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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

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MICHAEL A. [unclear]
RECORDER

<p>Mortgagor's Name And Address</p> <p>STEPHEN KELLEHER AND DEBRA A. KELLEHER 31 W. ELIZABETH DRIVE SCHERERVILLE, IN 46375</p>	<p>BANK CALUMET NATIONAL ASSOCIATION 5231 Hohman Avenue Hammond, Indiana 46320</p> <p>("Mortgages")</p>	<p>Return to:</p> <p>BANK CALUMET 5231 Hohman Avenue Hammond, Indiana 46320</p> <p><i>↗</i></p>
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REAL ESTATE MORTGAGE

FOR VALUABLE CONSIDERATION given this 4th day of January, 2005, the receipt of which is hereby acknowledged, **Stephen Kelleher and Debra A. Kelleher** ("Mortgagor" whether one or more) hereby grants, mortgages, warrants, and conveys, with mortgage covenants, to Mortgagee that real estate situated in **Lake County**, State of Indiana, described as follows:

Lot 23 in Block 4, in unrecorded plat of Lincoln Knolls Estate, Town of Schererville, described as follows: The West 100 feet of the East 398.85 feet of the following described tract: Part of the Northeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 16, Township 35 North, Range 9 West of the Second principal Meridian, described as follows: Beginning at a point on the East line of said Section which is 1653.58 feet North of the Southeast corner thereof; thence North along said East line a distance of 155 feet; thence North 90 degrees West a distance of 598.85 feet; thence South 155 feet to a point on the South line of North 30 acres of said Northeast Quarter of the Southeast Quarter; thence East along said South line 598.85 feet to the point of beginning in the Town of Schererville, Lake County, Indiana.

Common Address: 31 W. Elizabeth Drive, Schererville, Indiana 46375

Unit #20; Key #13-8-103

"The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- a) *When SBA is the holder of the Note, this document and all other documents evidencing or securing this Loan will be construed in accordance with federal law.*
- b) *Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.*

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument."

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together with all rights, privileges, interests, mineral rights, water rights, air rights, timber rights and/or gas rights, easements, buildings, improvements, appurtenances, fixtures and hereditaments therein, thereon, or thereto belonging (herein collectively "Real Estate"), and the rents and profits and other income of the Real Estate whether now existing or hereafter acquired, which said rents and profits are now and hereby assigned to Mortgagee.

1. **INDEBTEDNESS SECURED.** This Mortgage is given to secure the following (sometimes collectively referred to herein as the "Obligations")(boxes not checked are inapplicable. Sections 1.04, 1.05, 1.06 and 1.07 are always applicable):

THIRD PARTY BORROWER PROVISION
<input checked="" type="checkbox"/> If this box is checked, this Mortgage secures one or more loans to <u>Illiana Food Services, Inc., D/B/A Quizno's</u> , hereinafter referred to as "Borrower".

- 1.01. Payment of a term loan note executed by Mortgagor Borrower in favor of Mortgagee and dated the 4th day of January, 2005 in the original principal amount of \$150,000.00, with interest thereon as provided in said term loan, and with any unpaid balance of principal and interest being due and payable on or before the 4th day of January, 2015.
- 1.02. Payment of that certain line of credit loan note executed by Mortgagor Borrower in favor of Mortgagee and dated the _____ day of _____, 20____, with a maximum commitment of \$ _____, and with any unpaid balance of principal and interest being due and payable on or before the _____ day of _____, 20____. This is a line of credit obligation and Mortgagee will be making future loans and advances to Mortgagor pursuant to a \$ _____ commitment. It is intended by the Mortgagor that each such future loan or advance shall be secured by this Mortgage. The maximum principal amount of unpaid loan indebtedness secured under this Section 1.02, which may be outstanding at any time shall be \$ _____, exclusive of interest thereon and exclusive of unpaid balances of advances made with respect to the mortgaged premises for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the mortgage premises and all other costs which Mortgagee is authorized by this Mortgage to pay on Mortgagor's behalf, all of which amount shall also be secured by this Mortgage.
- 1.03. Any and all future loans, obligations and advancements made by Mortgagee to Mortgagor (and Borrower if the Third Party Borrower box is checked on the preceding page) except that the maximum amount of unpaid indebtedness under this paragraph 1.03 secured hereby which may be outstanding at any time shall not exceed two times the combined original principal indebtedness referenced in sections 1.01 and 1.02 above, exclusive of interest thereon and exclusive of unpaid balances of advances made with respect to the Real Estate for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the Real Estate and all other costs which Mortgagee is authorized by this Mortgage to pay on Mortgagor's behalf. Mortgagor stipulates and agrees with Mortgagee that as of the date of this Mortgage, Mortgagee has made no written or oral commitment to Mortgagor (or Borrower) to make any future loans or advancements under this Section 1.03. Any such future lending shall be at the Mortgagee's sole discretion.

- 1.04. Any renewal, extension, modification, refinancing or replacement of the indebtedness referred to in those paragraphs 1.01, 1.02, or 1.03, above, which are checked as being applicable.
- 1.05. Except as otherwise limited in this Mortgage, any other indebtedness which the Mortgagor and/or Borrower (if designated above) (or any one or more of them if more than one) might from time to time, while this mortgage is in effect, owe Mortgagee including, but not necessarily limited to, obligations under guarantys executed by Mortgagor and/or Borrower (or any one or more of them, if more than one) in favor of Mortgagee, indebtedness arising from overdrafts on depository accounts maintained by Mortgagor and/or Borrower (or any one or more of them, if more than one) with Mortgagee and indebtedness arising from Mortgagee making payment to beneficiaries under letters of credit issued by Mortgagee for the account of Mortgagor and/or Borrower (or any one or more of them, if more than one).
- 1.06. All interest, attorney fees, and costs of collection with respect to the obligations referred to in those paragraphs 1.01 through 1.05, above, together with any extensions or renewals thereof.
- 1.07. The performance by Mortgagor of all Mortgagor's covenants, agreements, promises, payments and conditions contained in this Mortgage agreement.

The Mortgagor shall have and hold the Real Estate unto the Mortgagee, for the purposes and uses set forth herein under the following terms and conditions:

2. **COVENANTS.** Mortgagor hereby covenants and agrees with Mortgagee as follows:

- 2.01. **Security Agreement.** THIS INSTRUMENT WHEN RECORDED SHALL CONSTITUTE A "FIXTURE FILING" FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE. THE ADDRESS OF THE MORTGAGEE AS SHOWN ABOVE IS THE ADDRESS AT WHICH INFORMATION CONCERNING THE MORTGAGEE'S SECURITY INTEREST MAY BE OBTAINED. Mortgagor hereby grants to Mortgagee a security interest in all equipment or other tangible personal property which is now or hereafter becomes attached to the Real Estate or any improvement thereon so as to constitute a fixture, whether now owned or hereinafter acquired, including, not by way of limitation, all heating, ventilation and air conditioning equipment, and all shelving and storage devices now or hereafter affixed or attached to the Real Estate.
- 2.02. **Waste and Maintenance of Premises.** The Mortgagor shall abstain from and not permit the commission of waste in or about the Real Estate; shall not move or demolish, or alter the structural character of any building at any time erected on the Real Estate without the prior written consent of the Mortgagee; shall maintain the Real Estate in good condition and repair, reasonable wear and tear excepted. The Mortgagee shall have the right, but not the duty, to enter upon the premises at any reasonable hour to inspect the order, condition, and repair thereof, including the interiors of any buildings and improvements located thereon.
- 2.03. **Insurance Obligation.** The Mortgagor will procure, deliver to, and maintain for the benefit of the Mortgagee during the continuance of this Mortgage and until the same is fully satisfied and released, a policy or policies of insurance insuring the buildings and improvements now existing or hereafter erected on the Real Estate for their full replacement value against loss or damage by fire, lightning, flood (if required by applicable law), wind-storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and such other hazards, casualties, and contingencies as the Mortgagee may designate. The Mortgagor shall procure business interruption insurance in such amounts as the Mortgagee may reasonably require. All policies of insurance required hereunder shall be in such form and amounts and by such companies, as the Mortgagee may accept, and shall contain a mortgagee clause acceptable to the Mortgagee, with loss payable to the Mortgagor and the Mortgagee as their interests may appear and shall provide that no act or omission of Mortgagor or any other person shall affect the right of Mortgagee to be paid the insurance proceeds pertaining to the loss or damage of the insured property. Such policies shall require the insurance company to provide Mortgagee with at least thirty (30) days' written notice before such policies are altered or canceled in any manner. The Mortgagor will promptly pay when due any premiums on any policy or policies of insurance required hereunder, and will deliver to the

Mortgagee renewals of such policy or policies at least ten (10) days prior to the expiration date(s) thereof, the said policies and renewals to be marked "paid" by the issuing company or agent.

In the event of any loss or damage, the Mortgagor will give prompt notice thereof to the Mortgagee. All proceeds of insurance in the event of such loss or damage shall be payable jointly to the Mortgagor, its successors and assigns, and the Mortgagee. All funds will be utilized by the Mortgagor to the extent necessary to restore the Real Estate to substantially the same condition as the Real Estate existed prior to the loss or damage, unless the Mortgagee shall elect not to do so. In the latter event, the Mortgagee shall then apply the proceeds to the then existing indebtedness and the balance shall be paid to the Mortgagor. Mortgagee may act as attorney-in-fact for the Mortgagor in making and settling claims under insurance policies, canceling any policy or endorsing Mortgagor's name on any draft or negotiable instrument drawn by any insurer.

- 2.04. Payment of Taxes and Other Charges.** The Mortgagor shall pay all real estate taxes, water and sewer rents, other similar claims and liens assessed or which may be assessed against the Real Estate or any part thereof, without any deduction or abatement, and shall produce to the Mortgagee receipts for the payment thereof in full and shall pay every other tax, assessment, claim, lien, or encumbrance which may at any time be or become a lien upon the Real Estate prior to the lien of this Mortgage.
- 2.05. Compliance with Laws and Ordinances.** The Mortgagor shall comply with all statutes, ordinances, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body or official applicable to the Real Estate, or any part thereof.
- 2.06. Condemnation.** Mortgagor shall immediately provide Mortgagee with written notice of any actual or threatened condemnation or eminent domain proceeding pertaining to the Real Estate, or any part thereof. All monies payable to Mortgagor from such condemnation or taking are hereby assigned to Mortgagee and shall be applied first to the payment of Mortgagee's attorney's fees, legal expenses and other costs (including appraisal fees) in connection with the condemnation action or eminent domain proceedings and then, at the option of Mortgagee, to the payment of the indebtedness secured by this Mortgage or the restoration or repair of the Real Estate.

DEFAULT AND BREACH

- 2.07. Events of Default.** Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Mortgage or any event defined as a default in any note secured hereby, or in any other instrument or document executed by Mortgagor (or Borrower) in favor of Mortgagee, including, but not limited to any failure by any one so obligated to make any payment of principal and/or interest when due under the Obligations including, without limitation, any note secured hereby shall constitute a default under this Mortgage.
- 2.08. Remedies on Default.** Upon the occurrence and continuance of an event of default, all indebtedness secured hereby shall, at the option of the Mortgagee, become immediately due and payable and this Mortgage may be foreclosed accordingly. Should proceedings to foreclose this Mortgage be instituted, the Mortgagee may apply for the appointment of a receiver (and the Mortgagor hereby consents to the appointment of a receiver if there has been any Default), and such receiver is hereby authorized to take possession of the Real Estate, collect any rental, accrued or to accrue, whether in money or kind, for the use or occupancy of said Real Estate by any person, firm or corporation, or may let or lease said Real Estate or any part thereof, receive the rents, income and profits there from, and hold the proceeds subject to the orders of the court, or the judge thereof, for the benefit of the Mortgagee, pending the final decree in said proceedings, and said receiver may be appointed irrespective of the value of the Real Estate or its adequacy to secure or discharge indebtedness due or to become due or the solvency of the Mortgagor. In any action to foreclose this Mortgage, the Mortgagee shall be entitled to recover, in addition to all attorney and related paraprofessional expenses incurred in connection therewith, all other costs and expenses associated with foreclosure including, without limitation, all expenses incurred for title searches, abstracts of title, title insurance, appraisals, surveys and environmental assessments reasonably deemed necessary by the Mortgagee, all of which costs and

expenses shall be additional amounts secured by this Mortgage. As used in the preceding sentence, the term "environmental assessments" means inspections and reports of environmental engineers or firms of environmental engineers or other appropriate experts or consultants, and associated samplings and testings of soil or groundwater, the purpose of which is to determine whether there is any Contamination associated with the Real Estate and if so, the extent thereof, and to estimate of the cost of Clean-up of any Contamination, and to determine whether there are any underground storage tanks or any asbestos in, on, or under the Real Estate and if so, whether there are any violations of Environmental Laws in connection therewith. As used in this paragraph, the terms "Contamination," "Clean-up" and "Environmental Laws" are used as defined hereinabove.

2.09. Failure to Pay Taxes or Insurance Premiums. If the Mortgagor fails to pay any tax, claim, lien or encumbrance which shall be or become prior in lien to this Mortgage, or to pay any insurance premium as aforesaid, or to keep the Real Estate in repair, as aforesaid, or commits or permits waste, then the Mortgagee, at its option, may pay said claim, lien, encumbrance, tax assessment, or premium, with right of subrogation there under, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any action or proceeding with respect to any of the foregoing and retain counsel therein, and take such action therein as the Mortgagee deems advisable, and for any of said purposes the Mortgagee may advance such sums of money as it deems necessary. All sums of money advanced by the Mortgagee pursuant to this section, together with interest on each such advance at the highest rate of interest specified in any note secured hereby, shall be so much additional indebtedness secured hereby and shall immediately become due and payable without notice or demand. The failure of the Mortgagee to act pursuant to this section shall not be deemed a waiver of any rights the Mortgagee may have because of any default by the Mortgagor.

3. SATISFACTION AND RELEASE

3.01. Release. Upon payment of the Obligations and any other sums secured by this Mortgage, Mortgagee shall release this Mortgage.

3.02. Transfer of Real Estate by Mortgagor. Any transfer by sale, gift, grant, devise, operation of law, or otherwise of the fee title or any other interest, (including, but not limited to mortgage, easement, land contract or leasehold interest) in all or any portion of the Real Estate shall have the same consequences as an event of default respecting the indebtedness secured hereby, and upon such transfer, the Mortgagee, without prior notice shall have the right to declare all sums secured hereby immediately due and payable and, upon failure by the Mortgagor to make such payment the Mortgagee shall have the right to exercise all remedies provided in any note secured hereby, this mortgage, or otherwise at law.

4. MISCELLANEOUS

4.01. Commercial Mortgage. This Mortgage secures indebtedness incurred for a business purpose.

4.02. Cumulative Rights and Remedies. The rights and remedies of the Mortgagee as provided herein, or in any note secured hereby, and the warranties therein contained, shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of the Mortgagee, and may be exercised as often as occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

4.03. State Law to Apply. This Mortgage shall be governed by and construed and enforced in all cases by the substantive laws of the State of Indiana, notwithstanding the fact that Indiana conflicts of law rules might otherwise require the substantive rules of law of another jurisdiction to apply.

- 4.04. Insufficiency of Proceeds.** In the event the property pledged by this instrument is sold under foreclosure and the proceeds are insufficient to pay the total costs of said foreclosure and the indebtedness evidenced and secured by this instrument, the Mortgagee will be entitled to a deficiency judgment.
- 4.05. Deposits for Assessments and Taxes.** In addition to the payments to be made by the Mortgagor as herein provided and also as provided in the Note hereby secured, the Mortgagor agrees, if requested by the Mortgagee at any time or from time to time while this Mortgage remains unsatisfied, to deposit monthly with the Mortgagee approximately one-twelfth (1/12) of the annual property taxes and any and all assessments for public improvements levied upon the mortgaged property, and also one-twelfth (1/12) of the annual insurance premiums required by this Mortgage or the Loan Agreement. If so requested by Mortgagee, Mortgagor agrees to sign and deliver to Mortgagee an escrow agreement in form and content acceptable to Mortgagee.
- 4.06. Parties Bound.** This mortgage shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
- 4.07. Severability.** In case any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 4.08. Construction.** The words "Mortgagor" and "Mortgagee" include singular or plural, individual or corporation, and the respective heirs, personal representatives, executors, administrators, successors, and assigns of the Mortgagor and the Mortgagee, as the case may be. The use of any gender applies to all genders. If more than one party is named as the Mortgagor, the Obligations hereunder of each such party is joint and several.
- 4.09. Limitations on Mortgage.** The security interest created under the provisions of this Mortgage will not secure (a) any indebtedness with respect to which the Mortgagee is required to make any disclosure of the existence of this Mortgage under applicable law for this transaction and fails to do so as required by law; (b) if this security interest is in a dwelling and secures a variable rate loan any indebtedness with respect to which the Mortgagee is required to disclose and provide for a limitation on the maximum interest rate that may be imposed during the term of such indebtedness as and when required by law or regulation and Mortgagee fails to do; or if this security interest is in Mortgagor's principal dwelling any indebtedness with respect to which the Mortgagee is required to provide any notice of right of rescission required by law for this transaction and fails to do so.
- 4.10. Captions.** The captions herein are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Mortgage or any particular paragraph or section hereof, nor the proper construction hereof.

EXECUTED and delivered in Lake County, Indiana this 4th day of January, 2005.



X Stephen Kelleher
Stephen Kelleher

X Debra A. Kelleher
Debra A. Kelleher

"Mortgagor"

STATE OF INDIANA)
LAKE COUNTY)SS:
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ACKNOWLEDGMENT

Before me, a Notary Public in and for said County and State personally appeared **Stephen Kelleher and Debra A. Kelleher**, and acknowledged the execution of the above and foregoing Mortgage this 4th day of January, 2005.

Sophie Zdraveski

Sophie Zdraveski Notary Public,
Residing in Lake County, Indiana

My Commission Expires:
March 5, 2008

