

CHICAGO TITLE INSURANCE COMPANY
INDIANA DIVISION

pol. 392497
Return to:
Steve Nelson
Chicago Title Ins. Co.

653378

SUBORDINATE MORTGAGE

THIS MORTGAGE DEED made the First day of November, 1981,
between Dunes Plaza Associates (the "Grantor") and
Casual Stop, Inc., New Jersey corporation whose address is C/O Polio
& Bateman,
Totowa, New Jersey 07512 (the "Grantee").
Furer Street,

WITNESSETH:

The Grantor hereby mortgages to the Grantee, its successors and assigns, the premises situated in the City of Gary, County of Lake, Indiana and more fully described as follows:

Leasehold Estate created by that certain indenture of Lease to Citizens Bank of Michigan City, Indiana, not individually but as Trustee under the provisions of a Trust Agreement dated the 5th day of May, 1970, and known as Trust No. 606, from Olind Skinner dated June 28, 1970 and recorded October 15, 1970, as Document No. 76188 and re-recorded December 30, 1971 as Document No. 130963, demising and leasing premises described as Part of the Southwest quarter of Section 4, Township 36 North, Range 7 West of the 2nd P.M., described as follows: Commencing at a point on the North line of U.S. Highway No. 20 (100 feet wide) and 401.37 feet Southeasterly (measured along said Northerly line) of its intersection with the West line of the Southwest quarter of said Section 4; thence Southeasterly along said Northerly line of U.S. No. 20, a distance of 920 feet; thence North and parallel with the West line of the Southwest quarter of said Section 4 to the Southerly right of way line of the Baltimore and Ohio Railroad; thence Northwesterly along the Southerly right of way line of the Baltimore and Ohio Railroad a distance of 921.65 feet; thence South and parallel with the West line of the Southwest quarter of said Section 4 a distance of 882.78 feet to the place of beginning, all in the City of Gary, Lake County, Indiana;

STATE OF INDIANA
LAKE COUNTY
FILED IN RECORDS
28 P
1981

Together with all buildings and improvements now situated or which hereafter may be erected thereon;

Together with, all and singular, the easements, rights-of-way, licenses, privileges, leases, tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also the estate, right, title, property, claim and demand whatsoever of the Grantor of, in and to the same and of, in and to every part and parcel thereof;

Together with all right, title and interest of Grantor, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the above described premises to the centerline thereof, and in and to all appurtenances thereto;

Together with all machinery, apparatus, equipment, fittings, fixtures, and articles of personal property of every kind and nature whatsoever, other than consumable goods,

[Handwritten signature]

now or hereafter located in or upon said real estate or any part thereof and used or useable in connection with any present or future operation of said real estate, and now owned or hereafter acquired by the Grantor (hereinafter collectively called "Equipment"), including, but without limiting the generality of the foregoing, all heating, lighting, laundry, incinerating, and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire-prevention, fire-extinguishing, refrigerating, ventilating and communications apparatus, air-cooling and air-conditioning apparatus, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, refrigerators, attached cabinets, partitions, ducts and compressors and all of the right, title and interest of the Grantor in and to any Equipment which may be subject to any conditional bill of sale or chattel mortgage superior in lien to the lien of this Mortgage; and

Together with any and all awards and payments, including interest thereon, and the right to receive the same which may be made with respect to said premises as a result of the exercise of the right of eminent domain, including, but not limited to, the alteration of the grade of any street or any other injury to or decrease in the value of said premises.

All of the foregoing collectively shall be deemed to be and are hereinafter referred to as the "premises" or "said premises."

TO HAVE AND TO HOLD the above granted and bargained premises and all the rents, issues and profits thereof, unto the said Grantee, its successors and assigns, forever, for the purpose of securing payment of the indebtedness evidenced by that certain Purchase Money Mortgage Note in the principal amount of One Hundred Thousand Dollars (\$100,000) executed by Grantor and payable to the order of Grantee, according to the terms and provisions of said Note.

(Definition) - Whenever in this instrument the context so admits or requires, the names of Grantor and Grantee and the terms "Grantor" and "Grantee" shall be construed as including their successors and assigns, as the case may be; and the pronoun as used herein in the third person, singular number and masculine gender, shall be construed as meaning the person, number and gender appropriate to the first designation to the parties to this instrument. The term "mortgage insurance premiums" shall also include any amounts paid in lieu thereof.

IN WITNESS WHEREOF, this instrument has been executed this ~~25~~ 25th day of November, 1981.

Signed and Acknowledged
in the Presence of:

Stanley C. Lipton
James J. DeSousa

DUNES PLAZA ASSOCIATES

By: Anthony Hevia
Anthony Hevia, General Partner

STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

Before me, a Notary Public in and for said County and State, this day personally appeared Anthony Hevia, who acknowledged that he did execute the foregoing instrument.

Witness my signature and Notarial Seal at New York, New York, this ~~25~~ 25th day of November, 1981.

Stanley C. Lipton
Printed: _____

My Commission Expires:

Residing at: _____ County
Indiana

This instrument prepared by:

Stanley C. Lipton, Esq.
122 E. 42nd St. Suite 1911
New York, NY 10168

STANLEY C. LIPTON
NOTARY PUBLIC, State of New York
No. 30-2377530 - Nassau County
Term Expires March 30, 1983



And the said Grantor does, for itself and its successors and assigns, covenant with the said Grantee, its successors and assigns, that at and until the encasing of these presents it is well seized of the premises as a good and indefeasible estate in fee simple, and has good right to bargain and sell the same in manner and form as above written; that said premises are free and clear from all liens, and encumbrances whatsoever, except current taxes, inclusion in special improvement districts of record, zoning conditions, easements and reservations of record, that certain Indiana Mortgage from Citizens Bank of Michigan City, Indiana, not individually but solely as Trustee under Trust Agreement Number 606 and Olind Skinner, now deceased, to The Equitable Life Assurance Society of the United States recorded as Document No. 169320 Lake County, Indiana records (the "Senior Mortgage"), and that said Grantor does warrant and will defend said premises, with all appurtenances thereunto belonging, to the said Grantee, its successors and assigns, against the lawful claims and demands of all persons claiming by, through, or under the Grantor, but against none other.

THE CONDITIONS OF THIS DEED are such that, Whereas said Grantor has executed and delivered to said Grantee the Notes payable in full on the dates therein provided together with interest thereon in accordance with the terms of the Notes, and

Whereas, the Grantor, for itself, its successors and assigns, does hereby covenant and agree with the Grantee, its successors and assigns, as follows:

1. That the Grantor covenants and agrees to comply with all terms and provisions of said Senior Mortgage (except the requirement to make the payments of principal and interest thereon); and upon compliance by Grantor with the terms and provisions contained in said Senior Mortgage and contained herein, Grantee will pay the installments of principal and interest from time to time due under said Senior Mortgage in accordance with its terms to the extent of the payments received on the Notes secured hereby. Nothing contained herein shall require the holder of the Notes secured hereby to perform the terms or provisions contained in said Senior Mortgage except the payment of installments of principal and interest, but only in accordance with the terms and provisions hereof. If Grantor shall default in the performance of any term or provisions contained in this mortgage, Grantee shall not be obligated to pay any principal or interest under the Senior Mortgage.

2. That the Grantor will pay and discharge, as the same may or shall become due and payable, mortgage insurance premiums, if any, and all taxes, assessments and

other governmental charges whatsoever, now or hereafter levied, assessed or imposed upon said premises or any part thereof, or upon Grantee's interest therein, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon Grantee.

3. That the Grantor will keep said premises free and clear from all mechanics' liens and statutory liens during the existence of this Mortgage; and will keep and maintain said premises in good condition and repair; and will not suffer or permit waste to be committed upon said premises; and will obtain and comply with all necessary governmental permits.

4. That this Mortgage shall also be construed as a "security agreement" within the meaning of, and shall create a security interest under, the Uniform Commercial Code as adopted by the State of Indiana, (IC 26-1-1-101 et seq.) with respect to the Equipment; that Grantor shall execute and deliver to Grantee in form satisfactory to Grantee such "financing statements" and such further assurances as Grantee may, from time to time, consider reasonably necessary to create, perfect and preserve Grantee's liens upon the Equipment, and Grantee, at the expense of Grantor, may or shall cause such statements and assurances to be recorded and re-recorded, filed and refiled, at such times and places as may be required or permitted by law, to so create, perfect and preserve such liens; and that Grantee shall have all the rights with respect to the Equipment afforded to it by the Uniform Commercial Code as adopted by the State of Indiana, and as may hereafter be modified, amended or substituted, in addition to, but not in limitation of, the other rights afforded Grantee hereunder.

5. That if any fixture, machinery, equipment or other personal property is hereafter substituted or replaced or is intended to be substituted or replaced by property, whether or not of a like or similar kind, and such fixture, machinery, equipment or other personal property is subject to or will be subject to any security interest which shall be prior to the lien of this Mortgage or any other security instrument held by the Grantee, and such security interest on such property is not released within ten (10) days after written request of Grantee, failure so to do shall constitute a default hereunder and shall entitle the Grantee to all rights and remedies provided by law and/or in this Mortgage, as in the case of any other default; and, in addition to any remedies provided by law or in this Mortgage, Grantee shall be entitled to enjoin at any time the removal of any fixture, machinery or equipment or other personal property which is to be substituted or replaced

whether or not by like or similar property and may or will be subject to a security interest prior to the lien of this Mortgage or any other security instrument held by the Grantee.

6. That if the lien of this Mortgage be subject at any time to a conditional bill of sale, conditional sales contract, title retaining contract, chattel mortgage, security agreement, or any other security instrument creating a security interest in and to any personal property installed in or used in connection with the operation of the mortgaged premises, all the right, title, equity and interest of the Grantor in and to any and all such personal property together with the benefits of any deposits or payments made thereon by the Grantor shall nevertheless be and hereby are assigned to the Grantee, and are covered by and subject to the lien of this Mortgage; and the Grantor covenants that it will immediately procure a discharge of any and all such contracts, except such contracts as shall be consented to in writing by the Grantee, ^{subject to the provisions hereof} so that this Mortgage shall constitute a valid and superior lien on all of said personal property; and the Grantor further covenants that if any such contract shall be consented to in writing by the Grantee as aforesaid, any default in the performance of the terms or conditions of any such contract shall constitute a default under this Mortgage.

7. That the Grantor will maintain or cause to be maintained fire, extended coverage and such other insurance as may from time to time be required by the Grantee or the Senior Mortgage upon all insurable property now or hereafter forming part of said premises. Such insurance shall be written in amounts (equal to the remaining balance of the mortgage indebtedness and sufficient to prevent Grantor from becoming a co-insurer) and in form acceptable to the Grantee or The Equitable Life Assurance Society of the United States by insurance companies satisfactory to the Grantee or The Equitable Life Assurance Society of the United States, and the policies of such insurance shall, if requested, be deposited with and remain in the custody and control of said Grantee or The Equitable Life Assurance Society of the United States. In the event of foreclosure of this Mortgage, all right, title and interest of the Grantor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Grantor hereby assigns to Grantee all such policies of insurance as collateral and further security for payment of the money secured by this Mortgage, with loss payable to the Grantee and The Equitable Life Assurance Society of the United States, as their interests may appear pursuant to the mortgagee clause contained in said policies, which clause shall be in form satisfactory to Grantee. If Grantee, by reason of such insurance, receives any money for loss or damage

to the p , provided that there exists no default under this Mortgage or the Note secured hereby, that the restoration or repair is economically feasible, that the security of this Mortgage is not impaired thereby, and that Grantee is assured there are sufficient funds to complete the work, Grantee will release and permit the use of such proceeds for restoration or repair, otherwise such monies may, be retained and applied toward payment of the indebtedness secured by this Mortgage. Grantor hereby assigns to Grantee all its right, title and interest in and to any insurance proceeds with respect to the premises to the extent of the indebtedness secured hereby and authorizes the insurer under any such policy to pay such proceeds to the Grantee to the extent provided above, provided, however, that the provisions of this Paragraph 7 shall be deemed effective and binding only insofar as same are consistent with the terms and conditions of the Senior Mortgage.

8. That Grantor hereby assigns to Grantee all its right, title and interest in and to any and all condemnation proceeds or awards with respect to the premises to the extent of the indebtedness secured hereby and authorizes any and all governmental authorities to pay such proceeds or award to Grantee to the extent provided above. Grantee will cooperate to make the proceeds available for repair and restoration as described in Paragraph 7 hereof.

9. This Mortgage is subject and subordinate to the following:

a) First Mortgage Deed dated September 26, 1972, covering the Land and Improvements and securing Mortgage Notes in the original principal amount of \$2,200,000, recorded on September 30, 1972 as Document No. 169320 Lake County Indiana records in favor of Equitable Life Assurance Society of the United States

b) Mortgage Deeds securing mortgage notes of even date and intended to be recorded simultaneously herewith covering the Land and Improvements as follows:

i) \$200,000 in favor of Equity Dunes Plaza

ii) \$900,000 in favor of Equity Dunes Plaza

iii) a Wrap Around Mortgage wrapping around the preceding three mortgages, between Dunes Plaza Associates as Mortgagor and Equity Dunes Plaza as Mortgagee

iv) \$150,000 in favor of North American Multicapital Corp.

10. That the Grantee, for the protection of its interest in said premises, is hereby authorized and empowered to enter upon said premises during normal business hours and in such manner so as not to disrupt the normal conduct of business on said premises for the purpose of inspecting the same and ascertaining the condition thereof and of the appurtenances thereunto belonging and for such other purposes as may in Grantee's sole discretion be necessary or desirable in connection with the exercise of its rights hereunder.

11. That should Grantor default in the payment of the indebtedness evidenced by, and in accordance with the tenor of the Notes, or in case Grantor shall fail to perform any one or more of the covenants contained herein and, with respect to said non-money default, shall not have cured same within twenty (20) days after receipt of written notice of said default (provided, however, that in the event the undersigned is proceeding diligently at the end of said twenty (20) day period to cure said default, the period for cure shall be extended for such reasonable time as may be required to complete such cure), then and in any such event Grantee may, at its election, declare the entire indebtedness hereby secured to be immediately due and payable, without further notice to Grantor, which notice Grantor hereby expressly waives, and upon such declaration, said entire unpaid indebtedness secured hereby shall become immediately due and payable with interest thereon in accordance with the terms of the Note.

12. That should Grantor, its successors and assigns, fail to pay or cause to be paid any mortgage insurance premiums or all taxes, assessments and other governmental charges on said premises, or casualty insurance premiums, or fail to deposit any insurance policy or policies, or renewals thereof with the Grantee as aforesaid, or fail to keep and maintain said premises in good condition and repair, or should Grantor default in the observance or performance of any other covenants devolving upon it for observance or performance hereunder, then, in any such case, the Grantee, at its option, is hereby authorized and empowered by the Grantor for Grantee's better security (but Grantee shall not be obligated to do so) to pay said taxes, assessments and other governmental charges and other charges against all or any part of said premises, to cause insurance to be placed on said premises and to pay the premiums therefor, and to perform any other covenants in default, and Grantor agrees immediately on demand to repay any sums of money so paid or expended, with interest thereon at a rate equal to five percent (5%) per annum higher than the interest rate set forth in the Note, from the date of such payments, computed

and payable monthly, and such sums so paid or expended, with interest as aforesaid, unless so repaid, shall be added to and be deemed part of the indebtedness secured hereby, shall be secured by the lien of this Mortgage in the same manner as the principal sum and interest thereon are secured, but no such payment by the Grantee shall relieve the Grantor of the consequences of any default, and any such payment shall be without prejudice to Grantee's right to declare the entire indebtedness hereby secured to be immediately due and payable, or to any other remedy or right of Grantee.

13. That upon the commencement of any action to foreclose this Mortgage or any other lien upon said premises, or any part thereof any similar action, whether instituted by the Grantee or any other party, or at any time during the pendency of such action, the Grantee shall have the immediate right to the appointment of a receiver, and the Court may at once, and without notice to said Grantor or to any party claiming under it and without consideration of the value of the premises, appoint a receiver for the benefit of the holder or holders of the indebtedness secured hereby and of any other parties in interest; and that upon the commencement of, or during the pendency of any legal proceedings relating to said premises, the Grantee may procure and pay for an abstract of title or Judicial Certificate upon said premises, and the cost thereof shall be added to the principal indebtedness secured hereby and shall be secured by this Mortgage. Grantor agrees to indemnify Grantee against any costs and expenses (including legal fees) incurred by Grantee in any legal proceedings in which Grantee is named as a party and which relate to this Mortgage. Grantor further agrees to pay any attorneys fees and expenses incurred by Grantee in any foreclosure proceedings brought on this Mortgage if Grantee dismisses such proceedings and reinstates Grantor under this Mortgage and the Note evidencing the indebtedness secured by this Mortgage, *

14. That Grantor will protect, indemnify, save harmless, and defend Grantee from and against (and reimburse Grantee for) any and all liabilities, obligations, claims, penalties, causes of action, losses, costs, damages or expenses (including legal fees) suffered or incurred by or asserted against Grantee in connection with:

(a) ownership of the premises or any interest therein or receipt of any rents, issues or profits thereof;

(b) the exercise by Grantee of any of its rights hereunder or at law or in equity;

* except if the dismissal is attributable to the absence of any default on the part of the Grantor at the time of institution of such proceedings.

- (c) any failure by Grantor to perform or comply with any of the terms or provisions hereof;
- (d) any work by Grantor in connection with construction of the improvements on the premises or;
- (e) subsidence of the surface of the premises.

Grantor's obligations hereunder relating to actions, omissions, events, claims or loss occurring or accruing prior to repayment of the indebtedness secured hereby shall survive any discharge of this Mortgage and such payment.

15. That the Grantor will properly execute and deliver, or cause to be properly executed and delivered from time to time at the request of the Grantee, all such further deeds, conveyances, mortgages, security agreements, financing statements, assignments of leases now existing or hereafter entered into and covering all or portions of the premises, transfers and such other assurances as the Grantee shall require for better assuring, mortgaging, pledging, assigning and confirming unto the Grantee all and singular the premises and the title thereto.

16. That no building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered without the prior written consent of the Grantee, except that Grantor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement, Grantor shall be deemed to have subjected such equipment to the lien of this Mortgage, or (b) any net cash proceeds received from such disposition shall be paid over promptly to the Grantee to be applied to the last installments due on the indebtedness secured, without any charge for prepayment.

17. That if requested by Grantee, Grantor will furnish Grantee its annual income and expense statements disclosing all income realized from or expenses incurred for the operation of the Premises, and such other information as Grantee may request concerning change in the condition of the property to which Grantor has given his consent (without any duty on the part of Grantee to inspect, or ascertain the extent of, such changes in condition).

19. That the Grantor acknowledges the indebtedness hereby secured was incurred in good faith for full value received.

20. That in the event of default by Grantor hereunder, Grantee agrees to look solely (a) to the real and personal property encumbered by this Mortgage, and (b) to the rents and other income arising out of the operation of the Premises for satisfaction of any indebtedness hereunder. Neither the Grantor nor any successors or assigns of the Grantor shall have any personal liability hereunder.

21. That no waiver by either party of any breach of any covenant of the other herein contained shall be construed as a waiver of any subsequent breach of the same or any other covenant herein contained.

22. That this Mortgage shall be construed as being severable, and the illegality or unenforceability of any phrase, clause, sentence, term, provision or paragraph of this mortgage shall not affect any other phrase, clause, sentence, term, provision or paragraph herein contained, and this Mortgage shall be construed in all respects as if such invalid or unenforceable phrase, clause, sentence, term, provision or paragraph were omitted herefrom.

23. That unless otherwise notified in writing to the contrary, any notice required or permitted by the terms hereof shall be effectively delivered for all purposes upon deposit in the United States mail, registered or certified mail, postage prepaid, if to the Grantor, at the address of the Premises, and if to the Grantee, at its principal office hereinabove set forth.

24. That the rights and remedies provided Grantee herein are cumulative, and that the Grantee, any assignee of Grantee, and any holder of the Note and of every other obligation secured hereby may recover judgment, issue execution, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security or any right or remedy afforded by this Mortgage.

NOW, THEREFORE, if the said Grantor shall well and truly pay the aforesaid Note and all other indebtedness secured hereby, to the said Grantee, its successors and assigns, and shall observe and perform all of the covenants and agreements herein set forth on Grantor's part to be observed and performed, then this Mortgage Deed shall become null and void; otherwise the same shall remain in full force and virtue in law.