heirs, personal representatives,  
successors and assigns.  
  
 X. Xxxxxx has refused to make the Loan or accept the Note and the  
Mortgage unless this Guarantee is executed by each Guarantor and delivered to  
Lender.  
  
 NOW, THEREFORE, in consideration of the Loan, and for other good and  
valuable consideration, the receipt whereof is xxxxxx acknowledged, each  
Guarantor, for [himself/herself], [his/her] heirs, personal representatives,  
successors and assigns, hereby covenants and agrees with Xxxxxx for the benefit  
of Xxxxxx, its indorsees, successors and assigns, as follows:  
  
 1. Guarantee. Each Guarantor unconditionally and irrevocably guarantees  
 ---------   
to Lender (A) the prompt, absolute and unconditional payment of (i) the  
principal sum evidenced by the Note which may be outstanding from time to time,  
(ii) interest on the outstanding principal sum evidenced by the Note, whether  
such interest accrues at the Applicable Interest Rate or at the Default Rate (as  
such terms are defined in the Note) and whether such interest accrues prior to  
or after the Maturity Date (as defined in the Note), (iii) late charges,  
prepayment fees and premiums, and interest accruing on the Note after any  
petition under the applicable federal bankruptcy laws, as the same shall become  
due and payable under the Note; and (iv) all fees, charges and expenses now or  
hereafter due to Lender under the Note, the Mortgages or any other Loan  
Document, including, without limitation, any and all costs and expenses incurred  
by Lender in connection with the collection and enforcement of the Note, the  
Mortgage or any other Loan Document, including, without limitation, all  
attorney's fees and expenses, investigative costs and all court costs, whether  
or not suit is filed thereon, or whether at maturity or by acceleration; and (B)  
the prompt and punctual performance of all covenants and agreements of Borrower  
under the Note, the Mortgage and the other Loan Documents; irrespective of the  
validity, regularity or enforceability of the Note or such obligations, or any  
instrument evidencing any of the obligations, or of any collateral therefor or  
of the existence of such collateral. All of the obligations guaranteed or  
undertaken by Guarantor in this Section 1 are hereinafter referred to as the  
"Obligations".  
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 2. Representations, Warranties and Covenants. Each Guarantor hereby  
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represents, warrants and covenants each as to himself as follows:  
  
 (a) Each Guarantor is of legal age and under no legal disability.  
  
 (b) This Guarantee has been duly executed and delivered by each  
Guarantor and constitutes the valid and binding obligations of each Guarantor  
and is enforceable against each Guarantor in accordance with its terms.  
  
 -2-  
  
   
 (c) The consummation of the transactions contemplated hereby and the  
performance by Guarantor of his obligations under this Guarantee will not result  
in any breach of, give rise to a lien under, or constitute a default under, any  
mortgage, deed of trust, lease, bank loan or credit agreement, partnership  
agreement, corporate charter, by-laws or other agreement or instrument to which  
any Guarantor is a party or by which he may be bound or affected.  
  
 (d) Each Guarantor will promptly comply with all conditions of this  
Guarantee. Each Guarantor will promptly (upon transmittal or receipt) deliver to  
Lender copies of all notices and correspondence with respect to: (i) this  
Guarantee, (ii) any material adverse change in the financial condition of any  
Guarantor, (iii) Lender's security and (iv) any violation or potential violation  
of any approval, authorization, or permit issued in regard to the Premises. Each  
Guarantor will promptly and fully respond to any inquiry of Xxxxxx made with  
respect to any of the matters described in the preceding sentence and will  
permit Lender, upon Xxxxxx's written request, to participate in any inquiry,  
hearing or meeting with regard to any of the foregoing.  
  
 (e) Each Guarantor agrees to pay on written demand all expenses  
(including reasonable legal services of every kind and cost of any insurance,  
any payment of taxes or other charges) of, or incidental to, or in any way  
relating to the enforcement or protection of the rights of Lender hereunder.  
  
 (f) Each Guarantor hereby acknowledges receipt and approval of the  
Note, the Mortgage and the other Loan Documents.  
  
 (g) Each Guarantor is deriving or expects to derive a financial or  
other advantage from each and every Obligation incurred by Borrower to Lender.  
  
 (h) Each Guarantor shall provide to Lender (i) within thirty (30)  
days after the end of each calendar year, updated annual financial statements in  
form similar to that previously provided to Lender; (ii) copies of federal tax  
returns (together with any extension filed) within fifteen (15) days after  
filing of same but in no event later than April 30 of each year; and (iii) such  
other financial information relating to Guarantor as may be reasonably requested  
from time to time by Xxxxxx.  
  
 (i) Each Guarantor shall promptly provide Lender with written notice  
of any pending or threatened litigation involving claims against any Guarantor  
or the commencement of any proceedings or investigations by any governmental or  
regulatory agency with respect to any Guarantor.  
  
 -3-  
  
   
 (j) Each Guarantor shall not incur any indebtedness, nor guarantee  
any indebtedness (other than pursuant to this Guarantee), without the prior  
written consent of Lender.  
  
 (k) Each Guarantor shall not transfer, sell or assign any real or  
personal property without the prior written consent of Xxxxxx, and any transfer,  
sale or assignment shall occur only in the ordinary course of such Guarantor's  
business.  
  
 (l) [Additional financial covenants].  
  
 3. Defaults. The following shall constitute a default hereunder (each,  
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an "Event of Default"):  
 ----------------  
  
 (a) If any Guarantor shall fail to timely perform, or cause to be  
timely performed, any Obligation and such failure is not cured by Guarantor  
within ten (10) days of written notice of such failure;  
  
 (b) If any Guarantor shall fail to comply with any of the covenants  
made by it in this Guarantee, or if at any time any representation or warranty  
made by any Guarantor to Lender in this Guarantee or in any certificate or  
statement delivered in connection herewith shall be false or misleading to an  
extent deemed by Lender, in its reasonable judgment, to be material and such  
failure is not cured by Guarantor within ten (10) days of written notice of such  
failure, provided that if such failure is not curable within such ten (10) day  
period, then Guarantor shall have such time as is reasonably required to cure  
same, provided (x) Guarantor promptly commences the cure within such ten (10)  
day period, (y) thereafter Guarantor diligently attempts to cure such default,  
and (z) Lender, in its reasonable judgment, determines that a cure may be  
effectuated during such additional period; or  
  
 (c) If at any time any Guarantor shall revoke or attempt to revoke,  
disavow, contest, commence any action or raise any defense against her  
obligations hereunder.  
  
 4. Lien on Personal Property. To secure the liabilities of Guarantor  
 -------------------------   
under this Guarantee, each Guarantor hereby grants to Lender a security interest  
in and a lien upon any personal property of each Guarantor or in which any  
Guarantor may have an interest, which is now or may at any time hereafter come  
into the lawful possession or control of Lender, or of any third party acting on  
behalf of Xxxxxx, whether for the express purpose of being used by Lender for  
collateral security or for safekeeping or for any other or different purpose,  
including such personal property as may be in transit by mail or carrier for any  
purpose or covered or affected by any documents in Xxxxxx's possession or  
control, or in the possession or control of any third party acting on its behalf  
(such property and interests in property, referred to collectively as the  
"Collateral").  
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 -4-   
  
   
 5. Remedies. Upon the occurrence of a default hereunder, in addition to  
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any other remedy provided for under this Guarantee or at law or in equity, each  
Guarantor hereby authorizes Xxxxxx, in Xxxxxx's sole discretion, at any time:  
  
 (a) To appropriate and apply upon any of the liabilities of Guarantor  
hereunder any of the Collateral;  
  
 (b) At any time, or from time to time, without notice to Guarantor or  
to any other person, any such notice being hereby expressly waived, immediately  
to set off and appropriate and apply any and all deposits (general or special)  
at any time held by or owing to Lender, if any, which are given to secure the  
obligations and liabilities of Guarantor hereunder to or for the credit or the  
account of Guarantor against and on account of the obligations and liabilities  
of Guarantor hereunder;  
  
 (c) To foreclose nonjudicially or judicially against any real or  
personal property security it holds for the Obligations or any part thereof, or  
exercise any other remedy against Guarantor or any security; and  
  
 (d) To exercise all other rights and remedies of a secured party  
under the Uniform Commercial Code as in effect in New York and [jurisdiction in  
which Premises is located], and, without limiting the generality of the  
foregoing, Lender may immediately, without demand of performance and without  
advertisement, all of which are hereby expressly waived, and upon ten (10) days'  
prior written notice to Guarantor, sell at public or private sale, grant options  
to purchase or otherwise realize upon in the State of New York or the State of  
[jurisdiction in which Premises is located], the whole or from time to time any  
part of the Collateral upon which Lender shall have a security interest and lien  
as aforesaid, and after deducting from the proceeds of sale or other disposition  
of the Collateral all expenses (including all reasonable expenses for legal  
services of every kind and other expenses as set forth below) shall apply the  
residue of such proceeds toward the payment of any of the liabilities of  
Guarantor hereunder in such order as Lender shall elect, Guarantor remaining  
liable for any deficiency remaining unpaid after such application. If notice of  
any sale or other disposition is required by law to be given, each Guarantor  
hereby agrees that a notice sent in accordance with this Guarantee at least ten  
(10) calendar days before the time of any intended public sale or of the time  
after which any private sale or other disposition of the said collateral is to  
be made, shall be reasonable notice of such sale or other disposition. At any  
such sale or other disposition, Lender may itself purchase the whole or any part  
of the Collateral sold, free from any right of redemption on the part of any  
Guarantor, which right is hereby waived and released.  
  
 6. Waiver of Election of Remedies. Each Guarantor waives any right to  
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require or compel Lender to (a) proceed against or exhaust any security for the  
Obligations; or (b) pursue any other remedy in Xxxxxx's power whatsoever; and  
failure of Lender to do any of the   
  
 -5-  
  
   
foregoing shall not exonerate, release or discharge any Guarantor from his  
absolute, unconditional and independent liabilities to Lender hereunder. Each  
Guarantor hereby waives any and all legal requirements that Lender shall  
institute any action or proceedings at law or in equity in respect of the Loan  
or any other Loan Document or resort to or seek to realize upon the security  
held by Xxxxxx, as a condition precedent to bringing an action against Guarantor  
upon this Guarantee.  
  
 7. Right of Separate Actions. Lender may bring and prosecute a separate  
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action against Guarantor to enforce its liabilities hereunder, whether or not  
any action is brought against any other person and whether or not any other  
person is joined in any such action or actions. Nothing shall prohibit Lender  
from exercising its rights against Guarantor, any security for the Obligations,  
and any other person simultaneously, jointly and/or severally.  
  
 8. Waiver of Rights of Subrogation. Each Guarantor hereby irrevocably  
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waives any rights to be subrogated to the rights of Lender with respect to the  
Obligations. No failure on the part of Lender to exercise, and no delay in  
exercising, any right, remedy or power hereunder shall operate as a waiver  
thereof, nor shall any single or partial exercise by Lender of any right, remedy  
or power hereunder preclude any other or future exercise of any other right,  
remedy or power.  
  
 9. Waiver of Notice, Consent, Etc. (a) This Guarantee shall be  
 -------------------------------   
construed as a continuing, absolute and unconditional guarantee of payment and  
performance.  
  
 (a) Each Guarantor hereby waives notice of acceptance of this  
Guarantee by Xxxxxx and of presentment, demand, protest, notice of protest and  
of dishonor, notices of default (except as otherwise expressly provided herein)  
and all other notices relative to this Guarantee of every kind and description  
now or hereafter provided by any agreement between Borrower and Lender or any  
statute or rule of law.  
  
 (b) Each Guarantor waives any and all notice of the creation,  
renewal, extension or accrual of any of the Obligations or of the reliance by  
Lender upon this Guarantee. Said Obligations, and each of them, shall  
conclusively be deemed to have been created, contracted, or incurred in reliance  
upon this Guarantee and all dealings between Borrower and Lender shall likewise  
be conclusively presumed to have been made or consummated in reliance upon this  
Guarantee.  
  
 (c) Each Guarantor hereby agrees that the terms, covenants and  
provisions contained in the Note, the Mortgage or in any other Loan Document may  
be altered, extended, modified, waived, released or canceled by Xxxxxx, and each  
Guarantor agrees that this Guarantee and his liability hereunder shall be in no  
way affected, diminished or released by any such alteration, extension,  
modification, release, waiver or cancellation.  
  
 -6-  
  
   
 10. Waiver of Priority of Collateral. Each Guarantor hereby agrees that,  
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in the event that any of his property is or may be hypothecated with other  
property of Borrower, as security for any obligations of Borrower under any  
other Loan Document, any right of Guarantor to have such other property of  
Borrower first applied to the discharge of such obligations is hereby  
irrevocably waived by each Guarantor. Each Guarantor hereby expressly  
recognizes that any of his property which is or may be hereafter hypothecated  
pursuant to the Mortgage is security for such obligations and is not security  
for this Guarantee.  
  
 11. No Discharge; Remedies Cumulative. No Guarantor shall be discharged,  
 ---------------------------------   
released or exonerated, in any way, from his absolute, unconditional and  
independent liabilities hereunder, even though any rights or defenses which any  
Guarantor may have against Lender or others may be destroyed, diminished or  
otherwise affected by:  
  
 (a) Any declaration by Xxxxxx of a default in respect of any of the  
Obligations;  
  
 (b) The exercise by Lender of any rights or remedies against Borrower  
or any other person under any other Loan Document;  
  
 (c) The failure of Lender to exercise any rights or remedies against  
Borrower or any other person under any other Loan Document;  
  
 (d) The sale or enforcement of, or realization upon (through judicial  
foreclosure, power of sale or any other means) any security for any of the  
Obligations, even though (i) recourse may not thereafter be had against Borrower  
under any other Loan Document for any deficiency, or (ii) Lender fails to pursue  
any such recourse which might otherwise be available, whether by way of  
deficiency judgment following judicial foreclosure or otherwise; and  
  
no such action by Lender will release or limit the liability of Guarantor to  
Lender. All rights and remedies of Lender hereunder or under any of the Loan  
Documents shall be cumulative and may be exercised singularly or concurrently  
against the party to whom enforcement is sought. The rights of Lender under  
this Guarantee are in addition to and not in diminution of the rights of Lender  
under any other Loan Document.  
  
 12. Continuing Guarantee. Until all obligations of Borrower to Lender are  
 --------------------   
fulfilled to the satisfaction of Lender and each and every of the terms,  
covenants and conditions of this Guarantee are fully performed and Lender fully  
repaid, Guarantor shall not be released by any act or thing which might, but for  
this provision, be deemed a legal or equitable discharge of a surety, or by  
reason of any waiver, extension, modification, forbearance or delay or other act  
or omission of Lender or its failure to proceed promptly or otherwise, or by  
reason of any action taken or omitted or circumstance which may or might vary  
the risk or affect the rights   
  
 -7-  
  
   
or remedies of Guarantor or by reason of any further dealings between Xxxxxxxx  
and Xxxxxx, whether relating to the Loan or otherwise, and each Guarantor hereby  
expressly waives and surrenders any defenses to its liability hereunder based  
upon any of the foregoing acts, omissions, things or agreements or waivers of  
Lender; it being the purpose and intent of the parties hereto that the  
obligations of each Guarantor hereunder are absolute and unconditional under any  
and all circumstances.  
  
 13. Notices. Any notice, demand, statement, request or consent made  
 -------   
hereunder shall be in writing to the other party hereto at its address set forth  
below or at such other address as such party may designate by notice to the  
other party hereto and shall be deemed given (i) on receipt, if mailed, by  
certified or registered U.S. mail, return receipt requested, postage prepaid;  
(ii) on receipt, if delivered, fee prepaid, to a national overnight delivery  
service (such as Federal Express, Purolater Courier, U.P.S. Next Day Air); or  
(iii) when delivered, if delivered by hand, as evidenced by a signed receipt:  
  
 To Guarantor:  
   
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 and  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 With a courtesy copy to:  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 To Lender:  
  
 Banco Popular de Puerto Rico  
 0 Xxxx 00/xx/ Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xx. Xxxxxxx Xxx  
 Vice President  
  
 -8-  
  
   
 With a courtesy copy to:  
  
 XxXxxxxxx Xxxxxx LLP  
 0000 Xxxxxx xx xxx Xxxxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xxxxx X. Xxxxx, Esq.  
  
A "Business Day" is any day other than a Saturday or Sunday, or a day on which  
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banking and savings and loan institutions in the State of New York are  
authorized or obligated by law or executive order to remain closed. Refusal to  
accept delivery of any notice shall be deemed to be receipt of such notice.  
  
 14. Entire Agreement. This Guarantee represents the entire agreement  
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between Guarantor and Lender with respect to the matters referred to herein, and  
no waiver or modification hereof or thereof shall be effective unless in writing  
and signed by Xxxxxx and Guarantor.  
  
 15. GOVERNING LAW. THIS GUARANTEE AND THE RIGHTS AND OBLIGATIONS OF THE  
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PARTIES HEREUNDER SHALL BE CONSTRUED, ENFORCED, AND INTERPRETED ACCORDING TO THE  
LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE IN AND PERFORMED IN  
THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS. UNLESS  
THE TEXT OTHERWISE REQUIRES, ALL TERMS USED HEREIN SHALL HAVE THE MEANING  
SPECIFIED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATES OF NEW YORK  
AND \_\_\_\_\_\_\_\_\_\_\_\_\_ AT THE DATE HEREOF.  
  
 16. Successors and Assigns. This Guarantee shall be binding upon each  
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Guarantor and upon their respective heirs, personal representatives, successors  
and assigns and shall inure to the benefit of Xxxxxx and its indorsees,  
successors and assigns.  
  
 17. Joint and Several. The representations, warranties, covenants and  
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other obligations of Guarantor hereunder are made and undertaken jointly and  
severally by each of the Guarantors.  
  
 18. Time of the Essence. Time shall be of the essence with regard to the  
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performance by each Guarantor of his obligations under this Guarantee.  
  
 19. Waiver of Trial by Jury. Lender and each Guarantor shall and hereby  
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do waive trial by jury in any action, proceeding or counterclaim brought by any  
of the parties hereto   
  
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against the other on any matters arising out of or in any way connected to the  
Loan, this Guarantee or any of the other Loan Documents.  
  
 20. Counterparts. This Guarantee may be executed in several counterparts,  
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each of which shall constitute but one and the same instrument.  
  
 IN WITNESS WHEREOF, this Guarantee has been executed by the undersigned as  
of the date first above written.  
  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
   
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
   
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 EXHIBIT K-2(F)  
  
 FORM OF FRANCHISEE ENVIRONMENTAL INDEMNITY AGREEMENT  
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 ENVIRONMENTAL INDEMNITY AGREEMENT  
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 THIS ENVIRONMENTAL INDEMNITY AGREEMENT ("Agreement") dated as of the \_\_ day  
of \_\_\_\_\_\_\_\_, 199\_\_, made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having an office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
(the "Borrower") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an individual having an address at  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Individual Indemnitor"; Borrower and the Individual  
Indemnitor(s) are sometime hereinafter collectively referred to as the  
"Indemnitor"), for the benefit of BANCO POPULAR DE PUERTO RICO, having offices  
at 0 Xxxx 00/xx/ Xxxxxx, Xxx Xxxx, Xxx Xxxx 00000 ("Lender"). All capitalized  
terms appearing herein and not defined herein shall have the meanings set forth  
in the Mortgage, Security Agreement and Assignment of Leases and Rents, dated as  
of the date hereof, made by Borrower in favor of Xxxxxx (the "Mortgage").  
  
 R E C I T A L S  
 - - - - - - - -  
  
 A. [Borrower is the actual, record and beneficial owner of the real  
property more particularly described in Schedule A attached hereto and by this  
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reference made a part hereof (the "Land"), together with the improvements  
located thereon (the "Improvements"; the Land and the Improvements,  
collectively, the "Premises")./Borrower is the actual, record and beneficial  
owner of the leasehold interest in the real property more particularly described  
in Schedule A attached hereto and by this reference made a part hereof (the  
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"Property"), together with the improvements located thereon (the "Improvements";  
the Property and the Improvements, collectively, the "Premises") pursuant to  
that certain lease dated \_\_\_\_\_\_\_\_\_, 199\_\_ (the "Lease") between \_\_\_\_\_\_\_\_\_\_, as  
landlord, and Xxxxxxxx, as tenant.]  
  
 X. Xxxxxx has agreed to make a loan to Borrower in the maximum principal  
amount of $\_\_\_\_\_\_\_\_\_ ( the "Loan") to, among other things, finance Xxxxxxxx's  
acquisition of the Premises.  
  
 C. The Loan will be evidenced by the Note and secured by, among other  
things, the Mortgage.  
  
 D. The Individual Indemnitor(s) is/are the sole [shareholder(s)/  
partner(s)/member(s)] of Borrower [and own in the aggregate one hundred percent  
(100%) of the ownership interests in Borrower] and each Indemnitor will benefit  
materially from the granting of the Loan by Xxxxxx to Borrower.  
  
 E. To induce Xxxxxx to make the Loan and to accept the Note and Mortgage,  
each Indemnitor has agreed to execute and deliver this Agreement, which  
Agreement is to be  
  
   
executed by each Indemnitor and to be binding upon each Indemnitor and its  
respective heirs, personal representatives, successors and assigns.  
  
 X. Xxxxxx has refused to make the Loan or accept the Note and Mortgage  
unless this Agreement is executed by each Indemnitor and delivered to Lender.  
  
 NOW, THEREFORE, in consideration of the Loan, and for other good and  
valuable consideration, the receipt whereof is xxxxxx acknowledged, each  
Indemnitor, for itself or himself/herself, and its respective heirs, personal  
representatives, successors and assigns, hereby covenants and agrees with Xxxxxx  
for the benefit of Xxxxxx, its indorsees, successors and assigns, as follows:  
  
 1. Guarantee. Each Indemnitor unconditionally guarantees to Lender  
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(i) the prompt payment, when due, of all "Claims and Costs" (as defined in  
paragraph 2(a) of this Agreement) and (ii) the timely performance of all of the  
obligations of Indemnitor under this Agreement. All of the obligations  
guaranteed or undertaken by each Indemnitor in clauses (i) and (ii) of this  
paragraph 1 are hereinafter collectively referred to as the "Obligations".  
  
 2. Indemnity. (a) Each Indemnitor unconditionally agrees to  
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indemnify and hold harmless Lender, its directors, officers, employees, agents,  
counsel, successors and assigns from and against any and all losses, claims,  
damages, penalties, liabilities, costs and expenses (including reasonable  
attorneys' fees and court costs), fines, injuries, penalties, response costs  
(including the cost of any required or necessary investigation, testing,  
monitoring, repair, cleanup, detoxification, preparation of any closure or other  
required plans, or other removal, response or remedial action at or relating to  
the Premises) (collectively, the "Claims and Costs"), with respect to, as a  
direct or indirect result of, or arising out of any of the following: (i) any  
law, ordinance or regulation, lawsuit (brought or threatened), settlement,  
agreement, consent order or judgment, injunction, restraining order, or  
requirement of any insurer of the Premises or any portion thereof, relating to  
the generation, presence, management, disposal, release (or threatened release),  
escape, seepage, leakage or clean-up of any Hazardous Materials (as hereinafter  
defined) at, on, in, from or under all or a portion of the Premises or any other  
real property owned by Borrower in violation of any applicable Environmental Law  
(as hereinafter defined); (ii) the migration of Hazardous Materials from the  
Premises to any other property or onto the Premises from any property or area  
adjacent to the Premises or any other real property owned by Borrower in  
violation of any applicable Environmental Law; (iii) the past treatment,  
disposal or storage of Hazardous Materials or the transportation of Hazardous  
Materials onto or from the Premises or any other real property owned by  
Indemnitor in violation of any applicable Environmental Law; or (iv) the  
incorporation, whether prior or future, of any Hazardous Materials into the  
Premises in violation of any applicable Environmental Law, except to the extent  
that any of the foregoing are caused by Lender or Xxxxxx's designee after Lender  
or Xxxxxx's designee has taken possession of or acquired title to the Premises  
by foreclosure or other means.  
  
 (b) For the purpose of this Agreement, the term "Hazardous Materials"  
shall include, but not be limited to, (i) any substances defined as "hazardous  
substances," "pollutants,"  
  
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"contaminants," "hazardous materials," "hazardous wastes," or "hazardous or  
toxic substances" or related materials as now or hereafter defined in any  
applicable federal, state or local law, regulation, ordinance or directive  
(collectively, "Environmental Laws"), including but not limited to the  
Comprehensive Environmental Response, Compensation and Liability Act of 1980, as  
amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.  
(S) 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. (S)  
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1801, et seq.; the Toxic Substances Control Act, 15 U.S.C. (S) 2601, et seq.;  
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the Resource Conservation and Recovery Act, as amended, 42 U.S.C. (S) 9601, et  
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seq.; the Clean Water Act, 33 U.S.C. (S) 1251 et seq.; the Clean Air Act, 42  
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U.S.C. (S) 7412 et seq.; [local environmental laws to be added]; as any such  
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acts may be amended, modified or supplemented; (ii) those substances listed or  
otherwise identified in the regulations adopted and publications issued, as may  
be amended, modified or supplemented, pursuant to any of the above referenced  
statutes; (iii) lead-based or lead-containing paint; and (iv) any friable  
asbestos, airborne asbestos, or any substance or material containing asbestos.  
The term "Hazardous Materials" shall specifically not include the emission,  
discharge, generation, processing, storage or transportation of any hazardous  
substances or hazardous materials pursuant to, and in accordance with, a valid  
federal or state permit, license or order or otherwise in accordance with  
applicable Environmental Laws.  
  
 3. Required Action of Each Indemnitor. Each Indemnitor shall comply  
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with any law, ordinance, regulation, settlement, agreement, consent order,  
decree, judgment, injunction or directive, affecting the Premises, or any  
requirement of any insurer of the Premises or any portion thereof, and shall  
timely perform, or cause to be performed, any investigation, testing,  
monitoring, repair, cleanup, detoxification, preparation of any closure or other  
required plans, or other removal, response or remedial action relating to (i)  
the presence, management, disposal, release or threatened release, escape,  
seepage or leakage of any Hazardous Materials at, on, in, from or under all or a  
portion of the Premises or any other real property owned by Borrower in  
violation of Environmental Laws; (ii) the migration of Hazardous Materials from  
the Premises to any other property, or onto the Premises from any property or  
area adjacent to the Premises or any other real property owned by Borrower in  
violation of Environmental Laws; (iii) the generation, transportation, storage  
or disposal of Hazardous Materials onto or from the Premises or any other real  
property owned by Borrower in violation of Environmental Laws; or (iv) the  
incorporation, whether prior or future, of any Hazardous Materials into the  
Premises in violation of Environmental Laws.  
  
 4. Representations, Warranties and Covenants. Each Indemnitor hereby  
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represents, warrants and covenants each as to himself/herself or itself as  
follows:  
  
 (a) Indemnitor is a corporation duly organized and validly  
existing under the laws of \_\_\_\_\_\_\_\_\_\_\_, is fully authorized to do business in  
the State of [jurisdiction where Premises is located], and has full power and  
authority to consummate the transactions contemplated hereby.  
  
 (b) [Each of] the Individual Indemnitor[s] is of legal age and  
under no legal disability.  
  
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 (c) This Agreement has been duly executed and delivered by each  
Indemnitor and constitutes the valid and binding obligations of each Indemnitor  
and is enforceable against each Indemnitor in accordance with its terms.  
  
 (d) The consummation of the transactions contemplated hereby and  
the performance by each Indemnitor of its obligations under this Agreement will  
not result in any breach of, give rise to a lien under, or constitute a default  
under, any mortgage, deed of trust, lease, bank loan or credit agreement,  
partnership agreement, corporate charter, by-laws or other agreement or  
instrument to which any Indemnitor is a party or by which it may be bound or  
affected.  
  
 (e) Each Indemnitor will promptly comply with all conditions of  
this Agreement. Indemnitor will promptly (upon transmittal or receipt) deliver  
to Lender copies of all notices and correspondence with respect to: (i) this  
Agreement, (ii) any material adverse change in the financial condition of any  
Indemnitor, (iii) Lender's security and (iv) any violation or potential  
violation of any approval, authorization, or permit issued in regard to the  
Premises. Each Indemnitor will promptly and fully respond to any inquiry of  
Xxxxxx made with respect to any of the matters described in the preceding  
sentence and will permit Lender, upon Xxxxxx's written request, to participate  
in any inquiry, hearing or meeting with regard to any of the foregoing.  
  
 (f) Each Indemnitor agrees to pay on written demand all expenses  
(including reasonable legal services of every kind and cost of any insurance,  
any payment of taxes or other charges) of, or incidental to, or in any way  
relating to the enforcement or protection of the rights of Lender hereunder.  
  
 (g) Each Indemnitor is deriving or expects to derive a financial  
or other advantage from each and every Obligation incurred by Indemnitor to  
Lender.  
  
 (h) Each Indemnitor acknowledges receipt and approval of the  
Note, the Mortgage and the other Loan Documents.  
  
 5. Defaults. The following shall constitute a default hereunder  
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(each, an "Event of Default"):  
  
 (a) If any Indemnitor shall fail to timely perform, or cause to  
be timely performed, any Obligation and such failure is not cured by Indemnitor  
within ten (10) days of written notice of such failure, provided that if such  
failure is not curable within such ten (10) day period, then Indemnitor shall  
have such time as is reasonably required to cure same, provided (x) Indemnitor  
promptly commences the cure within such ten (10) day period, (y) thereafter  
Indemnitor diligently attempts to cure such default, and (z) Lender, in its  
reasonable judgment, determines that a cure may be effectuated during such  
additional period;  
  
 (b) If any Indemnitor shall fail to comply with any of the  
covenants made by it in this Agreement, or if at any time any representation or  
warranty made by any  
  
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Indemnitor to Lender in this Agreement or in any certificate or statement  
delivered in connection herewith shall be false or misleading to an extent  
deemed by Lender, in its reasonable judgment, to be material and such failure is  
not cured by Indemnitor within ten (10) days of written notice of such failure,  
provided that if such failure is not curable within such ten (10) day period,  
then Indemnitor shall have such time as is reasonably required to cure same,  
provided (x) Indemnitor promptly commences the cure within such ten (10) day  
period, (y) thereafter Indemnitor diligently attempts to cure such default, and  
(z) Lender, in its reasonable judgment, determines that a cure may be  
effectuated during such additional period; or  
  
 (c) If at any time any Indemnitor shall revoke or attempt to  
revoke, disavow, contest, commence any action or raise any defense against its  
obligations hereunder .  
  
 6. Lien on Personal Property. To secure the liabilities of  
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Indemnitor under this Agreement, each Indemnitor hereby grants to Lender a  
security interest in and a lien upon any personal property of Indemnitor or in  
which any Indemnitor may have an interest, which is now or may at any time  
hereafter come into the lawful possession or control of Lender, or of any third  
party acting on behalf of Xxxxxx, whether for the express purpose of being used  
by Lender for collateral security or for safekeeping or for any other or  
different purpose, including such personal property as may be in transit by mail  
or carrier for any purpose or covered or affected by any documents in Xxxxxx's  
possession or control, or in the possession or control of any third party acting  
on its behalf (such property and interests in property, referred to collectively  
as the "Collateral").  
  
 7 Remedies. Upon the occurrence of a default hereunder, in addition  
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to any other remedy provided for under this Agreement or at law or in equity,  
each Indemnitor hereby authorizes Xxxxxx, in Xxxxxx's sole discretion, at any  
time:  
  
 (a) To appropriate and apply upon any of the liabilities of  
Indemnitor hereunder any of the Collateral;  
  
 (b) At any time, or from time to time, without notice to  
Indemnitor or to any other person, any such notice being hereby expressly  
waived, immediately to set off and appropriate and apply any and all deposits  
(general or special) at any time held by or owing to Lender, if any, which are  
given to secure the obligations and liabilities of Indemnitor hereunder to or  
for the credit or the account of Indemnitor against and on account of the  
obligations and liabilities of Indemnitor hereunder;  
  
 (c) To foreclose nonjudicially or judicially against any real or  
personal property security it holds for the Obligations or any part thereof, or  
exercise any other remedy against Indemnitor or any security; and  
  
 (d) To exercise all other rights and remedies of a secured party  
under the Uniform Commercial Code as in effect in New York and [jurisdiction  
where Premises is located] and, without limiting the generality of the  
foregoing, Lender may immediately,  
  
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without demand of performance and without advertisement, all of which are hereby  
expressly waived, and upon ten (10) days' prior written notice to Indemnitor,  
sell at public or private sale, grant options to purchase or otherwise realize  
upon in the States of New York and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, the whole or from time to  
time any part of the Collateral upon which Lender shall have a security interest  
and lien as aforesaid, and after deducting from the proceeds of sale or other  
disposition of the Collateral all expenses (including all reasonable expenses  
for legal services of every kind and other expenses as set forth below) shall  
apply the residue of such proceeds toward the payment of any of the liabilities  
of Indemnitor hereunder in such order as Lender shall elect, each Indemnitor  
remaining liable for any deficiency remaining unpaid after such application. If  
notice of any sale or other disposition is required by law to be given, each  
Indemnitor hereby agrees that a notice sent in accordance with this Agreement at  
least ten (10) calendar days before the time of any intended public sale or of  
the time after which any private sale or other disposition of the said  
collateral is to be made, shall be reasonable notice of such sale or other  
disposition. At any such sale or other disposition, Lender may itself purchase  
the whole or any part of the Collateral sold, free from any right of redemption  
on the part of any Indemnitor, which right is hereby waived and released.  
  
 8. Equitable Relief; Specific Performance. Each Indemnitor acknowledges  
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and agrees that it may be impossible to measure accurately the damages to Lender  
resulting from a breach of Indemnitor's covenant to satisfy the Obligations and  
that such a breach will cause irreparable injury to Xxxxxx and that Lender may  
not have an adequate remedy at law in respect of such breach and, as a  
consequence, agrees that such covenant shall be specifically enforceable against  
each Indemnitor and hereby waives and agrees not to assert any defense against  
an action for specific performance of such covenant. This clause shall not  
prejudice Xxxxxx's rights to assert any and all claims for damages incurred as a  
result of Indemnitor's default hereunder, and Xxxxxx may, before, during, or  
after any foreclosure of the Mortgage, hold each Indemnitor jointly and  
severally liable for any deficiency arising from Indemnitor's default hereunder  
and for all losses and damages sustained and expenses incurred by reason of  
Indemnitor failing to satisfy the Obligations.  
  
 9. Waiver of Election of Remedies. Each Indemnitor waives any right to  
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require or compel Lender to (a) proceed against or exhaust any security for the  
Obligations; or (b) pursue any other remedy in Lender's power whatsoever; and  
failure of Lender to do any of the foregoing shall not exonerate, release or  
discharge any Indemnitor from its absolute, unconditional and independent  
liabilities to Xxxxxx xxxxxxxxx. Each Indemnitor hereby waives any and all  
legal requirements that Lender shall institute any action or proceedings at law  
or in equity in respect of the Loan or any other Loan Document or resort to or  
seek to realize upon the security held by Xxxxxx, as a condition precedent to  
bringing an action against Indemnitor upon this Agreement.  
  
 10. Right of Separate Actions. Each Lender may bring and prosecute a  
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separate action against Indemnitor to enforce its liabilities hereunder, whether  
or not any action is brought against any other person and whether or not any  
other person is joined in any such action or actions. Nothing shall prohibit  
Lender from exercising its rights against Indemnitor, any security for the  
Obligations, and any other person simultaneously, jointly and/or severally.  
  
 6  
  
   
 11. Waiver of Rights of Subrogation. Each Indemnitor hereby irrevocably  
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waives any rights to be subrogated to the rights of Lender with respect to the  
Obligations. No failure on the part of Lender to exercise, and no delay in  
exercising, any right, remedy or power hereunder shall operate as a waiver  
thereof, nor shall any single or partial exercise by Lender of any right, remedy  
or power hereunder preclude any other or future exercise of any other right,  
remedy or power.  
  
 12. Waiver of Notice, Consent, Etc. (a) This Agreement shall be  
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construed as a continuing, absolute and unconditional indemnity.  
  
 (b) Each Indemnitor hereby waives notice of acceptance of this  
Agreement by Xxxxxx and of presentment, demand, protest, notice of protest and  
of dishonor, notices of default (except as otherwise expressly provided herein)  
and all other notices relative to this Agreement of every kind and description  
now or hereafter provided by any other agreement between Indemnitor and Lender  
or any statute or rule of law.  
  
 (c) Each Indemnitor waives any and all notice of the creation,  
renewal, extension or accrual of any of the Obligations or of the reliance by  
Lender upon this Agreement. Said Obligations, and each of them, shall  
conclusively be deemed to have been created, contracted, or incurred in reliance  
upon this Agreement and all dealings between Borrower and Lender shall likewise  
be conclusively presumed to have been made or consummated in reliance upon this  
Agreement.  
  
 (d) Each Indemnitor hereby agrees that the terms, covenants and  
provisions contained in the Note, the Mortgage or in any other Loan Document may  
be altered, extended, modified, waived, released or canceled by Xxxxxx, and each  
Indemnitor agrees that this Agreement and its liability hereunder shall be in no  
way affected, diminished or released by any such alteration, extension,  
modification, release, waiver or cancellation.  
  
 13. Waiver of Priority of Collateral. Each Indemnitor hereby agrees that,  
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in the event that any of its property is or may be hypothecated with other  
property of Borrower, as security for any obligations of Borrower under any  
other Loan Document, any right of Indemnitor to have such other property first  
applied to the discharge of such obligations is hereby irrevocably waived by  
each Indemnitor. Each Indemnitor hereby expressly recognizes that any of its  
property which is or may be hereafter hypothecated pursuant to the Mortgage is  
security for such obligations and is not security for this Agreement.  
  
 14. No Discharge; Remedies Cumulative. No Indemnitor shall be discharged,  
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released or exonerated, in any way, from its absolute, unconditional and  
independent liabilities hereunder, even though any rights or defenses which any  
Indemnitor may have against Lender or others may be destroyed, diminished or  
otherwise affected by:  
  
 (a) Any declaration by Xxxxxx of a default in respect of any of the  
Obligations;  
  
 7  
  
   
 (b) The exercise by Lender of any rights or remedies against Borrower  
or any other person under any other Loan Document;  
  
 (c) The failure of Lender to exercise any rights or remedies against  
Borrower or any other person under any other Loan Document;  
  
 (d) The sale or enforcement of, or realization upon (through judicial  
foreclosure, power of sale or any other means) any security for any of the  
Obligations, even though (i) recourse may not thereafter be had against Borrower  
under any other Loan Document for any deficiency, or (ii) Lender fails to pursue  
any such recourse which might otherwise be available, whether by way of  
deficiency judgment following judicial foreclosure or otherwise; and  
  
no such action by Xxxxxx will release or limit the liability of each Indemnitor  
to Lender. All rights and remedies of Lender hereunder or under any of the Loan  
Documents shall be cumulative and may be exercised singularly or concurrently  
against the party to whom enforcement is sought. The rights of Lender under  
this Agreement are in addition to and not in diminution of the rights of Lender  
under any other Loan Document.  
  
 15. Survival. Each and every of the terms, covenants and conditions of  
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this Agreement shall survive the repayment of Borrower's obligations under the  
Loan Documents, and no Indemnitor shall be released by any act or thing which  
might, but for this provision, be deemed a legal or equitable discharge of a  
surety, or by reason of any waiver, extension, modification, forbearance or  
delay or other act or omission of Lender or its failure to proceed promptly or  
otherwise, or by reason of any action taken or omitted or circumstance which may  
or might vary the risk or affect the rights or remedies of Indemnitor or by  
reason of any further dealings between Borrower and Lender, whether relating to  
the Loan or otherwise, and each Indemnitor hereby expressly waives and  
surrenders any defenses to its liability hereunder based upon any of the  
foregoing acts, omissions, things or agreements or waivers of Lender; it being  
the purpose and intent of the parties hereto that the obligations of Indemnitor  
hereunder shall survive the repayment of Borrower's obligations under the Loan  
Documents and are absolute and unconditional under any and all circumstances.  
  
 16. Notices. Any notice, demand, statement, request or consent made  
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hereunder shall be in writing to the other party hereto at its address set forth  
below or at such other address as such party may designate by notice to the  
other party hereto and shall be deemed given (i) on receipt, if mailed, by  
certified or registered U.S. mail, return receipt requested, postage prepaid;  
(ii) on receipt, if delivered, fee prepaid, to a national overnight delivery  
service (such as Federal Express, Purolater Courier, U.P.S. Next Day Air); or  
(iii) when delivered, if delivered by hand, as evidenced by a signed receipt:  
  
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 To Indemnitor:  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Attention:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 and  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Attention:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 With a courtesy copy to:  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 To Lender:  
  
 Banco Popular de Puerto Rico  
 0 Xxxx 00/xx/ Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xx. Xxxxxxx Xxx  
 Vice President  
   
 With a courtesy copy to:  
  
 XxXxxxxxx Xxxxxx LLP  
 0000 Xxxxxx xx xxx Xxxxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Attention: Xxxxx X. Xxxxx, Esq.  
  
A "Business Day" is any day other than a Saturday or Sunday, or a day on which  
 ------------   
banking and savings and loan institutions in the State of New York are  
authorized or obligated by law or executive order to remain closed. Refusal to  
accept delivery of any notice shall be deemed to be receipt of such notice.  
  
 17. Entire Agreement. This Agreement represents the entire agreement  
 ----------------   
between Indemnitor and Lender with respect to the matters referred to herein,  
and no waiver or  
  
 9  
  
   
modification hereof or thereof shall be effective unless in writing and signed  
by Xxxxxx and Indemnitor.  
  
 18. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE  
 -------------   
PARTIES HEREUNDER SHALL BE CONSTRUED, ENFORCED, AND INTERPRETED ACCORDING TO THE  
LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE IN AND PERFORMED IN  
THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS. UNLESS  
THE TEXT OTHERWISE REQUIRES, ALL TERMS USED HEREIN SHALL HAVE THE MEANING  
SPECIFIED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATES OF NEW YORK  
AND \_\_\_\_\_\_\_\_\_\_ AT THE DATE HEREOF.  
  
 19. Successors and Assigns. This Agreement shall be binding upon each  
 ----------------------   
Indemnitor and upon their respective heirs, personal representatives, successors  
and assigns and shall inure to the benefit of Xxxxxx and its indorsees,  
successors and assigns.  
  
 20. Joint and Several. The representations, warranties, covenants and  
 -----------------   
other obligations of Indemnitor hereunder are made and undertaken jointly and  
severally by each of the Indemnitors.  
  
 21. Time of the Essence. Time shall be of the essence with regard to the  
 -------------------   
performance by each Indemnitor of its obligations under this Agreement.  
  
 22. Waiver of Trial by Jury. Lender and each Indemnitor shall and hereby  
 -----------------------   
do waive trial by jury in any action, proceeding or counterclaim brought by any  
of the parties hereto against the other on any matters arising out of or in any  
way connected to the Loan, this Agreement or any of the other Loan Documents.  
  
 23. Counterparts. This Agreement may be executed in several counterparts,  
 ------------   
each of which shall constitute but one and the same instrument.  
  
 IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as  
of the date first above written.  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  
 a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 10  
  
   
 SCHEDULE A  
  
 LEGAL DESCRIPTION  
  
  
   
 SCHEDULE 1  
 ----------  
  
 EXISTING CREDIT FACILITY  
 ------------------------  
 FINANCIAL COVENANTS  
 -------------------  
  
Note: Capitalized terms appearing herein shall have the meanings ascribed to  
----   
 such terms in the Appendix of Defined Terms annexed hereto. To the  
 extent not so defined in the Appendix, capitalized terms shall have  
 the meanings ascribed in Section 1.1 of the Agreement.  
  
A. MINIMUM CASH INTEREST COVERAGE. Borrower shall not permit the ratio  
 ------------------------------   
 (the "CASH INTEREST COVERAGE RATIO") of (i) Consolidated EBITDA to  
 ----------------------------   
 (ii) Consolidated Cash Interest Expense for any four-fiscal quarter  
 period ending as of the dates set forth below to be less than the  
 correlative ratio indicated:  
  
  
  
 ======================================  
 FISCAL MINIMUM  
 QUARTER CASH INTEREST  
 ENDING COVERAGE   
 RATIO  
 --------------------------------------   
   
 --------------------------------------   
 09/07/97 2.25:1.00  
 --------------------------------------   
 12/28/97 2.25:1.00  
 --------------------------------------   
 03/22/98 2.25:1.00   
 --------------------------------------  
 06/14/98 2.25:1.00   
 --------------------------------------  
 09/06/98 2.25:1.00   
 --------------------------------------  
 12/27/98 2.25:1.00   
 --------------------------------------  
 03/21/99 2.50:1.00   
 --------------------------------------   
 06/13/99 2.50:1.00   
 --------------------------------------  
 09/05/99 2.50:1.00   
 --------------------------------------  
 12/26/99 2.50:1.00   
 --------------------------------------  
 03/19/00 2.75:1.00   
 --------------------------------------  
 06/11/00 2.75:1.00   
 --------------------------------------  
 09/03/00 2.75:1.00   
 --------------------------------------  
 12/31/00 2.75:1.00   
 --------------------------------------  
 03/25/01 3.00:1.00   
 --------------------------------------  
 06/17/01 3.00:1.00   
 --------------------------------------  
 09/09/01 3.00:1.00   
 --------------------------------------   
   
  
   
   
   
 --------------------------------------   
 12/30/01 3.00:1.00  
 --------------------------------------   
 03/24/02 3.00:1.00  
 --------------------------------------   
 06/16/02 3.00:1.00  
 --------------------------------------   
  
  
B. MAXIMUM LEVERAGE RATIO. Borrower shall not permit the ratio (the   
 "(LEVERAGE RATIO") of (i) Consolidated Total Debt as of the dates set   
 --------------  
 forth below to (ii) Consolidated EBITDA for the four-fiscal quarter period  
 ending on such date to exceed the correlative ratio indicated:  
  
  
  
 ======================================   
 FISCAL MINIMUM  
 QUARTER LEVERAGE   
 ENDING RATIO   
 --------------------------------------  
   
 --------------------------------------  
 09/07/97 4.00:1.00   
 --------------------------------------  
 12/28/97 4.00:1.00   
 --------------------------------------  
 03/22/98 4.00:1.00   
 --------------------------------------  
 06/14/98 4.00:1.00   
 --------------------------------------  
 09/06/98 4.00:1.00   
 --------------------------------------  
 12/27/98 4.00:1.00   
 --------------------------------------  
 03/21/99 3.75:1.00   
 --------------------------------------  
 06/13/99 3.75:1.00   
 --------------------------------------  
 09/05/99 3.75:1.00   
 --------------------------------------  
 12/26/99 3.75:1.00   
 --------------------------------------  
 03/19/00 3.75:1.00   
 --------------------------------------  
 06/11/00 3.75:1.00   
 --------------------------------------  
 09/03/00 3.75:1.00   
 --------------------------------------  
 12/31/00 3.75:1.00   
 --------------------------------------  
 03/25/01 3.50:1.00   
 --------------------------------------  
 06/17/01 3.50:1.00   
 --------------------------------------  
 09/09/01 3.50:1.00   
 --------------------------------------   
 12/30/01 3.50:1.00   
 --------------------------------------   
 03/24/02 3.50:1.00   
 --------------------------------------   
 06/16/02 3.50:1.00   
 ======================================   
  
   
 2  
   
  
   
C. MINIMUM FIXED CHARGE COVERAGE RATIO. Borrower shall not permit the ratio  
 (the ("FIXED CHARGE COVERAGE RATIO") of (i) Consolidated EBITDA to (ii)  
 ---------------------------   
 Consolidated Fixed Charges for any four-fiscal quarter period ending on the  
 dates set forth below to be less than the correlative ratio indicated:  
  
  
  
 ======================================   
 FISCAL MINIMUM  
 QUARTER FIXED CHARGE  
 ENDING COVERAGE   
 --------------------------------------  
   
 --------------------------------------  
 09/07/97 1.20:1.00   
 --------------------------------------  
 12/28/97 1.20:1.00   
 --------------------------------------  
 03/22/98 1.25:1.00   
 --------------------------------------  
 06/14/98 1.25:1.00   
 --------------------------------------  
 09/06/98 1.25:1.00   
 --------------------------------------  
 12/27/98 1.25:1.00   
 --------------------------------------  
 03/21/99 1.30:1.00   
 --------------------------------------  
 06/13/99 1.30:1.00   
 --------------------------------------  
 09/05/99 1.30:1.00   
 --------------------------------------  
 12/26/99 1.30:1.00   
 --------------------------------------  
 03/19/00 1.35:1.00   
 --------------------------------------  
 06/11/00 1.35:1.00   
 --------------------------------------  
 09/03/00 1.35:1.00   
 --------------------------------------  
 12/31/00 1.35:1.00   
 --------------------------------------  
 03/25/01 1.40:1.00   
 --------------------------------------  
 06/17/01 1.40:1.00   
 --------------------------------------  
 09/09/01 1.40:1.00   
 --------------------------------------   
 12/30/01 1.40:1.00   
 --------------------------------------   
 03/24/02 1.40:1.00   
 --------------------------------------   
 06/16/02 1.40:1.00   
 ======================================  
   
  
D. CAPITAL EXPENDITURES.  
  
 1. CONSOLIDATED CAPITAL EXPENDITURES. Except as set forth in  
 subparagraph 2 of this Paragraph D, Borrower shall not, and shall not  
 permit its Subsidiaries to,   
  
 3  
  
   
 make or incur Consolidated Capital Expenditures, in any fiscal year or  
 period indicated below, in an aggregate amount in excess of the  
 corresponding amount (the ("MAXIMUM CONSOLIDATED CAPITAL EXPENDITURES  
 -----------------------------------------  
 AMOUNT") set forth in the chart below opposite such fiscal year or  
 ------  
 period; provided that with respect to the Maximum Consolidated Capital  
 --------  
 Expenditure Amount for any fiscal year or period, at Borrower=s option  
 such amount may be increased (a) by a portion (not to exceed 20%) of  
 the Maximum Consolidated Capital Expenditure amount for the  
 immediately preceding fiscal year which was not utilized during such  
 preceding fiscal year, and (b) by a portion (not to exceed 15%) of the  
 amount of Maximum Consolidated Capital Expenditure Amount for the  
 immediately succeeding year (which, to the extent of such increase  
 shall reduce the amount of the Maximum Consolidated Capital  
 Expenditure Amount for such succeeding year), provided that in no  
 --------  
 event shall the aggregate amount of the increases to the Maximum  
 Consolidated Capital Expenditure Amount pursuant to the foregoing  
 clauses (a) and (b) in any fiscal year or period exceed $10,000,000;  
 provided further that the Maximum Consolidated Capital Expenditure  
 -------- -------  
 Amount for each fiscal year set forth below shall be increased by the  
 amount of Consolidated Excess Cash flow for the immediately preceding  
 fiscal year not required to be used to prepay Loans pursuant to  
 subsection 2.4B(iii)(f) of the Existing Credit Facility Loan  
 Agreement.  
  
  
  
 ==============================================   
 MAXIMUM CONSOLIDATED  
 FISCAL CAPITAL EXPENDITURES  
 YEAR/PERIOD AMOUNT  
 ----------------------------------------------   
   
 5/21/97 to end  
 of 1997 fiscal year $40,000,000  
 ----------------------------------------------   
 1998 $35,000,000  
 ----------------------------------------------   
 1999 $35,000,000  
 ----------------------------------------------   
 2000 $35,000,000  
 ----------------------------------------------   
 2001 $35,000,000  
 ----------------------------------------------   
 2002 $35,000,000  
 ----------------------------------------------   
  
  
; provided that each of the Maximum Consolidated Capital Expenditure Amounts  
 --------   
provided for above shall be increased by an aggregate amount equal to 15% of the  
purchase price paid by Company in connection with any Permitted Acquisition;  
provided further that such aggregate amount shall be allocated pro rata among  
-------- -------   
the remaining periods set forth above after the consummation of the Permitted  
Acquisition.  
  
2. In addition to the foregoing, Borrower may make Consolidated Capital  
 Expenditures (i) in connection with Permitted Acquisitions, (ii) with the  
 proceeds   
  
 4  
  
   
 of Specified Asset Sales and (iii) committed to be made prior to May  
 21, 1997 but made after May 21, 1997, and such Consolidated Capital  
 Expenditures made pursuant to this Paragraph (D)(2) shall not be  
 included for the purposes of calculating the Maximum Consolidated  
 Capital Expenditures set forth in Paragraph (D)(1).  
  
E. SALES AND LEASE-BACKS. Borrower shall not, and shall not permit any of its  
 ---------------------   
 Subsidiaries to, directly or indirectly, become or remain liable as lessee  
 or as a guarantor or other surety with respect to any lease, whether an  
 Operating Lease or a Capital Lease, of any property (whether real, personal  
 or mixed), whether now owned or hereafter acquired, (i) which Borrower or  
 any of its Subsidiaries has sold or transferred or is to sell or transfer  
 to any other Person (other than Borrower or any of its Subsidiaries) or  
 (ii) which Borrower or any of its Subsidiaries intends to use for  
 substantially the same purpose as any other property which has been or is  
 to be sold or transferred by Borrower or any of its Subsidiaries to any  
 Person (other than Borrower or any of its Subsidiaries) in connection with  
 such lease; provided that the foregoing shall not apply with respect to   
 --------   
 (i) any sale leaseback transaction consummated prior to May 21, 1997 and   
 (ii)any property acquired after May 21, 1997; provided that (y) the sale  
 --------   
 of such property constitutes a Specified Asset Sale and (z) the aggregate  
 sale price paid to Borrower with respect to all sales or transfers of such  
 property shall not exceed $15,000,000.  
  
 F. SALE OR DISCOUNT OF RECEIVABLES. Borrower shall not, and shall not permit  
 -------------------------------   
 any of its Subsidiaries to, directly or indirectly, sell with recourse, or  
 discount or otherwise sell for less than the face value thereof, any of its  
 notes or accounts receivable.  
  
G. DISPOSAL OF SUBSIDIARY STOCK. Except for any sale of any Regulatory Shares  
 ----------------------------   
 or 100% of the capital stock or other equity Securities of any of its  
 Subsidiaries in compliance with the provisions of subsection 7.7(iv) of the  
 Existing Credit Facility Loan Agreement, Borrower shall not:  
  
 (i) directly or indirectly sell, assign, pledge or otherwise encumber  
 or dispose of any shares of capital stock or other equity  
 Securities of any of its Subsidiaries, except to qualify  
 directors if required by applicable law; or  
  
 (ii) permit any of its Subsidiaries directly or indirectly to sell,  
 assign, pledge or otherwise encumber or dispose of any shares of  
 capital stock or other equity Securities of any of its  
 Subsidiaries (including such Subsidiary), except to Borrower,  
 another Subsidiary of Borrower, or to qualify directors if  
 required by applicable law.  
  
H. AMENDMENTS OF DOCUMENTS RELATING TO SUBORDINATED INDEBTEDNESS. Borrower  
 -------------------------------------------------------------   
 shall not, and shall not permit any of its Subsidiaries to, amend or  
 otherwise change the terms of the Unsecured Subordinated Note Indenture or  
 the Unsecured Subordinated Notes, or make any payment consistent with an  
 amendment thereof or change thereto, if the effect of such amendment or  
 change is to increase the interest rate on the Unsecured Subordinated  
 Notes, change (to earlier dates) any dates upon which payments of principal  
 or interest are due thereon, change any event of default or condition to an  
 event of default   
  
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 (other than to eliminate any such event of default), change the redemption,  
 prepayment or defeasance provisions thereof, change the subordination  
 provisions thereof (or of any guaranty thereof), or if the effect of such  
 amendment or change, together with all other amendments or changes made, is  
 to increase materially the obligations of the obligor thereunder or to  
 confer any additional rights on the holders of the Unsecured Subordinated  
 Notes (or a trustee or other representative on their behalf) which would be  
 adverse to Borrower or Lenders (as defined in the Existing Credit Facility  
 Loan Agreement). Borrower shall not designate any Indebtedness as  
 ADesignated Senior Indebtedness@ under the terms of the Unsecured Note  
 Indenture without the prior written consent of Administrative Agent and  
 Requisite Lenders (as defined in the Existing Credit Facility Loan  
 Agreement).  
  
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 APPENDIX OF DEFINED TERMS  
 APPEARING IN SCHEDULE 1  
 -----------------------  
  
  
 "ADMINISTRATIVE AGENT" means Canadian Imperial Bank of Commerce (acting  
through its New York Agency) in its capacity as administrative agent for Lenders  
and also means and includes any successor Administrative Agent appointed  
pursuant to Subsection 9.5.A of the Existing Credit Facility Loan Agreement.  
  
 "ASSET SALE" means the sale by Borrower or any of its Subsidiaries to any  
Person of (i) any of the stock of any of Borrower's Subsidiaries, (ii)  
substantially all of the assets of any division or line of business of Borrower  
or any of its Subsidiaries, or (iii) any other assets (whether tangible or  
intangible) of Borrower or any of its Subsidiaries outside of the ordinary  
course of business excluding tangible personal property that in the reasonable  
judgment of Xxxxxxxx, has become uneconomic, obsolete or worn out and which is  
disposed of in the ordinary course of business; and (iii) any other such assets  
to the extent that the aggregate amount of sales of such assets during any  
fiscal year is equal to or less than $1,000,000.  
  
 "CAPITAL LEASE", as applied to any Person, means any lease of any property  
(whether real, personal or mixed) by that person as lessee that, in conformity  
with GAAP, is accounted for as a capital lease on the balance sheet of that  
Person.  
  
 "CONSOLIDATED CAPITAL EXPENDITURES" means, for any period, the sum of (i)  
the aggregate of all expenditures (whether paid in cash or other consideration  
or accrued as a liability and including that portion of Capital Leases which is  
capitalized on the consolidated balance sheet of Borrower and its Subsidiaries)  
by Borrower and its Subsidiaries during that period that, in conformity with  
GAAP, are included in "additions" to property, plant or equipment" or comparable  
items reflected in the consolidated statement of cash flows of Borrower and its  
Subsidiaries plus (ii) to the extent not covered by clause (i) of this  
 ----  
definition, the aggregate of all expenditures by Borrower and its Subsidiaries  
during that period to acquire (by purchase or otherwise) (a) the business,  
property or fixed assets of any Person, or (b) stock or other evidence of  
beneficial ownership of any Person to the extent the purchase price of such  
stock or other evidence of beneficial ownership of such Person is appropriately  
allocated to property, plant, or equipment in accordance with GAAP; provided,  
 --------   
however, Consolidated Capital Expenditures shall not include expenditures made  
-------  
from the proceeds of any insurance or condemnation payments (or payments made in  
lieu of condemnation) received by Borrower and its Subsidiaries and used to  
repair or replace the damaged property with respect to which such proceeds were  
received.  
   
 "CONSOLIDATED CASH INTEREST EXPENSE" means, for any period, Consolidated  
Interest Expense for such period excluding, however, any interest expense not  
 --------- -------   
payable in cash (including amortization of discount and amortization of debt  
issuance costs).  
  
   
 "CONSOLIDATED CURRENT ASSETS" means, as at any date of determination, the  
total assets of Borrower and its Subsidiaries on a consolidated basis which may  
properly be classified as current assets in conformity with GAAP excluding cash  
and cash equivalents.  
  
 "CONSOLIDATED CURRENT LIABILITIES" means, as at any date of determination,  
the total liabilities of Borrower and its Subsidiaries on a consolidated basis  
which may properly be classified as current liabilities in conformity with GAAP  
excluding, however, the current portion of long-term Indebtedness.  
  
 "CONSOLIDATED EBITDA" means, for any period, the sum of the amounts for  
such period of (i) Consolidated Net Income, (ii) Consolidated Interest Expense,  
(iii) provisions for taxes based on income, (iv) total depreciation expense, (v)  
total amortization expense, (vi) other non-cash items reducing Consolidated Net  
Income (excluding any such non-cash charge to the extent that it represents an  
accrual of or reserve for cash expenditures in any future period) and (vii) to  
the extent deducted in determining Consolidated Net Income fees, expenses and  
similar transaction costs paid in connection with Permitted Acquisitions less  
 ----   
(viii) other non-cash items increasing Consolidated Net Income, all of the  
foregoing as determined on a consolidated basis for Borrower and its  
Subsidiaries in conformity with GAAP.  
  
 "CONSOLIDATED EXCESS CASH FLOW" means, for any period, an amount (if  
positive) equal to (i) the sum, without duplication, of the amounts for such  
period of (a) Consolidated EBITDA and (b) the Consolidated Working Capital  
Adjustment minus (ii) the sum, without duplication, of the amounts for such  
 -----  
period of (a) voluntary, mandatory and scheduled repayments of Consolidated  
Total Debt (excluding repayments of revolving loans except to the extent the  
revolving loan commitments are permanently reduced in connection with such  
repayments and mandatory repayments of the loans made pursuant to subsection  
2.4B.(iii) of the Existing Credit Facility Loan Agreement), (b) Consolidated  
Capital Expenditures (net of any proceeds of any related financings with respect  
to such expenditures or equity contributions applied to finance such  
expenditures), (c) Consolidated Cash Interest Expense, (d) provisions for  
current taxes based on income of Borrower and its Subsidiaries and payable in  
cash with respect to such period, (e) to the extent not included in Consolidated  
Capital Expenditures, payments made in connection with Permitted Acquisitions  
(net of any proceeds of any related financing with respect to such expenditures  
or equity contributions applied to finance such expenditures) and (f) to the  
extent not otherwise deducted in calculating Consolidated Net Income or included  
in Consolidated Capital Expenditures, payments made under Permitted Earnout  
Agreements.  
  
 "CONSOLIDATED FIXED CHARGES" means, for any period, an amount equal to the  
sum of the amounts for such period of (i) scheduled repayments of principal of  
all Indebtedness (as reduced as a result of prepayments pursuant to subsection  
2.4B of the Existing Credit Facility Loan Agreement in the case of Indebtedness  
thereunder), (ii) Consolidated Cash Interest Expense, (iii) Capital Expenditures  
for repair or maintenance of property, plant or equipment (net of related  
financings) and (iv) the portion of taxes based on income actually paid in cash  
(excluding taxes  
  
 2  
  
   
on extraordinary gains) all as determined for Borrower and its Subsidiaries on a  
consolidated basis in conformity with GAAP.  
  
 "CONSOLIDATED INTEREST EXPENSE" means, for any period, (i) total interest  
expense (including that portion attributable to Capital Leases in accordance  
with GAAP) and capitalized interest including, without limitation, all  
commissions, discounts and other fees and charges owed with respect to letters  
of credit and bankers' acceptance and net costs under Interest Rate Agreements,  
but excluding that portion attributable to (a) amortization expense associated  
with the Transaction Costs, (b) the write-off of unamortized deferred financing  
costs taken by Borrower in connection with the refinancings of Borrower and its  
Subsidiaries on a consolidated basis with respect to all outstanding  
Indebtedness of Borrower and its Subsidiaries, and (c) any amounts referred to  
in subsection 2.3 of the Existing Credit Facility Loan Agreement payable to  
Arranging Agent, Syndication Agent, Administrative Agent or Lenders (as such  
terms are defined in the Existing Credit Facility Loan Agreement) on or before  
May 21, 1997, minus (ii) total interest income of Borrower and its Subsidiaries  
 -----  
on a consolidated basis.  
  
 "CONSOLIDATED MAINTENANCE CAPITAL EXPENDITURES" means, for any period, the  
aggregate amount of all Consolidated Capital Expenditures actually paid by  
Borrower and its Subsidiaries during that period for repair or maintenance of  
property, plant or equipment.  
  
 "CONSOLIDATED NET INCOME" means, for any period, the net income (or loss)  
of Borrower and its Subsidiaries on a consolidated basis for such period taken  
as a single accounting period determined in conformity with GAAP; provided that  
 --------   
there shall be excluded (i) the income (or loss) of any Person (other than a  
Subsidiary of Borrower) in which any other Person (other than Borrower or any of  
its Subsidiaries) has an equity or similar interest, except to the extent of the  
amount of dividends or other distributions actually paid to Borrower or any of  
its Subsidiaries by such Person during such period, (ii) the income (or loss) of  
any Person accrued prior to the date it becomes a Subsidiary of Borrower or is  
merged into or consolidated with Borrower or any of its Subsidiaries or that  
Person's assets are acquired by Borrower or any of its Subsidiaries, (iii) the  
income of any Subsidiary of Borrower to the extent that the declaration or  
payment of dividends or similar distributions by that Subsidiary of that income  
is not at the time permitted by operation of the terms of its charter or any  
agreement, instrument, judgment, decree, order, statute, rule or governmental  
regulation applicable to that Subsidiary (other than such restriction contained  
in documents governing Indebtedness of such Subsidiary permitted under the  
Existing Credit Facility Loan Agreement), (iv) any after-tax gains or losses  
attributable to Asset Sales or returned surplus assets of any Plan, and (v) (to  
the extent not included in clauses (i) through (iv) above) any net extraordinary  
gains or net non-cash extraordinary losses.  
  
 "CONSOLIDATED TOTAL DEBT" means, as at any date of determination, the  
aggregate stated balance sheet amount of all Indebtedness of Borrower and its  
Subsidiaries, less an amount equal to the cash balances of Borrower and its  
 ----  
Subsidiaries (net of any overdraft balances), determined on a consolidated basis  
in accordance with GAAP.  
  
 3  
  
   
 "CONSOLIDATED WORKING CAPITAL" means, as at any date of determination, the  
amount (which may be a negative number) obtained by subtracting Consolidated  
Current Liabilities from Consolidated Current Assets.  
   
 "CONSOLIDATED WORKING CAPITAL ADJUSTMENT" means, for any fiscal year, the  
amount (which may be a negative number) obtained by subtracting (i) Consolidated  
Working Capital as of the end of such fiscal year from (ii) Consolidated Working  
Capital as of the beginning of such fiscal year.  
  
 "FAR WEST DIVISION" means the cooking and restaurant kitchen equipment  
manufacturing division of Borrower.  
  
 "INTEREST RATE AGREEMENT" means any interest rate swap agreement, interest  
rate cap agreement, interest rate collar agreement or other similar agreement or  
arrangement designed to protect Borrower or any of its Subsidiaries against  
fluctuations in interest rates.  
  
 "OPERATING LEASE" means, as applied to any Person, any lease (including  
without limitation, leases that may be terminated by the lessee at any time) of  
any property (whether real, personal or mixed) that is not a Capital Lease other  
than any such lease under which that Person is the lessor.  
  
 "PERMITTED ACQUISITIONS" means the acquisition (whether by means of equity  
or asset purchase acquisition) by Borrower or its Subsidiaries, of a business or  
a series of related businesses; provided that (i) the businesses acquired are  
 --------  
suitable for franchising; (ii) with respect to any such acquisition financed  
with the proceeds of Acquisition Loans (as defined in the Existing Credit  
Facility Loan Agreement) after giving effect to such acquisition, Borrower and  
its Subsidiaries shall be in compliance, on a Pro Forma Basis, with the  
financial covenants as required under subsection 7.6E of the Existing Credit  
Facility Loan Agreement; and (iii) concurrently with such acquisition the  
Administrative Agent, on behalf of Lenders, shall be granted a first priority  
security interest in the businesses and assets acquired (to the extent available  
under applicable law).  
  
 "PERMITTED EARNOUT AGREEMENTS" shall mean (x) the agreements set forth  
in Schedule 1.1D of the Existing Credit Facility Loan Agreement and (y) any  
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other agreement by Borrower or one of its Subsidiaries to pay the seller or  
sellers of any Person or assets acquired in accordance with the provisions of  
subsection 7.7(vi) of the Existing Credit Facility Loan Agreement at any time  
following the consummation of such acquisition by reference to the financial  
performance of the assets acquired; provided that the aggregate amount of all  
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such payments which may be owed under such agreements contemplated by this  
clause (y) at any time shall not exceed $10,000,000.  
  
 "REGULATORY SHARES" means, with respect to any Person, shares of such  
Person required to be issued as qualifying shares to directors or persons  
similarly situated or shares issued to  
  
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Persons other than Borrower or a Wholly Owned Subsidiary of Borrower in response  
to regulatory requirements of foreign jurisdictions pursuant to a resolution of  
the Board of Directors of such Person, so long as such shares do not exceed one  
percent of the total outstanding shares of equity such Person and any owners of  
such shares irrevocably covenant with Borrower to remit to Borrower or waive any  
dividends or distributions paid or payable in respect of such shares.  
  
 "SECURITIES" means any stock, shares, partnership interests, voting trust  
certificates, certificates of interest or participation in any profit-sharing  
agreement or arrangement, options, warrants, bonds, debentures, notes, or other  
evidences of indebtedness, secured or unsecured, convertible, subordinated or  
otherwise, or in general any instruments commonly known as "securities"" or any  
certificates of interest, shares or participations in temporary or interim  
certificates for the purchase or acquisition of, or any right to subscribe to,  
purchase or acquire, any of the foregoing.  
  
 "SPECIFIED ASSET SALES" means Asset Sales with respect to (i) sale-  
leaseback transactions completed within one year following the acquisition of  
the subject asset; (ii) sales, leases or transfers of restaurant properties to  
franchisees pursuant to Borrower's "turnkey"" development programs, (iii) sales,  
leases or transfers of franchises and related assets and properties repossessed  
or reacquired by Borrower from franchisees and subsequently resold to new  
franchisees all in the ordinary course of business, (iv) sales or dispositions  
of restaurant-related properties and assets that are no longer in operation and  
are surplus to Xxxxxxxx's needs in the ordinary course of business in an amount  
not in excess of $5,000,000 in any twelve month period, (v) exchanges of  
properties or assets for other properties or assets (other than cash or cash  
equivalents) that (1) are useful in the business of Borrower and its  
Subsidiaries as then being conducted and (2) have a fair market value at least  
equal to the fair market value of the assets or properties being exchanged (as  
evidenced by a resolution of the directors of Borrower in the case of  
transactions having a fair market value in excess of $1,000,000) in the ordinary  
course of business, (vi) the Far West Division and (vii) sales of restaurant  
related properties in connection with a market relocation program.  
  
 "SUBSIDIARY" means, with respect to any Person, any corporation,  
partnership, association, joint venture or other business entity of which more  
than 50% of the total voting power of shares of stock or other ownership  
interests entitled (without regard to the occurrence of any contingency) to vote  
in the election of the Person or Persons (whether directors, managers, trustees  
or other Persons performing similar functions) having the power to direct or  
cause the direction of the management and policies thereof is at the time owned  
or controlled, directly or indirectly, by that Person or one or more of the  
other Subsidiaries of that Person or a combination thereof.  
  
 "TRANSACTION COSTS" means the call premiums, fees, costs and expenses  
payable by Borrower pursuant to the Existing Credit Facility Loan Agreement and  
other fees, costs and expenses payable by Borrower in connection with (i) the  
Refinancings (as defined in the Existing  
  
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Credit Facility Loan Agreement), (ii) the issuance of the Unsecured Subordinated  
Notes and (iii) the execution and delivery of the Existing Credit Facility Loan  
Agreement and related documents.  
  
 "UNSECURED SUBORDINATED NOTE INDENTURE" means the indenture pursuant to  
which the Unsecured Subordinated Notes were issued as of May 21, 1997, as such  
indenture may be amended from time to time to the extent permitted under  
Subsection 7.15 of the Existing Credit Facility Loan Agreement.  
  
 "UNSECURED SUBORDINATED NOTES" means the $175,000,000 aggregate principal  
amount of Borrower's 10-1/4% senior subordinated notes due 2007 issued pursuant  
to the Unsecured Subordinated Note Indenture.  
  
 "WHOLLY OWNED SUBSIDIARY" means, with respect to any Person, a Subsidiary  
of such Person all of the outstanding capital stock or other ownership interests  
of which (other than Regulatory Shares) shall at the time be owned by such  
Person or by one or more Wholly Owned Subsidiaries of such Person or by such  
Person and one or more Wholly Owned Subsidiaries of such Person.  
  
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 SCHEDULE 2  
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 INSURANCE REQUIREMENTS  
  
 (a) Borrower, at its sole cost and expense, will keep the Properties  
insured during the entire term of this Agreement for the mutual benefit of  
Borrower and Lender against loss or damage by fire and against loss or damage  
by other risks and hazards covered by a standard extended coverage insurance  
policy including, but not limited to, riot and civil commotion, vandalism,  
malicious mischief, burglary and theft. Such insurance shall be in an amount  
(i) equal to one hundred percent (100%) of the then replacement cost of the  
Stores and the furniture, fixtures, equipment and other personal property  
contained therein (the "Equipment"), without deduction for physical depreciation  
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and (ii) such that the insurer would not deem Borrower a co-insurer under said  
policies. The policies of insurance carried in accordance with this paragraph  
shall be paid annually in advance and shall contain the "Replacement Cost  
Endorsement" with a waiver of depreciation.  
  
 (b) Borrower, at its sole cost and expense, for the mutual benefit of  
Borrower and Lender, shall also obtain and maintain during the entire term of  
this Agreement the following policies of insurance:  
  
 (i) Flood insurance on a per-Store basis if any part of the  
 Properties is located in an area identified by the Federal Emergency  
 Management Agency as an area having special flood hazards and in which  
 flood insurance has been made available under the National Flood Insurance  
 Act of 1968 (and any successor act thereto) in an amount at least equal to  
 the outstanding principal amount of the Loans advanced under this Agreement  
 with respect to such Property or the maximum limit of coverage available  
 with respect to the Stores and Equipment under said Act, whichever is less.  
  
 (ii) Comprehensive public liability insurance, including broad form  
 property damage, blanket contractual and personal injuries (including death  
 resulting there from) coverages in an amount not less than $1,000,000 per  
 occurrence and $10,000,000 in the aggregate on a per-Store basis.  
  
 (iii) During the course of any construction, renovation or equipping  
 of the Stores, builder's completed value risk insurance against "all risks  
 of physical loss", including collapse and transit coverage, with  
 deductibles reasonably satisfactory to Lender, in non-reporting form,  
 covering the total value of work performed and equipment, supplies and  
 materials furnished. Such policy of insurance shall contain the "permission  
 to occupy upon completion of work or occupancy" endorsement and a waiver of  
 co-insurance or an agreed amount endorsement.  
  
 (iv) Such other insurance as may from time to time be required under  
 the laws of the various states in which the Properties are located.  
  
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 (c) All policies of insurance (the "Policies") required pursuant to this  
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Schedule shall be issued by an insurer having an A.M. Best rating of A:V or  
better and satisfactory to Lender, (ii) shall contain the standard New York  
mortgagee non-contribution clause naming Lender as the person to which all  
payments made by such insurance company shall be paid, (iii) shall be maintained  
throughout the term of this Agreement without cost to Lender, (iv) original  
certificates, or copies thereof, certified to be true and correct, shall be  
delivered to Lender, (v) shall contain such provisions as Lender deems  
reasonably necessary or desirable to protect its interest including, without  
limitation, endorsements providing that neither Borrower, Lender nor any other  
party shall be a co-insurer under said Policies and that Lender shall receive at  
least thirty (30) days prior written notice of any modification or cancellation,  
and (vi) shall be satisfactory in form and substance to Lender and shall be  
approved by Lender as to amounts, form, risk coverage, deductibles, loss payees  
and insureds. All such premiums for such Policies (the "Insurance Premiums")  
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shall be paid by Borrower making payment when due directly to the carrier. Not  
later than thirty (30) days prior to the expiration date of each of the  
Policies, Borrower will deliver to Lender satisfactory evidence of the renewal  
of each Policy.  
  
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 SCHEDULE 3  
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 LITIGATION  
  
  
 NONE.  
  
   
 SCHEDULE 4  
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 ACQUISITIONS AND DISPOSITIONS  
  
 SINCE 12/19/96  
  
  
 1. Sale of 100 Church's(R) restaurants in eight markets: Indianapolis  
 (12), Chicago (29), St. Louis (21), Richmond (4), Detroit (19), Dayton  
 (5), Columbus (3), Cleveland (7) to Atlanta Franchise Development  
 Corporation.  
  
 2. Sale of 47 Church's(R) restaurants in California to Best Hospitality  
 Corporation.  
  
 3. Acquisition of Chesapeake Bagel Bakery, the third largest bagel   
 restaurant system.