

Treas Sch 99203778-1-27

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STATE OF INDIANA
DEPT OF REVENUE
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When recorded, return to:
ATHERTON CAPITAL INCORPORATED
1001 Bayhill Drive, Suite 155
San Bruno, California 94066
Attn: Loan Administration
Loan No. 1612-001

Document is

NOT OFFICIAL!

MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

**This Document is the property of
the Lake County Recorder!**

dated as of August 23, 1999

from

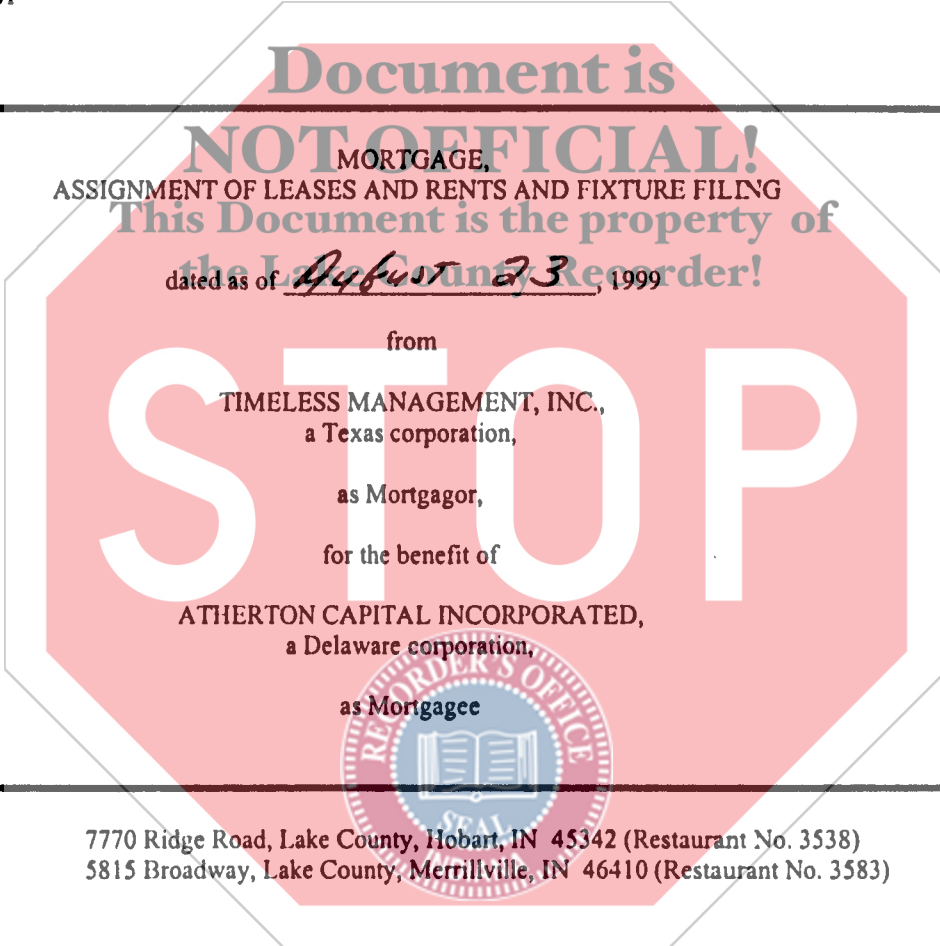
TIMELESS MANAGEMENT, INC.,
a Texas corporation,

as Mortgagor,

for the benefit of

ATHERTON CAPITAL INCORPORATED,
a Delaware corporation,

as Mortgagee



Property: 7770 Ridge Road, Lake County, Hobart, IN 45342 (Restaurant No. 3538)
5815 Broadway, Lake County, Merrillville, IN 46410 (Restaurant No. 3583)

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MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (herein called this "Mortgage") dated as of August 23, 1999, is executed by TIMELESS MANAGEMENT, INC., a Texas corporation, as the mortgagor (herein, together with its successors and assigns, called "Mortgagor"), with a mailing address at 13663 Jupiter Road***, for the benefit of ATHERTON CAPITAL INCORPORATED, a Delaware corporation, as the mortgagee (herein, together with its successors and assigns, called "Mortgagee"), with a mailing address at 1001 Bayhill Drive, Suite 155, San Bruno, California 94066.

***Suite 410
Dallas, TX 75081

A. Loan Agreement. Reference is hereby made to that certain Loan Agreement (the "Loan Agreement") dated as of the date hereof by and between Mortgagor, Mal Foods, Inc., a Texas corporation (the "Co-Mortgagor") as borrowers, and Mortgagee, as lender. Pursuant to the Loan Agreement, Mortgagee has agreed to loan certain funds to Mortgagor and Co-Mortgagor (the "Loan") and Mortgagor and Co-Mortgagor have executed and delivered to Mortgagee that certain Note evidencing Mortgagor's and Co-Mortgagor's obligation to repay the Loan (collectively the "Note").

B. Secured Obligations. The obligations secured by this Mortgage (the "Obligations") are comprised at any time of the following:

(i) the full and punctual payment by Mortgagor and Co-Mortgagor when due of (a) all principal of and interest on the Loan and the Note having a maturity date of September 1, 2019, which principal amount as of the date hereof is One Million Six Hundred Fifty Thousand and No/100 Dollars (\$1,650,000.00); and (b) all other amounts payable by Mortgagor and Co-Mortgagor pursuant to the Loan Agreement, the Note or any other Loan Document;

(ii) the full and punctual payment when due of all amounts payable by Mortgagor under this Mortgage, including, without limitation, indemnification obligations and advances made pursuant to the Loan Documents;

(iii) the performance and observance by Mortgagor and Co-Mortgagor of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Mortgagor or Co-Mortgagor under any Loan Document; and

(iv) the performance and observance by Mortgagor and Co-Mortgagor of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Mortgagor or Co-Mortgagor under all amendments, supplements, consolidations, replacements, renewals, extensions or other modifications of the foregoing, in each case whether now existing or hereafter arising.

The Obligations shall include, without limitation, any interest, Yield Maintenance Amount, costs, fees and expenses which accrue on or with respect to any of the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Mortgagor or Co-Mortgagor.

GRANTING CLAUSES

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, for the purpose of securing the due and punctual payment, performance and observance of the Obligations and intending to be bound hereby, Mortgagor hereby grants, conveys, mortgages, bargains, sells, transfers and assigns to Mortgagee, for the purpose and upon the terms and conditions hereinafter set forth, with power of sale and right of entry and possession, all of the property and rights described in the following Granting Clauses (all of which property and rights are herein collectively called the "Subject Property"), to wit:

GRANTING CLAUSE I.

Land. All estate, right, title and interest of Mortgagor in, to, under or derived from those certain lots, pieces, tracts or parcels of land located in certain cities and/or counties in the State of Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (collectively the "Land").

GRANTING CLAUSE II.

Improvements. All right, title and interest of Mortgagor in, to, under or derived from all buildings, structures, facilities and other improvements of every kind and description now or hereafter located on the Land or attached to the improvements which by the nature of their location thereon or attachment thereto are real property under applicable law (the foregoing being collectively the "Improvements"; and the Land with the Improvements thereon and Equipment therein and Appurtenant Rights thereto being collectively called the "Property").

GRANTING CLAUSE III.

Equipment. All estate, right, title and interest of Mortgagor in, to, under or derived from all machinery, equipment, fixtures and accessions thereof and renewals, replacements thereof and substitutions therefor, and all other customary franchise fast food restaurant equipment and other tangible property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land, or usable exclusively in connection with the present or future operation and occupancy of the Land or the Improvements (hereinafter collectively called the "Equipment").

GRANTING CLAUSE IV.

Appurtenant Rights. All estate, right, title and interest of Mortgagor in, to, under or derived from all tenements, hereditaments and appurtenances now or hereafter relating to the Property: all development, operating or similar rights appurtenant to the Land (including, without limitation, all rights arising from reciprocal access agreements, use or development agreements, and parking agreements); and all easements, licenses and rights of way now or hereafter appertaining to the Property (hereinafter collectively called "Appurtenant Rights").

GRANTING CLAUSE V.

General Intangibles, Payment Rights and Agreements. All estate, right, title and interest of Mortgagor in, to, under or derived from all contract rights, chattel paper, instruments, general intangibles, accounts, guaranties and warranties, letters of credit, and documents, in each case relating to the Property or to the present or future operation or occupancy of the Property, and all plans, specifications, maps, surveys, studies, records, insurance policies, guaranties and warranties, all relating to the Property or to the present or future operation or occupancy of the Property, all management contracts, all supply and service contracts for water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utilities relating to the Property (the foregoing being herein collectively called the "Agreements") and all other agreements affecting or relating to the use, enjoyment or occupancy of the Land or the Equipment.

GRANTING CLAUSE VI.

Leases. All estate, right, title and interest of Mortgagor in, to, under and derived from any lease, tenancy, subtenancy, license, concession or other occupancy agreement relating to the Property (together with all amendments, supplements, consolidations, replacements, restatements, extensions, renewals and other modifications of any thereof) (the "Leases"), now or hereafter in effect, whether or not of record; and the right to bring actions and proceedings under the Lease or for the enforcement thereof and to do anything which Mortgagor or any lessor is or may become entitled to do under the Lease.

GRANTING CLAUSE VII.

Rents, Issues and Profits. All estate, right, title and interest of Mortgagor in, to, under or derived from all rents, royalties, issues, profits, receipts, revenue, income, earnings and other benefits now or hereafter accruing with respect to all or any portion of the Property, including all rents and other sums now or hereafter payable pursuant to the Leases; and all other claims, rights and remedies now or hereafter belonging or accruing with respect to the Property, including oil, gas and mineral royalties (herein collectively called the "Rents"), all of which Mortgagor hereby irrevocably directs be paid to Mortgagee, subject to the license granted to Mortgagor pursuant to Section 5.7, to be held, applied and disbursed as provided in this Mortgage.

GRANTING CLAUSE VIII.

Permits. All estate, right, title and interest of Mortgagor in, to, under or derived from all licenses, certificates, variances, consents and other permits now or hereafter pertaining to the Property and all estate, right,

title and interest of Mortgagor in, to, under or derived from all tradenames or business names relating to the Property or the present or future operation or occupancy of the Property (herein collectively called the "Permits"), excluding, however, from the grant under this Granting Clause (but not the definition of the term "Permits" for the other purposes hereof) any Permits which cannot be transferred or encumbered by Mortgagor without causing a default thereunder or a termination thereof.

GRANTING CLAUSE IX.

Proceeds and Awards. All estate, right, title and interest of Mortgagor in, to, under or derived from all proceeds of any sale, transfer, taking by Condemnation (or any proceeding or purchase in lieu thereof), whether voluntary or involuntary, of any of the Subject Property described above, including all Insurance Proceeds and awards and title insurance proceeds, now or hereafter relating to any of the Subject Property, all of which Mortgagor hereby irrevocably directs be paid to Mortgagee to the extent provided hereunder, to be held, applied and disbursed as provided in this Mortgage.

TO HAVE AND TO HOLD the Subject Property unto Mortgagee, its successors and assigns, under and subject to the terms and conditions of this Mortgage, and for the security and enforcement of the prompt and complete payment and performance when due of all of the Obligations and the performance and observance by Mortgagor of all covenants, obligations and conditions to be performed or observed by Mortgagor pursuant to the Loan Agreement, the Note, and the other Loan Documents.

PROVIDED, HOWEVER, that this Mortgage is upon the condition that, if Mortgagor shall pay in full all of the Obligations and perform and observe all such covenants, obligations and conditions, this Mortgage shall cease, terminate pursuant to and in accordance with Section 6.2 and, thereafter, be of no further force effect (except as provided in Sections 4.1, 4.2 and 5.6 hereof); otherwise this Mortgage shall remain and be in full force and effect.

FURTHER PROVIDED, that Mortgagee may from time to time release or reconvey all or a portion of the Subject Property, in accordance with the terms and conditions of the Loan Agreement and applicable law.

MORTGAGOR ADDITIONALLY COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:

ARTICLE I. DEFINITIONS

SECTION 1.1. Definitions. Capitalized terms used, but not otherwise defined herein, are defined in, or by reference to the Loan Agreement and have the same meanings herein as therein.

ARTICLE II.
CERTAIN WARRANTIES AND COVENANTS OF MORTGAGOR

SECTION 2.1. Authority and Effectiveness. (a) Mortgagor represents, warrants and covenants that (i) Mortgagor is and shall be a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, and qualified to do business and in good standing in the state in which the Property is located and has and will have all governmental licenses, authorizations, consents and other qualifications required to carry on its business as now conducted, to own the Subject Property and to execute, deliver and perform this Mortgage; (ii) the execution, delivery and performance by Mortgagor of this Mortgage are within Mortgagor's corporate power, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not and will not contravene, or constitute a default under, any provision of the organizational documents of Mortgagor or of any agreement, judgment, injunction, order, decree or other instrument binding upon Mortgagor or relating to the Property; and (iii) this Mortgage constitutes a legal, valid, binding and enforceable agreement of Mortgagor.

(b) Mortgagor shall cause the representations and warranties in subsection (a) of this Section to continue to be true in each and every respect at all times prior to the termination of this Mortgage.

SECTION 2.2. Title and Further Assurances. (a) Mortgagor hereby represents and warrants to Mortgagee that:

(i) Mortgagor is the owner of the fee simple interest in the Land and the Improvements free from all liens, security interests, Leases, charges or encumbrances whatsoever, except for such liens as are permitted under the Loan Agreement;

(ii) Mortgagor is the owner of the Subject Property, free and clear of all liens except for such liens as are permitted under the Loan Agreement;

(iii) Mortgagor has good and lawful right to mortgage the Subject Property to Mortgagee without the consent of any Person other than those consents which have been obtained;

(iv) the lien created by this Mortgage constitutes a valid, binding and enforceable lien on the Subject Property; and

(v) the Permitted Liens do not materially interfere with or materially adversely affect the use, value or operation of the Property.

(b) Mortgagor shall (i) cause the representations and warranties in subsection (a) of this Section to continue to be true in each and every respect at all times prior to the termination of this Mortgage; and (ii) preserve, protect, warrant and defend (A) the estate, right, title and interest of Mortgagor in and to its Subject Property (B) the validity, enforceability and priority of the lien of this Mortgage, and (C) the right, title and interest of Mortgagee and any purchaser at any sale of the Subject Property hereunder or relating hereto.

(c) Upon the full execution, acknowledgment and recording of this Mortgage in the county recording office of the county in which the Land is located, the lien of this Mortgage shall be a perfected mortgage lien and fixture filing on the Subject Property.

(d) Mortgagor shall perform all acts that may be necessary to continue, maintain, preserve, protect and perfect the Subject Property, the lien granted to Mortgagee therein and the perfected priority of such lien. Upon request by Mortgagee, Mortgagor shall at its sole cost and expense (i) promptly correct any defect or error which may be discovered in this Mortgage or any financing statement or other document relating hereto; and (ii) promptly execute, acknowledge, deliver, record, and re-record, register and re-register, and file and re-file this Mortgage and any fixture filings, financing statements or other documents which Mortgagee may reasonably require from time to time (all in form and substance reasonably satisfactory to Mortgagee) in order (A) to effectuate, complete, perfect, continue or preserve the lien of this Mortgage on the Subject Property, whether now owned or hereafter acquired, (B) to correct or change the name of Mortgagor following any change in its identity, sale of the Subject Property, or assumption of the Loan pursuant to Section 2.7(b), or (C) to effectuate, complete, perfect, continue or preserve any right, power or privilege granted or intended to be granted to Mortgagee hereunder.

SECTION 2.3. Secured Obligations. Mortgagor shall duly and punctually pay, perform and observe the Obligations binding upon Mortgagor.

SECTION 2.4. Impositions. Subject to Section 2.6 and Section 2.9, Mortgagor shall (i) duly and punctually pay all Impositions before any fine, penalty, interest or cost may be added for nonpayment; and (ii) promptly notify Mortgagee of the receipt by Mortgagor of any notice of default in the payment of any Imposition. The term "Impositions" means all taxes, assessments and other governmental charges, ground rents, or other rents, charges, excises, levies, fees and other charges (public or private) which may be assessed, levied or imposed on, or in respect of or be a lien upon the Subject Property or any part thereof or any interest therein.

SECTION 2.5. Compliance with Legal and Insurance Requirements.

(a) Mortgagor represents and warrants that (i) as of the date hereof, the Property and the use and operation thereof comply in all material respects with all Legal Requirements (as defined below), Insurance Requirements (as defined below) and Contractual Obligations; (ii) there is no material default under any Legal Requirement, Insurance Requirement and Contractual Obligation; and (iii) the execution, delivery and performance of this Mortgage does not require any consent the failure of which to obtain would contravene any provision of and constitute a material default under, any Legal Requirement, Insurance Requirement or Contractual Obligation. Notwithstanding the limitations set forth in the preceding sentence, Mortgagor represents and warrants that as of the date hereof, the Property and the use thereof comply with all Environmental Laws and that Mortgagor has complied and shall comply with all Environmental Laws.

(b) Subject to Section 2.6 and Section 2.9, Mortgagor shall promptly perform and observe, or cause to be performed and observed and cause the Property to comply with, if the failure to so perform and observe would have a Material Adverse Effect, (i) all laws, rules, regulations, judgments, orders, permits, licenses, authorizations and other requirements of and agreements with all governments, department agencies, courts and officials, which now or hereafter shall be applicable to the Subject Property or any part thereof or any use or

condition thereof including, without limitation, all Environmental Laws (herein collectively called the "Legal Requirements"); (ii) all terms of any insurance policy covering or applicable to the Subject Property or any part thereof as required by the Loan Agreement, all reasonable requirements of the issuer of any such policy, and all reasonable orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to the Subject Property or any part thereof or any use or condition thereof (herein collectively called the "Insurance Requirements"); and (iii) all Permits required for any construction, reconstruction, repair, alteration, addition, improvement, maintenance, use and operation of the Property.

(c) Mortgagor shall promptly notify Mortgagee of the receipt by Mortgagor of any notice of default under any Legal Requirement, Insurance Requirement, Contractual Obligation, Permitted Lien or Permit or of the receipt by Mortgagor of any notice of any threatened or actual termination of any Permit or Insurance Policy or Franchise Agreement and furnish to Mortgagee a copy of such notice of default or termination.

SECTION 2.6. Impound and Security Account. At Mortgagee's option and upon its demand and except where and to the degree prohibited by law, Mortgagor shall, until all Obligations have been paid in full, pay to Mortgagee each month an amount estimated by Mortgagee to be equal to (i) the Impositions, (ii) all payments and premiums with respect to the Insurance Requirements, and (iii) any payments required under Permitted Liens. Estimated payments of Impositions, Insurance Requirements and Permitted Lien payments shall be calculated by dividing the amount next due by, in each instance, the number of months to lapse preceding the month in which the same, respectively, will become due. All sums so paid shall not bear interest, except to the extent and in the minimum amount required by law, and Mortgagee shall, unless Mortgagor is otherwise in default hereunder or under any obligation secured hereby, apply said funds to the payment of, or at the sole option of Mortgagee release said funds to Mortgagor for application to and payment of, such Impositions, Insurance Requirements and Permitted Lien payments. However, upon the occurrence of an Event of Default by Mortgagor hereunder or under any obligation secured hereby, Mortgagee may, at its sole option, apply all or any part of said sums to any Obligations or to advance sums to pay such Imposition, Insurance Requirement or Permitted Lien payment, which advance shall not cure Mortgagor's default hereunder.

SECTION 2.7. Sale; Liens.

(a) Except as otherwise provided in the Loan Agreement, Mortgagor shall not sell, assign, transfer, convey, lease or permit to be sold, assigned, transferred, conveyed, leased or otherwise disposed of, the Subject Property (other than Inventory sold in the normal course of business) or any part thereof or interest therein (for the purposes of this Section, a "Transfer"), and shall not create, suffer or permit to be created or exist any lien attaching to the Subject Property or any part thereof or interest therein, except the Permitted Liens or as permitted by the Loan Agreement. In the event of any Transfer or the creation, suffering, permitting to be created or exist any lien attaching to the Subject Property or any part thereof, that is not expressly permitted hereunder or under the terms of the Loan Agreement and is without the prior written consent of Mortgagee, Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all of the Obligations immediately due and payable and pursue its rights and remedies under Article V. Consent to one such Transfer or lien shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers or liens. Mortgagee shall have the right to grant or deny such consent in its absolute discretion. If consent should be given to a Transfer and if this Mortgage is not released to the extent of the Subject Property transferred or subjected to a lien by a writing signed

by Mortgagee and recorded in the proper city, town, county or parish records, then any such Transfer or lien shall be subject to this Mortgage and any such transferee shall assume all obligations hereunder and agree to be bound by all of the provisions contained hereunder.

(b) The Loan may be assumed by a new borrower provided each of the conditions set forth in Section 2.8 of the Loan Agreement are met.

SECTION 2.8. Status and Care of the Property.

(a) Mortgagor represents and warrants that (i) the Property is served by all necessary water, sanitary and storm sewer, electric, gas, telephone and other utility facilities which facilities have capacities which are sufficient to serve the current and anticipated future use and occupancy of the Property as presently constructed; (ii) the Property has legal access to public streets or roads sufficient to serve the current and anticipated future use and operation of the Property as presently constructed; (iii) to the extent that the Property is located in an area identified by the Secretary of Housing and Urban Development or a successor thereto as an area having special flood hazards or as an area designated as "flood prone" or a "flood risk area" pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, and any amendments or supplements thereto or substitutions therefor, Mortgagor has purchased flood insurance to the extent available; and (iv) all activities and conditions on the Property are currently in compliance with all Legal Requirements.

(b) Mortgagor (i) shall use and operate the Property, or cause the same to be used and operated, pursuant to the terms and provisions of a Franchise Agreement with Franchisor, a true and correct copy of which has been previously delivered to Mortgagee, and Mortgagor shall continue to operate the Property as the type of restaurant as required under the Franchise Agreement and the Loan Documents and shall not permit or suffer any default to occur under said Franchise Agreement; (ii) agrees that all activities on the Property shall at all times comply with all Legal Requirements; (iii) shall operate and maintain the Property, or cause the same to be operated and maintained, in good order, repair and condition except (subject to the provisions of this Section) for reasonable wear and tear; (iv) subject to the provisions of Section 3.2, shall promptly make, or cause to be made, all repairs, replacements, alterations, additions and improvements of and to the Property necessary or appropriate to keep the Property in good order, repair and condition; (v) shall not initiate or affirmatively support any change in the applicable zoning adversely affecting the Property, seek any variance (or any change in any variance), under the zoning adversely affecting the Property; and (vi) shall, promptly after receiving notice or obtaining knowledge of any proposed or threatened change in the zoning affecting the Property which would result in the current use of the Property being a non-conforming use, notify Mortgagee thereof and diligently contest the same at Mortgagor's expense by any action or proceeding deemed appropriate by Mortgagor or requested by Mortgagee.

SECTION 2.9. Permitted Contests. After prior notice to Mortgagee, Mortgagor may contest at Mortgagor's expense, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Imposition or lien therefor, any Legal Requirement, or any lien of any laborer, mechanic, materialman, supplier or vendor, provided that (a) the Subject Property, or any part thereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (b) in the case of (i) liens of laborers, mechanics, materialmen, suppliers or vendors or (ii) the Impositions, or liens therefor, such proceedings shall suspend the foreclosure of any such lien or any other

collection thereof from the Subject Property; (c) in the case of a Legal Requirement, Mortgagee shall not be in any danger of any criminal liability or, unless Mortgagor shall have furnished a bond or other security therefor reasonably satisfactory to Mortgagee, any additional civil liability for failure to comply therewith, and the Subject Property, or any part thereof or estate or interest therein, shall not be subject to the imposition of any lien as a result of such failure which is not properly contested pursuant to this Section 2.9; and (d) if reasonably required by Mortgagee, Mortgagor shall have furnished to Mortgagee a bond or other security reasonably satisfactory to Mortgagee.

SECTION 2.10. Inspection. Mortgagee and its authorized agents and employees and any person designated by Mortgagee shall have the right to enter on and into the Property at all reasonable times and, except in the event of an emergency, after reasonable notice for the purpose of inspecting the same, provided such inspection shall not unreasonably disturb business activities at the Property.

SECTION 2.11. Compliance with Instruments. Mortgagor shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all other instruments affecting the Property if the failure to so perform or observe would have a Material Adverse Effect and shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Subject Property if the failure so to do would have a Material Adverse Effect.

SECTION 2.12. Improvements. All improvements on the Land lie wholly within the boundary and building restriction lines of the Land and no improvements on adjoining properties encroach upon the Land in any respect so as to have a Material Adverse Effect on the use, operation or value of the Property.

SECTION 2.13. Casualty; Condemnation. The Subject Property is free of material damage and waste and, to Mortgagor's knowledge, there is no proceeding pending or threatened for the total or partial Condemnation thereof.

SECTION 2.14. Zoning and Other Laws. The Property and the use thereof, separate and apart from any other properties, constitute a legal and conforming use in compliance with the zoning regulations for which the Property is located. The Property complies with all applicable subdivision laws, ordinances and regulations, such that failure to comply would not have a Material Adverse Effect. All inspections, licenses and certificates required, whether by law, ordinance, regulation or insurance standards, to be made or issued with respect to the Property have been made by or issued by appropriate authorities, such that a failure to obtain such inspections, licenses or certificates would not have a Material Adverse Effect.

SECTION 2.15. Use of Loan Proceeds. Mortgagor shall use the proceeds of the Loan only for the purposes set forth in the Loan Agreement which uses are not primarily for personal, family or household purposes.

ARTICLE III.
INSURANCE, CASUALTY AND CONDEMNATION

SECTION 3.1. Insurance. Mortgagor shall comply with all of the terms and provisions and shall maintain, or cause to be maintained, with respect to the Property the insurance required by the Loan Agreement. If Mortgagor fails to maintain the insurance policies required to be maintained under this Section, Mortgagee shall have the right (but not the obligation) to obtain such insurance policies and pay the premiums therefor. If Mortgagee obtains such insurance policies or pays the premiums therefor, upon demand, Mortgagor shall reimburse Mortgagee for its expenses in connection therewith, together with interest thereon pursuant to Section 4.3.

SECTION 3.2. Casualty and Condemnation. Mortgagor's right to collect or use any Insurance Proceeds or awards resulting from any casualty loss or Condemnation shall be subject to, and applied in accordance with, the terms and provisions of the Loan Agreement. Mortgagor hereby authorizes and directs any affected insurance company and any affected governmental body responsible for such Condemnation to make payment of the Insurance Proceeds or awards directly to Mortgagee. Mortgagor hereby irrevocably assigns to Mortgagee all Insurance Proceeds and awards to which Mortgagor may become entitled by reason of its interests in the Property if a loss occurs.

ARTICLE IV.
EXPENSES AND INDEMNIFICATION

SECTION 4.1. Expenses. Upon written demand, Mortgagor (a) shall reimburse Mortgagee for all reasonable out-of-pocket expenses, including reasonable attorneys' fees and expenses, paid or incurred by Mortgagee in connection with (i) any default or alleged default, (ii) the perfection, protection, exercise or enforcement of any right or remedy under or with respect to this Mortgage or any other Loan Document, and (iii) the execution, delivery, administration or performance of this Mortgage or any other Loan Document and any consent or waiver thereunder and any amendment thereof, or (b) if an Event of Default occurs, shall reimburse Mortgagee for all out-of-pocket expenses, including reasonable attorneys' fees and expenses, (i) paid or incurred by Mortgagee in connection with (A) such Event of Default and collection, bankruptcy, insolvency and enforcement proceedings resulting therefrom or (B) the exercise or enforcement of any right or remedy under or with respect to this Mortgage or any other Loan Document or (ii) otherwise paid or incurred with respect to this Mortgage or any other Loan Document, together, in each case, with interest thereon at the Default Rate from the date paid by Mortgagee through the date repaid to Mortgagee, as the case may be. All such funds advanced in the reasonable exercise of Mortgagee's judgment that the same are needed to protect the Subject Property, the lien of this Mortgage, or the Obligations are to be deemed obligatory advances hereunder and shall constitute additional indebtedness secured by this Mortgage. The obligations of Mortgagor under this Section shall be part of the Obligations and shall survive any foreclosure or transfer in lieu of foreclosure of this Mortgage and the release of this Mortgage.

SECTION 4.2. Indemnification. To the fullest extent permitted by law, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee, and its stockholders, members, directors, managers, officers, employees, beneficial owners, attorneys, agents and other representatives or affiliates of, and partners in,

Mortgagee (each an "Indemnified Person") from and against any and all liabilities, losses, actions, fines, injunctions, obligations, claims, damages (whether direct or consequential), penalties, causes of action, costs and expenses of any kind or nature (including, without limitation, in respect of or for reasonable attorneys' fees and expenses whether incurred within or outside the judicial process), imposed upon or incurred by or asserted against any such Indemnified Person including, without limitation, by reason of (i) this Mortgage or the Subject Property or any interest therein or receipt of any Rents; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Subject Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (iv) any violation or failure to comply with any Legal Requirement by Mortgagor or the Property in any way; and (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Subject Property or any part thereof, provided that any claims arising out of the willful misconduct or gross negligence of any Indemnified Person or act of any Indemnified Person after taking title to the Property shall be excluded from the foregoing indemnification of such Indemnified Person. Any amounts payable to Mortgagee by reason of the application of this Section 4.2 shall be secured by this Mortgage as an Obligation and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this Section 4.2 shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage and the exercise of any rights or remedies by Mortgagee.

SECTION 4.3. Interest. If any Obligation arising hereunder (including, to the extent permitted under applicable law, any interest obligation) shall not be paid when due, such Obligation shall bear interest at the Default Rate commencing from the due date through the date paid. Such interest shall be part of the Obligations and shall be secured by this Mortgage.

SECTION 4.4. Increased Costs: Change of Taxation. In the event of the enactment after the date hereof of any applicable law deducting from the value of the Property for the purpose of taxation of any lien thereon or changing in any way the applicable taxation of mortgages, deeds of trust or other liens or obligations secured thereby, or the manner of collection of such taxes, so as to affect this Mortgage, the Obligations or Mortgagee, upon demand by Mortgagee, to the extent permitted under applicable law. Mortgagor shall pay or reimburse Mortgagee for all taxes, assessments or other charges which Mortgagee is obligated to pay as a result thereof, provided, however, if for any reason payment by the Mortgagor of any such new or additional taxes, assessments or other charges would be unlawful or if the payment thereof would constitute usury or render the Loan wholly or partially usurious under any of the terms or provisions of the Loan Agreement, Note, or this Mortgage, or otherwise, the Mortgagee may, at its sole option, upon thirty (30) days' written notice to the Mortgagor, declare the whole indebtedness secured by this Mortgage, with interest thereon, to be immediately due and payable. Such taxes, assessments or other charges shall be part of the Obligations and shall be secured by this Mortgage.

ARTICLE V.

DEFAULTS, REMEDIES AND RIGHTS

SECTION 5.1. Events of Default. The occurrence of any of the following events shall be deemed an event of default ("Event of Default") hereunder and shall, at the option of Mortgagee make all amounts then remaining unpaid on the Obligations immediately due and payable, all without further demand, presentment, notice or other requirements of any kind, all of which are expressly waived by Mortgagor, and the lien,

encumbrance and security interest evidenced or created hereby shall be subject to foreclosure in any manner provided for herein or provided for by law and all other remedies available at law or in equity:

(a) The occurrence of any Event of Default (as defined in the Loan Agreement) under the Loan Agreement; or

(b) Mortgagor shall default in the performance or observance of any term, covenant or condition required to be observed by Mortgagor under this Mortgage.

SECTION 5.2. Fixtures. Upon the occurrence of any Event of Default, or at any time thereafter, Mortgagee may, to the extent permitted under applicable law, elect to treat the fixtures included in the Subject Property either as real property or personal property, or both, and proceed to exercise such rights as apply thereto. With respect to any sale of real property included in the Subject Property made under the power of sale herein granted and conferred, Mortgagee may, to the extent permitted by applicable law, include in such sale any personal property and fixtures included in the Subject Property relating to such real property.

SECTION 5.3. Remedies Cumulative. All notice and cure periods provided in this Mortgage, the Loan Agreement or any other Loan Document shall run concurrently with any notice or cure periods provided under applicable law. No remedy or right of Mortgagee hereunder, under the Loan Agreement and any other Loan Document or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or in equity under any such document or under applicable law. No failure or delay by Mortgagee in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor, and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to, and not in limitation of, those provided by law, equity or in the Loan Agreement and any other Loan Document.

SECTION 5.4. Possession of Property. Mortgagor hereby waives, while any Event of Default exists, all right to the possession, income, earnings, revenues, issues, profits and Rents of the Property. Mortgagee or a Receiver (as the case may be as the Person exercising the rights under this Section) is hereby expressly authorized and empowered to the extent permitted by applicable law, but not obligated, while any Event of Default exists, (i) to enter into and upon and take possession of, and operate all facilities on, the Property or any part thereof, personally, or by its agents or attorneys, and exclude Mortgagor therefrom without liability for trespass, damages or otherwise; (ii) to enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating to the possession and operation of the Subject Property; (iii) to conduct, either personally or by its agents, the business of the Property; (iv) to exercise all rights of Mortgagor with respect to the Subject Property, including, without limitation, the right to sue for or otherwise collect the Rents, including those that are unpaid; (v) to complete any alteration or restoration in progress on the Property at the expense of Mortgagor at reasonable and customary cost or at such cost previously agreed to by Mortgagor, and (vi) to apply all income of the Property less the necessary or appropriate expenses of collection thereof, either for the operation, care and

preservation of the Property, or, at the election of the Person exercising the rights under this Section in its sole discretion, as provided in Section 5.9 hereof. The Person exercising the rights under this Section is also hereby granted full and complete authority while any Event of Default exists (vii) to employ watchmen to protect the Subject Property; (viii) to continue any and all outstanding contracts for the erection and completion of Improvements to the Property; (ix) to make all necessary and proper repairs, renewals, replacements, alterations, additions, betterments and improvements to the Property that, in its sole discretion, it may deem appropriate; (x) to insure and reinsure the Property for all risks incidental to Mortgagee's possession, operation and management thereof; (xi) to make and enter into any contracts or obligations wherever necessary in its own name for the operation, care and preservation of the Subject Property, and (xii) to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Mortgagor. The Person exercising the rights under this Section shall not be liable to account for any action taken hereunder, and shall not be liable for any loss sustained by Mortgagor resulting from any act or omission of such Person, except to the extent such loss is caused by such Person's willful misconduct or gross negligence. All such expenditures by the Person exercising the rights under this Section shall be Obligations hereunder.

SECTION 5.5. Foreclosure; Receiver. While any Event of Default exists, Mortgagee, with or without entry, shall also have the following rights:

- (a) to institute a proceeding or proceedings, by advertisement, judicial process or otherwise, as provided under applicable law, for the complete or partial foreclosure of this Mortgage or the complete or partial sale of the Subject Property under the power of sale hereunder or under any applicable provision of law;
- (b) to sell the Subject Property and all estate, right, title and interest of Mortgagor therein as a whole or in separate parcels, at one or more sales, at such time and place and upon such terms and conditions as may be required by applicable law;
- (c) to take such steps to protect and enforce rights, whether by action, suit or proceeding in equity or at law, for the specific performance of any provision in the Loan Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy Mortgagee shall elect;
- (d) to apply for the appointment of a receiver, supervisor, trustee, liquidator, conservator or other custodian (a "Receiver") of the Subject Property or any part thereof and all earnings, revenues, Rents, issues, profits and income thereof, to the extent permitted by law without giving notice to any other party and without regard to the adequacy or inadequacy of the security of the Subject Property or the solvency of either Mortgagor or any other Person and Mortgagor agrees that it shall not oppose the appointment of a Receiver; and
- (e) to take all such other steps and to assert all such other rights and remedies as shall be permitted by applicable law.

The purchase money, proceeds or avails of any foreclosure or sale after default and any other sums which then may be held by Mortgagee under this Mortgage shall be applied as provided in Section 5.9 hereof.

SECTION 5.6. No Liability on Mortgagee. Notwithstanding anything contained herein, this Mortgage is only intended as security for the Obligations and Mortgagee shall not be obligated to perform or discharge, and Mortgagee need not perform or discharge, any obligation, duty or liability of Mortgagor with respect to any of the Subject Property. Mortgagee shall not have responsibility for the control, care, management or repair of the Property nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any licensee, employee, tenant or stranger. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted to it, and Mortgagor expressly waives and releases any such liability. Should Mortgagee or any Person exercising rights on its behalf incur any such liability, loss or damage, under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee and such Person, immediately upon demand (provided such demand is accompanied by an itemized statement) for the amount thereof, including costs, expenses and reasonable attorneys' fees, and any such obligations of Mortgagor shall be Obligations hereunder and shall survive any foreclosure or transfer in lieu of foreclosure of this Mortgage and the release of this Mortgage.

SECTION 5.7. Assignment of Leases. (a) Subject to paragraph (d) below, the assignments of the Leases and the Rent under Granting Clauses VI and VII are and shall be present, absolute and irrevocable assignments by Mortgagor to Mortgagee and, subject to the license to Mortgagor under Section 5.7(b), Mortgagee or a Receiver appointed pursuant to Section 5.5(d) (as the case may be as the Person exercising the rights under this Section) shall have the absolute, immediate and continuing right to collect and receive all Rents now or hereafter, including during any period of redemption, accruing with respect to the Property. At the request of Mortgagee or such Receiver, Mortgagor shall promptly execute, acknowledge, deliver, record, register and file any additional general assignment of the Leases or specific assignment of any Lease which Mortgagee or such Receiver may require from time to time (all in form and substance reasonably satisfactory to Mortgagee or such Receiver) to effectuate, complete, perfect, continue or preserve the assignments of the Leases and the Rents under Granting Clauses VI and VII.

(b) As long as no Event of Default exists, Mortgagor shall have the right under a license granted hereby, subject to Section 5.7(c), to collect all Rents upon, but not prior to fifteen (15) days before, the due date thereof.

(c) If any Event of Default exists, Mortgagee or Receiver appointed pursuant to Section 5.5(d) (as the case may be as the Person exercising the rights under this Section) shall have the right to do any of the following: (i) terminate the license granted under Section 5.7(b) by notice to Mortgagor (ii) exercise the rights and remedies provided under Section 5.4, Section 5.5 or under applicable law; (iii) as attorney in-fact or agent of Mortgagor, or in its own name as the Person exercising the rights under this Section and under the powers herein granted, hold, operate, manage and control the Property and all other Subject Property, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper and necessary to enforce the payment of any Rents, the Leases and other Subject Property relating thereto (including actions for the recovery of Rent, actions in forcible detainer and actions in distress of Rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; and (vi) perform such other acts in connection with the management and operation of the Subject Property as the Person exercising the rights under this Section in its discretion may deem proper, Mortgagor hereby granting

full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times while an Event of Default exists without notice to Mortgagor.

(d) Nothing in this Section 5.7 shall be construed to be an assumption by the Person exercising the rights under this Section, or to otherwise make such Person liable for the performance, of any of the obligations of Mortgagor under the Leases.

SECTION 5.8. Sales. Except as otherwise provided herein, to the extent permitted under applicable law, at the election of Mortgagee, the following provisions shall apply to any sale of the Subject Property hereunder, whether made pursuant to the power of sale hereunder, any judicial proceeding, or any judgment or decree of foreclosure or sale or otherwise;

(a) Mortgagee or the court officer (as the case may be as the Person conducting any sale) may conduct any number of sales as Mortgagee may direct from time to time. The power of sale hereunder or with respect hereto shall not be exhausted by any sale as to any part or parcel of the Subject Property which is not sold, unless and until the Obligations shall have been paid in full, and shall not be exhausted or impaired by any sale which is not completed or is defective. A sale may be as a whole or in part or parcels and Mortgagor hereby waives its right to direct the order in which the Subject Property or any part or parcel thereof is sold.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or such postponed or adjourned sale without further notice.

(c) Any statement of fact or other recital made in any instrument given by the Person conducting any sale as to the nonpayment of any Obligation, the existence of an Event of Default, the amount of the Obligations due and payable, the request to Mortgagee to sell, the notice of the time, place and terms of sale and of the Subject Property to be sold having been duly given, or any other act or thing having been duly done or not done by Mortgagor, Mortgagee or any other Person, shall be taken as conclusive and binding against all other Persons as evidence of the truth of the facts so stated or recited.

(d) Any sale shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the Subject Property sold, and (to the extent permitted under applicable law) shall be a perpetual bar both at law and in equity against Mortgagor and any and all Persons claiming such Subject Property or any interest therein by, through or under Mortgagor.

(e) At any sale, Mortgagee may bid for and acquire the Subject Property sold and, in lieu of paying cash therefor may make settlement for the purchase price by causing the Secured Parties to credit against the Obligations, including the expenses of the sale and the cost of any enforcement proceeding hereunder, the amount of the bid made therefor to the extent necessary to satisfy such bid.

(f) In the event that Mortgagor or any Person claiming by, through or under Mortgagor shall transfer or fail to surrender possession of the Subject Property after any sale thereof, then Mortgagor or such Person shall be deemed tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available, hereunder or under applicable law.

(g) Upon any sale, it shall not be necessary for the Person conducting such sale to have any Subject Property being sold present or constructively in its possession.

(h) To the extent permitted under applicable law, in the event that a foreclosure hereunder shall be commenced by Mortgagee, Mortgagee may at any time before the sale abandon the sale, and may institute suit for the collection of the Obligations or for the foreclosure of this Mortgage; or in the event that Mortgagee should institute a suit for collection of the Obligations or the foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment in said suit dismiss the same and sell the Subject Property in accordance with the provisions of this Mortgage.

SECTION 5.9. Application of Proceeds. The proceeds of any sale of any of the Subject Property made pursuant to this Article V shall be applied as follows:

(a) First, to the payment of all costs and expenses incident to the enforcement of this Mortgage paid or incurred by Mortgagee or the agent for enforcement, protection or collection, including, without limitation, reasonable costs, attorneys' fees, stenographers' fees, costs of advertising, costs of documentary evidence of title (including title search and insurance), all other related charges and costs, and a reasonable compensation to the agents, attorneys and in-house counsel of Mortgagee and of agent;

(b) Second, to the payment or prepayment of the Obligations, in such order as Mortgagee shall elect; and

(c) Third, the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law;

provided, however, if applicable law requires such proceeds to be paid or applied in a manner other than as set forth above in this Section 5.9, then such proceeds shall be paid or applied in accordance with such applicable law.

SECTION 5.10 Time Limitation. Nothing in Article V shall constitute or deem to constitute a waiver by the Mortgagor of the time limitations on issuance of process under a Judgment of Decree of Foreclosure as and if required by applicable law.

SECTION 5.11 Mortgage Foreclosure. To the extent the subject property is located in the State of Indiana, notwithstanding anything to the contrary in this Mortgage, Mortgagee shall foreclose this Mortgage in accordance with applicable law.

ARTICLE VI.
GENERAL

SECTION 6.1. Fixture Filing. To the extent that the Subject Property includes items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing of this Mortgage in the real estate records of the county in which such Subject Property is

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located shall also operate from the time of filing as a fixture filing with respect to such Subject Property, and the following information is applicable for the purpose of such fixture filing, to wit:

(a) Name and Address of the Debtor:
Timeless Management, Inc..
13663 Jupiter Road, Suite 410
Dallas, Texas 75081
Attention: Syeda Fatima

(b) Name and Address of the Secured Party:
Atherton Capital Incorporated
1001 Bayhill Drive, Suite 155
San Bruno, California 94066
Attention: Loan Administration

(c) This financing statement covers goods or items of personal property which are or are to become fixtures upon the Property.

(d) Name and address of record owners:
Timeless Management, Inc.
13663 Jupiter Road, Suite 410
Dallas, Texas 75081

SECTION 6.2. Defeasance. If all of the Obligations shall have been paid in full, and if Mortgagor shall have performed and observed all the covenants, obligations and conditions to be performed by Mortgagor pursuant to the Loan Documents, and each of the Loan Documents shall have been terminated, then this Mortgage shall cease, terminate and, thereafter, be of no further force or effect (except as provided in Sections 4.1, 4.2 and 5.6). Upon such termination and Mortgagor's request, appropriate release shall promptly be made by Mortgagee to the Person or Persons legally entitled thereto at Mortgagor's expense.

SECTION 6.3. Notices. Each notice, demand or other communication given to Mortgagor or Mortgagee in connection with this Mortgage shall be given in the manner set forth in the Loan Agreement and shall be sent to the addresses shown below or such other addresses which the parties may provide to one another in accordance with the Loan Agreement.

To Mortgagee:
Atherton Capital Incorporated
1001 Bayhill Drive, Suite 155
San Bruno, California 94066
Attention: Loan Administration
Telephone No.: (650) 827-7800
Telecopy No.: (650) 827-7953
Loan No. 1612-001

with a copy to
Loan Servicer:

GMACCM
650 Dresher Road
Horsham, Pennsylvania 19044
Attn: Executive Vice President, Loan Servicing
Loan No. 1612-001
Telephone: (215) 328-1030
Telecopier: (215) 328-3478

To Mortgagor:

Timeless Management, Inc.
13663 Jupiter Road, Suite 410
Dallas, Texas 75081
Attention: Syeda K. Fatima
Telephone No.: (214) 221-7599
Telecopy No.: (214) 221-2340

SECTION 6.4. Amendments in Writing. No amendment, consent, waiver or supplement in any way affecting Mortgagor's obligations or Mortgagee's rights under this Mortgage shall in any event be effective unless contained in a writing signed by Mortgagee.

SECTION 6.5. Governing Law; Construction. This Mortgage shall be governed by the law of the state in which the Land is situated.

SECTION 6.6. Successors and Assigns. The covenants and agreements of Mortgagor hereunder, and the provisions hereof affecting Mortgagor, shall bind Mortgagor hereunder, its successors and assigns and all Persons claiming by, through or under Mortgagor and shall inure to the benefit of Mortgagor and its successors and permitted assigns. The rights and privileges of Mortgagee hereunder, and the provisions hereof affecting Mortgagee, shall inure to the benefit of Mortgagee hereunder and its successors and assigns.

SECTION 6.7. Waiver. Mortgagor waives, on behalf of itself and all Persons now or hereafter interested in the Property or the other Subject Property, to the fullest extent permitted by applicable law, (i) all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, redemption, single action, election of remedies and marshalling statutes, laws or equities now or hereafter existing, (ii) any benefit of any law providing for the valuation or appraisal of the Property or the other Subject Property or any part thereof prior to any sale thereof; (iii) after any such sale, claim or exercise any right to redeem the property so sold or any part thereof; (iv) all benefit or advantage of any such law and covenants not to hinder, delay or impede the execution by Mortgagee of any power or remedy herein granted or available at law or in equity, but to suffer and permit the execution of every power and remedy as though no such law existed and (v) any and all requirements that at any time any action may be taken against any other Person. Mortgagor hereby acknowledges and agrees that no defense based on any of the foregoing will be asserted in any action enforcing this Mortgage.

SECTION 6.8. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE, THE NOTE OR ANY OTHER LOAN DOCUMENT OR FOR ANY COUNTERCLAIM THEREIN.

SECTION 6.9. No Redemption. Mortgagor hereby waives, to the fullest extent permitted by applicable law, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

SECTION 6.10. Limitation by Law. All rights, remedies and powers provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage illegal, invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered, or filed under the provisions of any applicable law.

SECTION 6.11. Mortgagee's Performance. If Mortgagor shall fail to pay or perform any of its obligations herein contained (including, without limitation, payment of expenses of foreclosure and court costs) or under the Loan Documents each with respect to the Subject Property, Mortgagee upon five (5) days prior written notice to Mortgagor (except as otherwise expressly permitted by any Loan Document in the event of an emergency when no notice need be given) may, but need not, make (or cause to be made) any such payment or perform (or cause to be performed) any such obligation of Mortgagor hereunder or thereunder (provided Mortgagor is not contesting such payment or performance in accordance with Section 2.9 and the failure to so perform such obligation would have a Material Adverse Effect), in any form and manner deemed reasonably expedient by Mortgagee as agent or attorney-in-fact of Mortgagor, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses (including legal expenses) for each matter for which it acts under this Mortgage), with interest thereon at the Default Rate, shall be added to the Obligations and shall be repaid to Mortgagee upon demand. No such action of Mortgagee shall be considered as a waiver of any right accruing to it on account of the occurrence of any default on the part of Mortgagor under this Mortgage, any default, any Event of Default, or any default or event of default under any other Loan Document.

SECTION 6.12. Subrogation. To the extent that Mortgagee, after the date hereof, pays pursuant to the terms of this Mortgage any sum due under any provision of law or any instrument or documents creating any lien prior or superior to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on the Subject Property equal in priority to that discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence for the benefit of Mortgagee to secure the amount expended by Mortgagee on account of or in connection with such lien.

SECTION 6.13. Conflicting Provisions. To the extent there exists any conflict or inconsistency between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern.

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SECTION 6.14. Counterparts. This Mortgage may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

SECTION 6.15. Recourse. Except as otherwise expressly set forth in this Section 6.15, Mortgagee shall have no recourse against any shareholder, owner, partner, officer, director, agent or employee of or in Mortgagor or of or in any partner in or shareholder of Mortgagor (all such Persons, except to the extent any such Person is obligated under a guaranty, referred to collectively as "Exculpated Persons") for the repayment of the Loan. Notwithstanding the provisions of this Section 6.15, nothing herein or in any other Loan Document shall: (i) prevent Mortgagee's recourse to Mortgagor, the Restaurant, the Collateral or the Property or against any guarantor under a guaranty; (ii) constitute a waiver, release or discharge of any Indebtedness or Obligation evidenced by the Loan or arising under or secured by this Mortgage or any of the other Loan Documents, but the same shall continue until fully paid or discharged; (iii) affect or in any way limit the rights and remedies of Mortgagee under this Mortgage or under any other Loan Document; or (iv) limit the personal liability of any Exculpated Person for misappropriation or misallocation of any funds, fraud, misrepresentation or willful damage to the Restaurant, the Property or any portion thereof or for any environmental indemnity under the Loan Documents.

SECTION 6.16. Special Indiana Provisions.

(a) Scope of Remedies. Anything herein to the contrary notwithstanding, upon the occurrence of an Event of Default, Mortgagee shall have the right to foreclose this Mortgage in the manner provided under the laws of Indiana and to exercise all remedies available under Indiana law. In the event a foreclosure action is commenced, as aforesaid, and a receiver is appointed as to any of the Subject Property, said receiver shall possess all rights and powers granted to Mortgagee to the extent said receiver may possess and exercise said rights and powers under Indiana law.

(b) Indiana Responsible Property Transfer Law. Mortgagor represents and warrants that (i) either (1) none of the Subject Property is within the definition of the term "property" as defined in Indiana Code Section 13-11-2-174 and no person is required as a result of the execution and delivery of this Mortgage to furnish to any other person the disclosure documents described in and provided for in the Indiana Responsible Property Transfer Law (I.C. 13-25-3) or (2) all required disclosure documents have been timely delivered to all persons specified in the Indiana Responsible Property Transfer Law and, (ii) except as disclosed in any environmental audits and reports delivered to Mortgagee, the Subject Property does not contain any environmental defect as defined in I.C. 13-11-2-70.

(c) Prepayment. Mortgagor has specifically agreed to pay to Mortgagee the Yield Maintenance Amount specified in the Loan Documents in the event of, and notwithstanding, the acceleration of the Obligations prior to the stated maturity date as the consequence of the occurrence of an Event of Default, including (without limitation but with recognition of the negotiated nature thereof) an Event of Default.

(d) Future Advances. Notwithstanding anything contained in this Mortgage or the other Loan Documents to the contrary, this Mortgage shall secure: (i) one hundred ten percent (110%) of the face amount of the Obligations, exclusive of any items described in (ii) below, including any additional advances made from

time to time after the date hereof pursuant to the Note and other Loan Documents whether made as a part of the Obligations secured hereby, made at the option of Mortgagee, made after a reduction to a zero (0) or other balance, or made otherwise, (ii) all other amounts payable by Mortgagor, or advanced by Mortgagee for the account of, or on behalf, of Mortgagor or the Subject Property, pursuant to the Loan Documents, including amounts advanced with respect to the Subject Property for the payment of taxes, assessments, insurance premiums and other costs and impositions incurred for the protection of the Subject Property to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage, and (iii) future modifications, extensions, and renewals of any Obligations secured by this Mortgage. Pursuant to I.C. 32-8-11-9, the lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date of this Mortgage is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Mortgage is executed.

(e) After Acquired Property. If, after the date of this Mortgage, Mortgagor acquires any property located on and used in connection with the Subject Property and that by the terms of the Loan Documents is required or intended to be encumbered by this Mortgage, the property shall become subject to the lien and security interest of this Mortgage immediately upon its acquisition by Mortgagor and without any further mortgage, conveyance, assignment or transfer. Nevertheless, upon Mortgagee's request any time Mortgagor shall execute, acknowledge and deliver any additional instruments and assurances of title and will do or cause to be done anything further that is reasonably necessary for carrying out the intent of this Mortgage.

(f) No Limitation on Remedies. Each of the remedies set forth herein, including without limitation the remedies involving a power of sale on the part of Mortgagor and the right of Mortgagee to exercise self-help in connection with the enforcement of the terms of this Mortgage, shall be exercisable if, and to the extent, permitted by the laws of the State of Indiana in force at the time of the exercise of such remedies without regard to the enforceability of such remedies at the time of the execution and delivery of this Mortgage.

(g) Valuation and Appraisal. All payments due under the Loan Documents shall be made without relief from valuation and appraisal laws.

[signatures begin on next page]

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage as of the date first written above.

TIMELESS MANAGEMENT, INC.,
a Texas corporation

By: *SK. Fatima*
Printed Name: Syeda K. Fatima
Title: President

[corporate seal]



ACKNOWLEDGEMENT FOR MORTGAGOR

STATE OF Texas

COUNTY OF Dallas

Before me, Debra L. Versover, Notary Public in and for _____
State of Texas County, Dallas this 16
day of August, 1999. Syeda K. Fatima
_____, the President of TIMELESS MANAGEMENT, INC., a
Texas corporation, who acknowledged the execution of the annexed Mortgage and certified that all required action
for the authorization, execution and delivery of the instrument has been taken by the Corporation.

This Document is the property of
NOTARY PUBLIC
the Lake County Recorder!

My Commission Expires:
9-26-2002
[Notary Seal]

By: Debra L. Versover
Printed Name: Debra L. Versover
Notary Public, Resident of Texas
County, Dallas

This instrument was prepared by:
Randy Evans, Esq.
KRASS MONROE, P.A.
1650 West 82nd Street, Suite 1100
Minneapolis, Minnesota 55431-1447
Attn: Randy Evans, Esq.
(612) 885-5999



When recorded, return to:
ATHERTON CAPITAL INCORPORATED
1001 Bayhill Drive, Suite 155
San Bruno, California 94066
Attn: Loan Administration
Loan No. 1612-001

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EXHIBIT A

To Mortgage

DESCRIPTION OF REAL ESTATE

Restaurant No. 3538

7770 Ridge Road
Hobart, IN 45342

Record Owner: Timeless Management, Inc.

PARCEL II: The East 243.63 feet of Lot 3 in North Ridge Center, as per plat thereof, recorded in Plat Book 65 page 13, in the Office of the Recorder of Lake County, Indiana.

Restaurant No. 3583

5815 Broadway
Merrillville, IN 46410

Record Owner: Timeless Management, Inc.

PARCEL I: Lots 1, 2, 3, 4, 5, and the North Half of Lot 6, and Lots 25, 26 and 27 in Block 4 in Gross Park Addition to Gary, as per plat thereof, recorded in Plat Book 20 page 59, in the Office of the Recorder of Lake County, Indiana.

