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Commercial Real Estate Mortgage and Assignment of Leases and Rents

This mortgage is made on this date between the parties listed below. The Mortgagor(s) in consideration of the principal amount shown below and for other valuable consideration, the receipt of which is acknowledged, hereby mortgages and warrants to the Lender, its successors and assigns, forever, the land and property described below, together with the privileges, improvements, rents and profits, easements, hereditaments, appurtenances equipment, and other personal goods

of whatsoever description which may now or hereafter be located, situated or affixed on and used in connection therewith (hereinafter called the Property).

Mortgage Date
February 25, 1992

| | | | |
|---|------------------|---------------------------------------|------------------|
| MORTGAGOR(S) | | LENDER | |
| NAME(S) WHITING DAIRY QUEEN, INC., an Indiana corporation 92013054 | | NAME(S) BANK ONE, MERRILLVILLE, NA | |
| ADDRESS 1441 Indianapolis Blvd. | | ADDRESS 1000 E. 80th Place | |
| CITY Whiting | | CITY Merrillville | |
| COUNTY Lake | STATE Indiana | COUNTY Lake | STATE Indiana |

INDIANA DIVISION

PROPERTY DESCRIPTION

A Leasehold Estate as created by a certain Lease recorded May 17, 1989 as Document No. 037064 on the following described real Estate.
Lots 8 and 9, Block 2, Forsyth's Sheffield Subdivision, as shown in Plat Book 8, page 18, in Lake County, Indiana.

(Mortgagor has a leasehold interest in the land under the structure or building and ownership of the building and/or structure(s) thereon)

STATE OF INDIANA
RECORDS SECTION
MERRILLVILLE
FEB 25 11 52 AM '92

Document is NOT OFFICIAL!

PRINCIPAL AMOUNT

TWO HUNDRED THIRTY THOUSAND EIGHT HUNDRED FIFTY SEVEN AND NO/100 Dollars (\$ 230,857.00)

This Document is the property of the Lake County Recorder!

The Mortgagor Covenants and Agrees With the Lender as Follows:

1. This mortgage secures the principal amount shown above as may be evidenced by a promissory note or notes of even, prior or subsequent date hereto and every other indebtedness of any and every kind now or hereafter owing from Mortgagor to Lender howsoever created or arising, whether primary, secondary or contingent, together with any interest or charges provided in or arising out of such indebtedness, as well as the agreements and covenants of this mortgage, any promissory note or of any other mortgage, assignment of leases or rents, security agreement, loan agreement, or any other agreement of whatsoever nature, whether written or oral, now existing or hereafter arising between the Mortgagor and the Lender (hereinafter all referred to as the Indebtedness).
2. The Mortgagor promises to pay the Indebtedness in accordance with the terms thereof and to perform all of the terms and conditions from which the Indebtedness may arise.
3. The Mortgagor promises at all times to preserve and to maintain the Property and every part thereof in good repair, working order, and condition, and will from time to time, make all needful and proper repairs so that the value of the Property shall not in any way be impaired. Mortgagor certifies that the property has not in the past been nor will in the future be allowed in any manner to be exposed to or contain hazardous or environmentally harmful substances as may be defined or regulated by any state or federal law or regulation which impacts, in any way, such substances, except to the extent the existence of such substances has been disclosed in writing to Lender. The Lender shall have the right and access to inspect the Property at all reasonable times and if the Property, or any part thereof, shall require inspection, repair, or maintenance which the Mortgagor has failed to provide, the Lender, after reasonable notice, may enter upon the Property to effect such obligation; and the cost thereof shall be added to the Indebtedness and paid on the Lender's demand by the Mortgagor.
4. The Mortgagor promises to pay and to discharge liens, encumbrances, taxes, assessments, and governmental charges at any time levied or assessed

against the Mortgagor or the Property, and the Mortgagor will not do or permit to be done any act of whatsoever nature which would impair the lien of this mortgage; provided, however, that the Mortgagor shall not be required to pay any tax, assessment, or governmental charge so long as the Mortgagor in good faith disputes the validity thereof and provides for payment in a manner satisfactory to Lender in the event the Mortgagor fails in the dispute.

5. The Mortgagor promises to keep the Property insured against such risks, in such form and with such carriers as may within the sole discretion of the Lender be acceptable, causing the Lender to be named as loss payee or alternatively if requested by Lender, Mortgagee, in such form and manner as prescribed by the Lender. The Mortgagor hereby directs each and every insurer of the Property to make payment of loss to the Lender with the proceeds to be applied, only at the Lender's option, to the repair and replacement of the damage or loss or to be applied to the Indebtedness with the surplus, if any, to be paid by the Lender to the Mortgagor.

6. The Mortgagor hereby assigns to the Lender all judgements, decrees, and awards for injury, damage, or condemnation of or to the Property and authorizes the Lender, at its sole option, to apply the proceeds thereof to the payment of the Indebtedness in such manner as the Lender may elect.

7. The Mortgagor promises to abstain from the commission of any waste on the Property and to comply with all present and future statutes, regulations, and rules of any governmental authority governing the Property or in any way concerning the use and occupancy thereof.

8. The Mortgagor promises not to remove any part of the Property from its present location, except for replacement, maintenance and relocation in the ordinary course of business, nor to attempt to sell or otherwise dispose of, except as herein provided, any or all of its interest in any part of or all of the Property without first obtaining the written consent of the Lender.

9. At any time, upon a request of the Lender, the Mortgagor will execute and deliver to the Lender,

WHEN RECORDED RETURN TO:
BANK ONE, MERRILLVILLE, NA
1000 E. 80th Place
Merrillville, IN 46410
Atten: Deidre CLP

DRAFTED BY:
A. James Babusiak, Vice President
ADDRESS, CITY, STATE
1000 E. 80th Place
Merrillville, IN 46410

1260

and if appropriate, cause to be recorded, such further mortgages, assignments, assignments of leases and rents, security agreements, pledges, financing statements, or such other document as the Lender may be required, in the Lender's sole discretion, to effectuate, complete, and to perfect as well as to continue to preserve the indebtedness, or the lien or security interest created by this mortgage. In the event the Mortgagor shall fail or refuse to execute and deliver any such document to the Lender, the Mortgagor hereby constitutes and appoints the Lender, or any of its officers or employees, as the Mortgagor's true and lawful attorney in fact to do so, and the expenses thereof shall be added to the indebtedness and paid by the Mortgagor upon demand by the Lender.

10. As additional security for the indebtedness and the performance of all of the Mortgagor's covenants hereunder, the Mortgagor:

(a) hereby grants to the Lender a security interest in any personal property or fixtures which may now or hereafter constitute any part of the Property, in all personal property in possession of the Lender but belonging to the Mortgagor, and in any balance of deposit account with the Lender which may be applied by the Lender upon the indebtedness in the event of default hereunder; and

(b) hereby (pursuant to any statute now or hereafter existing and applicable) sells, assigns, transfers and sets over to the Lender all of the rents, profits, and income under any lease or leases of the Property, including any extensions, amendments, or renewals thereof, whether due or to become due, including all such leases in existence or coming into existence during the period this mortgage is in effect. This assignment of rents shall run with the land and be good and valid as against the Mortgagor or those claiming by, under, or through the Mortgagor, from the date of the recording of this instrument. This assignment shall continue to be operative during the period of any foreclosure or other action to enforce this mortgage, during any receivership created hereunder, and during the period of redemption, including the period of deficiency in the repayment of the indebtedness. The Mortgagor acknowledges that this assignment is given as collateral security only and shall not be construed as obligating the Lender to perform any of the covenants or undertakings required to be performed by the Mortgagor contained in any such assigned leases. In the event of surrender or the taking of possession of the Property by the Lender upon the Mortgagor's default, the Lender may thereafter collect the rents and income therefrom, rent or lease the Property or any portion thereof upon such terms as the Lender may deem, in its sole discretion, advisable, and apply all proceeds derived therefrom to (i) preservation of the Property; (ii) payment of taxes; (iii) payment of insurance premiums; (iv) payment of interest or principal due on the indebtedness.

11. The following shall constitute default of this mortgage and any note or other agreement it secures:

(a) the failure to pay either the interest or principal upon the indebtedness when due;

(b) the failure to perform or keep any of the covenants of this agreement or any agreement, oral or written, out of which the indebtedness arises or which governs any of the terms of the indebtedness;

(c) the insolvency of the Mortgagor;

(d) the filing by or against the Mortgagor of any insolvency, bankruptcy or receivership proceeding;

(e) the institution of any assignment by the Mortgagor for the benefit of the Mortgagor's creditors;

(f) the insolvency or death of any guarantor of this indebtedness;

(g) the death of the Mortgagor, if a natural person, or of any partner if the Mortgagor is a partnership;

(h) the dissolution, merger and consolidation or transfer of a substantial part of the ownership of the Mortgagor or any guarantor of the indebtedness if the Mortgagor or such guarantor is a corporation; or

(i) the non-payment of any taxes or insurance, which shall constitute waste and entitle the Lender to the appointment of a receiver under applicable law; or

(j) the sale or transfer by Mortgagor of any interest in the Property, whether by deed, land contract, contract of sale, or the like;

(k) the Lender deems itself unsecured for any reason whatsoever.

12. In the event of default, the Lender may, without demand or notice, pay any taxes, assessments, premiums or liens required to be paid by the Mortgagor, effect any insurance provided for herein, make such repairs, cause the abstracts of title or title insurance policy and tax histories of said premises to be certified to date, or procure new abstracts of title or title insurance and tax histories in case none were furnished to it, and procure title reports covering said premises, including surveys. The sums paid for any such purposes shall be added to the indebtedness and shall bear interest at the rate of interest otherwise accruing on the indebtedness secured hereby until paid. In the event of foreclosure, the abstracts of title or title insurance shall become the property of the Lender. All abstracts of title, title insurance, tax histories, surveys, and other documents pertaining to the indebtedness shall remain in the Lender's possession until the indebtedness is paid in full.

13. In the event of default, the Lender may, without notice, and at its option, declare the entire indebtedness due and payable, as it may elect, regardless of the date or dates of maturity thereof and, if permitted by state law, is authorized and empowered to sell or to cause the Property to be sold at public auction, and to execute and deliver to the purchaser or purchasers at such sale any deeds of conveyance good and sufficient at law, pursuant to the statute in such case made and provided; and out of the proceeds of the sale to retain the sums then due hereunder and all costs and charges of the sale, including attorneys fees, rendering any surplus monies to the party or parties entitled to the excess. Any such sale or a sale made pursuant to a judgement or a decree for the foreclosure hereof may, at the option of the Lender, be made en masse. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed as exercise of the above option. In the event of default or the commission of waste, the Lender shall forthwith be entitled to the appointment of a receiver of the property and of the earnings, income, issue, and profits hereof, with such powers as the court making such appointments shall confer. The Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. IN THE EVENT OF THE SALE OF THIS PROPERTY UNDER THE PROCEDURE FOR FORECLOSURE OF A MORTGAGE BY ADVERTISEMENT, AS PROVIDED BY APPLICABLE LAW, OR IN THE EVENT THE LENDER EXERCISES ITS RIGHTS UNDER THE ASSIGNMENT OF RENTS AND LEASES, THE MORTGAGOR HEREBY WAIVES ANY RIGHT TO ANY NOTICE OTHER THAN THAT PROVIDED FOR SPECIFICALLY BY STATUTE, OR TO ANY JUDICIAL HEARING PRIOR TO SUCH SALE OR OTHER EXERCISE OF RIGHTS.

14. The Mortgagor expressly acknowledges that it is the intent of both itself and the Lender to have a default of any of the provisions of this mortgage constitute a default of any other agreement which may now exist or hereafter arise between them and that, likewise, a breach of any such agreement shall constitute a breach and default of this mortgage. It is the expressed intent of the Mortgagor to cross collateralize all of its indebtedness and obligations to the Lender howsoever arising and whensoever incurred.

15. Mortgagor warrants that no provision, warranty or promise made by the Mortgagor in any document related to this transaction causes any conflict whatsoever with the terms of any document related to any other transaction Mortgagor may be involved with, with any other person or entity.

16. It is further agreed that:

(a) no forbearance on the part of the Lender and no extension of the time payment of any of the indebtedness given by the Lender shall operate to release, discharge, modify or change or affect the original liability of the Mortgagor herein or of its continued performance of the covenants herein contained or in the covenants and terms of any portion of the liabilities

(b) any reference to the Lender herein shall also include the Lender's successors and assigns;

(c) the covenants and conditions hereof shall bind and the benefits and advantages hereof shall inure to the respective heirs, executors, administrators, assigns and successors of the parties hereto.

(d) the Mortgagor agrees to pay the Lender, in addition to payment of the Indebtedness, a pro rata portion of the taxes, assessments, mortgage guarantee insurance premiums (so long as this mortgage is insured by a mortgage guarantee insurance policy), hazard insurance premiums next to become due, as estimated by the Lender so the Lender will have sufficient funds on hand to pay taxes, assessments and insurance premiums within thirty (30) days before the due date thereof, and to pay the Lender, immediately, any deficit thereon, the monies so held not to bear any interest and, upon default, to be applied by the Lender on account of the Indebtedness;

(e) all rights and remedies granted to the Lender hereunder shall be cumulative and not exclusive of one or the other or of any other remedy provided for by law or agreement, and may be exercised either successively or concurrently; and that

(f) if any provision of this mortgage shall be prohibited by state law, such prohibitions shall apply only to that provision and all other provisions of the mortgage shall remain in full force and effect.

Additional Provisions

The Mortgagor shall execute and deliver, on request of the Mortgagee, such instruments as the Mortgagee may deem useful or required to permit the Mortgagee to cure any default under any of the ground leases or permit the Mortgagee to take such other action as the Mortgagee considers desirable to cure or remedy the matter in default and preserve the interest of the Mortgagee in the mortgaged property



DELETIONS: The Mortgagor and Lender agree that the following paragraphs of this agreement may be deleted:

ALL
Parties
Must
Initial:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

IN WITNESS WHEREOF, said Mortgagor has executed this mortgage the day and year first noted above.

Signed, Sealed, and Delivered in the Presence of:

WHITING DAIRY QUEEN, INC., an Indiana corporation

By Tina L. Brinkley
Tina L. Brinkley, President

By Mark E. Brinkley
Mark E. Brinkley, Secretary

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |

INDIVIDUAL

STATE OF _____

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 19 _____,

by _____

Notary Public _____ County, _____

My Commission expires: _____

PARTNERSHIP

STATE OF _____

SS:

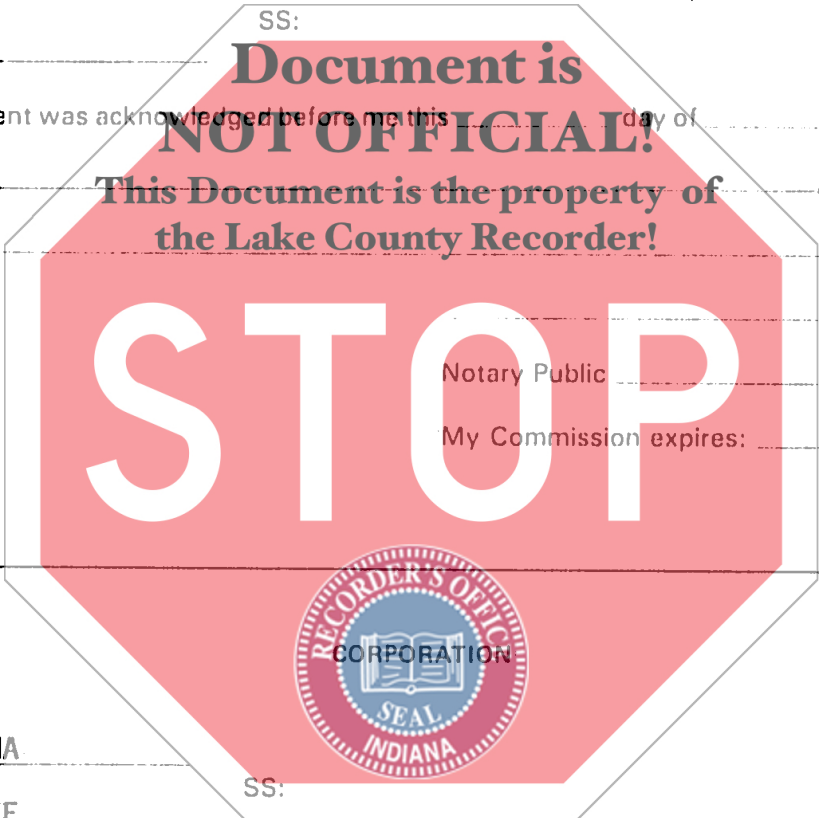
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 19 _____,

by _____, partner on behalf of _____, a partnership.

Notary Public _____ County, _____

My Commission expires: _____



STATE OF INDIANA

SS:

COUNTY OF LAKE

The foregoing instrument was acknowledged before me this 25th day of February, 19 92,

by Tina L. Brinkley and Mark E. Brinkley,

who are the President and Secretary of

Whiting Dairy Queen, an Indiana corporation, on behalf of the corporation.

Thelma Jean Carter
Thelma Jean Carter

Notary Public Lake County, Indiana

My Commission expires: September 17, 1992