

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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### FILER

#### **SMITH & WOLLENSKY RESTAURANT GROUP INC**

CIK: **1137047** | IRS No.: **582350980** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

On one or more occasions, we may make statements in this Quarterly Report on Form 10-Q regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements other than statements of historical facts, included or incorporated by reference herein relating to management's current expectations of future financial performance, continued growth and changes in economic conditions or capital markets are forward looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934.

Words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "projects," "targets," "will likely result," "hopes", "will continue" or similar expressions identify forward-looking statements. Forward-looking statements involve risks and uncertainties, which could cause actual results or outcomes to differ materially from those expressed. We caution that while we make such statements in good faith and we believe such statements are based on reasonable assumptions, including without limitation, management's examination of historical operating trends, data contained in records and other data available from third parties, we cannot assure you that our projections will be achieved. Factors that may cause such differences include: economic conditions generally and in each of the markets in which we are located, the amount of sales contributed by new and existing restaurants, labor costs for our personnel, fluctuations in the cost of food products, changes in consumer preferences, the level of competition from existing or new competitors in the high-end segment of the restaurant industry and our success in implementing our growth strategy.

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter or subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in Exhibit 99.1 of this Quarterly Report on Form 10-Q.

From time to time, oral or written forward-looking statements are also included in our reports on Forms 10-K, 10-Q and 8-K, our Schedule 14A, our press releases and other materials released to the public. Although we believe that at the time made, the expectations reflected in all of these forward-looking statements are and will be reasonable, any or all of the forward-looking statements in this Quarterly Report on Form 10-Q, our reports on Forms 10-K, 10-Q and 8-K, our Schedule 14A and any other public statements that are made by us may prove to be incorrect. This may occur as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties. Many factors discussed in this Quarterly Report on Form 10-Q, certain of which are beyond our control, will be important in determining our future performance. Consequently, actual results may differ materially from those that might be anticipated from forward-looking statements. In light of these and other uncertainties, you should not regard the inclusion of a forward-looking statement in this Quarterly Report on Form 10-Q or other public communications that we might make as a representation by us that our plans and objectives will be achieved, and you should not place undue reliance on such forward-looking

statements.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. However, your attention is directed to any further disclosures made on related subjects in our subsequent periodic reports filed with the Securities and Exchange Commission on Forms 10-K, 10-Q and 8-K and Schedule 14A.

Unless the context requires otherwise, references to "we," "us," "our," "SWRG" and the "Company" refer specifically to The Smith & Wollensky Restaurant Group, Inc. and its subsidiaries and predecessor entities.

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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS.

THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.  
AND SUBSIDIARIES

Unaudited Consolidated Balance Sheets

(dollar amounts in thousands, except share and per share data)

<TABLE>

<CAPTION>

	June 28, 2004	December 29, 2003 (a)
	----	-----
Assets		
<S>	<C>	<C>
Current assets:		
Cash and cash equivalents.....	\$ 1,033	\$ 2,181
Short-term investments.....	168	1,055
Accounts receivable, less allowance for doubtful accounts of \$94 and \$95 at June 28, 2004 and December 29, 2003, respectively.....	2,818	2,680
Merchandise inventory.....	4,867	4,749
Prepaid expenses and other current assets.....	1,376	845
	-----	-----
Total current assets.....	10,262	11,510
Property and equipment, net.....	68,527	63,386
Goodwill, net.....	6,886	6,886
Licensing agreement, net.....	3,489	3,338
Other assets.....	4,241	3,941
	-----	-----
Total assets.....	\$ 93,405	\$ 89,061
	=====	=====
Liabilities and Stockholders' Equity		
Current liabilities:		
Current portion of long-term debt.....	\$ 1,323	\$ 2,121
Accounts payable and accrued expenses.....	12,206	11,922
	-----	-----
Total current liabilities.....	13,529	14,043
Obligations under capital lease.....	10,062	9,991
Long-term debt, net of current portion.....	10,497	6,099
Deferred rent.....	6,481	6,400
	-----	-----
Total liabilities.....	40,569	36,533
Interest in consolidated variable interest entity.....	(1,601)	(1,680)
Commitments and contingencies		
Stockholders' equity:		
Common stock (par value \$.01; authorized 40,000,000 shares; 9,376,249 shares issued and outstanding at June 28, 2004 and December 29, 2003, respectively).....	94	94
Additional paid-in capital.....	69,940	69,940
Accumulated deficit.....	(15,649)	(15,842)
Accumulated other comprehensive income .....	52	16
	-----	-----
	54,437	54,208
	-----	-----
Total liabilities and stockholders' equity.....	\$ 93,405	\$ 89,061
	=====	=====

</TABLE>

(a) Restated to reflect the adoption of FASB Interpretation No. 46 (revised December 2003), "Consolidation of Variable Interest Entities" ("FIN 46 (R)").

See accompanying notes to unaudited consolidated financial statements.

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THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.  
AND SUBSIDIARIES  
Unaudited Consolidated Statements of Operations  
(dollar amounts in thousands, except per share amounts)

<TABLE>  
<CAPTION>

	Three Months Ended		Six Months Ended	
	June 28, 2004	June 30, 2003 (a)	June 28, 2004	June 30, 2003 (a)
<S>	<C>	<C>	<C>	<C>
Consolidated restaurant sales.....	\$ 30,010	\$ 26,081	\$ 60,662	\$ 51,440
Cost of consolidated restaurant sales:				
Food and beverage costs.....	9,366	7,989	19,515	15,671
Salaries and related benefit expenses.....	8,669	7,369	17,422	14,469
Restaurant operating expenses.....	4,758	4,233	9,557	8,176
Occupancy and related expenses.....	1,458	1,313	2,894	3,027
Marketing and promotional expenses.....	1,326	1,010	2,624	1,992
Depreciation and amortization expenses.....	1,016	996	2,078	1,949
Total cost of consolidated restaurant sales.....	26,593	22,910	54,090	45,284
Income from consolidated restaurant operations.....	3,417	3,171	6,572	6,156
Management fee income.....	316	232	632	444
Income from consolidated and managed restaurants.....	3,733	3,403	7,204	6,600
General and administrative expenses.....	2,367	2,389	4,908	5,086
Royalty expense.....	432	369	871	717
Operating income .....	934	645	1,425	797
Interest expense.....	(333)	(277)	(656)	(403)
Amortization of deferred debt financing costs.....	(26)	(13)	(44)	(26)
Interest income.....	--	31	--	74
Interest and other expense, net.....	(359)	(259)	(700)	(355)
Income before provision for income taxes.....	575	386	725	442
Provision for income taxes.....	51	75	103	125
Income before (income) loss of consolidated variable interest entity.....	524	311	622	317
(Income) loss of consolidated variable interest entity	(261)	(71)	(429)	6
Net income.....	\$ 263	\$ 240	\$ 193	\$ 323
Net income per common share:				
Basic:.....	\$ 0.03	\$ 0.03	\$ 0.02	\$ 0.03
Diluted:.....	\$ 0.03	\$ 0.02	\$ 0.02	\$ 0.03
Weighted average common shares outstanding:				
Basic.....	9,376,249	9,354,481	9,376,249	9,354,374
Diluted.....	10,131,915	9,806,731	10,131,915	9,667,470

</TABLE>

(a) Restated to reflect the adoption of FIN 46 (R).

See accompanying notes to unaudited consolidated financial statements.

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THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.  
AND SUBSIDIARIES  
Unaudited Consolidated Statements of Stockholders' Equity  
(dollar amounts in thousands)

Six months ended June 28, 2004 and June 30, 2003

	Common Stock		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Stockholders' equity
	Shares	Amount	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Balance at December 30, 2002(a)	9,354,266	\$94	\$69,854	\$(14,820)	\$ (51)	\$55,077
Stock options exercised.....	1,633		7			7
Comprehensive income on investments, net of tax effect.....					70	70
Net income.....	--	--	--	323	--	323
	-----	---	-----	-----	-----	-----
Total comprehensive income						393
						---
Balance at June 30, 2003(a) ..	9,355,899	\$ 94	\$69,861	\$(14,497)	\$ 19	\$55,477
	=====	=====	=====	=====	=====	=====
Balance at December 29, 2003(a)	9,376,249	\$94	\$69,940	\$(15,842)	\$16	\$54,208
Comprehensive income on investments, net of tax effect.....					36	36
Net income.....	--	--	--	193	--	193
	-----	---	-----	-----	-----	-----
Total comprehensive income						229
						=====
Balance at June 28, 2004.....	9,376,249	\$ 94	\$69,940	\$(15,649)	\$ 52	\$54,437
	=====	=====	=====	=====	=====	=====

</TABLE>

(a) Restated to reflect the adoption of FIN 46 (R).

See accompanying notes to unaudited consolidated financial statements.

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THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.  
AND SUBSIDIARIES  
Unaudited Consolidated Statements of Cash Flows  
(dollar amounts in thousands)

Six months ended June 28, 2004 and June 30, 2003

	June 28, 2004	June 30, 2003 (a)
	----	-----
<S>	<C>	<C>
Cash flows from operating activities:		
Net income .....	\$ 193	\$ 323
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization.....	2,251	2,117
Amortization of deferred financing costs.....	44	26
Accretive interest on capital lease obligation.....	71	23
Income (loss) of consolidated variable interest entity....	429	(6)
Changes in operating assets and liabilities:		
Accounts receivable.....	(165)	(537)
Merchandise inventory.....	(118)	(73)
Prepaid expenses and other current assets.....	(531)	165
Other assets.....	(321)	(163)
Accounts payable and accrued expenses.....	280	614
Deferred rent.....	81	(13)

Net cash provided by operating activities.....	2,214	2,476
Cash flows from investing activities:		
Purchase of property and equipment.....	(7,274)	(4,118)
Purchase of nondepreciable assets.....	(34)	(99)
Purchase of investments.....	-	(2,568)
Proceeds from sale of investments.....	925	4,504
Payments under licensing agreement.....	(229)	(224)
	-----	-----
Cash flows used in investing activities.....	(6,612)	(2,505)
Cash flows from financing activities:		
Proceeds from issuance of long-term debt.....	3,959	-
Principal payments of long-term debt.....	(359)	(826)
Net proceeds from exercise of options	-	7
	-----	-----
Distribution to owners of consolidated variable interest entity.....	(350)	(150)
	-----	-----
Cash flows provided by (used in) financing activities.....	3,250	(969)
	-----	-----
Net change in cash and cash equivalents.....	(1,148)	(998)
Cash and cash equivalents at beginning of period.....	2,181	4,226
	-----	-----
Cash and cash equivalents at end of period.....	\$ 1,033	\$ 3,228
	=====	=====
Supplemental disclosures of cash flow information:		
Cash paid during the period for:		
Interest.....	\$ 504	\$ 328
	=====	=====
Income taxes.....	\$ 73	\$ 44
	=====	=====
Noncash investing and financing activities:		
Assets under capital lease.....	\$71	\$ 9,898
	=====	=====
Obligations under capital lease.....	-	\$ 9,921
	=	=====
Capitalization of deferred rent.....	\$150	\$ -
	=====	=====

</TABLE>

(a) Restated to reflect the adoption of FIN 46 (R).

See accompanying notes to unaudited consolidated financial statements.

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THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.  
AND SUBSIDIARIES

Notes to Unaudited Consolidated Financial Statements  
(dollar amounts in thousands, except per share amounts and where noted)  
June 28, 2004 and June 30, 2003

(1) General

The accompanying unaudited consolidated financial statements of The Smith & Wollensky Restaurant Group, Inc. and its wholly-owned subsidiaries (collectively, "SWRG") do not include all information and footnotes normally included in financial statements prepared in conformity with accounting principles generally accepted in the United States. In the opinion of management, the unaudited consolidated financial statements for the interim periods presented reflect all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of the financial position and results of operations as of and for such periods indicated. These unaudited consolidated financial statements and related notes should be read in conjunction with the audited consolidated financial statements of SWRG for the fiscal year ended December 29, 2003 filed by SWRG on Form 10-K with the Securities and Exchange Commission on March 26, 2004. Results for the interim periods presented herein are not necessarily indicative of the results which may be reported for any other interim period or for the entire fiscal year.

The consolidated balance sheet data presented herein for December 29, 2003 was derived from SWRG's consolidated financial statements for the fiscal year then ended and includes the effect of consolidating the entity that owns

the Maloney & Porcelli restaurant ("M&P") that SWRG manages in New York City, but does not include all disclosures required by accounting principles generally accepted in the United States. The preparation of unaudited financial statements in accordance with accounting principles generally accepted in the United States requires SWRG to make certain estimates and assumptions for the reporting periods covered by the financial statements. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses during the reporting period. Actual results could differ from these estimates.

The consolidated financial statements of SWRG include the accounts and results of SWRG and, as a result of Financial Accounting Standards Board ("FASB") Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities, ("FIN 46(R)"), the accounts and results of the entity that owns M&P. SWRG manages the operations of M&P pursuant to the terms of a restaurant management agreement (the "Maloney Agreement"). FIN 46(R) addresses the consolidation by business enterprises of variable interest entities. All variable interest entities, regardless of when created, are required to be evaluated under FIN 46(R) no later than the first period ending after March 15, 2004. An entity shall be subject to consolidation according to the provisions of this Interpretation if, by design, as a group, the holders of the equity investment at risk lack any one of the following three characteristics of a controlling financial interest: (1) the direct or indirect ability to make decisions about an entity's activities through voting rights or similar rights; (2) the obligation to absorb the expected losses of the entity if they occur; or (3) the right to receive the expected residual returns of the entity if they occur. SWRG consolidated the financial statements of the entity that owns M&P because the holders of the equity investment lacked one of the above characteristics.

The presented consolidated financial statements relating to prior periods have been restated to consolidate the accounts and results of the entity that owns M&P as a direct result of the adoption of FIN 46(R). In connection with the restatement under FIN 46(R), SWRG's net investment in the Maloney Agreement, previously classified under "Management contract, net" and management fees and miscellaneous charges receivable classified under "Accounts receivable" have been eliminated in consolidation and, instead, the separable assets and liabilities of M&P are presented. In connection with the restatement under FIN 46(R), the consolidated statements of operations for the fiscal year ended December 30, 2002 reflect a cumulative effect of an accounting change. In addition, amortization expense related to the Maloney Agreement for previous periods classified under "General and administrative expense", and fees received pursuant to the Maloney Agreement and classified under "Management fee income" have been removed from the consolidated statements of operations. The consolidation of the entity that owns M&P has changed SWRG's current assets by (\$81) and \$144, non-current assets by (\$577) and (\$305) current liabilities by \$551 and \$840, and non-current liabilities by \$390 and \$392 at June 28, 2004 and December 29, 2003, respectively. The consolidation of the entity that owns M&P increased consolidated sales by \$2,724 and \$2,402, and increased restaurant operating costs by \$2,262 and \$2,059 for the three months ended June 28, 2004 and June 30, 2003, respectively. The consolidation of the entity that owns M&P increased consolidated sales by \$5,482 and \$4,769, and increased restaurant operating costs by \$4,459 and \$4,212 for the six months ended June 28, 2004 and June 30, 2003, respectively. Certain reclassifications were made to prior period amounts to conform to current period classifications.

SWRG utilizes a 52- or 53-week reporting period ending on the Monday nearest to December 31st. The three months ended June 28, 2004 and June 30, 2003 represent 13-week reporting periods and the six months ended June 28, 2004 and June 30, 2003 represent 26-week reporting periods. SWRG develops, owns, operates and manages a diversified portfolio of upscale tablecloth restaurants. At June 28, 2004, SWRG owned and operated twelve restaurants, including nine Smith & Wollensky restaurants. The newest restaurant, a 400 seat Smith & Wollensky in Houston, Texas, opened on January 19, 2004. SWRG also manages five restaurants.

(2) Net Income per Common Share

SWRG calculates net income per common share in accordance with Statement of Financial Accounting Standard ("SFAS") No. 128, Earnings Per Share. Basic net income per common share is computed by dividing the net income by the weighted average number of common shares outstanding. Diluted net income per common share assumes the exercise of stock options using the treasury stock method, if dilutive.

The following table sets forth the calculation for net income per common share on a weighted average basis:

<TABLE>

<CAPTION>

	Three Months Ended		Six Months Ended	
	June 28, 2004	June 30, 2003 (a)	June 28, 2004	June 30, 2003 (a)
<S>	<C>	<C>	<C>	<C>
Numerator:				
Net income.....	\$263	\$240	\$ 193	\$323
	=====	=====	=====	=====
Denominator - Weighted Average Shares:				
Basic.....	9,376,249	9,354,481	9,376,249	9,354,374
Dilutive Options.....	755,666	452,250	755,666	313,096
	-----	-----	-----	-----
Diluted .....	10,131,915	9,806,731	10,131,915	9,667,470
	=====	=====	=====	=====
Per common share:				
Basic.....	\$ 0.03	\$ 0.03	\$ 0.02	\$ 0.03
	=====	=====	=====	=====
Diluted .....	\$ 0.03	\$ 0.02	\$ 0.02	\$ 0.03
	=====	=====	=====	=====

</TABLE>

(a) Restated to reflect the adoption of FIN 46(R).

SWRG applies the intrinsic value-based method of accounting prescribed by Accounting Principles Board ("APB") Opinion No. 25, Accounting for Stock Issued to Employees, and related interpretations, including FASB Interpretation No. 44, Accounting for Certain Transactions Involving Stock Compensation, an interpretation of APB Opinion No. 25, issued in March 2000, to account for its stock based employee compensation. Under this method, compensation expense is recorded on the date of grant of the option only if the current market price of the underlying stock exceeded the exercise price of the option. SFAS No. 123, Accounting for Stock-Based Compensation ("SFAS No. 123"), established accounting and disclosure requirements using a fair value-based method of accounting for stock-based employee compensation plans. In December 2002, the FASB issued SFAS No. 148, Accounting for Stock-Based Compensation Transition and Disclosure, an amendment of SFAS No. 123. This Statement provides alternative methods of transition for a voluntary change to the fair value method of accounting for stock-based employee compensation. SWRG has adopted the pro forma disclosure requirements of SFAS No. 123. The following table illustrates the effect on net income as if SWRG had applied the fair value recognition provisions of SFAS No. 123 to its stock-based employee compensation:

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<TABLE>

<CAPTION>

	Three Months Ended		Six Months Ended	
	June 28, 2004	June 30, 2003	June 28, 2004	June 30, 2003
<S>	<C>	<C>	<C>	<C>
Net income , as reported for 2004 and as restated for 2003 to reflect the adoption of FIN 46(R).....	\$ 263	\$ 240	\$ 193	\$ 323
	=====	=====	=====	=====
Add stock-based employee compensation expense included in reported net income	-	22	-	22
Deduct total stock-based employee compensation expense determined under fair value based method for all awards, net of tax.....	(86)	(131)	(172)	(262)
	-----	-----	-----	-----
Pro forma net income (loss).....	\$ 177	\$ (131)	\$21	\$ 83
	=====	=====	=====	=====
Pro forma net income (loss) Per common share -				
Basic and diluted.....	\$ 0.02	\$ (0.01)	\$0.00	\$ 0.01

Weighted average common shares outstanding:				
Basic.....	9,376,249	9,354,481	9,376,249	9,354,374
Dilutive options.....	755,666	452,250	755,666	313,096
	-----	-----	-----	-----
Diluted.....	10,131,915	9,806,731	10,131,915	9,667,470
	=====	=====	=====	=====

</TABLE>

(3) Investment Securities

The amortized cost, gross unrealized holding gains, gross unrealized holding losses, and fair value of available for sale debt securities by major security type and class of security at June 28, 2004 was as follows:

<TABLE>  
<CAPTION>

	Amortized ----- Cost ----	Gross unrealized ----- holding gains -----	Gross unrealized ----- holding losses -----	Fair value -----
<S>	<C>	<C>	<C>	<C>
At June 28, 2004				
Available for sale short-term:				
Equity securities	\$116 =====	\$52 =====	\$-- =====	\$168 =====

</TABLE>

Proceeds from the sale of investment securities available for sale were \$925 and \$4,504 for the six months ended June 28, 2004 and June 30, 2003, respectively, and gross realized gains and (losses) included in general and administrative expenses for the six months ended June 28, 2004 and June 30, 2003, respectively, were \$20 and \$(13), respectively.

In April 2003, the FASB issued SFAS No. 149, Amendment of Statement 133 on Derivative Instruments and Hedging Activities ("SFAS No. 149"). SFAS No. 149 amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under SFAS No. 133. In particular, SFAS No. 149 clarifies under what circumstances a contract within an initial net investment meets the characteristic of a derivative and when a derivative contains a financing component that warrants special reporting in the statement of cash flows. SFAS No. 149 was generally effective for contracts entered into or modified after June 30, 2003. SWRG is exposed to market fluctuations in the prices of various commodities. SWRG closely monitors the potential impacts of price changes in beef and, where appropriate, enters into contracts to protect margins for a portion of future sales. SWRG used commodity instruments, such as futures and options, as economic hedges for beef purchases. SWRG hedged exposures to the price variability of beef for a maximum of 10 months. The amount recognized for transactions that did not qualify as cash flow hedges was a loss of \$77 for the year ending December 29, 2003. SWRG sold all its derivative instruments during the three months ended March 29, 2004. The realized gain on the sale of these instruments was \$61 for the three-month period ended March 29, 2004. SWRG had no derivative instruments or hedging activities during the three months ended June 28, 2004.

(4) Property and Equipment

Property and equipment consists of the following:

<TABLE>  
<CAPTION>

	June 28, 2004 -----	December 29, ----- 2003 (a) -----
<S>	<C>	<C>
Land.....	\$13,115	\$13,115
Building and building improvements.....	7,317	7,317
Machinery and equipment.....	11,252	10,183
Furniture and fixtures.....	8,004	7,399
Leasehold improvements.....	46,111	40,814
Leasehold rights.....	3,376	3,376
Construction-in-progress.....	5,120	4,787
	-----	-----
	94,295	86,991
Less accumulated depreciation and amortization.....	(25,768)	(23,605)

</TABLE>

(a) Restated to reflect the adoption of FIN 46 (R).

Land includes \$9,898 of assets under capital lease (note 8). Depreciation and amortization expense of property and equipment was \$2,163 and \$4,028, for the six months ended June 28, 2004 and the fiscal year ended December 29, 2003, respectively. SWRG capitalizes interest cost as a component of the cost of construction in progress. In connection with SWRG's assets under construction for the six months ended June 28, 2004 and the fiscal year ended December 29, 2003, SWRG capitalized \$40 and \$111 of interest costs, respectively, in accordance with SFAS No. 34, Capitalization of Interest Cost.

(5) Licensing Agreements

On August 16, 1996, SWRG entered into a Licensing Agreement with St. James Associates ("St. James"), the owner of the Smith & Wollensky restaurant in New York. St. James is an entity related to SWRG through common management and ownership.

The Licensing Agreement provides SWRG with the exclusive right to utilize the names "Smith & Wollensky" and "Wollensky's Grill" (the "Names") throughout the United States and internationally, with the exception of a reserved territory, as defined. Consequently, SWRG may not open additional Smith & Wollensky restaurants or otherwise utilize the Names in the reserved territory. The Licensing Agreement requires SWRG to make additional payments to St. James as follows: (i) \$200 for each new restaurant opened (increasing annually commencing in 1999 by the lesser of the annual increase in the Consumer Price Index or a 5% increase of the fee required in the preceding year), (ii) a royalty fee of 2% based upon annual gross sales for each restaurant utilizing the Names, as defined, subject to certain annual minimums, and (iii) a royalty fee of 1% of annual gross sales for any steakhouses opened in the future by SWRG that do not utilize the Names. In addition, should SWRG terminate or default on the license, as defined, it is subject to a fee of \$2,000 upon termination or \$2,500 to be paid over four years.

The future minimum royalty payments as of June 28, 2004 relating to (ii) and (iii) above are as follows:

Fiscal year:	
2004.....	\$ --
2005.....	800
2006.....	800
2007.....	800
2008.....	800
2009 and each year thereafter.....	800

During the six-month period ended June 28, 2004, SWRG paid \$229 in connection with the opening of the Smith & Wollensky unit in Houston, Texas.

(6) Long-Term Debt

Long-term debt consists of the following:

	June 28, 2004 ----	December 29, 2003 ----
Mortgage and loan payable (a).....	\$1,596	\$1,643
Term loan(b).....	3,567	3,767
Promissory note(c).....	1,100	1,100
Term loan(d).....	1,615	1,710
Line of credit (e).....	1,959	-
Promissory note (f).....	1,983	-
	-----	-----
	11,820	8,220
Less current portion.....	1,323	2,121
	-----	-----
	\$10,497	\$6,099

- a. In Fiscal 1997, SWRG assumed certain liabilities in connection with the acquisition of leasehold rights relating to its Smith & Wollensky Miami location from two bankrupt corporations. Pursuant to the terms of the bankruptcy resolution, SWRG was obligated to make quarterly and annual payments over a six-year period. These obligations generally bore interest at rates ranging from 9% to 12%. The final payment for these obligations was made in 2003. In addition, SWRG assumed a mortgage on the property that requires monthly payments and bears interest at 5.25% per year. On April 30, 2004, a letter was signed by the financial institution that holds the mortgage for the property extending the term of the mortgage three additional years, with the final principal payment due in June 2007. The extension became effective June 2004. In Fiscal 1997, SWRG also assumed a loan payable to a financing institution that requires monthly payments through the year 2014, and bears interest at 7.67% per year.
- b. On August 23, 2002, SWRG entered into a \$14.0 million secured term loan agreement with Morgan Stanley Dean Witter Commercial Financial Services, Inc. ("Morgan Stanley"). Under the agreement, SWRG is the guarantor of borrowings by its wholly owned subsidiary, S&W Las Vegas, LLC ("Borrower"). SWRG, through the Borrower, borrowed \$4.0 million under the agreement for general corporate purposes, including its new restaurant development program. This portion of the loan bears interest at a fixed rate of 6.35% per annum. Principal payments for this portion of the loan commenced June 30, 2003. Pursuant to the terms of the loan agreement, SWRG is obligated to make monthly principal payments of approximately \$33 for this portion of the loan over the term of the loan and a balloon payment of approximately \$2,033 on May 31, 2008, the maturity date of the loan. The term loan is secured by a leasehold mortgage relating to the Las Vegas property and all of the personal property and fixtures of the Borrower. As previously disclosed, the balance of the funds available under the agreement had been intended to be used by SWRG to exercise its purchase option for the land and building at 3767 Las Vegas Blvd. where SWRG operates its 675-seat, 30,000 square foot restaurant. The ability to draw down this balance expired on May 31, 2003. SWRG did not draw down the remaining balance because, as an alternative to purchasing the land, SWRG signed an amendment to its lease agreement, as discussed in Note 8. On September 28, 2003, Morgan Stanley amended, among other things, the interest coverage ratio covenant of the term loan agreement. The costs in connection with the amendment were not material. At June 28, 2004, SWRG was in compliance with all the financial covenants contained in this amended loan agreement.

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- c. On October 9, 2002, SWRG purchased the property for the Smith & Wollensky unit in Dallas. The purchase price for this property was \$3.75 million. A portion of the purchase price for this property was financed through a \$1.65 million promissory note that was signed by Dallas S&W, L.P., a wholly owned subsidiary of SWRG. This loan bears interest at 8% per annum and requires annual principal payments of \$550 with the first installment being prepaid on March 4, 2003, and the subsequent two installments originally due on October 9, 2004 and October 9, 2005, respectively. SWRG received a 60-day extension on the installment due on October 9, 2004. The promissory note is secured by a first mortgage relating to the Dallas property.
- d. On December 24, 2002, SWRG entered into a \$1.9 million secured term loan agreement with Morgan Stanley. Under the agreement, SWRG and Dallas S&W L.P., a wholly owned subsidiary of SWRG, are the guarantors of borrowings by the Borrower. Of the \$1.9 million borrowed by SWRG, through the Borrower, under the agreement, \$1.35 million was used for its new restaurant development program, and \$550 was used for the first principal installment on the \$1.65 million promissory note with Toll Road Texas Land Company, L.P. described above. This loan bears interest at a fixed rate of 6.36% per annum. Principal payments for this loan commenced January 24, 2003. Pursuant to the terms of the loan agreement, SWRG is obligated to make monthly principal payments of \$16 for this loan over the term of the loan and a balloon payment of approximately \$966 on December 24, 2007, the maturity date of the loan. The term loan

is secured by a second mortgage relating to the Dallas property and a security interest in all of the personal property and fixtures of Dallas S&W L.P. The term loan is also secured by the leasehold mortgage relating to the Las Vegas property. On September 28, 2003, Morgan Stanley amended, among other things, the interest coverage ratio covenant of the term loan agreement. The costs in connection with the amendment were not material. At June 28, 2004, SWRG was in compliance with all the financial covenants contained in the amended loan agreement.

- e. On January 30, 2004, SWRG entered into a \$2.0 million secured line of credit facility with Morgan Stanley. Under the agreement, SWRG is the guarantor of borrowings by the Borrower. Through the Borrower, SWRG has the ability to borrow up to \$2.0 million under the agreement for working capital purposes. Advances under this line of credit will bear interest at a fixed rate of LIBOR plus 3% per annum, payable on a monthly basis. SWRG is also subject to an unused availability fee of 1.75% for any unused portion of this line, payable on a quarterly basis. SWRG may at anytime repay advances on this line without penalty. SWRG is obligated to repay the principal portion of this line on January 30, 2006, the termination date of this line. This line is secured by a leasehold mortgage relating to the Las Vegas property and all of the personal property and fixtures of the Borrower. At June 28, 2004, SWRG was in compliance with all the financial covenants contained in the line of credit facility.
- f. On May 26, 2004, S&W New Orleans, L.L.C. ("New Orleans"), a wholly owned subsidiary of SWRG, signed a \$2.0 million promissory note with Hibernia National Bank ("Hibernia"). The \$2.0 million was used by SWRG for construction costs related to the new Smith & Wollensky restaurant in Boston. The note bears interest at a fixed rate of 6.27% per annum. Principal payments for this note commenced June 26, 2004. Pursuant to the terms of the promissory note, New Orleans is obligated to make monthly payments of \$17 for this note over the term of the note with a balloon payment of approximately \$1,548 on May 26, 2009, the maturity date of the note. This note is secured by a first mortgage relating to the New Orleans property. At June 28, 2004, New Orleans was in compliance with the financial covenant contained in the loan agreement between New Orleans and Hibernia.

(7) Capital Lease Obligation

On April 29, 2003, SWRG signed a second amendment to its lease agreement (the "Agreement") with The Somphone Limited Partnership ("Lessor"), the owner of the property for the Las Vegas restaurant. The Agreement, which is being treated as a capital lease, adjusts the annual fixed payment to \$400 per year from May 1, 2003 to April 30, 2008 and to \$860 per year from May 1, 2008 to April 30, 2018. The Agreement also amends the amount of the purchase price option available to SWRG effective May 1, 2003. SWRG will have the option to purchase the property over the next five years at an escalating purchase price. The purchase price was approximately \$10.0 million at May 1, 2003, and escalates to approximately \$12.1 million at the end of five years. SWRG is required to make down payments on the purchase price of the property. Those payments, which escalate annually, are payable in monthly installments into a collateralized sinking fund based on the table below, and will be applied against the purchase price at the closing of the option. If at the end of the five years SWRG does not exercise the option, the Lessor receives the down payments that accumulated in the sinking fund, and thereafter the purchase price for the property would equal \$10.5 million. The down payments for the purchase of the land over the next five years as of June 28, 2004 will be as follows:

Fiscal year	
-----	
2004	\$142
2005	298
2006	328
2007	360
2008	123
	-----
	\$1,251
	=====

If SWRG exercises the option, the Lessor is obligated to provide SWRG with financing in the amount of the purchase price applicable at the time of the closing, less the down payment payable by SWRG, at an interest rate of 8% per

annum, payable over ten years.

The Agreement also provides the Lessor with a put right that would give the Lessor the ability to require SWRG to purchase the property at any time after June 15, 2008 at the then applicable purchase price. In the event of the exercise of the put option, the Lessor is obligated to provide SWRG with financing in the amount of the purchase price applicable at that time. SWRG will then have two months to close on the purchase of the property.

On May 14, 2003, a letter was signed by Morgan Stanley confirming that the treatment of the Agreement as a capital lease does not violate the debt restriction covenant of the secured term loan agreement and that the capital lease and any imputed interest related to the capital lease are excluded from the calculation of the financial covenants.

(8) Restaurant Related Commitments

All of SWRG's consolidated restaurants operate in leased premises, with the exception of the Smith & Wollensky locations in New Orleans and Dallas, which are owned properties. Remaining lease terms range from approximately 3 to 25 years, including anticipated renewal options. The leases generally provide for minimum annual rental payments and are subject to escalations based upon increases in the Consumer Price Index, real estate taxes and other costs. In addition, certain leases contain contingent rental provisions based upon the sales of the underlying restaurants. Certain leases also provide for rent deferral during the initial term of such leases and/or scheduled minimum rent increases during the terms of the leases. For financial reporting purposes, rent expense is recorded on a straight-line basis over the life of the lease. Accordingly, included in long-term liabilities in the accompanying consolidated balance sheets at June 28, 2004 and December 29, 2003 are accruals related to such rent deferrals and the pro rata portion of scheduled rent increases of approximately \$6,481 and \$6,400, respectively. Future minimum annual rental commitments under all leases are as follows:

Fiscal year: (a)	
-----	
2004.....	\$2,210
2005.....	4,493
2006.....	4,346
2007.....	4,026
2008.....	4,145
Thereafter.....	50,308
	-----
	\$69,528
	=====

(a) Restated to reflect the adoption of FIN 46 (R).

SWRG is contingently liable under letters of credit aggregating \$151 at June 28, 2004 and December 29, 2003, respectively, for deposits with the landlord of one of its restaurants and the corporate office.

(9) Common Stock

The 2001 Stock Incentive Plan ("2001 Stock Incentive Plan") provides for the granting of options to purchase shares of our Common Stock and stock awards. Options may be incentive stock options, as defined in Section 422 of the Internal Revenue Code (the "Code"), granted only to our employees (including officers who are also employees) or non-qualified stock options granted to our employees, directors, officers and consultants. Stock awards may be granted to employees of, and other key individuals engaged to

provide services to, SWRG and its subsidiaries. The 2001 Stock Incentive Plan was adopted and approved by our directors in March 2001 and our stockholders in April 2001.

The 2001 Stock Incentive Plan may be administered by our Board of Directors or by our Compensation Committee, either of which may decide who will receive stock option or stock awards, the amount of the awards, and the terms and conditions associated with the awards. These include the price at which stock options may be exercised, the conditions for vesting or accelerated vesting, acceptable methods for paying for shares, the effect of corporate transactions or changes in control, and the events triggering expiration or forfeiture of a participant's rights. The maximum term for stock options may not exceed ten years, provided that no incentive stock options may be granted to any

employee who owns ten percent or more of SWRG with a term exceeding five years.

The maximum number of shares of Common Stock available for issuance under the 2001 Stock Incentive Plan is 583,333 shares, increased by 4% of the total number of issued and outstanding shares of Common Stock (including shares held in treasury) as of the close of business on December 31 of the preceding year on each January 1, beginning with January 1, 2002, during the term of the 2001 Stock Incentive Plan. However, the number of shares available for all grants under the 2001 Stock Incentive Plan is limited to 11% of SWRG's issued and outstanding shares of capital stock on a fully-diluted basis. Accordingly, the maximum number of options to purchase shares of Common Stock available for issuance in 2004 is approximately 357,000 shares. In addition, options may not be granted to any individual with respect to more than 500,000 total shares of Common Stock in any single taxable year (taking into account options that were terminated, repriced, or otherwise adjusted during such taxable year).

The 2001 Stock Incentive Plan provides that proportionate adjustments shall be made to the number of authorized shares which may be granted under the 2001 Stock Incentive Plan and as to which outstanding options, or portions of outstanding options, then unexercised shall be exercisable as a result of increases or decreases in SWRG's outstanding shares of common stock due to reorganization, merger, consolidation, recapitalization, reclassification, stock split-up, combination of shares, or dividends payable in capital stock, such that the proportionate interest of the option holder shall be maintained as before the occurrence of such event. Upon the sale or conveyance to another entity of all or substantially all of the property and assets of SWRG, including by way of a merger or consolidation or a Change in Control of SWRG, as defined in the 2001 Stock Incentive Plan, our Board of Directors shall have the power and the right to accelerate the exercisability of any options.

Unless sooner terminated by our Board of Directors, the 2001 Stock Incentive Plan will terminate on April 30, 2011, ten years from the date on which the 2001 Stock Incentive Plan was adopted by our Board of Directors. All options granted under the 2001 Stock Incentive Plan shall terminate immediately prior to the dissolution or liquidation of SWRG; provided, that prior to such dissolution or liquidation, the vesting of any option shall automatically accelerate as if such dissolution or liquidation is deemed a Change of Control, as defined in the 2001 Stock Incentive Plan.

On September 5, 2002 SWRG granted options pursuant to an option exchange program (the "Option Exchange Program") that SWRG initiated in February 2002 in order to allow employees, officers and directors to cancel all or some stock options to purchase its common stock having an exercise price greater than \$5.70 per share granted under its 1996 Stock Option Plan, its 1997 Stock Option Plan and its 2001 Stock Incentive Plan in exchange for new options granted under the 2001 Stock Incentive Plan. Under the Option Exchange Program, the new options were issued on September 5, 2002 with an exercise price of \$3.88. The exercise price of each option received under the exchange program equaled 100% of the price of SWRG's common stock on the date of grant of the new options, determined in accordance with the terms of the 2001 Stock Incentive Plan. An employee received options under the exchange program with an exercise price of \$4.27, or 110% of the fair market value of SWRG's common stock on the date of grant. The new options vest over periods ranging from four months to five years, in accordance with the vesting schedule of the cancelled options. SWRG structured the Option Exchange Program in a manner that did not result in any additional compensation charges or variable award accounting. As of December 30, 2002, options to purchase 726,033 shares of common stock remained outstanding under the 2001 Stock Incentive Plan.

In June and July 2003, SWRG granted options to purchase 127,000 shares of common stock under the 2001 Stock Incentive Plan. The weighted average exercise price of the options granted was \$5.05 per share, the estimated fair market value of the underlying common shares at the date of grant. Each option granted in June and July 2003 will vest over a period of five years. As of June 28, 2004, options to purchase 755,666 shares of common stock were outstanding under the 2001 Stock Incentive Plan.

Activity relating to SWRG's option plans was as follows:

<TABLE>  
<CAPTION>

	Number of options	Weighted average exercise price per share of common stock
<S>	<C>	<C>
Options outstanding at December 30, 2002.....	726,033	\$4.56
Options forfeited during Fiscal 2003.....	(73,267)	5.64

Options granted during Fiscal 2003.....	127,000	5.05
Options exercised during Fiscal 2003.....	(21,983)	3.91
	-----	----
Options outstanding at December 29, 2003.....	757,783	4.56
Options forfeited during the six months ended June 28, 2004.....	(2,117)	4.91
	-----	----
Options outstanding at June 28, 2004.....	755,666	\$4.55
	=====	=====

</TABLE>

As of June 28, 2004 the weighted average remaining contractual life of options outstanding was six years. As of June 28, 2004, there were options covering approximately 408,000 shares of common stock exercisable at a range of \$3.88 to \$5.70 per share.

(10) Legal Matters

On or about September 5, 2001, Mondo's of Scottsdale, L.C. ("Mondo's") filed a suit against SWRG alleging that it had entered into an agreement to purchase all of the leasehold interest in, and certain fixtures and equipment located at, Mondo's restaurant located in Scottsdale, Arizona. The suit was filed in the Superior Court of the State of Arizona in and for the County of Maricopa and had been set to go to jury trial in March 2004. The plaintiff requested damages of approximately \$2.0 million. On March 18, 2004 the parties tentatively agreed to settle the matter for \$525 and a reserve of \$525 was established as of December 29, 2003. On April 9, 2004 a final settlement was reached between the parties and, in accordance with the settlement, SWRG made the first payment of \$225, with the final payment of \$300 due on April 11, 2005.

SWRG is involved in various claims and legal actions arising in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on SWRG's consolidated financial position, results of operations or liquidity.

(11) Subsequent Events

On July 21, 2004, SWRG entered into a \$2.0 million secured line of credit facility with Morgan Stanley. Under the agreement, SWRG and Smith & Wollensky of Boston LLC are the guarantors of borrowings by the Borrower. Through the Borrower, SWRG has the ability to borrow up to \$2.0 million under the agreement for working capital purposes. Advances under this line of credit will bear interest at a fixed rate of LIBOR plus 3% per annum, payable on a monthly basis. SWRG is also subject to an unused availability fee of 1.75% for any unused portion of this line, payable on a quarterly basis. SWRG may at anytime repay advances on this line without penalty. SWRG is obligated to repay the principal portion of this line on May 31, 2005, the termination date of this line. This line is secured by a leasehold mortgage relating to the Las Vegas property and all of the personal property and fixtures of the Borrower.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

General

As of June 28, 2004, we operated 17 high-end, high volume restaurants in the United States. We believe that the particularly large size of the markets we entered warranted investment in restaurants with seating capacities ranging from 290 to 675. On January 19, 2004, we opened a 400 seat Smith & Wollensky in Houston, Texas. We expect to open another Smith & Wollensky restaurant in early fall of 2004 in Boston, Massachusetts. We expect the restaurant in Boston to have approximately 450 seats on four levels. Although we currently do not have any leases signed other than leases relating to our existing and planned locations and will not actively pursue new locations in 2005, we would consider opening a new Smith & Wollensky restaurant in a high caliber location under highly favorable investment terms. We plan to move ahead cautiously with our future expansion as management evaluates and monitors economic and

security conditions, and we expect to resume our new restaurant growth in 2006. We expect additional locations to have seating capacities ranging from 375 to 450 seats, but would consider locations with larger seating capacities where appropriate. We believe these new restaurants will require, on average, a total cash investment of \$2.0 million to \$5.3 million net of landlord contributions

and excluding pre-opening expenses. This range assumes that the property on which the new unit is located is being leased and is dependent on the size of the location and the amount of the landlord contribution. Although our newest unit in Houston falls within this range, the restaurant we plan to open in Boston is expected to significantly exceed this range primarily because of its physical size. Some locations that we choose will be outside our preferred cash investment range, but are nevertheless accepted based on our evaluation of the potential returns.

As a result of our recent expansion and when our locations opened, period-to-period comparisons of our financial results may not be meaningful. When a new restaurant opens, we typically incur higher than normal levels of food and labor costs as a percentage of sales during the first year of its operation. In calculating comparable restaurant sales, we introduce a restaurant into our comparable restaurant base once it has been in operation for 15 months.

Pursuant to management contracts and arrangements, we also operate, but do not own, the original Smith & Wollensky, The Post House, Maloney & Porcelli and ONEc.p.s. restaurants in New York and the Mrs. Parks Tavern in Chicago.

The consolidated financial statements include our accounts and results and, as a result of Financial Accounting Standards Board ("FASB") Interpretation No.46 (revised December 2003), Consolidation of Variable Interest Entities ("FIN46(R)", the accounts and results of the entity that owns the Maloney & Porcelli restaurant ("M&P") that we manage in New York City. We manage the operations of M&P pursuant to the terms of a restaurant management agreement (the "Maloney Agreement"). Under the provisions of the Maloney Agreement, we receive a management fee equal to the sum of 3% of restaurant sales and a fee equal to 50% of the unit's net operating cash flow generated during each fiscal year, provided that the M&P owner receives a minimum amount of operating cash flow per year ranging from \$360,000 to \$480,000. Either party can terminate the Maloney Agreement for cause and we have a right to purchase the restaurant under specified conditions and amounts. The restaurant owner can preempt the purchase option by remitting a specified cash payment to us. The Maloney Agreement expires on December 31, 2011.

Consolidated restaurant sales include gross sales less sales taxes and other discounts. Costs of consolidated restaurant sales include food and beverage costs, salaries and related benefits, restaurant operating expenses, occupancy and related expenses, marketing and promotional expenses and restaurant level depreciation and amortization. Salaries and related benefits include components of restaurant labor, including direct hourly and management wages, bonuses, fringe benefits and related payroll taxes. Restaurant operating expenses include operating supplies, utilities, maintenance and repairs and other operating expenses. Occupancy and related expenses include rent, real estate taxes and other occupancy costs.

Management fee income relates to fees that we receive from our managed units. These fees are based on a percentage of sales from the managed units, ranging from 2.3% to 6.0%. Prior to December 2002, we operated Park Avenue Cafe in Chicago, Mrs. Park's Tavern and the other services of the food and beverage department of the Doubletree Hotel in Chicago ("Doubletree") pursuant to a sub management agreement (the "Doubletree Agreement"). We received a management fee equal to the sum of 1.5% of sales and a percentage of earnings, as defined. The Doubletree Agreement was to expire on the earlier of December 31, 2004 or the termination of the related hotel management agreement between Chicago HSR Limited Partnership ("HSR"), the owner of the Doubletree and Doubletree Partners, the manager of the Doubletree. During December 2002, HSR closed the Park Avenue Cafe restaurant in Chicago and discontinued our requirement to provide other food and beverage department service for the Doubletree. As a result, we no longer receive the fees described above. During the three-month period ended March 31, 2003, we reached an agreement with HSR. The agreement provides for the continued use by HSR of the name Mrs. Parks Tavern and requires us to provide management services to support that location. In exchange for the use of the Mrs. Park's Tavern name and related management support we receive an annual fee of \$50,000. The agreement will automatically renew each year, unless notification of cancellation is given, by either party, at least 90 days prior to December 31. Management fee income also could include fees from ONEc.p.s. equal to 40% of the restaurant's operating cash flows, if any, as reduced by the repayment of project costs and working capital contributions. After all the project costs and working capital contributions have been repaid, the fee will increase to 50% of the restaurant's operating cash flows. On December 31, 2003, we amended our agreement with Plaza Operating Partners, Ltd. (the "Plaza Operating Partners"). Effective January 1, 2004, Plaza Operating Partners agreed to pay us \$50,000 per quarter as a minimum base management fee. The minimum base management fee will be credited against any management fee that we earn under the agreement. This amendment also gives either party the right to fund or refuse to fund any necessary working capital requirements. If neither party is willing to fund the required additional working capital contributions, as defined, then either party may terminate the agreement.

General and administrative expenses include all corporate and administrative functions that support existing consolidated and managed operations and provide infrastructure to our organization. General and administrative expenses are comprised of management,

supervisory and staff salaries and employee benefits, travel costs, information systems, training costs, corporate rent, corporate insurance and professional and consulting fees. Pre-opening costs incurred in connection with the opening of new restaurants are expensed as incurred and are included in general and administrative expenses. General and administrative expenses also include the depreciation of corporate-level property and equipment and the amortization of corporate intangible assets, such as licensing agreements and management contracts.

Royalty expense represents fees paid pursuant to a licensing agreement with St. James Associates, based upon 2.0% of sales, as defined, for restaurants utilizing the Smith & Wollensky name.

#### Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations are based upon our unaudited consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements require us to make significant estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities.

On an on-going basis, we evaluate our estimates and assumptions, including those related to revenue recognition, allowance for doubtful accounts, valuation of inventories, valuation of long-lived assets, goodwill and other intangible assets, income taxes, income tax valuation allowances and legal proceedings. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that can not readily be determined from other sources. There can be no assurance that actual results will not differ from those estimates.

Change in accounting principles: The presented consolidated financial statements relating to prior periods have been restated to consolidate the accounts and results of the entity that owns M&P as a direct result of the adoption of FIN 46(R). FIN 46(R) addresses the consolidation by business enterprises of variable interest entities. All variable interest entities, regardless of when created, are required to be evaluated under FIN 46 (R) no later than the first period ending after March 15, 2004. An entity shall be subject to consolidation according to the provisions of this Interpretation if, by design, as a group the holders of the equity investment at risk lack any one of the following three characteristics of a controlling financial interest: (1) the direct or indirect ability to make decisions about an entity's activities through voting rights or similar rights; (2) the obligation to absorb the expected losses of the entity if they occur; or (3) the right to receive the expected residual returns of the entity if they occur. We consolidated the financial statements of the entity that owns M&P because the holders of the equity investment lacked one of the above characteristics.

In connection with the restatement under FIN 46 (R), our net investment in the Maloney Agreement, previously classified under "Management contract, net" and management fees and miscellaneous charges receivable classified under "Accounts receivable" have been eliminated in consolidation and, instead, the separable assets and liabilities of the entity that owns M&P are presented. In connection with the restatement under FIN 46 (R), the consolidated statements of operations for the fiscal year ended December 30, 2002 reflect a cumulative effect of an accounting change. In addition, amortization expense related to the Maloney Agreement for previous periods classified under "General and administrative expense", and fees received pursuant to the Maloney Agreement and classified under "Management fee income" have been removed from the consolidated statements of operations. The consolidation of the entity that owns M&P has changed our current assets by (\$81) and \$144, non-current assets by (\$577) and (\$305) current liabilities by \$551 and \$840, and non-current liabilities by \$390 and \$392 at June 28, 2004 and December 29, 2003, respectively. The consolidation of the entity that owns M&P increased consolidated sales by \$2,724 and \$2,402, and increased restaurant operating costs by \$2,262 and \$2,059 for the three months ended June 28, 2004 and June 30, 2003, respectively. The consolidation of the entity that owns M&P increased consolidated sales by \$5,482 and \$4,769, and increased restaurant operating costs by \$4,459 and \$4,212 for the six months ended June 28, 2004 and June 30, 2003, respectively. Certain reclassifications were made to prior period amounts to conform to current period classifications.

We believe the following is a summary of our critical accounting policies:

**Revenue recognition:** Consolidated restaurant sales are recognized as revenue at the point of the delivery of meals and services. Management fee income is recognized as the related management fee is earned pursuant to the respective agreements.

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**Allowance for doubtful accounts:** Substantially all of our accounts receivable are due from credit card processing companies or individuals that have good historical track records of payment. Accounts receivable are reduced by an allowance for amounts that may become uncollectible in the future. Such allowance is established through a charge to the provision for bad debt expenses.

**Long-lived assets:** We review long-lived assets to be held and used or to be disposed of for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable through future undiscounted net cash flows to be generated by the assets. Recoverability of assets to be held and used is measured by restaurant comparing the carrying amount of the restaurant's assets to undiscounted future net cash flows expected to be generated by such assets. We limit assumptions about such factors as sales and margin improvements to those that are supportable based upon our plans for the unit, its individual results and actual results at comparable restaurants. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Fair value would be calculated on a discounted cash flow basis.

**Goodwill:** Goodwill represents the excess of fair value of certain reporting units acquired in the formation of the Company over the book value of those reporting units' identifiable net assets. Goodwill is tested for impairment at least annually in accordance with the provisions of SFAS No. 142, Goodwill and Other Intangible Assets. SFAS No. 142 also requires that intangibles assets with estimable useful lives be amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment in accordance with SFAS No. 144, Accounting for Impairment or Disposal of Long-Lived Assets. We assess the recoverability of goodwill at the end of each year through a fair value evaluation performed for each reporting unit that has goodwill. The fair value valuation is calculated using various methods, including an analysis based on projected discounted future operating cash flows of each reporting unit using a discount rate reflecting our average cost of funds. We limit assumptions about such factors as sales and margin improvements to those that are supportable based upon our plans for the unit and actual results at comparable restaurants. The assessment of the recoverability of goodwill will be impacted if estimated future operating cash flows are negatively modified by us as a result of changes in economic conditions, significant events that occur or other factors arising after the preparation of any previous analysis. The net carrying value of goodwill as of June 28, 2004 and December 29, 2003 was \$6.9 million.

**Other intangible assets:** We review other intangible assets, which include costs attributable to a sale and licensing agreement and the cost of the acquisition of management contracts, for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. Recoverability of our intangible assets will be assessed by comparing the carrying amount of the asset to the undiscounted expected net cash flows to be generated by such assets. An intangible asset would be considered impaired if the sum of undiscounted future cash flows is less than the book value of the assets generating those cash flows. We limit assumptions about such factors as sales and margin improvements to those that are supportable based upon our plans for the unit and actual results at comparable restaurants. If intangible assets are considered to be impaired, the impairment to be recognized will be measured by the amount by which the carrying amount of the asset exceeds the fair value of the assets. Fair value would be calculated on a discounted cash flow basis. The assessment of the recoverability of these intangible assets will be impacted if estimated future operating cash flows are negatively modified by us as a result of changes in economic conditions, significant events that occur or other factors arising after the preparation of any previous analysis. The net carrying value of our intangible assets as of June 28, 2004 and December 29, 2003 was \$3.5 million and \$3.3 million, respectively.

**Artwork:** We purchase artwork and antiques for display in our restaurants. We do not depreciate artwork and antiques since these assets have cultural, aesthetic or historical value that is worth preserving perpetually and we have the ability and intent to protect and preserve these assets. Such assets are recorded at cost and are included in other assets in the accompanying consolidated balance sheets. The net carrying value of our artwork as of June 28, 2004 and December 29, 2003 was \$2.0 million.

Self-insurance liability: We are self insured for our employee health program. We maintain stop loss insurance to limit our total exposure and individual claims. The liability associated with this program is based on our estimate of the ultimate costs to be incurred to settle known claims and claims incurred but not reported as of the balance sheet date. Our estimated liability is not discounted and is based on a number of assumptions and factors, including historical medical claim patterns and known economic conditions. If actual trends, including the severity or frequency of claims, differ from our estimates, our financial results could be impacted. However, we believe that a change in our current accrual requirement of 10% or less would cause a change of approximately \$50,000 to our financial results.

Legal proceedings: We are involved in various claims and legal actions, the outcomes of which are not within our complete control and may not be known for prolonged periods of time. In some actions, the claimants seek damages, which, if granted, would require significant expenditures. We record a liability in our consolidated financial statements when a loss is known or considered

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probable and the amount can be reasonably estimated. If the reasonable estimate of a known or probable loss is a range, and no amount within the range is a better estimate, the minimum amount of the range is accrued. If a loss is not remote and can be reasonably estimated, a liability is recorded in the consolidated financial statements.

Income taxes and income tax valuation allowances: We estimate certain components of our provision for income taxes. These estimates include, but are not limited to, effective state and local income tax rates, estimates related to depreciation expense allowable for tax purposes and estimates related to the ultimate realization of net operating losses and tax credit carryforwards and other deferred tax assets. Our estimates are made based on the best available information at the time that we prepare the provision. We usually file our income tax returns several months after our fiscal year-end. All tax returns are subject to audit by federal and state governments, usually years after the returns are filed and could be subject to differing interpretations of the tax laws.

At June 28, 2004, we have recorded a valuation allowance of \$8.0 million to reduce our net operating loss and tax credit carryforwards of \$6.5 million and other timing differences of \$1.5 million to an amount that will more likely than not be realized. These net operating loss and tax credit carryforwards exist in federal and certain state jurisdictions and have varying carryforward periods and restrictions on usage. The estimation of future taxable income for federal and state purposes and our resulting ability to utilize net operating loss and tax credit carryforwards can significantly change based on future events and operating results. Thus, recorded valuation allowances may be subject to material future changes.

This discussion and analysis should be read in conjunction with the unaudited consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q.

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## Results of Operations

<TABLE>  
<CAPTION>

<S>	Three Months Ended				Six Months Ended			
	June 28, 2004		June 30, 2003 (a)		June 28, 2004		June 30, 2003 (a)	
	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Consolidated restaurant sales	\$ 30,010	100.0%	\$ 26,081	100.0%	\$ 60,662	100.0%	\$ 51,440	100.0%
Cost of consolidated restaurant sales:								
Food and beverage costs	9,366	31.2	7,989	30.6	19,515	32.2	15,671	30.4
Salaries and related benefit expenses	8,669	28.8	7,369	28.2	17,422	28.7	14,469	28.1
Restaurant operating expenses	4,758	15.9	4,233	16.4	9,557	15.8	8,176	15.9
Occupancy and related expenses	1,458	4.9	1,313	4.9	2,894	4.8	3,027	5.9
Marketing and promotional expenses	1,326	4.4	1,010	3.9	2,624	4.3	1,992	3.9
Depreciation and amortization expenses	1,016	3.4	996	3.8	2,078	3.4	1,949	3.8
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Total cost of consolidated restaurant sales	26,593	88.6	22,910	87.8	54,090	89.2	45,284	88.0
Income from consolidated restaurant operations	3,417	11.4	3,171	12.2	6,572	10.8	6,156	12.0
Management fee income	316	1.0	232	0.9	632	1.1	444	0.9
Income from consolidated and managed Restaurants	3,733	12.4	3,403	13.1	7,204	11.9	6,600	12.9
General and administrative expenses	2,367	7.8	2,389	9.2	4,908	8.1	5,086	9.9
Royalty expense	432	1.4	369	1.4	871	1.4	717	1.5
Operating income	934	3.2	645	2.5	1,425	2.4	797	1.5
Interest and other expense, net	(359)	(1.2)	(259)	(1.0)	(700)	(1.2)	(355)	(0.7)
Income before provision for income taxes	575	2.0	386	1.5	725	1.2	442	0.8
Provision for income taxes	51	0.2	75	0.3	103	0.2	125	0.2
Income before (income) loss of consolidated variable interest entity	524	1.8	311	1.2	622	1.0	317	0.6
(Income) loss of consolidated variable interest entity	(261)	(0.9)	(71)	(0.3)	(429)	(0.7)	6	0.0
Net income	\$ 263	0.9%	\$ 240	0.9%	\$ 193	0.3%	\$ 323	0.6%

</TABLE>

(a) Restated to reflect the adoption of FIN 46 (R).

Three Months Ended June 28, 2004 Compared to the Three Months Ended June 30, 2003

**Consolidated Restaurant Sales.** Consolidated restaurant sales increased \$3.9 million, or 15.1%, to \$30.0 million for the three months ended June 28, 2004 from \$26.1 million for the three months ended June 30, 2003. The increase in consolidated restaurant sales was partially due to a net increase in comparable consolidated unit sales of \$2.3 million, or 9.3%. The net increase in comparable consolidated unit sales was due to an increase in sales of \$1.8 million from our owned Smith & Wollensky units open for the entire period. The improvement is primarily a result of an increase in our average check, due primarily to price increases, and, to a lesser extent, tourism, business travel and banquet sales at our units outside of New York. This increase in comparable consolidated unit sales was also partially due to an increase in sales of \$444,000 from our consolidated New York units, which includes the sales of the entity that owns M&P. This increase was attributable to an increase in our average check and, to a lesser extent, an increase in banquet sales and an improvement in tourism in the New York metropolitan area. The increase in consolidated restaurant sales also includes a combined net sales increase of \$1.7 million from our Smith & Wollensky unit in Dallas, Texas, which opened in March 2003, and our unit in Houston, Texas, which opened in January 2004.

**Food and Beverage Costs.** Food and beverage costs increased \$1.4 million to \$9.4 million for the three months ended June 28, 2004 from \$8.0 million for the three months ended June 30, 2003. Food and beverage costs as a percentage of consolidated restaurant sales increased to 31.2% in 2004 from 30.6% in 2003. The increase in cost is primarily related to an increase in food cost at our comparable

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consolidated units of approximately \$876,000. This increase related primarily to a net increase in customer volume at our comparable units and, to a lesser extent, the continued increase in the cost of beef during the three months ended June 28, 2004 as compared to the three months ended June 30, 2003. The increase in food and beverage costs also related to approximately \$501,000 in food and beverage costs for the new Smith & Wollensky units in Dallas, Texas, which opened in March 2003, and Houston, Texas, which opened in January 2004. The new Smith & Wollensky unit in Houston experienced higher than normal food and beverage costs as a percentage of sales as a result of initial startup inefficiencies and a lower revenue base. As the Smith & Wollensky unit in Houston matures and revenues increase, operating efficiencies are expected to continue to improve and the food and beverage costs as a percentage of sales for that unit are expected to decrease.

**Salaries and Related Benefits.** Salaries and related benefits increased \$1.3 million to \$8.7 million for the three months ended June 28, 2004 from \$7.4

million for the three months ended June 30, 2003. This increase was partially due to the new Smith & Wollensky units in Dallas, Texas, which opened in March 2003 and Houston, Texas, which opened in January 2004. The increase relating to these new units was \$581,000. Salaries and related benefits as a percent of consolidated restaurant sales increased to 28.8% for the three months ended June 28, 2004 from 28.2% for the three months ended June 30, 2003. The increase in salaries and related benefits as a percentage of consolidated restaurant sales was primarily due to the additional staffing required at the new Smith & Wollensky unit in Houston, Texas during the unit opening. It is common for our new restaurants to experience increased costs for additional staffing in the first six months of operations. Generally, as the unit matures and revenues increase, operating efficiency is expected to improve as we expect that staffing will be reduced through efficiencies and salaries and wages as a percentage of consolidated sales for that unit will decrease due to the lower staffing requirement and higher revenue base. The increase in salaries and related benefits is also attributable to the payroll and related benefits associated with the increase in comparable consolidated unit sales, to an increase in the cost of health insurance provided to employees and paid for in part by us and increases in employer contributions for other payroll taxes.

**Restaurant Operating Expenses.** Restaurant operating expenses increased \$525,000 to \$4.8 million for the three months ended June 28, 2004 from \$4.2 million for the three months ended June 30, 2003. The increase includes \$253,000 that was due to the opening of the new Smith & Wollensky units in Dallas, Texas and Houston, Texas. The remaining increase is related to certain costs associated with upgrades of operating supplies, ongoing repairs and maintenance, certain costs that are directly related to the increased sales volume such as credit card charges, linen costs and increases in property and liability insurance premiums at the units open the entire period. Restaurant operating expenses as a percentage of consolidated restaurant sales decreased to 15.9% for 2004 from 16.4% in 2003.

**Occupancy and Related Expenses.** Occupancy and related expenses increased \$145,000 to \$1.5 million for the three months ended June 28, 2004 from \$1.3 million for the three months ended June 30, 2003 primarily due to the combined increase of \$171,000 in occupancy and related expenses including real estate and occupancy taxes for the new Smith & Wollensky units in Dallas, Texas and Houston, Texas and by increases in percentage of sales rent at applicable units. The increase was partially offset by the reduction in rent and deferred rent of \$72,000 for the Smith & Wollensky unit in Las Vegas, Nevada, which is now treated as a capital lease due to the amendment to the lease on April 29, 2003. Occupancy and related expenses as a percentage of consolidated restaurant sales was 4.9% for both the three months ended June 28, 2004 and June 30, 2003, respectively.

**Marketing and Promotional Expenses.** Marketing and promotional expenses increased \$316,000 to \$1.3 million for the three months ended June 28, 2004 from \$1.0 million for the three months ended June 30, 2003. The increase was related primarily to the opening of the Smith & Wollensky units in Dallas, Texas, and Houston, Texas and, to a lesser extent, an increase in advertising in support of our owned New York restaurants. Marketing and promotional expenses as a percent of consolidated restaurant sales increased to 4.4% for the three months ended June 28, 2004 from 3.9% for the three months ended June 30, 2003.

**Depreciation and Amortization.** Depreciation and amortization was \$1.0 million for the three months ended June 28, 2004 and June 30, 2003, respectively.

**Management Fee Income.** Management fee income increased \$84,000 to \$316,000 for the three months ended June 28, 2004 from \$232,000 for the three months ended June 30, 2003, primarily due to an increase in fees received from one of our managed units relating to a minimum base management fee that we began receiving during the three months ended March 29, 2004.

**General and Administrative Expenses.** General and administrative expenses was \$2.4 million for the three months ended June 28, 2004 and June 30, 2003, respectively. General and administrative expenses as a percent of consolidated restaurant sales decreased to 7.8% for the three months ended June 28, 2004 from 9.2% for three months ended June 30, 2003. General and administrative expenses include corporate payroll and other expenditures that benefit both owned and managed units. General and administrative expenses as a percentage of consolidated and managed restaurant sales decreased to 5.9% for the three months ended June 28, 2004 from 6.9% for the three months ended June 30, 2003.

**Royalty Expense.** Royalty expense increased \$63,000 to \$432,000 for the three months ended June 28, 2004 from \$369,000 for the three months ended June 30, 2003 primarily due to the increase in sales of \$1.8 million from our owned Smith & Wollensky units open for the comparable period together with a combined increase in sales of \$1.7 million from our Smith & Wollensky unit in Dallas,

Texas, which opened in March 2003 and our new unit in Houston, Texas, which opened in January 2004.

Interest and Other Expense -Net of Interest Income. Interest and other expense, net of interest income, increased \$100,000 to \$359,000 for the three months ended June 28, 2004 from \$259,000 for the three months ended June 30, 2003, primarily due to the interest related to the capital lease for the Smith & Wollensky unit in Las Vegas, Nevada and, to a lesser extent, the interest expense on debt incurred for general corporate purposes and in connection with the financing of our new Smith & Wollensky units in Dallas, Texas, and Houston, Texas. Interest and other expense, net of interest income, was also impacted by the reduction in interest income related to the use of cash for capital improvements, which had been invested in short and long term interest bearing investments during the three months ended June 30, 2003.

Provision for Income Taxes. The income tax provision for the three months ended June 28, 2004 and June 30, 2003, respectively, represents certain state and local taxes.

(Income) Loss in Consolidated Variable Interest Entity. In accordance with our adoption of FIN 46 (R), the operating results of the entity that owns M&P are now consolidated and the net (income) or loss of this variable interest entity is presented as a separate item after the provision for income taxes.

#### Six Months Ended June 28, 2004 Compared to the Six Months Ended June 30, 2003

Consolidated Restaurant Sales. Consolidated restaurant sales increased \$9.3 million, or 17.9%, to \$60.7 million for the six months ended June 28, 2004 from \$51.4 million for the six months ended June 30, 2003. The increase in consolidated restaurant sales was partially due to a net increase in comparable consolidated unit sales of \$4.6 million, or 9.4%. The net increase in comparable owned unit sales was due to an increase in sales of \$3.7 million from our owned Smith & Wollensky units open for the entire period. The improvement is primarily a result of an increase in our average check, due primarily to price increases, and, to a lesser extent, tourism, business travel and banquet sales at our units outside of New York. This increase in comparable owned unit sales was also partially due to an increase in sales of \$1.0 million from our consolidated New York units, which includes the sales of the entity that owns M&P. This increase was attributable to an increase in our average check and, to a lesser extent, an increase in banquet sales and an improvement in tourism in the New York metropolitan area. The increase in consolidated restaurant sales also includes a combined sales increase of \$4.5 million from our Smith & Wollensky unit in Dallas, Texas, which opened in March 2003, and our unit in Houston, Texas, which opened in January 2004.

Food and Beverage Costs. Food and beverage costs increased \$3.8 million to \$19.5 million for the six months ended June 28, 2004 from \$15.7 million for the six months ended June 30, 2003. Food and beverage costs as a percentage of consolidated restaurant sales increased to 32.2% in 2004 from 30.4% in 2003. The increase in cost is primarily related to an increase in food cost at our comparable units of approximately \$2.2 million. This increase related primarily to the continued increase in the cost of beef during the six months ended June 28, 2004 as compared to the six months ended June 30, 2003, and to a net increase in customer volume at our comparable units. The increase in food and beverage costs also related to approximately \$1.6 million in food and beverage costs for the new Smith & Wollensky units in Dallas, Texas, which opened in March 2003, and Houston, Texas, which opened in January 2004. The new Smith & Wollensky unit in Houston experienced higher than normal food and beverage costs as a percentage of sales as a result of initial startup inefficiencies and a lower revenue base. As the Smith & Wollensky unit in Houston matures and revenues increase, operating efficiencies are expected to continue to improve and the food and beverage costs as a percentage of sales for that unit are expected to decrease.

Salaries and Related Benefits. Salaries and related benefits increased \$2.9 million to \$17.4 million for the six months ended June 28, 2004 from \$14.5 million for the six months ended June 30, 2003. This increase was partially due to the new Smith & Wollensky units in Dallas, Texas, which opened in March 2003 and Houston, Texas, which opened in January 2004. The increase relating to these new units was \$1.5 million. Salaries and related benefits as a percent of consolidated restaurant sales increased to 28.7% for the six months ended June 28, 2004 from 28.1% for the six months ended June 30, 2003. The increase in salaries and related benefits as a percentage of consolidated restaurant sales was primarily due to the additional staffing required at the new Smith & Wollensky unit in Houston, Texas during the unit opening. It is common for our new restaurants to experience increased costs for additional staffing in the first six months of operations. Generally, as the unit matures and revenues increase, operating efficiency is expected to improve as we expect that staffing will be reduced through efficiencies and salaries and wages as a percentage of consolidated sales for that unit will decrease due to the lower staffing requirement and higher revenue base. The increase in salaries and related benefits is also attributable to the payroll and related benefits associated with the increase in comparable unit sales, to an increase in the cost of health insurance provided to employees and paid for in part by us and to increases in employer contributions for other payroll taxes.

**Restaurant Operating Expenses.** Restaurant operating expenses increased \$1.4 million to \$9.6 million for the six months ended June 28, 2004 from \$8.2 million for the six months ended June 30, 2003. The increase includes \$698,000 that was due to the opening of the new Smith & Wollensky units in Dallas, Texas and Houston, Texas. The remaining increase is related to certain costs associated with upgrades of operating supplies, ongoing repairs and maintenance, certain costs that are directly related to the increased sales volume such as credit card charges, linen costs and increases in property and liability insurance premiums at the units open the entire period. Restaurant operating expenses as a percentage of consolidated restaurant sales decreased to 15.8% for 2004 from 15.9% in 2003.

**Occupancy and Related Expenses.** Occupancy and related expenses decreased \$133,000 to \$2.9 million for the six months ended June 28, 2004 from \$3.0 million for the six months ended June 30, 2003 primarily due to the reduction in rent and deferred rent of \$485,000 for the Smith & Wollensky unit in Las Vegas, Nevada, which is now treated as a capital lease due to the amendment to the lease on April 29, 2003. The decrease was partially offset by the combined increase of \$315,000 in occupancy and related expenses including real estate and occupancy taxes for the new Smith & Wollensky units in Dallas, Texas and Houston, Texas. The decrease was also partially offset by increases in percentage of sales rent at applicable units and increased real estate and property taxes. Occupancy and related expenses as a percentage of consolidated restaurant sales decreased to 4.8% for the six months ended June 28, 2004 from 5.9% for the six months ended June 30, 2003.

**Marketing and Promotional Expenses.** Marketing and promotional expenses increased \$632,000 to \$2.6 million for the six months ended June 28, 2004 from \$2.0 million for the six months ended June 30, 2003. The increase was related primarily to the opening of the Smith & Wollensky units in Dallas, Texas, and Houston, Texas and, to a lesser extent, an increase in advertising in support of our owned New York restaurants. Marketing and promotional expenses as a percent of consolidated restaurant sales increased to 4.3% for the six months ended June 28, 2004 from 3.9% for the six months ended June 30, 2003.

**Depreciation and Amortization.** Depreciation and amortization increased \$129,000 to \$2.1 million for the six months ended June 28, 2004 from \$2.0 million for the six months ended June 30, 2003, primarily due to the increase relating to the property and equipment additions for the new Smith & Wollensky units in Dallas, Texas and Houston, Texas, being offset by a reduction in depreciation from items which became fully depreciated during 2003.

**Management Fee Income.** Management fee income increased \$188,000 to \$632,000 for the six months ended June 28, 2004 from \$444,000 for the six months ended June 30, 2003, primarily due to an increase in fees received from one of our managed units relating to a minimum base management fee that we began receiving during the six months ended June 28, 2004 and increased sales volume in the other managed units.

**General and Administrative Expenses.** General and administrative expenses decreased \$178,000 to \$4.9 million for the six months ended June 28, 2004 from \$5.1 million for the six months ended June 30, 2003. General and administrative expenses as a percent of consolidated restaurant sales decreased to 8.1% for the six months ended June 28, 2004 from 9.9% for six months ended June 30, 2003. General and administrative expenses include corporate payroll and other expenditures that benefit both owned and managed units. General and administrative expenses as a percentage of consolidated and managed restaurant sales decreased to 6.1% for the six months ended June 28, 2004 from 7.5% for the six months ended June 30, 2003. The decrease was primarily due to a decrease in certain professional fees, consulting expenses, and travel and related expenditures.

**Royalty Expense.** Royalty expense increased \$154,000 to \$871,000 for the six months ended June 28, 2004 from \$717,000 for the six months ended June 30, 2003 primarily due to the increase in sales of \$3.7 million from our owned Smith & Wollensky units open for the comparable period together with a combined increase in sales of \$4.5 million from our Smith & Wollensky unit in Dallas, Texas, which opened in March 2003 and our new unit in Houston, Texas, which opened in January 2004.

**Interest and Other Expense -Net of Interest Income.** Interest and other expense, net of interest income, increased \$345,000 to \$700,000 for the six months ended June 28, 2004 from \$355,000 for the six months ended June 30, 2003, primarily due to the interest related to the capital lease for the Smith & Wollensky unit in Las Vegas, Nevada and, to a lesser extent, the interest expense on debt incurred for general corporate purposes and in connection with the financing of our new Smith & Wollensky units in Dallas, Texas, and Houston, Texas. Interest

and other expense, net of interest income, was also impacted by the reduction in interest income related to the use of cash for capital improvements, which had been invested in short and long term interest bearing investments during the six months ended June 30, 2003.

Provision for Income Taxes. The income tax provision for the six months ended June 28, 2004 and June 30, 2003, respectively, represents certain state and local taxes.

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(Income) Loss in Consolidated Variable Interest Entity. In accordance with our adoption of FIN 46 (R), the operating results of the entity that owns M&P are now consolidated and the net (income) or loss of this variable interest entity is presented as a separate item after the provision for income taxes.

#### Risk Related to Certain Management Agreements and Lease Agreements

We are subject to various covenants and operating requirements in certain of our management agreements that, if not complied with or otherwise met, provide for the right of the other party to terminate these agreements.

With respect to management agreements, we are subject to a right of the other party to terminate, at any time, the agreement relating to ONEC.p.s. We have not been notified by the other party to this agreement that they plan to terminate the agreement and management has no reason to believe that the agreement will be terminated.

Pursuant to our lease agreement for Cite with Rockefeller Center North, Inc., Rockefeller Center may terminate the lease agreement if Mr. Stillman does not own at least 35% of the shares of each class of the tenants stock, or if there is a failure to obtain their consent to an assignment of the lease. We are currently in default with respect to these requirements, although Rockefeller Center has not given us notice of default. Rockefeller Center may also terminate the lease agreement if Mr. Stillman does not have effective working control of the business of the tenant. The default existing under the lease agreement for Cite could subject us to renegotiation of the financial terms of the lease, or could result in a termination of the lease agreement which would result in the loss of the restaurant at this location. This event could have a material adverse effect on our business and our financial condition and results of operations. To date, none of the parties to the lease agreement has taken any action to terminate the agreement and management has no reason to believe that the agreement will be terminated.

#### Liquidity and Capital Resources

We have funded our capital requirements in recent years through cash flow from operations, third-party financing and an IPO. Net cash provided by operating activities amounted to \$2.2 million for the six months ended June 28, 2004 and \$2.5 million for the six month period ended June 30, 2003.

Net cash provided by financing activities was \$3.3 million for the six month period ended June 28, 2004 and net cash used in financing activities was (\$969,000) for the six month period ended June 30, 2003. Net cash provided by financing activities for the six month period ended June 28, 2004 includes \$2.0 million in proceeds from the line of credit facility with Morgan Stanley Dean Witter Commercial Financial Services, Inc. ("Morgan Stanley"), \$2.0 million in proceeds from the promissory note with Hibernia National Bank ("Hibernia"), \$359,000 of principal payments on long-term debt and distributions of \$350,000 to the minority interest in the consolidated variable interest entity. Net cash used in financing activities for the six month period ended June 30, 2003 includes \$826,000 of principal payments on long-term debt and distributions of \$150,000 to the minority interest in the consolidated variable interest entity.

We used cash primarily to fund the development and construction of new restaurants and expansion of existing restaurants. Net cash used in investing activities was \$6.6 million and \$2.5 million for the six months ended June 28, 2004 and June 30, 2003, respectively. The total capital expenditures were \$7.3 million and \$4.1 million for the six months ended June 28, 2004 and June 30, 2003, respectively. Other cash used in investing activities consisted primarily of net proceeds from the sale of investments of \$925,000 and \$4.5 million for the six months ended June 28, 2004 and June 30, 2003, respectively, and net purchases of investments of \$2.6 million for the six months ended June 30, 2003.

On January 19, 2004, we opened our newest Smith & Wollensky unit in

Houston, Texas. We expect to open another Smith & Wollensky restaurant in early fall of 2004 in Boston, Massachusetts. We expect the restaurant to have approximately 450 seats on four levels. As of June 28, 2004, total remaining capital expenditures for 2004 were expected to be approximately \$3.6 million and will be used primarily to complete the construction of our new restaurant in Boston, Massachusetts, and for general maintenance of existing restaurants. Although we currently do not have any leases signed other than leases relating to our existing and planned locations and will not actively pursue new locations in 2005, we would consider opening a new Smith & Wollensky restaurant in a high caliber location under highly favorable

investment terms. We plan to move ahead cautiously with our future expansion as management evaluates and monitors economic and security conditions, and we expect to resume our new restaurant growth in 2006. As of June 28, 2004, the average cost of opening the last three Smith & Wollensky restaurants, net of landlord contributions, has been approximately \$3.7 million, excluding the purchase of land and pre-opening costs. We expect additional locations to have seating capacities ranging from 375 to 450 seats, but would consider locations with larger seating capacities where appropriate. We intend to develop restaurants that will require, on average, a total cash investment of \$2.0 million to \$5.3 million net of landlord contributions and excluding pre-opening costs. This range assumes that the property on which the new unit is located is being leased and is dependent on the size of the location and the amount of the landlord contribution. Although our newest unit in Houston falls within this range, the restaurant we plan to open in Boston is expected to significantly exceed this range primarily because of its physical size. Some locations that we choose will be outside our preferred cash investment range, but are nevertheless accepted based on our evaluation of the potential returns.

In 1997, we assumed certain liabilities from two bankrupt corporations in connection with the acquisition of our lease for the Smith & Wollensky in Miami. Pursuant to the terms of the bankruptcy resolution, we are obligated to make quarterly and annual payments over a six-year period. These obligations bore interest at rates ranging from 9.0% to 12.0%. The final payment for these obligations was made in 2003. In addition, we assumed a mortgage on the Miami property that requires monthly payments and bears interest at 5.25% per year. On April 30, 2004, a letter was signed by the financial institution that holds the mortgage for the property extending the term of the mortgage three additional years, with the final principal payment due in June 2007. The extension became effective June 18, 2004. In 1997, we also assumed a loan payable to a financing institution that requires monthly payments through the year 2014 and bears interest at 7.67% per year. The aggregate balance of the mortgage and loan payable was approximately \$1.6 million on June 28, 2004.

On August 23, 2002, we entered into a \$14.0 million secured term loan agreement with Morgan Stanley. Under the agreement we are the guarantor of borrowings by our wholly owned subsidiary, S&W Las Vegas, LLC. We have borrowed \$4.0 million under the agreement for general corporate purposes, including our new restaurant development program. This portion of the loan bears interest at a fixed rate of 6.35% per annum. Principal payments for this portion of the loan commenced June 30, 2003. Pursuant to the terms of the loan agreement, we are obligated to make monthly principal payments of \$33,333 commencing June 30, 2003 over the term of the loan with a balloon payment of approximately \$2.0 million on May 31, 2008, the maturity date of the loan. The term loan is secured by a leasehold mortgage relating to the Las Vegas property and all of the personal property and fixtures of S&W Las Vegas, LLC. As previously disclosed, the balance of the funds available under the agreement had been intended to be used by us to exercise our purchase option for the land and building at 3767 Las Vegas Blvd. where we operate our 675-seat, 30,000 square foot restaurant. The ability to draw down this balance expired on May 31, 2003. We did not draw down the remaining balance because, as an alternative to purchasing the land, we signed an amendment to our lease agreement, as discussed below. On September 28, 2003, Morgan Stanley amended, among other things, the interest coverage ratio covenant of the term loan agreement. The costs in connection with the amendment were not material. At June 28, 2004, we were in compliance with all the financial covenants contained in this amended loan agreement.

On April 29, 2003, we signed a second amendment to lease agreement ("Agreement") with The Somphone Limited Partnership ("Lessor"), the owner of the property for our Las Vegas restaurant. The Agreement, which has been accounted for as a capital lease, adjusts the annual fixed payment to \$400,000 per year from May 1, 2003 to April 30, 2008 and to \$860,000 per year from May 1, 2008 to April 30, 2018. The Agreement also amends the amount of the purchase price option available to us effective from May 1, 2003. We will have the option to purchase the property over the next five years at an escalating purchase price. The purchase price was approximately \$10.0 million at May 1, 2003, and escalates to approximately \$12.1 million at the end of five years. We are required to make down payments on the purchase price of the property. Those payments, which

escalate annually, are payable in monthly installments into a collateralized sinking fund based on the table below, and will be applied against the purchase price at the closing of the option. If at the end of the five years we do not exercise the option, the Lessor receives the down payments that accumulated in the sinking fund, and thereafter the purchase price for the property would equal \$10.5 million. The down payments for the purchase of the land over the next five years as of June 28, 2004 will be as follows:

Fiscal year -----	(dollar amounts in thousands) -----
2004.....	\$142
2005.....	298
2006.....	328
2007.....	360
2008.....	123
	---
	\$1,251
	=====

If we exercise the option, the Lessor is obligated to provide us with financing in the amount of the purchase price applicable at the time of the closing, less any down payments already made, at an interest rate of 8% per annum, payable over ten years.

The Agreement also provides the Lessor with a put right that would give the Lessor the ability to require us to purchase the property at any time after June 15, 2008 at the then applicable purchase price. In the event of the exercise of the put option, the Lessor is obligated to provide us with financing in the amount of the purchase price applicable at that time. We will then have two months to close on the purchase of the property.

On May 14, 2003, a letter was signed by Morgan Stanley confirming that the treatment of the Agreement as a capital lease does not violate the debt restriction covenant of the secured term loan agreement and that the capital lease and any imputed interest related to the capital lease are excluded from the calculation of the financial covenants.

On October 9, 2002, we purchased the property for the Smith & Wollensky unit in Dallas. The purchase price for this property was \$3.75 million. Part of the purchase price for this property was financed through a \$1.65 million promissory note that was signed by Dallas S&W, L.P., a wholly owned subsidiary of SWRG. This loan bears interest at 8% per annum and requires annual principal payments of \$550,000. The first installment was prepaid on March 4, 2003, and the subsequent two installments are due on October 9, 2004 and October 9, 2005, respectively. We received a 60-day extension on the installment due on October 9, 2004. The promissory note is secured by a first mortgage relating to the Dallas property.

On December 24, 2002, we entered into a \$1.9 million secured term loan agreement with Morgan Stanley. Under the agreement, the Company and Dallas S&W L.P., a wholly owned subsidiary, are the guarantors of borrowings by our wholly owned subsidiary, S&W Las Vegas, LLC. Of the \$1.9 million borrowed by us under the agreement, \$1.35 million was used for our new restaurant development program, and \$550,000 was used for the first principal installment on the \$1.65 million promissory note with Toll Road Texas Land Company, L.P. described above. This loan bears interest at a fixed rate of 6.36% per annum. Principal payments for this loan commenced January 24, 2003. Pursuant to the terms of the loan agreement, we are obligated to make monthly principal payments of \$15,833 for this loan over the term of the loan and a balloon payment of approximately \$1.0 million on December 24, 2007, the maturity date of the loan. The term loan is secured by a second mortgage relating to the Dallas property and a security interest in all of the personal property and fixtures of Dallas S&W L.P. The term loan is also secured by the leasehold mortgage relating to the Las Vegas property. The aggregate outstanding balance of this term loan was approximately \$1.6 million as of June 28, 2004. On September 28, 2003, Morgan Stanley amended, among other things, the interest coverage ratio covenant of the term loan agreement. The costs in connection with the amendment were not material. At June 28, 2004, we were in compliance with the financial covenants contained in the amended loan agreement.

On January 30, 2004, we entered into a \$2.0 million secured line of credit facility with Morgan Stanley ("January Financing"). Under the agreement we are the guarantor of borrowings by our wholly owned subsidiary, S&W Las Vegas, LLC. Through S&W Las Vegas, we have the ability to borrow up to \$2.0 million under the agreement for working capital purposes. Advances under this line of credit will bear interest at a fixed rate of LIBOR plus 3% per annum, payable on a monthly basis. We are also subject to an unused availability fee of

1.75% for any unused portion of this line, payable on a quarterly basis. We may at anytime repay advances on this line without penalty. We are obligated to repay the principal portion of this line on January 30, 2006, the termination date of this line. This line is secured by a leasehold mortgage relating to the Las Vegas property and all of the personal property and fixtures of S&W Las Vegas, LLC. The aggregate outstanding balance of this line of credit facility was approximately \$2.0 million as of June 28, 2004. At June 28, 2004 we were in compliance with the financial covenants contained in the line of credit facility.

On March 17, 2004, we signed a first amendment to covenants agreement with Morgan Stanley. The amendment increased to \$525,000 the amount that we may exclude from the determination of any of our covenants, under our term loans and line of credit facility, as a result of the settlement of the legal dispute between the Company and Mondo's.

On May 26, 2004, S&W New Orleans, L.L.C. ("New Orleans"), a wholly owned subsidiary, signed a \$2.0 million promissory note with Hibernia ("May Financing"). The \$2.0 million was used by us for construction costs related to the new Smith & Wollensky restaurant in Boston. The note bears interest at a fixed rate of 6.27% per annum. Principal payments for this note commenced June 26, 2004. Pursuant to the terms of the promissory note, New Orleans is obligated to make monthly payments of \$17,272 for this note over the term of the note with a balloon payment of approximately \$1.5 million on May 26, 2009, the maturity date of the note. This note is secured by a first mortgage relating to the New Orleans property. At June 28, 2004, New Orleans was in compliance with the financial covenant contained in the loan agreement between New Orleans and Hibernia.

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During 2003, we incurred a net loss of \$1.1 million, primarily related to the costs incurred for litigation and accrual of settlement costs on a disputed lease matter and the costs incurred for the opening of a new restaurant in Dallas. We used cash during 2003 primarily for the purchase of property and equipment at our Dallas location and our Houston location. While we generated cash from operating activities of \$3.7 million for the year ended December 29, 2003, cash of \$4.9 million and \$1.1 million was used for investing and financing activities, respectively, leaving us with cash and cash equivalents of approximately \$1.9 million as of December 29, 2003. As of June 28, 2004, we project remaining capital expenditures for 2004 to total approximately \$3.6 million, primarily related to the planned restaurant in Boston, which is scheduled for opening early fall of 2004. The increase in the remaining capital expenditures for Boston from those previously disclosed relates primarily to undetected defects directly associated with the renovations to the building, which is over 100 years old and which has been lightly used over the last 20 years, as well as the additional cost related to the adherence to a stricter building code than originally anticipated. The Houston location was opened in January 2004. We incurred approximately \$1.6 million in capital expenditures to complete this project during the first quarter of 2004.

Because of these developments, we obtained the January Financing, May Financing, and obtained an additional \$2.0 million secured line of credit facility on July 21, 2004 ("July Financing"). Under this agreement, we are the guarantors of borrowings by our wholly owned subsidiary, S&W Las Vegas, LLC. Through S&W Las Vegas, LLC, we have the ability to borrow up to \$2.0 million under the agreement for working capital purposes. Advances under this line of credit will bear interest at a fixed rate of LIBOR plus 3% per annum, payable on a monthly basis. We are also subject to an unused availability fee of 1.75% for any unused portion of this line, payable on a quarterly basis. We may at any time repay advances on this line without penalty. We are obligated to repay the principal portion of this line on May 31, 2005, the termination date of this line. This line is secured by a leasehold mortgage relating to the Las Vegas property and all of the personal property and fixtures of S&W Las Vegas. We also renegotiated the mortgage related to the Miami restaurant property and extended the term of this mortgage, which now has a final principal payment due in June 2007. As of June 28, 2004, we had drawn down the entire \$4.0 million available to us under the January Financing and the May Financing. These funds were used to pay the construction costs relating to the Smith & Wollensky restaurants in Houston and Boston.

As of June 28, 2004, we believe that our cash and short-term investments on hand, funds received under the July Financing described above, projected cash flow from operations and expected landlord construction contributions should be sufficient to finance our planned capital expenditures and operations throughout 2004, as well as allow us to meet our debt service obligations under our loan agreements. Our cash resources, and therefore our liquidity, are dependent upon the level of internally generated cash from operations. Changes in our operating plans, lower than anticipated sales, increased expenses, weak initial opening for the Boston location or other events would cause us to seek alternative

financing or cease our capital expenditure plans as early as September 2004. While we would seek to obtain additional funds through commercial borrowings or the private or public issuance of debt or equity securities, there can be no assurance that such funds would be available when needed or be available on terms acceptable to us.

The following table discloses aggregate information as of June 28, 2004 about our contractual obligations and the periods in which payments in respect of the obligations are due:

<TABLE>  
<CAPTION>

Contractual Obligations: -----	Total -----	PAYMENTS DUE BY PERIOD -----			
		Less than 1 year -----	1-3 years -----	3-5 years -----	More than 5 years -----
		(dollars in thousands)			
<S>	<C>	<C>	<C>	<C>	<C>
Minimum royalty payments licensing agreement(1)	\$ 4,000	\$ 0	\$ 1,600	\$1,600	\$800(2)
Minimum distributions management agreement(1)..	\$ 3,490	\$ 130	\$ 960	\$ 960	\$ 1,440
Minimum payments on employment agreements(1)...	\$ 2,661	\$ 607	\$ 2,054	\$ 0	\$ 0
Principal payments on long-term debt(1).....	\$11,820	\$ 935	\$ 2,120	\$6,765	\$ 2,000
Payments under capital lease(1).....	\$11,380	\$ 337	\$ 1,426	\$1,590	\$ 8,027
Minimum annual rental commitments(1)(3).....	\$69,528	\$2,209	\$ 8,839	\$8,171	\$50,309
	-----	-----	-----	-----	-----
Total.....	\$102,879	\$4,218	\$16,999	\$19,086	\$62,576
	=====	=====	=====	=====	=====

</TABLE>

- (1) Please refer to the discussion in the "Liquidity and Capital Resources" section above and the Notes to Unaudited Consolidated Financial Statements for additional disclosures regarding these obligations.
- (2) The license agreement is irrevocable and perpetual unless terminated in accordance with the terms of the agreement. See Notes to the unaudited Consolidated Financial Statements, Note 5.
- (3) Restated to reflect the adoption of FIN 46 (R).

Seasonality

Our business is seasonal in nature depending on the region of the United States in which a particular restaurant is located, with revenues generally being less in the third quarter than in other quarters due to reduced summer volume and highest in the fourth quarter due to year-end and holiday events. As we continue to expand in other locations, the seasonality pattern may change.

Inflation

Components of our operations subject to inflation include food, beverage, lease and labor costs. Our leases require us to pay taxes, maintenance, repairs, insurance, and utilities, all of which are subject to inflationary increases. We believe inflation has not had a material impact on our results of operations in recent years.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK.

We are exposed to changing interest rates on our outstanding mortgage in relation to the Smith & Wollensky, Miami property that bears interest at prime rate plus 1%. The interest cost of our mortgage is affected by changes in the prime rate. The table below provides information about our indebtedness that is sensitive to changes in interest rates. The table presents cash flows with respect to principal on indebtedness and related weighted average interest rates by expected maturity dates. Weighted average rates are based on implied forward rates in the yield curve at June 28, 2004.

<TABLE>  
<CAPTION>

Expected Maturity Date -----
Fiscal Year Ended

Debt	2004	2005	2006	2007	2008	Thereafter	Total	Fair Value
								June 28, 2004
----	----	----	----	----	----	-----	-----	----
(dollars in thousands)								
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Long-term variable rate...	\$23	\$53	\$56	\$2,736	\$ -	\$ -	\$2,868	\$2,868
Average interest rate.....							4.6%	
Long-term fixed rate.....	\$912	\$1,276	\$736	\$1,696	\$2,333	\$1,999	8,952	10,124
Average interest rate.....							6.6%	
							-----	-----
Total debt.....							\$11,820	\$12,992
							=====	=====

</TABLE>

We have no derivative financial or derivative commodity instruments. We do not hold or issue financial instruments for trading purposes.

ITEM 4. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

An evaluation of the effectiveness of the design and operation of our "disclosure controls and procedures" (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this Quarterly Report on Form 10-Q was made under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer. Based upon this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures (a) are effective to ensure that information required to be disclosed by us in reports filed or submitted under the Exchange Act is timely recorded, processed, summarized and reported and (b) include, without limitation, controls and procedures designed to ensure that information

required to be disclosed by us in reports filed or submitted under the Exchange Act is accumulated and communicated to management, including its Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Controls

There was no change in our internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

On or about September 5, 2001, Mondo's of Scottsdale, L.C. ("Mondo's") filed a suit against SWRG alleging that it had entered into an agreement to purchase all of the leasehold interest in, and certain fixtures and equipment located at, Mondo's restaurant located in Scottsdale, Arizona. The suit was filed in the Superior Court of the State of Arizona in and for the County of Maricopa and had been set to go to jury trial in March 2004. The plaintiff requested damages of approximately \$2.0 million. On March 18, 2004 the parties tentatively agreed to settle the matter for \$525 and a reserve of \$525 was established as of December 29, 2003. On April 9, 2004 a final settlement was reached between the parties and, in accordance with the settlement, SWRG made the first payment of \$225, with the final payment of \$300 due on April 11, 2005.

SWRG is involved in various claims and legal actions arising in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on SWRG's consolidated financial position, results of operations or liquidity.

ITEM 2. CHANGES IN SECURITIES, USE OF PROCEEDS AND ISSUER PURCHASES OF EQUITY SECURITIES.

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

ITEM 4. SUBMISSIONS OF MATTERS TO A VOTE TO SECURITY HOLDERS.

The Company's Annual Meeting of Stockholders was held on May 20, 2004. The proposal submitted to the stockholders for a vote was:

1. Proposal to elect Alan N. Stillman and Thomas H. Lee as Class III directors to serve for a three year term and until their successors are duly elected and qualified.

The following sets forth the number of votes for, the number of votes against, the number of abstentions (or votes withheld in the case of the election of directors) and broker non-votes with respect to each of the forgoing proposals.

	Votes For -----	Votes Against -----	Abstentions (withheld) -----	Broker Non-Votes -----
Alan N. Stillman	8,217,647	--	20,348	--
Thomas H. Lee	8,219,895	--	18,100	--

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ITEM 5. OTHER INFORMATION.

None.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.

(a) Exhibits

- 10.86 Business Loan Agreement by and between S&W New Orleans, L.L.C. as "Borrower" and Hibernia National Bank as "Lender" dated as of May 26, 2004
- 10.87 Multiple Indebtedness Mortgage by and between S&W New Orleans, L.L.C. as "Mortgagor" and Hibernia National Bank as "Mortgagee" dated as of May 26, 2004
- 10.88 Promissory Note by and between S&W New Orleans, L.L.C. as "Borrower" and Hibernia National Bank as "Lender" dated as of May 26, 2004
- 10.89 Commercial Guaranty by and between S&W New Orleans, L.L.C. as "Borrower", The Smith & Wollensky Restaurant Group, Inc. as "Guarantor" and Hibernia National Bank as "Lender" dated as of May 26, 2004
- 10.90 Line of Credit Agreement by and between S&W of Las Vegas L.L.C. as "Borrower", The Smith & Wollensky Restaurant Group, Inc. as "Guarantor" and Morgan Stanley Dean Witter Commercial Financial Services, Inc. as the "Lender" dated as of July 21, 2004, including schedules and exhibits thereto
- 10.91 Guaranty of Payment by and between S&W of Las Vegas L.L.C. as the "Borrower" and Morgan Stanley Dean Witter Commercial Financial Services, Inc. as the "Lender" and exhibits thereto dated as of July 21, 2004
- 10.92 Leasehold Deed of Trust by and between S&W of Las Vegas L.L.C. as the "Grantor" to First American Title Company of Nevada, Inc. as "Trustee" for the benefit of Morgan Stanley Dean Witter Commercial Financial Services, Inc. as the "Beneficiary" and exhibits thereto dated as of July 21, 2004

- 10.93 Absolute Assignment of Leases and Rents Agreement by and between S&W of Las Vegas L.L.C. as the "Assignor" and Morgan Stanley Dean Witter Commercial Financial Services, Inc. as the "Assignee" and exhibits thereto dated as of July 21, 2004
- 10.94 Hazardous Material Guaranty and Indemnification Agreement by and between S&W of Las Vegas L.L.C. as the "Borrower" and Morgan Stanley Dean Witter Commercial Financial Services, Inc. as the "Lender" and exhibits thereto dated as of July 21, 2004
- 10.95 Promissory Note by and between S&W of Las Vegas L.L.C. as the "Borrower" and Morgan Stanley Dean Witter Commercial Financial Services, Inc. as the "Lender" dated as of July 21, 2004
  
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
- 32.1 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 99.1 Risk Factors.

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(b) Reports on Form 8-K

Report on Form 8-K dated May 28, 2004 furnishing under Items 4 and 7 disclosing that effective May 21, 2004, the Audit Committee of the Board of Directors of the Company replaced KPMG LLP as its independent accounting firm with BDO Seidman, LLP.

Report on Form 8-K dated June 10, 2004 furnishing under Item 9 disclosing that effective May 28, 2004, Mr. Alan Stillman, Chairman, Chief Executive Officer and Chief Operating Officer of the Company purchased additional shares of Thursday's Supper Pub, Inc., a corporation whose sole asset is 385,400 shares of common stock of the Company.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.

August 11, 2004

By: /s/ ALAN N. STILLMAN  
-----

Name: Alan N. Stillman  
Title: Chairman of the Board, Chief  
Executive Officer and  
Director  
(Principal Executive Officer)

August 11, 2004

By: /s/ ALAN M. MANDEL  
-----

Name: Alan M. Mandel  
Title: Chief Financial Officer,

Exhibit No.	Description of Document
-----	-----
10.86	Business Loan Agreement by and between S&W New Orleans, L.L.C. as "Borrower" and Hibernia National Bank as "Lender" dated as of May 26, 2004
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31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
32.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
99.1	Risk Factors.
*	Management contract or compensatory plan or arrangement



References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. An item above containing "\*\*\*\*" has been omitted due to text length limitations.

Borrower: S & w New Orleans, L.L.C.  
(TIN: 13-3932811)  
1114 First Ave.  
New York, NY 10021

Lender: Hibernia National Bank  
Attn: Loan Administration Dept.  
934 Third Street  
Alexandria, LA 71301

THIS BUSINESS LOAN AGREEMENT dated May 26, 2004, is made and executed between S l W New Orleans, L.L.C. ("Borrower"), and Borrower's Members signing below ("Members"), and Hibernia National Bank ("Lender") on the following terms and conditions. Borrower has applied to Lender for a loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement ("Loan"). Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (8) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

EFFECT OF AGREEMENT. The following provisions pertain to the effect of this Agreement.

Applicability. This Agreement shall apply to any and all present and future Indebtedness, contracts, agreements and undertakings by and between Borrower and Lender for any purpose whatsoever.

Amendment to Operating Agreement. This Agreement shall for all purposes be considered and shall have the same effect as an amendment to, and shall comprise a part of Borrower's Operating Agreement, and shall be binding upon Borrower and all of Borrower's present and future Members. To this end, all persons subsequently acquiring Membership Interests in Borrower for all purposes shall be deemed to be bound and obligated under the terms and conditions of this Agreement just as if said subsequently added Members had signed this Agreement along with the Members signing below, with the consent and agreement of such subsequently added Members to be so bound and obligated hereunder being an absolute condition precedent to such persons acquiring Membership Interests in Borrower.

APPLICATION FOR AND PURPOSE OF THE LOAN. Borrower has applied to Lender for a Loan in the aggregate principal amount of \$2,000,000 for the following purpose: Property updates and term financing..

BORROWER'S NOTE. Lender has agreed to extend a Loan to Borrower in the amount of

\$2,000,000 subject to the terms and conditions of this Agreement and Borrower's attached Note. Borrower agrees to be bound and obligated under the terms and conditions of this Agreement and Borrower's Note.

TERM. This Agreement shall be effective as of May 26, 2004, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

AUTHORIZED REPRESENTATIVES. The following provisions pertain to, among other things, the authorization of persons under this Agreement.

Resolutions. The Members of Borrower have met and have properly authorized certain designated persons ("Authorized Representatives") to represent Borrower and to act for and on behalf of Borrower in dealing with Lender. To the extent applicable, such Authorized Representatives are listed in a separate form of Resolution or other communication delivered to Lender.

Managers. Borrower's present and future Managers (to the extent that Borrower has Managers) shall always have the full and unrestricted authority to deal with Lender and shall be considered Authorized Representatives of Borrower without the additional necessity of being specifically designated as such by Borrower's Members under a formal resolution.

Unrestricted Authority. Notwithstanding any provision of Borrower's Operating Agreement to the contrary, or any resolution of Borrowers Members not previously communicated to Lender in writing, Borrower's Authorized Representatives (including without limitation Borrower's Managers) shall have the full and unrestricted right, power and authority to deal and to contract with Lender and to otherwise bind and unrestricted right, power and authority, from time to time, one or more times, and without the necessity of obtaining the further approval of all or a majority of Borrower's Members: (1) to obtain loans, loan advances, and to incur other Indebtedness and obligations in favor of Lender in any amount and for any purpose, and whether or not deemed to be in the ordinary course of Borrower's business; and (2) to sell, exchange, lease, mortgage, pledge, or otherwise transfer or encumber or grant Security Interests in favor of Lender as affecting any or all or substantially all of the assets and movable (personal) and immovable (real) properties of Borrower, including without limitation, entering into mortgages and security agreements that contain confessions of judgment and consents to foreclosure remedies under Louisiana executory process procedures; and (3) otherwise to enter into such agreements and to incur such obligations in favor of Lender as such Authorized Representatives may deem to be necessary and proper.

Substitute Authorized Representatives. Lender may continue to deal and contract with such Authorized Representatives on an unrestricted basis until such time as: (1) their authority to act for and on behalf of Borrower is formally revoked and substitute Authorized Representatives are properly appointed by Borrower's Members, and (2) Lender is properly notified in writing and accepts and acknowledges the same.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral, (3) financing statements and all other documents perfecting Lender's Security Interests; (4) evidence of insurance as required below; (5) guaranties, (6) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Borrower's Authorization. Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

Representations and Warranties. The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

Organization. Borrower is a limited liability company which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Delaware. Borrower is duly authorized to transact business in the State of Louisiana and all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 1114 First Ave., New York, NY 10021. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records

concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

BUSINESS LOAN AGREEMENT (Continued)

Page 2

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Borrower's articles of organization or membership agreements, or (b) any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that; (1) During the period of Borrower's ownership of Borrower's Collateral, there has been no use,

generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the Indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation. There are no suits or proceedings pending, or to the knowledge of Borrower, threatened against or affecting Borrower or Borrower's assets, before any court or by any governmental agency, other than those previously disclosed to Lender in writing, which, if adversely determined, may have a material adverse effect on Borrower's financial condition or business.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Information. All information heretofore or contemporaneously herewith furnished by Borrower to Lender for the purposes of or in connection with this Agreement or any transaction contemplated hereby is, and all information hereafter furnished by or on behalf of Borrower to Lender will be, true and accurate in

every material respect on the date as of which such information is dated or certified; and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Good Standing. Maintain its good standing status as a Louisiana limited liability company and remain qualified in each additional jurisdiction where the conduct of Borrower's business requires such qualification.

Other Events. Promptly notify Lender in writing of (1) the addition of any new Members of Borrower, (2) the death, interdiction, withdrawal, expulsion, bankruptcy, or dissolution of any Member or the occurrence of any other event which may terminate the continued membership of any member, (3) the expression of any intent or desire on the part of any Member or Members to dissolve or liquidate Borrower, and (4) the occurrence or any event specified in Borrower's Articles or in Borrower's Operating Agreement that may result in Borrower's dissolution or liquidation.

Notices of Claims and Litigation. Promptly inform Lender in writing at (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with the following:

Annual Statements. As soon as available after the end of each fiscal year, Borrower's balance sheet and income statement for the year ended, prepared by Borrower in form satisfactory to Lender.

Tax Returns. As soon as available after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by

a tax professional satisfactory to Lender.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Insurance Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Guaranties. Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the guarantor

BUSINESS LOAN AGREEMENT (Continued)

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named below, on Lender's forms, and in the amount and under the conditions set forth in those guaranties.

Name of Guarantor	Amount
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The Smith & Wollensky Restaurant Group, Inc.	Unlimited

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other

such agreements.

Loan Proceeds. Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Operations. Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such

records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Compliance Certificates. Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Environmental Compliance and Reports. Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

LENDER'S EXPENDITURES. Borrower recognizes and agrees that Lender may incur certain expenses in connection with Lender's exercise of rights under this Agreement. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, Encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral, including without limitation, the purchase of insurance protecting only Lender's interest in any Collateral. Lender may further take such other action or actions and incur such additional expenditures as Lender may deem to be necessary and proper to cure or rectify any actions or inactions on Borrower's part as may be required under this Agreement. Nothing under this Agreement or otherwise shall obligate Lender to take any such actions or to incur any such additional expenditures on Borrower's behalf, or as making Lender in any way responsible or liable for any loss, damage, or injury to any Collateral, to Borrower, or to any other person or persons, resulting from Lender's election not to take such actions or to incur such additional expenses.

In addition, Lender's election to take any such actions or to incur such additional expenditures shall not constitute a waiver or forbearance by Lender of any Event of Default under this Agreement. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

**NEGATIVE COVENANTS.** Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

**Amendments to Articles or Operating Agreement.** Amend its Articles or Operating Agreement (1) to limit or restrict the permissible activities in which Borrower may engage, or (2) to withdraw the authority of or to limit or restrict the authority of Borrower's Authorized Representatives (including Borrower's Managers) to deal and contract with Lender and to bind and obligate Borrower.

**Withdrawal of Members.** Permit any Member to withdraw from the Borrower and to receive any type of withdraw distribution. Distributions. Pay any interim distribution in cash or other assets to a Member or Members of Borrower.

**Waiver or Compromise of Rights Against Members.** Waive, compromise or forgo any rights that Borrower may have against any Member for unpaid capital contributions or any other obligation owed to Borrower.

**Non-Compliance** None of the above actions on the part of Borrower (including without limitation, any amendment to Borrower's Articles or Operating Agreement) shall be effective as against Lender unless and until: (1) Borrower shall have notified Lender in writing, and (2) Lender shall have expressly agreed to such actions in writing. Specifically, any distribution by Borrower in violation of this Agreement shall be considered as a "wrongful distribution" for purpose of applicable Law.

**Indebtedness and Liens.** (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

**Continuity of Operations.** (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

Loans, Acquisitions and Guaranties. (1) Loan, invest in or advance money or assets to any other person, enterprise or entity, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

Agreements. Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

#### BUSINESS LOAN AGREEMENT (Continued)

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OBLIGATION OF MEMBERS. So long as this Agreement remains in effect, each and every present and future Member of Borrower agrees and covenants as follows:

No Withdrawal. Not to withdraw as a Member of Borrower and to obtain a withdrawal distribution without first notifying Lender in writing and obtaining Lender's prior written consent (which Lender shall have the unrestricted right to refuse).

Compliance. To take whatever steps may be necessary and proper to insure that Borrower and each other Member complies with the terms, conditions and covenants of this Agreement.

SECURITY INTEAEST GRANTED BY MEMBERS. Borrower and each Member additionally agree as follows:

Membership Interests. Notwithstanding any provision of Borrower's Articles or Operating Agreement to the contrary, each Member shall have the unrestricted right, power and authority to grant a Security Interest in favor of Lender as affecting his Membership Interest in Borrower.

Rights of Lender. Should Lender for any reason acquire the Membership Interest of any Member, whether as a result of default under a loan or extension of credit or otherwise, then Lender or any third party to whom Lender may sell or assign said Membership Interest shall have all of the rights, powers and authority of a "member" of Borrower, including the right to participate in the management and affairs permit that result to occur.

Redemptive Rights. Should Lender acquire the Membership Interest of any Member as a result of a default under a loan, then Lender shall have the right, without the necessity of first obtaining any type of judgment against such a Member, to redeem the defaulting Member's Membership Interest for the then value thereof, which sum shall be paid by Borrower immediately on demand by Lender to be applied against the Member's loan obligation.

DEPOSIT ACCOUNTS. As collateral security for repayment of Borrower's Note and all renewals and extensions, as well as to secure any and all other loans, notes, indebtedness and obligations that Borrower may now and in the future owe to Lender or incur in Lender's favor, whether direct or indirect, absolute or contingent, due or to become due, of any nature and kind whatsoever (with the

exception of any indebtedness under a consumer credit card account), and to the extent permitted by law, Borrower is granting Lender a continuing security interest in any and all funds that Borrower may now and in the future have on deposit with Lender or in certificates of deposit or other deposit accounts as to which Borrower is an account holder (with the exception of IRA, pension, and other tax-deferred deposits). Borrower further agrees that, to the extent permitted by law, Lender may at any time apply any funds that Borrower may have on deposit with Lender or in certificates of deposit or other deposit accounts as to which Borrower is an account holder against the unpaid balance of Borrower's Note and any and all other present and future indebtedness and obligations that Borrower may then owe to Lender, in principal, interest, fees, costs, expenses, and reasonable attorneys' fees.

EVENTS OF DEFAULT. The following actions or inactions or both shall constitute Events of Default under this Agreement; Default Under the Note. Should Borrower default in the payment of principal or interest under the Note or any of the Indebtedness.

Default Under this Agreement. Should Borrower violate, or fail to comply fully with any of the terms and conditions of, or default under this Agreement.

Default Under other Agreements. Should any default occur or exist under any Related Document which directly or indirectly secures repayment of the Loan and any of the Indebtedness.

Other Defaults In Favor of Lender. Borrower or any guarantor defaults under any other loan, extension of credit, security right, instrument, document, or agreement, or obligation in favor of Lender.

Default in Favor of Third Parties. Should Borrower or any Guarantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property, or any Guarantor's ability to perform their respective obligations under this Agreement, or any Related Document, or pertaining to the Indebtedness.

Insolvency. Should the suspension, failure or insolvency, however evidenced, of Borrower or any Guarantor occur or exist.

Readjustment of Indebtedness. Should proceedings for readjustment of indebtedness, reorganization, composition or extension under any insolvency law be brought by or against Borrower or any Guarantor.

Assignment for Benefit of Creditors. Should Borrower or any Guarantor file proceedings for a respite or make a general assignment for the benefit of creditors.

Receivership. Should a receiver of all or any part of Borrower's property, or the property of any Guarantor, be applied for or appointed.

Dissolution Proceedings. Proceedings for the dissolution or appointment of a liquidator of Borrower or any guarantor are commenced.

False Statements. Any warranty, representation or statement made or furnished to

Lender by Borrower or on Borrower's behalf, the Note, is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insecurity. Lender in good faith believes itself insecure with regard to repayment of the Loan.

Effect of an Event of Default. If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise.

Lender shall have the right at its sole option, to accelerate payment of Borrower's Note in full, in principal, interest, costs, expenses, attorneys' fees, and other fees and charges, as well as to accelerate the maturity of any and all other loans and/or obligations that Borrower may then owe to Lender, whether direct or indirect, or by way of assignment or purchase of a participation interest, and whether absolute or contingent, liquidated or unliquidated, voluntary or involuntary, determined or undetermined, due or to become due, and whether now existing or hereafter arising, and whether Borrower is obligated alone or with others on a "solidary" or "joint and several" basis, as a principal obligor or as a surety, of every nature and kind whatsoever, whether any such indebtedness may be barred under any statute of limitations or otherwise may be unenforceable or voidable for any reason whatsoever.

Lender shall have the additional right, again at its sole option, to file an appropriate collection action against Borrower and/or against any guarantor or guarantors of Borrower's Loan and Note, and/or to proceed or exercise any rights against any Collateral then securing repayment of Borrower's Loan and Note. Borrower and each guarantor further agree that Lender's remedies shall be cumulative in nature and nothing under this Agreement or otherwise, shall be construed as to limit or restrict the options and remedies available to Lender following any event of default under this Agreement or otherwise.

Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lenders right to declare a default and to exercise its rights and remedies.

DEFINITION OF INDEBTEDNESS EXPANDED. The word "Indebtedness" shall also mean and include individually, collectively, interchangeably and without limitation, any and all present and future loans, extensions of credit, liabilities and/or

obligations of every nature and kind whatsoever that Borrower, and/or Grantor if Borrower and Grantor are not the same party, may now and in the future owe to or incur in favor of Lender and its successors or assigns, including without limitation, indebtedness under any Note described herein, whether such loans, extensions of credit liabilities and/or obligation are direct or indirect, or by way of assignment, and whether related or unrelated, or whether committed or purely discretionary, and whether absolute or contingent, voluntary or involuntary, determined or undetermined, liquidated or unliquidated, due or to become due, together with interest, costs, expenses, attorneys' fees and other fees and charges, whether or not any such indebtedness may be barred under any statute of limitations or may be otherwise unenforceable or voidable for any reason.

ADDITIONAL PROVISION. Borrower covenants and agrees with Lender that Borrower will notify Lender if The Smith 8, Wollensky Restaurant Group, Inc. or any of its subsidiaries are not in compliance (default) with any financial or non-financial covenants with other financial institutions. Failure to comply with this provision shall constitute a default hereunder and shall entitle Lender to exercise all remedies provided hereunder.

DEBT SERVICE COVERAGE COVENANT. Borrower covenants and agrees with Lender that as long as this Note is in effect, Borrower shall maintain, at all times, a Debt Service Coverage of no less than 1.10X, where "Debt Service Coverage" is the result of the following formula; Cash Flow divided by Debt Service, where Cash Flow means the net income (loss) of Borrower for a period, plus any interest expense, plus any tax expense, plus any depreciation or amortization expense, recorded in that same period. Debt Service means, for a period, the sum of all scheduled principal and interest payments on debt (including any capitalized leases) during the period, including that portion of any long term debt that is due within the period.. The determination of Net Income, the expense items, and debt payments shall be based on the Borrower's financial statements, prepared in accordance with Generally Accepted Accounting Principles (GAAP), submitted to Lender with the degree of diligence and timeliness as required herein or in any loan or other agreement relating to or governing repayment hereunder. Failure to comply with this provision shall constitute a default hereunder, and shall entitle Lender to exercise all remedies provided herein.

BUSINESS LOAN AGREEMENT (Continued)

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Miscellaneous Provisions. The following miscellaneous provisions are a part of this Agreement:

Amendments. No amendment, modifications, consent or waiver of any provision at this Agreement, and no consent to any departure by Borrower therefrom, shall be effective unless the same shall be in writing signed by a duly authorized officer of Lender, and then shall be effective only as to the specific instance and for the specific purpose for which given.

Attorneys' Fees. Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees in an amount

not exceeding 25.000% of the principal balance due on the Loan and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expense include Lender's reasonable attorneys' fees in an amount not exceeding 25.000% of the principal balance due on the Loan and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees in an amount not exceeding 25.000% of the Lender's principal balance due on the Loan and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court cost and such additional fees as may be directed by the court

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement

Consent to Loan Participation. Borrower agrees and constants to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any right to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all right of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interest may enforce Its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Governing Law. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Louisiana. This Agreement has been accepted by Lender in the State of Louisiana.

No Waiver by Lender. Lender shall not be deemed to have waived any right under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part at Lender in exercising any right shall operate as a waiver at such right or any other right A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a

waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. To give Borrower any notices required under this Agreement, Lender may hand deliver or mail the notice Borrower at Borrower's last address in Lender's records. If there is more than one Borrower under this Agreement, notice to a single Borrower shall be considered as notice to all Borrowers. To give Lender any notice under this Agreement, Borrower (or any Borrower) shall mail the notice to Lender by registered or certified mail at the address specified in this Agreement, or at any other address that Lender may have given to Borrower (or any Borrower) by written notice as provided in this section. All notices required or permitted under this Agreement shall be in writing and will be considered as given on the day it is delivered by hand or deposited in the U.S. Mail as provided herein.

Severability. If any provision of this Agreement is held to be Illegal, Invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Agreement shall be construed and enforceable as if the illegal, invalid or unenforceable provision had never comprised a part of it, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by any severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and legal, valid and enforceable.

Subsidiaries and Affiliates of Borrower. To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any of Borrower's subsidiaries and affiliates.

Successors and Assigns. All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

Survival of Representations and Warranties. Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by

Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

Waive Jury. All parties to this Agreement hereby waive the right to any Jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Definitions. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States at America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Louisiana Commercial Laws (La. R.S. 10:9-101, et seq.). Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

Agreement. The word 'Agreement' means this business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached or to be attached to this Business Loan Agreement from time to time.

Articles. The word "Articles" means and includes Borrower Articles of Organization as presently on file with Office of the Louisiana Secretary of State, and as such Articles may subsequently be amended or modified from time to time, one or more times.

Authorize Representatives. The words "Authorized Representatives" mean and include, individually, collectively, interchangeably, any and all persons authorized by Borrower's Members or Managers to act for and on behalf of Borrower in dealings with Lender.

Borrower. The word "Borrower" means S & W New Orleans, L.L.C, and includes all co-signers and co-makers signing the Note.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and

whether granted in the form of a security interest, mortgage, collateral mortgage, deed at trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-409 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

#### BUSINESS LOAN AGREEMENT (Continued)

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GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, in principal, interest, costs, expenses and attorneys' fees and all other fees and charges together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means Hibernia National Bank, its successors and assigns, and any subsequent holder or holders of Borrower's Loan and Note, or

any interest therein.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Member. The word "MEMBER" means and include, individually, collectively, interchangeably, any and all present and future member owners of Borrower.

Membership Interest. The words "MEMBERSHIP INTEREST" mean and include a Member's ownership rights and interest in Borrower, including without limitation, a Member's share of the profits and losses of Borrower, right to receive distributions of Borrower's assets, and any right to vote or participate in the management and affairs of Borrower.

Note. The word "Note" means the Note executed by S & W New Orleans, L.L.C. in the principal amount of \$2,000,000.00 dated May 26, 2004, together with all renewals, extensions, modifications, refinancings, consolidations and substitutions of and for the note or credit agreement.

Operating Agreement. The words "Operating Agreement" mean any agreement between Borrower's Members governing the affairs of Borrower and the conduct of its business.

Permitted Liens. The words "Permitted Liens" mean (a) liens and security interests securing Indebtedness owed by Borrower to Lender; (b) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (c) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (d) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (e) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (1) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include individually, collectively, interchangeably and without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED MAY 26, 2004.

BORROWER:  
S & W NEW ORLEANS, LL.C.  
THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.,  
Member of S & W New Orleans, L.L.C.

/ S / Alan M. Mandel  
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Alan M. Mandel, Executive Vice President of The  
Smith & Wollensky Restaurant Group, Inc.

LENDER:  
  
HIBERNIA NATIONAL BANK

By: Authorized Signer

Mortgagor: S 8 W New Orleans, L.L.C.  
(TIN: 13-3932811)  
1114 First Ave.  
New York, NY 10021

Mortgagee: Hibernia National Bank  
Attn:  
Loan Administration Dept.  
934 Third Street  
Alexandria, LA 71301

MULTIPLE INDEBTEDNESS MORTGAGE

UNITED STATES OF AMERICA

BY: S & W New Orleans, L.L.C.

STATE OF NEW YORK

IN FAVOR OF:

COUNTY OF NEW YORK

Hibernia National Bank

And Any Future Holder or Holders

BE IT KNOWN, that on May 26, 2004;

BEFORE ME, the undersigned Notary Public, and in the presence of the undersigned competent witnesses;

PERSONALLY CAME AND APPEARED:

S 8 W New Orleans, L.L.C. TIN: 13-3932811, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has its principal office and mailing address at 1114 First Ave., New York, NY, 10021, appearing herein through its duly authorized member;

WHO DECLARED THAT:

TERMS AND CONDITIONS:

INDEBTEDNESS. The word "Indebtedness" as used in this Mortgage means individually, collectively and interchangeably any and all present and future loans, advances, and/or other extensions of credit obtained and/or to be obtained by Mortgagor from Mortgagee, as well as Mortgagee's successors and assigns, from time to time, one or more times, now and in the future, under a certain commercial loan agreement dated May 26, 2004 and any and all promissory notes evidencing such present and/or future loans, advances, and/or other extensions of credit, including without limitation, a Note dated May 26, 2004, in the principal amount of \$2,000,000.00, from Mortgagor to Mortgagee, and any and all amendments thereto and/or substitutions therefor, and any and all renewals, extensions and refinancings thereof, as well as any and all other obligations, including, without limitation, Mortgagor's covenants and agreements

in any present or future loan or credit agreement or any other agreement, document or instrument executed by Mortgagor and liabilities that Mortgagor may now and/or in the future owe to and/or incur in favor of Mortgagee, whether direct or indirect, or by way of assignment or purchase of a participation interest, and whether related or unrelated, or whether committed or purely discretionary, and whether absolute or contingent, liquidated or unliquidated, voluntary or involuntary, determined or undetermined, due or

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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to become due, and whether now existing or hereafter arising, or otherwise secured or unsecured, whether Mortgagor is obligated alone or with others on a "solidary" or "joint and several" basis, as a principal obligor or as a surety, guarantor, or endorser, of every nature and kind whatsoever, whether or not any such Indebtedness may be barred under any statute of limitations or prescriptive period or may be or become otherwise unenforceable or voidable for any reason whatsoever. Notwithstanding any other provision of this Mortgage, the maximum amount of Indebtedness secured hereby shall be limited to \$50,000,000.00.

GRANTING OF MORTGAGE. And now, in order to secure the prompt and punctual payment and satisfaction of the Indebtedness, in principal, interest, costs, expenses, attorneys' fees and other fees and charges, and additionally to secure repayment of any and all Additional Advances that Mortgagee may make on behalf of Mortgagor as provided in this Mortgage, together with interest thereon, Mortgagor does by these presents specifically mortgage, affect and hypothecate unto and in favor of Mortgagee, any and all of Mortgagor's present and future rights, title and interest in and to the following described Property located in Orleans Parish, State of Louisiana:

The immovable (real) property specifically described as follows:

A certain portion of ground together with all of the buildings and improvements thereon, situated in Square 270, First Municipal District, City of New Orleans, Orleans Parish, State of Louisiana, and being bounded by Poydras Street, O'Keefe Avenue, Perdido Street and South Rampart Street, and being designated Lot SW on a plan of resubdivision by the office of Gandolfo Kuhn & Associates, drawing No. J-133-2, dated September 10, 1997, revised February 3, 1998, and approved by the City Planning Commission on August 12, 1998, under Subdivision Docket No. 108/97, recorded as Conveyance Instrument No. 164464 on August 21, 1998; and being further shown on a plat of survey by Gandolfo Kuhn, LLC, drawing number N-32-1, dated May 13, 2004, revised May 20, 2004, and is more particularly described as follows:

Begin at the intersection of the northerly line of Poydras Street with the easterly line of South Rampart Street, thence along said easterly line a

distance of 55' 11" 5"" to the northerly line of Lot SW; thence along said line at an interior angle to the left of 89 degrees 55' a distance of 95' 9" 6"" to a point and corner, thence continue along the northerly line of Lot SW along the interior angle to the left of 178 degrees 50' 49" a distance of 70' 2" 2"" to the westerly line of O'Keefe Avenue; thence along said line at an interior angle to the left of 91 degrees 22' 6" a distance of 54' 5" to the northerly line of Poydras Street, thence along said line at an interior angle to the left of 89 degrees 50' a distance of 166' 1" 1"" to the easterly line of Rampart Street and the point of beginning.

Together with any and all present and future buildings, constructions, component parts, improvements, attachments, appurtenances, fixtures, rights, ways, privileges, advantages, batture, and batture rights, servitudes and easements of every type and description, now and/or in the future relating to the Property, and any and all items and fixtures attached to and/or forming integral or component parts of the Property in accordance with the Louisiana Civil Code.

The Property or its address is commonly known as 1009 Poydras St., New Orleans, LA 70112.

MORTGAGE SECURING FUTURE INDEBTEDNESS. This Mortgage has been executed by Mortgagor pursuant to Article 3298 of the Louisiana Civil Code for the purpose of securing Mortgagor's Indebtedness that may now be existing or that may arise in the future as provided herein, with the preferences and priorities provided under applicable Louisiana law. However, nothing under this Mortgage shall be construed as limiting the duration of this Mortgage or the purpose or purposes for which Mortgagor's Indebtedness may be requested or extended. Mortgagor's additional loans will automatically be secured by this Mortgage without the necessity that Mortgagor agrees or consents to such a result at the time additional loans are made and that the note or notes evidencing such additional loans reference the fact that such notes are secured by this Mortgage. Mortgagor understands that Mortgagor may not subsequently have a change of mind and insist that Mortgagor's additional loans not be secured by this Mortgage unless Mortgagee specifically agrees to such a request in writing.

DURATION OF MORTGAGE. This Mortgage will remain in effect until (A) all of the Indebtedness is fully paid and satisfied and there is no agreement or commitment to advance any additional Indebtedness; and (B) Mortgagor cancels this Mortgage by filing a written cancellation instrument signed by Mortgagee. When all of the indebtedness is fully paid and satisfied and there is no

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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agreement or commitment to advance any additional indebtedness, Mortgagor may request Mortgagee to sign such a written cancellation instrument by writing

Mortgagee at the above address or at such other address as Mortgagee may advise. Mortgagee may delay providing Mortgagor with such a mortgage cancellation instrument for a period of sixty (60) days following receipt of Mortgagor's written request, or such longer time as may be necessary for Mortgagee to verify that all conditions precedent for mortgage cancellation have been satisfied.

PROHIBITIONS REGARDING PROPERTY. So long as this Mortgage remains in effect, Mortgagor shall not, without the prior written consent of Mortgagee, sell, transfer, forego, assign, pledge, do anything or permit anything to be done that may in any way affect Mortgagee's security interests and rights in and to the mortgaged Property, or create or permit to exist any Encumbrance in or against any of the Property, in favor of any person other than Mortgagee.

REPRESENTATIONS AND WARRANTIES CONCERNING THE PROPERTY. Except as previously disclosed to Mortgagee in writing, Mortgagor represents and warrants that: (A) Mortgagor is and will continue to be the lawful owner of the Property; (B) Mortgagor has the right to mortgage the Property to Mortgagee; (C) as of the time this Mortgage is recorded, there are no Encumbrances affecting the Property; (D) the security rights and interest granted under this Mortgage will at no time become subordinate or junior to any security rights, interests, liens, or claims of, or in favor of, any person, firm, corporation, or other entity; and (E) this Mortgage is binding upon Mortgagor as well as Mortgagor's heirs, successors, legatees, administrators, executors, representatives and assigns, and is legally enforceable in accordance with its terms. The above representations and warranties, and all other representations and warranties contained in this Mortgage, are and will be continuing in nature and will remain in full force and effect until such time as this Mortgage is cancelled in the manner provided above.

INSURANCE PROVISIONS. The following insurance provisions are a part of this Mortgage:

Required Insurance. So long as this Mortgage remains in effect, Mortgagor shall, at its sole cost, keep and/or cause others, at their expense, to keep the Property constantly insured against loss by fire, by hazards included within the term "extended coverage," and by such other hazards (including flood insurance, where applicable) as may be required by Mortgagee. Such insurance shall be in an amount not less than the full replacement value of the Property, or such other amount or amounts as Mortgagee may require or approve in writing. Mortgagor shall further provide and maintain, at its sole cost and expense, comprehensive public liability insurance, naming both Mortgagor and Mortgagee as parties insured, protecting against claims for bodily injury, death and/or property damage arising out of the use, ownership, occupancy, possession, operation and condition of the Property, and further containing a broad form contractual liability endorsement covering Mortgagor's obligations to indemnify Mortgagee as provided hereunder. The Real Property is or will be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area. Mortgagor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required

by Mortgagee, and to maintain such insurance for the term of the loan.

Insurance Companies and Policies. Mortgagor may purchase such insurance from any insurance company or broker that is acceptable to Mortgagee, provided that such approval may not be unreasonably withheld. All such insurance policies, including renewals and replacements, must also be in form and substance acceptable to Mortgagee, and must additionally contain a lender's loss payee endorsement in favor of Mortgagee, providing in part that (1) all proceeds and returned premiums under such policies of insurance will be paid directly to Mortgagee, and (2) no act or omission on the part of Mortgagor, or any of its directors, officers, agents, employees or representatives, nor breach of any warranty contained in such policies, shall affect the obligations of the insurer to pay the full amount of any loss to Mortgagee. Such policies of insurance must also contain a provision prohibiting cancellation, nonrenewal, or the alteration of such insurance without at least thirty (30) days prior written notice to Mortgagee of such intended cancellation or alteration. Mortgagor agrees to provide Mortgagee with originals or certified copies of such policies of insurance. Mortgagor further agrees to promptly furnish Mortgagee with copies of all renewal notices and, if requested by Mortgagee, with copies of receipts for paid premiums. Mortgagor shall provide Mortgagee with originals or certified copies of all renewal or replacement policies of insurance no later than fifteen (15) days before any such existing policy or policies should expire. If Mortgagor's insurance policies and renewals are held by another person, Mortgagor agrees to supply original or certified copies of the same to Mortgagee within the time periods required above.

Property Losses and Claims. Mortgagor agrees to immediately notify Mortgagee in writing of

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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any material casualty to or accident involving the Property, whether or not such casualty or loss is covered by insurance. Mortgagor further agrees to promptly notify Mortgagee's insurance company and to submit an appropriate claim and proof of claim to the insurance company in the event that any of the Property is lost, damaged, or destroyed as a result of an insured hazard. Mortgagee may submit such a claim and proof of claim to the insurance company on Mortgagor's behalf, should Mortgagor fail to do so promptly for any reason. Mortgagor hereby irrevocably appoints Mortgagee as its agent and attorney-in-fact, such agency being coupled with an interest, to make, settle and adjust claims under such policy or policies of insurance and to endorse the name of Mortgagor on any check or other item of payment for the proceeds thereof; it being understood, however, that unless one or more Events of Default exist under this Mortgage, Mortgagee will not settle or adjust any such claim without the prior approval of Mortgagor (which approval shall not be unreasonably withheld).

Insurance Proceeds. Mortgagee shall have the right to directly receive the proceeds of all insurance protecting the Property. In the event that Mortgagor should receive any such insurance proceeds, Mortgagor agrees to immediately turn over and to pay such proceeds directly to Mortgagee. All insurance proceeds may be applied, at Mortgagee's sole option and discretion, and in such a manner as Mortgagee may determine (after payment of all reasonable costs, expenses and attorney's fees necessarily paid or fees necessarily paid or incurred by Mortgagee in this connection), for the purpose of: (1) repairing or restoring the lost, damaged or destroyed Property; or (2) reducing the then outstanding balance of the Indebtedness and any Additional Advances that Mortgagee may have made on Mortgagor's behalf, together with interest thereon. Mortgagee's receipt of such insurance proceeds and the application of such proceeds as provided herein shall not, however, affect the lien of this Mortgage. Nothing under this section shall be deemed to excuse Mortgagor from its obligations to promptly repair, replace or restore any lost or damaged Property, whether or not the same may be covered by insurance, and whether or not such proceeds of insurance are available, and whether such proceeds are sufficient in amount to complete such repair, replacement or restoration to the satisfaction of Mortgagee. Furthermore, unless otherwise confirmed by Mortgagee in writing, the application or release of any insurance proceeds by Mortgagee shall not be deemed to cure or waive any Event of Default under this Mortgage.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Mortgagor shall promptly pay or cause to be paid when due, all taxes, local and special assessments, and governmental and other charges, as well as all public and/or private utility charges, of every type and description, that may from time to time be imposed, assessed and levied against the mortgaged Property or against Mortgagor.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Mortgagor agrees that Mortgagor's possession and use of the Property shall be governed by the following provisions:

Use of Property. Mortgagor shall not use the Property and shall not permit others to use the Property, for any purpose or purposes other than those previously disclosed to Mortgagee in writing, and in no event shall any of the Property be used in any manner that would damage, depreciate, or diminish its value, or that may result in a cancellation or termination of insurance coverage. Mortgagor additionally agrees not to do or to suffer to be done anything which may increase the risk of fire or other hazard to the Property or any part or parts thereof. Mortgagor shall not permit the Property, or any portion thereof, to be used by the public and others as may make possible a claim or claims of adverse usage, easement, servitude, right of way or habitation, or adverse possession by the public and others, or any implied, tacit or other dedication of the Property.

Compliance with Applicable Laws and Regulations. Mortgagor shall observe and abide by, and shall cause others to observe and abide by, all present and future

laws, ordinances, orders, rules, regulations, restrictions, and requirements of all federal, state and municipal governments, courts, departments, commissions, boards, agencies, and officers, affecting the Property and its use.

Mortgagor shall further promptly perform and observe, and shall cause others to promptly perform and observe, all the terms, covenants and conditions of any requirements, instruments and agreements affecting the Property, non-compliance with which may adversely affect the priority of this Mortgage, or which may impose any duty or obligation upon Mortgagor, or upon any lessee or other occupant of the Property. Mortgagor shall further do and cause to be done all things necessary to preserve intact and unimpaired any and all easements, servitudes, appurtenances and other interests and rights in favor of, or constituting any portion of, the

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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Property.

Compliance With Environmental Laws. Mortgagor represents and warrants to Mortgagee that: (1) During the period of Mortgagor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Mortgagor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Mortgagee in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Mortgagee in writing, (a) neither Mortgagor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Mortgagor authorizes Mortgagee and its agents to enter upon the Property to make such inspections and tests, at Mortgagor's expense, as Mortgagee may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee to Mortgagor or to any other person. The representations and warranties contained herein are based on Mortgagor's due diligence in investigating the Property for Hazardous Substances. Mortgagor hereby (1) releases and waives any future claims against Mortgagee for indemnity or

contribution in the event Mortgagor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Mortgagee against any and all claims, losses, liabilities, damages, penalties, and expenses which Mortgagee may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Mortgagor's ownership or interest in the Property, whether or not the same was or should have been known to Mortgagor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Mortgagee's acquisition of any interest in the Property, whether by foreclosure or otherwise.

ERISA. Mortgagor represents and warrants to Lender that the granting of this Mortgage and the consummation of any loan or loans or other transactions contemplated or secured hereby will not violate the provisions of, and will not constitute a prohibited transaction under the ERISA.

Alterations. Mortgagor shall not, without the prior written consent of Mortgagee, demolish, remove, construct, restore, add to or alter any building(s) or other improvements to or upon the Property, or any part or parts thereof, or consent to, or permit any such demolition, removal, construction, restoration, addition or alteration. Mortgagor shall further not, without the prior written consent of Mortgagee, remove or permit the removal of any present or future fixtures and other property forming part of the Property. Mortgagee may condition its consent to permit Mortgagor to demolish or to remove such improvements, fixtures and/or other property upon Mortgagor's agreement to replace the same with new improvements and/or fixtures of at least equal value then satisfactory to Mortgagee.

Abandonment of Property. Mortgagor shall not, nor shall Mortgagor permit others to abandon, commit waste, or destroy the Property, or any part or parts thereof.

Repairs and Maintenance. Mortgagor shall keep and maintain, and/or cause others to keep and maintain, the Property and the sidewalks and curbs adjoining the Property, in good order, repair and condition. Mortgagor shall further make and/or cause all necessary repairs to be made to the Property (including the repair and restoration of any portion of the Property that may have been damaged, lost or destroyed).

ENCUMBRANCES. The following provisions relating to Encumbrances on the Property are a part of this Mortgage:

Prior Encumbrances. To the extent applicable, Mortgagor shall fully and timely perform any and all of Mortgagor's obligations under any prior Encumbrances affecting the Property. Without limiting the foregoing, Mortgagor shall not commit or permit to exist any breach of or default under any such prior Encumbrances. Mortgagor shall further promptly notify Mortgagee

in writing upon the occurrence of any event or circumstances that would, or that might, result in a breach of or default under any such prior Encumbrance. Mortgagor shall further not modify or extend any of the terms of any prior Encumbrance or any indebtedness secured thereby,

Future Encumbrances. Mortgagor shall not, without the prior written consent of Mortgagee, grant any Encumbrance that may affect the mortgaged Property, or any part or parts thereof, nor shall Mortgagor permit or consent to any Encumbrance attaching to or being filed against any of the mortgaged Property in favor of anyone other than Mortgagee. Mortgagor shall further promptly pay when due all statements and charges of mechanics, materialmen, laborers and others incurred in connection with the alteration, improvement, repair and maintenance of the mortgaged Property, or otherwise furnish appropriate security or bond, so that no future Encumbrance may ever attach to or be filed against the Property or any of Mortgagor's Rights.

Notice of Encumbrances. Mortgagor shall immediately notify Mortgagee in writing upon the filing of any attachment, lien, judicial process, claim, or other Encumbrance. Mortgagor additionally agrees to notify Mortgagee immediately in writing upon the occurrence of any default, or event that with the passage of time, failure to cure, or giving of notice, might result in a default under any of Mortgagor's obligations that may be secured by any presently existing or future Encumbrance, or that might result in an Encumbrance affecting the mortgaged Property, or should any of the mortgaged Property be seized or attached or levied upon, or threatened by seizure or attachment or levy, by any person other than Mortgagee.

ADDITIONAL ADVANCES FOR SPECIFIC PURPOSES. Mortgagee shall have the right, within Mortgagee's sole option and discretion, to make Additional Advances on Mortgagor's behalf for the following purposes:

Insurance. If Mortgagor should for any reason fail to maintain insurance on the Property as required under this Mortgage, Mortgagee may make Additional Advances on Mortgagor's behalf for the purpose of purchasing and maintaining, and Mortgagee may purchase and maintain such insurance coverage (including insurance protecting only Mortgagee's interests in the Property).

Taxes. If Mortgagor should for any reason fail to promptly pay when due taxes, assessments and governmental and other charges as required under this Mortgage, Mortgagee may make Additional Advances on Mortgagor's behalf for the purpose of paying, and Mortgagee may pay, such taxes, assessments and governmental and other charges.

Repairs. If Mortgagor should for any reason fail to make all necessary repairs to the Property and to keep the Property in good working order and condition as

required under this Mortgage, Mortgagor agrees that Mortgagee may make Additional Advances on Mortgagor's behalf for the purpose of making, and Mortgagee may make, such repairs and maintenance to the Property as Mortgagee may deem to be necessary and proper within its sole discretion.

Encumbrances. If Mortgagor should permit or allow any Encumbrance to attach to or be recorded or filed against the Property, without having first obtained Mortgagee's prior written consent, or if Mortgagor should for any reason default under any obligation secured by any presently existing or future Encumbrance, Mortgagee may make Additional Advances on Mortgagor's behalf and take such other action or actions as Mortgagee may deem to be necessary and proper, within Mortgagee's sole discretion, to pay and fully satisfy such obligation and/or Encumbrance, to cure or rectify any such default or defaults, and to prevent the occurrence of any future defaults.

Other. Mortgagee may further make Additional Advances on Mortgagor's behalf and take such other action or actions as Mortgagee may deem to be necessary and proper, within Mortgagee's sole discretion, to cure and rectify any actions or inactions on Mortgagor's part, as are required under this Mortgage, that are not listed immediately above.

No Obligations. Nothing under this Mortgage shall obligate Lender to make any such Additional Advances or to take any of the above actions on Grantor's behalf, or as making Lender in any way responsible or liable for any loss, damage or injury to Grantor, or to any other person or persons, resulting from Lender's election not to advance such additional sums or to take such action or actions. In addition, Lender's election to make Additional Advances and/or to take the above actions on Grantor's behalf shall not constitute a waiver or forbearance by Lender of any Event at Default under this Mortgage.

OBLIGATION TO REPAY ADDITIONAL ADVANCES; INTEREST. Mortgagor unconditionally agrees to repay any and all Additional Advances that Mortgagee may elect to make on Mortgagor's behalf, together with interest as provided herein, immediately upon demand by Mortgagee. Mortgagor further agrees to pay Mortgagee interest on the amount of such Additional Advances at

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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the rate of interest provided under the above referenced promissory note or at the legal rate of interest provided under applicable law, whichever is greater from the date of each such Advance until all such Advances are repaid in full. Mortgagor's obligations to repay Additional Advances to Mortgagee, together with interest thereon, shall be secured by this Mortgage.

COLLATERAL ASSIGNMENT AND PLEDGE OF RIGHTS AS ADDITIONAL SECURITY. As additional

collateral security for the prompt and punctual payment and satisfaction of, and all Additional Advances that Mortgagee may make on Mortgagor's behalf pursuant to this Mortgage, together with interest thereon as provided herein, Mortgagor hereby assigns, pledges and grants Mortgagee a continuing security interest in and to:

Proceeds. Any and all proceeds derived or to be derived from the sale, transfer, conveyance, insurance loss, damage, destruction, condemnation, expropriation, or other taking of the Property, or other proceeds and proceeds of proceeds, and any unearned insurance premiums relating thereto, including the rights of Mortgagor to receive such proceeds directly from the obligor or obligors therefor, and to further enforce any rights that Mortgagor may have to collect such proceeds, including without limitation, Mortgagor's rights to commence an appropriate collection or enforcement action or actions incident thereto.

Leases, Rents and Profits. Any and all present and future leases or subleases affecting the mortgaged Property, and all rents, income, and profits therefrom, including without limitation, any and all rents, income, profits, bonuses, revenues, royalties, cash or security deposits, advance rentals and other payments, and further including Mortgagor's rights to enforce all present and future leases or subleases and to receive and enforce any rights that Mortgagor might have to collect rental and all other payments.

Deposits. Any and all present and future deposits or other security or advance payments, including rental payments, made by or on behalf of Mortgagor to others, with respect to (1) utility service regarding the Property, (2) cleaning, maintenance, repair, or similar services regarding the Property, (3) refuse removal or sewer service regarding the Property, (4) rentals of equipment, if any, used in the operation by or on behalf of Mortgagor regarding the Property, and/or (5) parking or similar services or rights regarding the Property.

Options. Any and all present and future options to sell or lease the mortgaged Property or any interest therein.

Contract Rights. To the extent assignable and/or transferrable, any and all of Mortgagor's present and future contract rights, instruments, documents, and general intangibles necessary for use or useful in connection with the ownership and operation of all or any part of the Property, whether now existing or hereafter created, or otherwise acquired by Mortgagor, and all liens, security interests, guaranties, remedies, privileges and other rights pertaining thereto, and all rights and remedies of any kind forming the subject matter thereof.

REPRESENTATIONS AND WARRANTIES CONCERNING RIGHTS. Mortgagor represents and warrants that: (A) Mortgagor is and/or will be the lawful owner of all of the Rights; (B) Mortgagor has the right to collaterally assign and pledge all such Rights to Mortgagee; (C) Mortgagor has not granted any previous security interests and has not otherwise encumbered any of Mortgagor's Rights; (D) to the extent applicable, all of Mortgagor's Rights that consist of or give rise to obligations of third parties, represent and/or will at all times continue to represent bona fide obligations of the obligors thereunder, free of any offset,

compensation, deduction or counterclaim. The collateral assignment and pledge of Mortgagor's Rights are further binding upon Mortgagor, as well as Mortgagor's heirs, successors, representatives and assigns, and are legally enforceable in accordance with the foregoing terms and conditions.

ADDITIONAL OBLIGATIONS OF MORTGAGOR WITH REGARD TO COLLATERALLY ASSIGNED AND PLEDGED RIGHTS. Mortgagor additionally agrees:

Prohibitions Regarding Property. So long as this Mortgage remains in effect, Mortgagor shall not, without the prior written consent of Mortgagee, sell, transfer, forego, assign, pledge, do anything or permit anything to be done that may in any way affect Mortgagee's security interests and rights in and to the mortgaged Property, or create or permit to exist any Encumbrance in or against any of the Property, in favor of any person other than Mortgagee.

No Settlement or Compromise. Mortgagor shall not, without the prior written consent of Mortgagee, compromise, settle, adjust or extend payment under or with regard to any of Mortgagor's Rights subject hereto.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Mortgagee to examine and audit Mortgagor's books and records at

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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all reasonable times.

Notice to Obligors. Upon request by Mortgagee, Mortgagor immediately will notify individual obligors and debtors under Mortgagor's Rights, advising such obligors and debtors of the fact that their respective agreements or obligations have been collaterally assigned and pledged to Mortgagee. In the event that Mortgagor should fail to provide such notices for any reason upon Mortgagee's request, Mortgagor agrees that Mortgagee may forward appropriate notices to such obligors and debtors either in Mortgagee's name or in Mortgagor's name.

Protection of Rights. Mortgagor will at all times protect and preserve all of Mortgagor's Rights.

Notice of Change of Names. Mortgagor will promptly notify Mortgagee of any change in Mortgagor's name, including any change to the assumed business names of Mortgagor. Mortgagor will also promptly notify Mortgagee of any change in Mortgagor's social security number or employer identification number. Mortgagor further agrees to notify Mortgagee in writing prior to any change in address or location of Mortgagor's principal office.

EVENTS OF DEFAULT. The following actions or inactions or both shall constitute Events of Default under this Mortgage:

Default Under Loan Agreement. If an Event of Default occurs or exists under the terms of Mortgagor's Loan Agreement in favor of Mortgagee.

Default Under the Note. Should Mortgagor default in the payment of principal or interest under the Note or any of the Indebtedness.

Default Under this Mortgage. Should Mortgagor violate, or fail to comply fully with any of the terms and conditions of, or default under this Mortgage.

Default Under other Agreements. Should any default occur or exist under any Related Document which directly or indirectly secures repayment of any of the Indebtedness.

Other Defaults in Favor of Mortgagee. Mortgagor or any guarantor defaults under any other loan, extension of credit, security right, instrument, document, or agreement, or obligation in favor of Mortgagee.

Insolvency. Should the suspension, failure or insolvency, however evidenced, of Mortgagor or any Guarantor occur or exist.

Readjustment of Indebtedness. Should proceedings for readjustment of indebtedness, reorganization, composition or extension under any insolvency law be brought by or against Mortgagor or any Guarantor.

Assignment for Benefit of Creditors. Should Mortgagor or any Guarantor file proceedings for a respite or make a general assignment for the benefit of creditors.

Receivership. Should a receiver of all or any part of Mortgagor's property, or the property of any Guarantor, be applied for or appointed.

Dissolution Proceedings. Proceedings for the dissolution or appointment of a liquidator of Mortgagor or any guarantor are commenced.

Failure to Pay Additional Advances. Mortgagor fails to pay any Additional Advance, together with interest thereon, as provided in this Mortgage, upon Mortgagee's demand.

False Statements. Any warranty, representation or statement made or furnished to Mortgagee by Mortgagor or on Mortgagor's behalf, the Note, is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insecurity. Mortgagee in good faith believes itself insecure with regard to repayment of the Indebtedness.

OTHER DEFAULTS. Mortgagor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the

Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Mortgagee and Mortgagor.

MORTGAGEE'S RIGHTS UPON DEFAULT. Should one or more Event of Default occur or exist under this Mortgage, as provided above, Mortgagee, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights and remedies provided by law:

Acceleration; Foreclosure. Mortgagee shall have the right, at its sole option, to accelerate the maturity and demand immediate payment in full of any and all of the Indebtedness. Mortgagee

#### MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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shall then have the right to commence appropriate foreclosure proceedings against the Property and against Mortgagor's Rights as provided in this Mortgage.

Seizure and Sale of Property. In the event that Mortgagee elects to commence appropriate Louisiana foreclosure proceedings under this Mortgage, Mortgagee may cause the Property, or any part or parts thereof, to be immediately seized and sold, whether in term of court or in vacation, under ordinary or executory process, in accordance with applicable Louisiana law, to the highest bidder for cash, with or without appraisal, and without the necessity of making additional demand upon or notifying Mortgagor or placing Mortgagor in default, all of which are expressly waived.

Confession of Judgment. For purposes of foreclosure under Louisiana executory process procedures, Mortgagor confesses judgment and acknowledges to be indebted to Mortgagee, up to the full amount of the Indebtedness in principal, interest, costs, expenses, reasonable attorneys' fees and other fees and charges. Mortgagor further confesses judgment and acknowledges to be indebted unto and in favor of Mortgagee in the amount of all Additional Advances that Mortgagee may make on Mortgagor's behalf pursuant to this Mortgage, together with interest thereon. To the extent permitted under applicable Louisiana law, Mortgagor additionally waives: (1) the benefit of appraisal as provided in Articles 2332, 2336, 2723, and 2724 of the Louisiana Code of Civil Procedure, and all other laws with regard to appraisal upon judicial sale; (2) the demand and three (3) days' delay as provided under Articles 2639 and 2721 of the Louisiana Code of Civil Procedure; (3) the notice of seizure as provided under Articles 2293 and 2721 of the Louisiana Code of Civil Procedure; (4) the three (3) days' delay provided under Articles 2331 and 2722 of the Louisiana Code of Civil Procedure; and (5) all other benefits provided under Articles 2331, 2722 and 2723 of the Louisiana Code of Civil Procedure and all other Articles not specifically mentioned above. Mortgagor further agrees that any declaration of fact made by

authentic act before a Notary Public and two witnesses, by a person declaring that such facts are within his or her knowledge, shall constitute authentic evidence of such facts for purposes of foreclosure under applicable Louisiana law and for purposes of La. R.S. 9:3504(D)(6) and La. R.S. 10:9-508, to the extent applicable.

Keeper. Should any or all of the Property be seized as an incident to an action for the recognition or enforcement of this Mortgage, by executory process, sequestration, attachment, writ of fieri facias or otherwise, Mortgagor hereby agrees that the court issuing any such order shall, if requested by Mortgagee, appoint Mortgagee, or any agent designated by Mortgagee or any person or entity named by Mortgagee at the time such seizure is requested, or any time thereafter, as Keeper of the Property as provided under La. R.S. 9:5136, et seq. Such a Keeper shall be entitled to reasonable compensation. Mortgagor agrees to pay the reasonable fees of such Keeper, which are hereby fixed at \$150.00 per hour, which compensation to the Keeper shall also be secured by this Mortgage in the form of an Additional Advance as provided in this Mortgage.

Declaration of Fact. Should it become necessary for Mortgagee to foreclose under this Mortgage, all declarations of fact, which are made under an authentic act before a Notary Public in the presence of two witnesses, by a person declaring such facts to lie within his or her knowledge, shall constitute authentic evidence for purposes of executory process and also for purposes of La. R.S. 9:3509.1, La. R.S. 9:3504(D)(6) and La. R.S. 10:9-508, where applicable.

Separate Sale of Mortgagor's Rights Following Default. Should one or more Event of Default occur or exist under this Mortgage, Mortgagee shall have the additional right, at its sole option, to separately sell the aforesaid Rights, or any part or parts thereof, at private or public sale, at such price or prices as Mortgagee may deem best, either for cash or for any other compensation, or on credit, or for future delivery, without the assumption of any credit risk. The sale of the aforesaid Rights may be without appraisal, the benefit of which is also expressly waived by Mortgagor. Mortgagee may exercise any other remedies with regard to Mortgagor's Rights as may be authorized under the Louisiana Commercial Laws (La. R.S. 10:9-101, et seq.).

Automatic Transfer of Rights. In the event of foreclosure under this Mortgage, or other transfer of title or assignment of the Property, or any part or parts thereof, in lieu of payment of the Indebtedness, whether in whole or in part, all policies of insurance and other Rights applicable to the foreclosed upon or transferred Property shall automatically inure to the benefit of and shall pass to the purchaser(s) or transferee(s) thereof, subject to the rights of the purchaser(s) or transferee(s) to reject such insurance coverage and/or Rights at its or their sole option and election.

Specific Performance. Mortgagee may, in addition to or in lieu of the foregoing remedies, in

Mortgagee's sole discretion, commence an appropriate action against Mortgagor seeking specific performance of any covenant contained in this Mortgage or in aid of the execution or enforcement of any power in this Mortgage granted.

Election of Remedies. Except as may be prohibited by applicable law, all of Mortgagee's rights and remedies, whether evidenced by this Mortgage or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Mortgagee to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Mortgagor under this Mortgage, after Mortgagor's failure to perform, shall not affect Mortgagee's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Mortgagee following an Event of Default, or in any way to limit or restrict the rights and ability of Mortgagee to proceed directly against Mortgagor and/or against any other co-maker, guarantor, surety or endorser of the Indebtedness, and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

MORTGAGEE'S RIGHT TO DIRECTLY COLLECT AND RECEIVE PROCEEDS AND PAYMENTS BEFORE OR AFTER DEFAULT. Mortgagee shall have the right, at its sole option and election, at any time, whether or not one or more Event of Default then exist under this Mortgage, to directly collect and receive all proceeds and/or payments arising under or in any way accruing from Mortgagor's Rights, as such amounts become due and payable. In order to permit the foregoing, Mortgagor unconditionally agrees to deliver to Mortgagee, immediately following demand, any and all of Mortgagor's records, ledger sheets, and other documentation, in the form requested by Mortgagee, with regard to Mortgagor's Rights and any and all proceeds and/or payments applicable thereto.

Mortgagee shall have the further right, whether or not an Event of Default then exists under this Mortgage, where appropriate and within Mortgagee's sole discretion, to file suit, either in Mortgagee's own name or in the name of Mortgagor, to collect any and all proceeds and payments that may then and/or in the future be due and owing under and/or as a result of such rights. Where it is necessary for Mortgagee to attempt to collect any such proceeds and/or payments from the obligors therefor, Mortgagee may compromise, settle, extend, or renew for any period (whether or not longer than the original period) any obligation or indebtedness thereunder or evidenced thereby, or surrender, release, or exchange all or any part of said obligation or indebtedness, without affecting the liability of Mortgagor under this Mortgage or under the Indebtedness. To that end, Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact, coupled with an interest and with full power of substitution, to take any and all such actions and any and all other actions permitted hereby, either in the name of Mortgagor or Mortgagee.

PROTECTION OF MORTGAGEE'S SECURITY RIGHTS. Mortgagor will be fully responsible for any losses that Mortgagee may suffer as a result of anyone other than Mortgagee asserting any rights or interest in or to the Property and/or Mortgagor's Rights collaterally assigned and pledged hereunder. Mortgagor agrees to appear in and to defend all actions or proceedings purporting to affect Mortgagee's security interests in any of the Property and/or Rights subject to this Mortgage and any of the rights and powers granted Mortgagee hereunder. In the event that Mortgagor fails to do what is required of it under this Mortgage, or if any action or proceeding is commenced naming Mortgagee as a party or affecting Mortgagee's security interests or the rights and powers granted under this Mortgage, then Mortgagee may, without releasing Mortgagor from any of its obligations under this Mortgage, do whatever Mortgagee believes to be necessary and proper within its sole discretion to protect the security of this Mortgage, including without limitation making Additional Advances on Mortgagor's behalf as provided herein. Should the reappraisal of the Property occur, whether to comply with appropriate regulatory requirements or otherwise, Mortgagor agrees to pay the costs of such appraisal or reappraisals or to reimburse Mortgagee for the costs thereof.

INDEMNIFICATION OF MORTGAGE. Mortgagor agrees to indemnify, to defend and to save and hold Mortgagee harmless from any and all claims, suits, obligations, damages, losses, costs, expenses (including, without limitation, Mortgagee's attorney's fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Mortgagee, its officers, directors, employees, and agents arising out of or in any manner occasioned by this Mortgage and the exercise of the rights and remedies granted Mortgagee hereunder. The foregoing indemnity provisions shall survive the cancellation of this Mortgage as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Mortgagee elects to exercise any of the remedies as provided under this Mortgage following default hereunder.

EXECUTION OF ADDITIONAL DOCUMENT. Mortgagor agrees to execute all additional

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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documents, instruments and agreements that Mortgagee may deem to be necessary and proper, within its sole discretion, in form and substance satisfactory to Mortgagee, to keep this Mortgage in effect, to better reflect the true intent of this Mortgage, and to consummate fully all of the transactions contemplated hereby and by any other agreement, instrument or document heretofore, now or at any time or times hereafter executed by Mortgagor and delivered to Mortgagee.

INSPECTION OF PROPERTY. Mortgagee and Mortgagee's designated representatives and

agents shall have the right at all reasonable times to examine and inspect the Property wherever located.

AUDITS. Mortgagee and its agents may also periodically conduct audits of Mortgagor's books and records that in any way pertain to the Property, the foregoing Rights and any part or parts thereof.

APPLICATION OF PAYMENTS. Mortgagor agrees that all payments and other sums and amounts received by Mortgagee under the Indebtedness or under this Mortgage, including, but not limited to, the net proceeds of any judicial or other sale, of any charter, management or other use of the Property by Mortgagee, of any claim for damages to the Property and of any insurance proceeds received by Mortgagee (except to the extent that such insurance proceeds are to be paid to Mortgagor pursuant to any other provisions of this Mortgage) shall be held and applied by Mortgagee from time to time in accordance with the terms of the Note.

TAXATION. In the event that there should be any change in law with regard to taxation of mortgages or the debts they secure, Mortgagor agrees to pay any taxes, assessments or charges that may be imposed upon Mortgagee as a result of this Mortgage.

ADDITIONAL REPRESENTATIONS AND WARRANTIES. Mortgagor further represents, warrants and covenants that:

Organization. Mortgagor is a limited liability company which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Delaware. Mortgagor is duly authorized to transact business in the State of Louisiana and all other states in which Mortgagor is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Mortgagor is doing business. Specifically, Mortgagor is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Mortgagor has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Mortgagor maintains an office at 1114 First Ave., New York, NY 10021. Unless Mortgagor has designated otherwise in writing, the principal office is the office at which Mortgagor keeps its books and records including its records concerning the Collateral. Mortgagor will notify Mortgagee prior to any change in the location of Mortgagor's state of organization or any change in Mortgagor's name. Mortgagor shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Mortgagor and Mortgagor's business activities.

Authorization. Mortgagor's execution, delivery, and performance of this Mortgage and all the Related Documents have been duly authorized by all necessary action by Mortgagor and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Mortgagor's articles of organization or membership agreements, or (b) any agreement or other instrument binding upon

Mortgagor or (2) any law, governmental regulation, court decree, or order applicable to Mortgagor or to Mortgagor's properties.

Consents and Approvals. If notice to or the consent or approval of any governmental body or authority, or any third party (including without limitation, any other creditor of Mortgagor) is now or any time hereafter required in connection with the execution, delivery and performance by Mortgagor of this Mortgage, then (1) with respect to all currently applicable requirements, such notice has been given and consent or approval obtained by Mortgagor prior to the execution hereof and written evidence thereof has been concurrently herewith delivered to Mortgagee, and (2) with respect to such requirements that shall at any time hereafter be imposed or become applicable, such notice will be given and such consent or approval will be obtained by Mortgagor prior to the time such failure to do so will constitute a violation of law or result in any breach, default or failure by Mortgagor under any contract or instrument, and written evidence thereof will at such time be delivered to Mortgagee.

ADDITIONAL WAIVERS. In granting this Mortgage, Mortgagor waives any and all homestead exemptions and other rights and all other exemptions from seizure or sale with regard to the Property to which Mortgagor may be entitled under the laws of the State of Louisiana. Mortgagor is

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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also waiving the production of Mortgage, Conveyance and any and all other Certificates and relieves and releases the Notary Public before whom this Mortgage was passed from all responsibility and liability in connection therewith.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. No amendment, modification, consent or waiver of any provision of this Mortgage, and no consent to any departure by Mortgagor therefrom, shall be effective unless the same shall be in writing signed by a duly authorized officer of Mortgagee, and then shall be effective only as to the specific instance and for the specific purpose for which given.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Effect of Waivers. Any failure or delay on the part of the Mortgagee to exercise any of the rights and remedies granted under this Mortgage or under any other

agreement or agreements by and between Mortgagor and Mortgagee, shall not have the effect of waiving any of Mortgagee's rights and remedies. Any partial exercise of any rights and remedies granted to Mortgagee shall furthermore not constitute a waiver of any of Mortgagee's other rights and remedies; it being Mortgagor's intent and agreement that all of Mortgagee's rights and remedies shall be cumulative in nature. Furthermore, any failure on the part of Mortgagee at any time or times hereafter to require strict performance by Mortgagor of any of the provisions, warranties, terms and conditions contained herein or in any other agreement, document or instrument now or hereafter executed by Mortgagor and delivered to Mortgagee, shall not waive, affect, or diminish the rights of Mortgagee to thereafter demand strict compliance and performance therewith and with respect to all other provisions, warranties, terms and conditions contained herein or therein. None of the warranties, conditions, provisions and terms contained in this Mortgage or any other agreement, document, or instrument now or hereafter executed by Mortgagor and delivered to Mortgagee, shall be deemed to have been waived by any act or knowledge of Mortgagee, its agents, directors, officers or employees; but only by an instrument in writing specifying such waiver, signed by a duly authorized officer of Mortgagee and delivered to Mortgagor. A waiver or forbearance on the part of Mortgagee as to one Event of Default shall not constitute a waiver or forbearance as to any other or subsequent default.

Successors and Assigns Bound; Solidary Liability. Subject to the limitations set forth herein on transfer of the Property, this Mortgage shall be binding upon and inure to the benefit of the parties, and their successors and assigns.

Governing Law. This Mortgage will be governed by, construed and enforced in accordance with federal law and the laws of the State of Louisiana. This Mortgage has been accepted by Mortgagee in the State of Louisiana.

Severability. If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Mortgage shall be construed and enforceable as if the illegal, invalid or unenforceable provision had never comprised a part of it, and the remaining provisions of this Mortgage shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Mortgage, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and legal, valid and enforceable.

WAIVER OF CERTIFICATES. The parties to this Mortgage hereby waive the production of mortgage, conveyance, tax, paving, chattel mortgage, assignment of accounts, and all other certificates and relieve and release the Notary before whom this Mortgage was passed from all responsibilities and liabilities in connection therewith.

WAIVE JURY. All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Louisiana Commercial Laws (La. R.S. 10: 9-101, et seq.):

Additional Advance. The words "Additional Advance" mean any and all additional sums that

#### MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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Mortgagee may advance on Mortgagor's behalf as provided under this Mortgage.

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Mortgagor or on Mortgagor's behalf on a line of credit or multiple advance basis under the terms and conditions of this Mortgage.

Borrower. The word "Borrower" means S & W New Orleans, L.L.C. and includes all co-signers and co-makers signing the Note.

Encumbrance. The word "Encumbrance" means individually, collectively and interchangeably any and all presently existing and/or future mortgages, liens, privileges and other contractual and/or statutory security interests and rights, of every nature and kind, whether in admiralty, at law, or in equity, that now and/or in the future may affect the Property or any part or parts thereof.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

ERISA. The word "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and including all regulations and published interpretations of the act.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the default section of this Mortgage.

GAAP. The word "GAAP" means generally accepted accounting principles.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means and includes all amounts identified in the Indebtedness section of this Mortgage.

Mortgage. The word "Mortgage" means this Multiple Indebtedness Mortgage as this Multiple Indebtedness Mortgage may be amended, supplemented, restated or otherwise modified from time to time.

Mortgagee. The word "Mortgagee" means Hibernia National Bank, Mortgagee's successors and assigns, and any future holder or holders of the Indebtedness or any interest therein.

Mortgagor. The word "Mortgagor" means individually, collectively and interchangeably S & W New Orleans, L.L.C., as well as any and all persons and entities subsequently purchasing the mortgaged Property, with or without assumption of this Mortgage.

Note. The word "Note" means the note or credit agreement dated May 26, 2004, in the principal amount of \$2,000,000.00 from S & W New Orleans, L.L.C. to Lender, together with all substitute or replacement notes therefor, as well as all renewals, extensions, modifications, refinancings, consolidations and substitutions of and for the note or credit agreement.

Property. The word "Property" means all of Mortgagor's right, title and interest in and to all the Property as described in the "Property Description" section of this Mortgage.

Real Property. The words "Real Property" mean the real immovable property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

MULTIPLE INDEBTEDNESS MORTGAGE (Continued)

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Rights. The word "Rights" means any and all of Mortgagor's additional rights collaterally assigned and pledged to Mortgagee as provided under this Mortgage.

THUS DONE AND PASSED, on the day, month and year first written above, in the presence of the undersigned Notary and the undersigned competent witnesses, who hereunto sign their names with Mortgagor after reading of the whole.

WITNESSES:

X / S / Anne Massey

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Witness Anne Massey

X / S / Merrick Rhodes

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Witness Merrick Rhodes

MORTGAGOR:

S & W NEW ORLEANS, L.L.C.

THE SMITH & WOLLENSKY RESTAURANT GROUP, INC., Member of S & W New Orleans, L.L.C.

By: / S / Alan M. Mandel

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Alan M. Mandel, Executive Vice President of The Smith & Wollensky Restaurant Group, Inc.

/ S / Maria Chang

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NOTARY PUBLIC

Maria Chang

No. 01CH6093157

Commission Expires June 2, 2007

Principal	Loan Date	Maturity	Loan No	Call/ Coll	Account	Officer	Initials
\$2,000,000	05-26-2004	05-26-2009				1263	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

<TABLE>  
<CAPTION>

<p>&lt;S&gt; Borrower: S &amp; W New Orleans, L.L.C. (TIN: 13-3932811) 1114 First Ave. New York, NY 10021</p>	<p>&lt;C&gt; Lender: Hibernia National Bank Attn: Loan Administration Dept. 934 Third Street Alexandria, LA 71301</p>
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Principal Amount: \$2,000,000.00      Interest Rate: 6.270%      Date of Note: May 26, 2004  
</TABLE>

PROMISE TO PAY. S & W New Orleans, L.L.C. ("Borrower") promises to pay to the order of Hibernia National Bank ("Lender"), in lawful money of the United States of America the sum of Two Million 5 00100 Dollars (U.S. \$2,000,000.00), together with simple interest at the rate of 6.270/o per annum assessed on the unpaid principal balance of this Note as outstanding from time to time, commencing on May 26, 2004 and continuing until this Note Is paid in full.

PAYMENT. Borrower will pay this loan on demand. Payment In full Is due Immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in 59 regular payments of \$17,271.50 each and one Irregular last payment estimated at \$1,547,656.61. Borrower's first payment is due June 26, 2004, and all subsequent payments are due on the same day of each month after that. Borrower's final payment due on May 26, 2009, may be greater If Borrower does not make payments as scheduled. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid Interest; then to principal; then to any late charges; and then to any unpaid collection costs. The annual interest rate for this Note is computed on a 365/360 basis; that Is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT. Other than Borrower s obligation to pay any prepayment penalty, Borrower may prepay this Note in full at any time by paying the then unpaid principal balance of this Note, plus accrued simple interest and any unpaid late charges through date of prepayment. If Borrower prepays this Note in full, or if Lender accelerates payment, Borrower understands that, unless otherwise required by law, any prepaid fees or charges will not be subject to rebate and will be earned by Lender at the time this Note is signed. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full",

'Without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to; Hibernia National Bank, P.O. Box 61540 New Orleans, IA 70161.

LATE CHARGE. If Borrower fails to pay any payment under this Note in full within 10 days of when due, Borrower agrees to pay Lender a late payment fee in an amount equal to 10.000% of the delinquent interest due or \$29.00, whichever is greater. Late charges will not be assessed following declaration of default and acceleration of the maturity of this Note.

INTEREST AFTER DEFAULT. If Lender declares this Note to be in default, Lender has the right prospectively to adjust and fix the simple interest rate under this Note until this Note is paid in full, as follows: (A) If the original principal amount of this Note is \$250,000 or less, the fixed default interest rate shall be equal to eighteen (18%) percent per annum, or three (3%) per cent per annum in excess of the interest rate under this Note, whichever is greater. (B) If the original principal amount of this Note is more than \$250,000, the fixed default interest rate shall be equal to twenty-one (21%) percent per annum, or three (3%) per cent per annum in excess of the interest rate under this Note at the time of default, whichever is greater.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Default Under Loan Agreement. If an event of default occurs or exists under the terms of Borrower's Loan Agreement in favor of Lender.

Payment Default. Borrower fails to make any payment when due under this Note.

Default Under Security Agreements. Should Borrower or any guarantor violate, or fail to comply fully with any of the terms and conditions of, or default under any security right, instrument, document, or agreement directly or indirectly securing repayment of this Note.

Other Defaults In Favor of Lender. Should Borrower or any guarantor of this Note default under any other loan, extension of credit, security right, instrument, document, or agreement, or obligation in favor of Lender.

Default in Favor of Third Parties. Should Borrower or any guarantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may affect any property or other collateral directly or indirectly securing repayment of this Note.

Insolvency. Should the suspension, failure or insolvency, however evidenced, of Borrower or any Guarantor of this Note occur or exist. Death or Interdiction. Should any guarantor of this Note die or be interdicted.

Readjustment of Indebtedness. Should proceedings for readjustment of indebtedness, reorganization, bankruptcy, composition or extension under any insolvency law be brought by or against Borrower or any guarantor.

Assignment for Benefit of Creditors. Should Borrower or any guarantor file proceedings for a respite or make a general assignment for the benefit of creditors.

Receivership. Should a receiver of all or any part of Borrower's property, or

the property of any guarantor, be applied for or appointed. Dissolution Proceedings. Proceedings for the dissolution or appointment of a liquidator of Borrower or any guarantor are commenced.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Material Adverse Change. Should any material adverse change occur in the financial condition of Borrower or any guarantor of this Note or should any material discrepancy exist between the financial statements submitted by Borrower or any guarantor and the actual financial condition of Borrower or such guarantor.

Insecurity. Lender in good faith believes itself insecure with regard to repayment of this Note.

LENDER'S RIGHTS UPON DEFAULT. Should any one or more default events occur or exist under this Note as provided above, Lender shall have the right, at Lender's sole option, to declare formally this Note to be in default and to accelerate the maturity and insist upon immediate payment in full of the unpaid principal balance then outstanding under this Note, plus accrued interest, together with reasonable attorneys' fees, costs, expenses and other fees and charges as provided herein. Lender shall have the further right, again at Lender's sole option, to declare formal default and to accelerate the maturity and to insist upon immediate payment in full of each and every other loan, extension of credit, debt, liability and/or obligation of every nature and kind that Borrower may then owe to Lender, whether direct or indirect or by way of assignment, and whether absolute or contingent, liquidated or unliquidated, voluntary or involuntary, determined or undetermined, secured or unsecured, whether Borrower is obligated alone or with others on a "solidary" or "joint and several" basis, as a principal obligor or otherwise, all without further notice or demand, unless Lender shall otherwise elect.

ATTORNEYS' FEES; EXPENSES. If Lender refers this Note to an attorney for collection, or files suit against Borrower to collect this Note, or if Borrower files for bankruptcy or other relief from creditors, Borrower agrees to pay Lender's reasonable attorneys' fees in an amount not exceeding 25.000% of the principal balance due on the loan.

WAIVE JURY. BORROWER AND LENDER HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER BORROWER OR LENDER AGAINST THE OTHER.

GOVERNING LAW. This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Louisiana. This Note has been accepted by Lender In the State of Louisiana.

NSF CHECK CHARGE. In the event that Borrower makes any payment under this Note by check and Borrower's check is returned to Lender unpaid due to nonsufficient funds in Borrower's deposit account, Borrower agrees to pay Lender an additional NSF check charge in an amount of \$29.00.

PROMISSORY NOTE (Continued)

DEPOSIT ACCOUNTS. As collateral security for repayment of this Note and all renewals and extensions, as well as to secure any and all other loans, notes, indebtedness and obligations that Borrower may now and in the future owe to Lender or incur in Lender's favor, whether direct or indirect, absolute or contingent, due or to become due, of any nature and kind whatsoever (with the exception of any indebtedness under a consumer credit card account), and to the extent permitted by law, Borrower is granting Lender a continuing security interest in any and all funds that Borrower may now and in the future have on deposit with Lender or in certificates of deposit or other deposit accounts as to which Borrower is an account holder (with the exception of IRA, pension, and other tax-deferred deposits). Borrower further agrees that, to the extent permitted by law, Lender may at any time apply any funds that Borrower may have on deposit with Lender or in certificates of deposit or other deposit accounts as to which Borrower is an account holder against the unpaid balance of this Note and any and all other present and future indebtedness and obligations that Borrower may then owe to Lender, in principal, interest, fees, costs, expenses, and reasonable attorneys' fees.

FINANCIAL STATEMENTS. Borrower agrees to provide Lender with such financial statements and other related information at such frequencies and in such detail as Lender may reasonably request.

WAIVERS. Borrower and each guarantor of this Note hereby waive demand, presentment for payment, protest, notice of protest and notice of nonpayment, and all pleas of division and discussion, and severally agree that their obligations and liabilities to Lender hereunder shall be on a "solidary" or "joint and several" basis. Borrower and each guarantor further severally agree that discharge or release of any party who is or may be liable to Lender for the indebtedness represented hereby, or the release of any collateral directly or indirectly securing repayment hereof, shall not have the effect of releasing any other party or parties, who shall remain liable to Lender, or of releasing any other collateral that is not expressly released by Lender. Borrower and each guarantor additionally agree that Lender's acceptance of payment other than in accordance with the terms of this Note, or Lender's subsequent agreement to extend or modify such repayment terms, or Lender's failure or delay in exercising any rights or remedies granted to Lender, shall likewise not have the effect of releasing Borrower or any other party or parties from their respective obligations to Lender, or of releasing any collateral that directly or indirectly secures repayment hereof. In addition, any failure or delay on the part of Lender to exercise any of the rights and remedies granted to Lender shall not have the effect of waiving any of Lender's rights and remedies. Any partial exercise of any rights and/or remedies granted to Lender shall furthermore not be construed as a waiver of any other rights and remedies; it being Borrower's intent and agreement that Lender's rights and remedies shall be cumulative in nature. Borrower and each guarantor further agree that, should any default event occur or exist under this Note, any waiver or forbearance on the part of Lender to pursue the rights and remedies available to Lender, shall be binding upon Lender only to the extent that Lender specifically agrees to any such waiver or forbearance in writing. A waiver or forbearance on the part of Lender as to one default event shall not be construed as a waiver or forbearance as to any other default. Borrower and each guarantor of this Note further agree that any late charges provided for under this Note will not be charges for deferral of time for payment and will not and are not intended to compensate Lender's for a grace or cure period, and no such deferral, grace or cure period has or will be granted to Borrower in return for the imposition of any late charge. Borrower recognizes that Borrower's failure to make timely payment of amounts due under this Note will result in damages to Lender, including but not limited to Lender's loss of the use of amounts due, and Borrower agrees that any late charges imposed by Lender hereunder will represent reasonable compensation to Lender for such damages. Failure to pay in full any installment or payment

timely when due under this Note, whether or not a late charge is assessed, will remain and shall constitute an Event of Default hereunder.

SUCCESSORS AND ASSIGNS LIABLE. Borrower's and each guarantor's obligations and agreements under this Note shall be binding upon Borrower's and each guarantor's respective successors, heirs, legatees, devisees, administrators, executors and assigns. The rights and remedies granted to Lender under this Note shall inure to the benefit of Lender's successors and assigns, as well as to any subsequent holder or holders of this Note.

CAPTION HEADINGS. Caption headings in this Note are for convenience purposes only and are not to be used to interpret or define the provisions of this Note.

SEVERABILITY. If any provision of this Note is held to be invalid, illegal or unenforceable by any court, that provision shall be deleted from this Note and the balance of this Note shall be interpreted as if the deleted provision never existed.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's successors, heirs, legatees, devisees, administrators, executors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Hibernia National Bank, Loan Services, P.O. Box 61007 New Orleans, LA 70161

APPLICABLE LENDING LAW. This business or commercial Note is subject to La. R.S. 9:3509, et seq.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER:

S & W NEW ORLEANS, LL.C.

THE SMITH & WOLLENSKY RESTAURANT GROUP, INC., Member of S & W New Orleans, L.L.C.

By: / S/ Alan M. Mandel

-----  
Alan M Mandel, Executive Vice President of The  
Smith & Wollensky Restaurant Group, Inc.

Borrower: S & W New Orleans, LLC. (TIN: 13-3932811)  
1114 First Avenue  
New York, NY 10021

Lender: Hibernia National Bank  
Attn:  
Loan Administration Dept.  
934 Third Street  
Alexandria, LA 71301

Guarantor: The Smith & Wollensky Restaurant Group, Inc.  
(TIN; 58-2350980)  
1114 First Ave.  
New York, NY 10021

MOUNT OF GUARANTY. The amount of this Guaranty is Unlimited.

CONTINUING UNLIMITED GUARANTY. For good and valuable consideration, The Smith & Wollensky Restaurant Group, Inc. ("Guarantor") absolutely and unconditionally guarantees and promises to pay to Hibernia National Bank ("Lender") or its order, on demand, in legal tender of the United States of America, the Indebtedness (as that term is defined below) of S & W New Orleans, LLC, ("Borrower") to Lender on the terms and conditions set forth in this Guaranty. Under this Guaranty, the liability of Guarantor is unlimited and the obligations of Guarantor are continuing.

CONTINUING GUARANTY. THIS IS A CONTINUING GUARANTY AGREEMENT UNDER WHICH GUARANTOR AGREES TO GUARANTEE PAYMENT OF BORROWER'S PRESENT AND FUTURE INDEBTEDNESS IN FAVOR OF LENDER ON A CONTINUING BASIS. Guarantor's obligations and liability under this Agreement shall be open and continuous in effect. Guarantor intends to and does hereby guarantee at all times the prompt and punctual payment, performance and satisfaction of all of Borrower's present and future indebtedness in favor of Lender. Accordingly, any payments made on Borrower's Indebtedness will not discharge or diminish the obligations and liability of Guarantor under this Agreement for any remaining and succeeding indebtedness of Borrower in favor of Lender.

INDEBTEDNESS GUARANTEED. The word "Indebtedness" as used in this Guaranty means individually, collectively, interchangeably and without limitation any and all present and future loans, loan advances, extensions of credit, obligations and/or liabilities that Borrower may now and/or in the future owe to and/or incur in favor of Lender, whether direct or indirect, or by way of assignment or purchase of a participation interest, and whether absolute or contingent, voluntary or involuntary, determined or undetermined, liquidated or unliquidated, due or to become due, secured or unsecured, and whether Borrower may be liable

individually, jointly or solidarily with others, whether primarily or secondarily, or as a guarantor or otherwise, and whether now existing or hereafter arising, of every nature and kind whatsoever, in principal, interest, costs, expenses and attorneys' fees and other fees and charges, including without limitation Borrower's Indebtedness and obligations under a certain commercial loan agreement and Note in favor of Lender dated May 26, 2004 in the fixed principal amount of U.S. \$2,000,000.00. In addition, all interest thereon, costs, expenses, attorneys' fees and other fees and charges related thereto under Borrower's Indebtedness shall be fully guaranteed hereunder.

JOINT, SEVERAL AND SOLIDARY LIABILITY. Guarantor's obligations and liability under this Guaranty shall be on a "solidary" or "joint and several" basis along with Borrower to the same degree and extent as if Guarantor had been and/or will be a co-borrower, co-principal obligor and/or co-maker Borrower's indebtedness. In the event that there is more than one Guarantor under this Guaranty, or In the event that there are other guarantors, endorsers or sureties of all or any portion of Borrower's Indebtedness, Guarantor's obligations and liability hereunder shall further be on a "solidary" or "joint and several" basis along with such other guarantors, endorsers and/or sureties,

DURATTON OF GUARANTY. This Agreement and Guarantor's obligations and liability hereunder shall remain in full force and effect until such time as this Agreement may be cancelled or otherwise terminated by Lender under a written cancellation instrument in favor of Guarantor (subject to the automatic reinstatement provisions herein below). It is anticipated that fluctuations may occur In the aggregate amount of Borrower's Indebtedness guaranteed under this Agreement and it is specifically acknowledged and agreed to by Guarantor that reductions in the amount of Borrower's Indebtedness, even to zero (\$0.00) dollars, prior to Lender's written cancellation of this Agreement, shall not constitute or give rise to a termination of this Agreement.

CANCELLATION OF AGREEMENT; EFFECT. Unless otherwise indicated under such a written cancellation instrument, Lender's agreement to terminate or otherwise cancel this Guaranty shall affect only, and shall be expressly limited to, Guarantor's continuing obligations and liability to guarantee Borrower's Indebtedness incurred, originated and/or extended (without prior commitment) after the date of such a written cancellation instrument, with Guarantor remaining fully obligated and liable under this Guaranty for any and all of Borrower's Indebtedness incurred, originated, ended, or committed to prior to the date of such a written cancellation instrument. Nothing under this Guaranty or under any other agreement or understanding by and between Guarantor and Lender, shall in any way obligate, or be construed to obligate, Lender to agree to the subsequent termination or cancellation of Guarantor's obligations and liability hereunder; it being fully understood and agreed to by Guarantor that Lender has and intends to continue to rely on Guarantor's assets, income and financial resources in extending credit and other Indebtedness to and in favor

of Borrower, and that to release Guarantor from Guarantor's continuing obligations and liabilities under this Guaranty would so prejudice Lender that Lender may, within its sole and uncontrolled discretion and judgment, refuse to release Guarantor from any of Guarantor's continuing obligations and liability under this Guaranty for any reason whatsoever as long as any of Borrower's Indebtedness remains unpaid and outstanding, or

otherwise.

DEFAULT. Should any event of default occur or exist under any of Borrower's Indebtedness in favor of Lender, Guarantor unconditionally and absolutely agrees to pay Lender the then unpaid amount of Borrower's Indebtedness, in principal, interest, costs, expenses, attorneys' fees and other fees and charges. Such payment or payments shall be made at Lender's offices indicated above, immediately following demand by Lender.

GUARANTOR'S WAIVERS. Guarantor hereby waives;

(A) Notice of Lender's acceptance of this Guaranty.

(B) Presentment for payment of Borrower's Indebtedness, notice of dishonor and of nonpayment, notice of intention to accelerate, notice of acceleration, protest and notice of protest, collection or institution of any suit or other action by Lender in collection thereof, including any notice of default in payment thereof, or other notice to, or demand for payment thereof, on any party.

(C) Any right to require Lender to notify Guarantor of any nonpayment relating to any collateral directly or indirectly securing Borrower's Indebtedness, notice of any action or non-action on the part of Borrower, Lender, or any other guarantor, surety or endorser of Borrower's Indebtedness, or notice of creation of any new or additional Indebtedness subject to this Guaranty.

(D) Any rights to demand or require collateral security from the Borrower or any other person as provided under applicable Louisiana law or otherwise.

(E) Any right to require Lender to notify Guarantor of the terms, time and place of any public or private sale of any collateral directly or indirectly during Borrower's Indebtedness.

(F) Any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, or any action in lieu of foreclosure.

(G) Any election of remedies by Lender that may destroy or impair Guarantor's subrogation rights or Guarantor's right to proceed for reimbursement against

Borrower or any other guarantor, surety or endorser of Borrower's Indebtedness, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging Borrower's Indebtedness.

(H) Any disability or other defense of Borrower, or any other guarantor, surety or endorser, or any other person, or by reason of the cessation from any cause whatsoever, other than payment in full of Borrower's Indebtedness.

(I) Any statute of limitations or prescriptive period, if at the time an action or suit brought by Lender against Guarantor is commenced, there is any outstanding Indebtedness of Borrower to Lender which is

barred by any applicable statute of limitations or prescriptive period.

Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences, and that, under the circumstances, such waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law.

GUARANTOR'S SUBORDINATION OF RIGHTS. In the event that Guarantor should for any reason (A) advance or lend monies to Borrower, whether not such funds are used by Borrower to make payment(s) under Borrower's Indebtedness, or (B) make any payment(s) to Lender or others for and

COMMERCIAL GUARANTY (Continued)

Page 2

on behalf of Borrower under Borrower's Indebtedness, or (C) make any payment to Lender in total or partial satisfaction of Borrower's obligations and liabilities under this Agreement, or (D) if any of Borrower's property is used to pay or satisfy any of Borrower's Indebtedness, Guarantor hereby agrees that any and all rights that Guarantor may have or acquire to collect from or to be reimbursed by Borrower (or from or by any other guarantor, endorser surety of Borrower's Indebtedness), whether Guarantor's rights of collection or reimbursement arise by way of subrogation to the rights of Lender or otherwise, shall in all respects, whether or not Borrower is presently or subsequently becomes insolvent, be subordinate, inferior and junior to the rights Lender to collect and enforce payment, performance and satisfaction of Borrower's then remaining Indebtedness, until such time as Borrower's Indebtedness is fully paid and satisfied. In the event of Borrower's insolvency or consequent liquidation of Borrower's assets, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to Borrower's then remaining

Indebtedness. Guarantor hereby signs to Lender all claims which it may have or acquire against Borrower or any assignee or trustee of Borrower in bankruptcy; provided that, such assignment shall be effective only for the purpose of assuring to Lender full payment of Borrower's Indebtedness guaranteed under this Agreement.

If now or hereafter Borrower is or shall become insolvent and Borrower's Indebtedness shall not at all times until paid be fully secured by collateral pledged by Borrower, Guarantor hereby forever waives and gives up to favor of Lender and Borrower, and Lender's and Borrower's respective predecessors, any claim or right to payment Guarantor may now have or hereafter have or acquire against Borrower, by subrogation or otherwise, so that no time shall Guarantor be or become a "creditor" of Borrower within the meaning of 11 U.S.C, section 547(b). or any successor provision of the Federal bankruptcy laws.

GUARANTOR'S RECEIPT OF PAYMENTS. Guarantor further agrees to refrain from attempting to collect and/or enforce any of Guarantor's collection and/or reimbursement rights against Borrower (or against any other guarantor, surety or endorser of Borrower's Indebtedness), arising by

way of subrogation or otherwise, until such time as all of Borrower's then remaining Indebtedness in favor of Lender is fully paid and satisfied. In the event at Guarantor should for any reason whatsoever receive any payments from Borrower (or any other guarantor, surety or endorser of Borrower's Indebtedness) that Borrower (or such a third party) may owe to Guarantor for any of the reasons stated above, Guarantor agrees to accept such payment(s) in trust for and on behalf of Lender, advising Borrower (or the third party payee) of such fact. Guarantor further unconditionally agrees to immediately deliver such funds to Lender, with such funds being held by Guarantor over any Interim period, in trust for Lender. In the event that Guarantor should for any reason whatsoever receive any such funds from Borrower (or any third party), and Guarantor should deposit such funds in one or more of Guarantor's deposit accounts, no matter where located, Lender shall have the right to attach any and all of Guarantor's deposit accounts which such funds were deposited, whether or not such funds were commingled with other monies of Guarantor, and whether or not such funds then remain on deposit in such an account or accounts. To this end and to secure Guarantor's obligations under the Guaranty, Guarantor collaterally signs and pledges to Lender, and grants to Lender a continuing security interest in, any and all of Guarantor's present and future rights, title and interest in and to all monies that Guarantor may now and/or in the future maintain on deposit with banks, savings and loan associations and other entities (other than tax deferred accounts with Lender), in which Guarantor may at any time deposit any such funds that may be received from Borrower (or any other guarantor, endorser or surety of Borrower's Indebtedness) in favor of Lender.

DEPOSIT ACCOUNTS. As collateral security for repayment of Guarantor's obligations hereunder and under any additional guaranties previously granted or

to be granted by Guarantor in the future, and additionally as collateral security for any present and future Indebtedness of Guarantor in favor Lender (with the exception of any indebtedness under a consumer credit card account), and to the extent permitted by law, Guarantor is granting under a continuing security interest in any and all funds that Guarantor may now and in the future have on deposit with Lender or in certificates of deposit or other deposit accounts as to which Guarantor in an account holder (with the exception of IRA, pension, and other tax-deferred deposits). Guarantor further agrees that, to the extent permitted by law, Lender may at any time apply any funds that Guarantor may have on deposit with Lender in certificates of deposit or other deposit accounts as to which Guarantor is an account holder against the unpaid balance of any and all other present and future obligations and Indebtedness of Guarantor to Lender, in principal, interest, fees, costs, expenses, and attorneys' fees.

ADDITIONAL COVENANTS. Guarantor agrees that Lender may, at its sole option, at any time, and from time to time, without the consent of or notice Guarantor, or any of them, or to any other party, and without incurring any responsibility to Guarantor or to any other party, and without impairing or leasing any of Guarantor's obligations or liabilities under this Guaranty:

(A) Make additional secured and/or unsecured loans to Borrower.

(B) Discharge, release or agree not to sue any party (including, but not limited to, Borrower or any other guarantor, surety, or endorser of

Borrower's Indebtedness), who to or may be liable to Lender for any of Borrower's Indebtedness.

(C) Sell, exchange, release, surrender, realize upon, or otherwise deal with, in any manner and in any order, any collateral directly or indirectly securing repayment of any of Borrower's Indebtedness.

(D) Alter, renew, extend, accelerate, or otherwise change the manner, place, terms and/or times of payment or other terms of Borrower's Indebtedness, or any part thereof, including any increase or decrease in the rate or rates of interest on any of Borrower's Indebtedness.

(E) Settle or compromise any of Borrower's Indebtedness.

(F) Subordinate and/or agree to subordinate the payment of all or any part of Borrower's Indebtedness, or Lender's security rights in any collateral directly or indirectly securing any such indebtedness, to the payment and/or security rights of any other present and/or future creditors of Borrower.

(G) Apply any payments and/or proceeds to any of Borrower's Indebtedness In such priority or with such preferences as Lender may determine in its sole

discretion, regardless of which of Borrower's Indebtedness then remains unpaid.

(H) Take or accept any other collateral security or guaranty for any or all of Borrower's Indebtedness.

(I) Enter into, deliver, modify, amend, or waive compliance with, any instrument or arrangement evidencing, securing or otherwise affecting, all or any part of Borrower's Indebtedness.

NO IMPAIRMENT OF GUARANTOR'S OBLIGATIONS. No course of dealing between Lender and Borrower (or any other guarantor, surety or endorser of Borrower's Indebtedness), nor any failure or delay on the part of Lender to exercise any of Lender's rights and remedies under this Guaranty or any other agreement or agreements by and between Lender and Borrower (or any other guarantor, surety or endorser), shall have the effect of impairing or releasing Guarantor's obligations and liabilities to Lender, or of waiving any of Lender's rights and remedies under this Guaranty or otherwise. Any partial exercise of any rights and remedies granted to Lender shall furthermore not constitute a waiver of any of Lender's other rights and remedies; it being Guarantor's intent and agreement that Lender's rights and remedies shall be cumulative in nature. Guarantor further agrees that, should Borrower default under any of its Indebtedness, any waiver or forbearance on the part of Lender to pursue Lender's available rights and remedies shall be binding upon Lender only to the extent that Lender specifically agrees to such waiver or forbearance in writing. A waiver or forbearance on the part of Lender as to one event of default shall not constitute a waiver or forbearance as to any other default.

NO RELEASE OF GUARANTOR. Guarantor's obligations and liabilities under this Guaranty shall not be released, impaired, reduced, or otherwise

affected by, and shall continue in full force and effect notwithstanding the occurrence of any event, including without limitation any one or more of the following events:

(A) The death, insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution, or lack of authority (whether corporate, partnership or trust) of Borrower (or any person acting on Borrower's behalf), or of any other guarantor, surety or endorser of Borrower's Indebtedness.

(B) Any payment by Borrower, or any other party, to Lender that is held to constitute a preferential transfer or a fraudulent conveyance under any applicable law, or any such amounts or payment which, for any reason, Lender is required to refund or repay to Borrower or to any other person.

(C) Any dissolution of Borrower, or any sale, lease or transfer of all or any part of Borrower's assets.

(D) Any failure of Lender to notify Guarantor of the making of additional loans or other extensions of credit in reliance on this Guaranty.

AUTOMATIC REINSTATEMENT. This Guaranty and Guarantor's obligations and liabilities hereunder shall continue to be effective, and/or shall automatically and retroactively be reinstated, if a release or discharge has occurred, or if at any time, any payment or part thereof to Lender with respect any of Borrower's Indebtedness, is rescinded or must otherwise be restored by Lender pursuant to any insolvency, bankruptcy, reorganization, receivership, or any other debt relief granted to Borrower or to any other party to Borrower's Indebtedness or any such security therefor. In the event at Lender must rescind or restore any payment received in total or partial satisfaction of Borrower's Indebtedness, any prior release or discharge from the terms of this Guaranty given to Guarantor shall be without effect, and this Guaranty and Guarantor's obligations and liabilities hereunder shall automatically and retroactively be renewed and/or reinstated and shall remain in full force and effect to the same degree and extent as it such a release discharge had never been granted. It is the intention of Lender and Guarantor that Guarantor's obligations and liabilities hereunder shall not be discharged except by Guarantor's full and complete performance and satisfaction of such obligations and liabilities; and then only to the extent of such performance.

ORGANIZATION. Guarantor is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing understand by virtue of the laws of the State of Delaware. Guarantor is duly authorized to transact business in the State of Louisiana and all other states in which Guarantor is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Guarantor is doing business. Specifically, Guarantor is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify valid have a material adverse effect on its business or financial condition. Guarantor's guaranty of Borrower's Indebtedness does not violate

COMMERCIAL GUARANTY

(Continued)

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Guarantor's Articles of Incorporation or Bylaws. Guarantor has taken all actions necessary to authorize the execution, delivery and performance of this Guaranty. Guarantor shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Guarantor and Guarantor's business activates.

PRESENTATIONS AND WARRANTIES BY GUARANTOR. Guarantor represents and warrants that

(A) Guarantor has the lawful power to own its properties and to engage in its business as presently conducted.

(B) Guarantor's guaranty of Borrower's Indebtedness and Guarantor's execution, delivery and performance of this Guaranty are not in violation of any laws and will not result in a default under any contract, agreement, or instrument to which Guarantor is a party, or by which Guarantor or its property may be bound.

(C) Guarantor has agreed and consented to execute this Guaranty and to guarantee Borrower's Indebtedness in favor of Lender, at Borrower's request and not at the request of Lender.

(D) Guarantor will receive and/or has received a direct or indirect material benefit from the transactions contemplated herein and/or arising out of Borrower's Indebtedness.

(E) This Guaranty, when executed and delivered to Lender, will constitute a valid, legal and binding obligation of Guarantor, enforceable in accordance with its terms.

(F) Guarantor has established adequate means of obtaining information from Borrower on a continuing basis regarding Borrower's financial condition.

(G) Lender has made no representations to Guarantor as to the creditworthiness of Borrower.

ADDITIONAL OBLIGATIONS OF GUARANTOR. So long as this Guaranty remains in effect. Guarantor will not, without Lender's prior written consent, sell, lease, assign, pledge, hypothecate, encumber, transfer, or otherwise dispose of all or substantially all of Guarantor's assets. Guarantor further agrees to keep adequately informed of all facts, events and circumstances which might in any way affect Guarantor's risks under this Guaranty without in any way relying upon Lender to advise Guarantor of the same. Lender shall have no obligation whatsoever to disclose to Guarantor any information acquired in the course of its relationship with Borrower or otherwise.

GUARANTOR'S FINANCIAL STATEMENTS. Guarantor agrees to furnish Lender with the following:

Annual Statements. As soon as available, but in no event later than sixty (60) days after the end of each fiscal year. Guarantor's balance sheet and income statement for the year ended, audited by a certified public accountant satisfactory to Lender.

Tax Returns. As soon as available after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by

a tax professional satisfactory to Lender.

Financial reports required to be provided under the Guaranty shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Guarantor as being true and correct.

Transfer of Indebtedness. This Guaranty is for the benefit of Lender and for such other person or persona as may from time to time become or be the holders of all or any part of Borrower's Indebtedness. This Guaranty shall be transferrable and negotiable with the same force and effect and to the same extent as Borrower's Indebtedness may be transferrable; It being understood and agreed to by Guarantor that, upon any transfer or assignment and or any part of Borrower's Indebtedness, the holder of such Indebtedness shall have all of the rights and remedies granted to Lender under this Guaranty. Guarantor further agrees that, upon any transfer of an or any portion of Borrower's Indebtedness, Lender may transfer and deliver any and such collateral securing repayment of such Indebtedness (including, but not limited to, any collateral provided by Guarantor) to the transferee of such indebtedness, and such collateral shall secure any and all of Borrower's Indebtedness in favor of such a transferee. Guarantor additionally agrees that, after any such transfer or assignment has taken place, Lender shall be fully discharged from any and all liability and responsibility to Borrower and Guarantor with respect to such collateral, and the transferee thereafter shall be vested with all the powers and rights with respect to such collateral.

Consent to Participation. Guarantor recognizes and agrees that Lender may, from time to time, one or more times, transfer all or any part of Borrower's Indebtedness through sales of participation interests in such Indebtedness to one or more third party lenders. Guarantor specifically agrees and consents to all such transfers and assignments, and Guarantor further waives any subsequent notice of such transfers and assignments as may be provided under Louisiana law. Guarantor additionally agrees that the purchaser of any participation interest in Borrower's Indebtedness will be considered as the absolute owner of a percentage interest of such indebtedness and that such a purchaser will have all of the rights granted under any participation agreement governing the sale of such a participation interest, Guarantor waives any rights of offset that Guarantor may have against Lender and/or any purchaser of such a participation interest, and Guarantor unconditionally agrees that either Lender or such a purchaser may enforce Guarantor's obligations and liabilities under this Guaranty, irrespective of the failure or insolvency of Lender or any such purchaser.

Notices. Any notice provided in this Guaranty must be in writing and will be considered as given on the day as is delivered by hand or deposited in the U.S. mail, postage prepaid, addressed to the person to

whom the notice is to be given at the address shown above or at such other

addresses as any party may designate to the other in writing. If there is more than one Guarantor under this Guaranty, notice to any Guarantor shall constitute notice to Guarantors.

**Additional Guaranties.** Guarantor recognizes and agrees that Guarantor may have previously granted, and may in the future grant one or more additional guaranties of the indebtedness and obligations in favor of Lender. Should this occur, the execution of this Guaranty and any additional Guaranties on Guarantor's part will not be construed as a cancellation of this Guaranty or any of my additional guaranties; it being Guarantor's full intent and agreement that all of Guarantor's guaranties of the indebtedness and obligations in favor of Lender, shall remain in full force and shall be cumulative in nature and effect.

**CONFLICT.** In the event of a conflict herein between the definitions of the word Indebtedness set forth in the INDEBTEDNESS GUARANTEED and DEFINITIONS/Indebtedness sections of this Guaranty, I agree that the INDEBTEDNESS GUARANTEED section shall control.

**Miscellaneous Provisions.** The following miscellaneous provisions are a part of this Guaranty:

**AMENDMENTS.** No amendment, modification, consent or waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless the same shall be in writing signed by a duly authorized officer of Lender, and then shall be effective only as to the specific instance and for the specific purpose for which given.

**ATTORNEYS' FEES; EXPENSES.** Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees in an amount not exceeding 25.000% of the amount due under this Guaranty and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement, costs and expenses include Lender's reasonable attorneys' fees in an amount not exceeding 25.000% of the amount due under this Guaranty and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees in an amount not exceeding 25.000% of the amount due under this Guaranty and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

**CAPTION HEADINGS.** Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

**GOVERNING LAW.** This Guaranty will be governed by, construed and enforced in accordance with federal law and the law of the State of Louisiana. This Guaranty has been accepted by Lender in the State of Louisiana.

**NO ORAL AGREEMENTS.** This Guaranty is the final expression of the

agreement between Lender and Guarantor and may not be contradicted by evidence of any prior oral agreement or of a contemporaneous agreement between Lender and Guarantor.

NO WAIVER BY LENDER. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute salver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld In the sole discretion of Lender.

SEVERABILITY. If any provision of this Guaranty is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Guaranty shall be construed and enforceable as if the illegal, invalid or unenforceable provision is never comprised a part of it, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there all be added automatically as a part of this Guaranty, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and legal, valid and enforceable.

#### COMMERCIAL GUARANTY

(Continued)

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SUCCESSORS AND ASSIGNS BOUND. Guarantor's obligations and liabilities under this Guaranty shall be binding upon Guarantor's successors, heirs, legatees, devisees, administrators, executors and assigns.

WAIVE JURY. Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

Definitions. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the

plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms In the Louisiana Commercial Laws (La. R.S. 10:9-101, et seq.):

BORROWER. The word "Borrower" means S & W New Orleans, LLC. and

Includes any co-signers and co-makers signing the Note.

GAAP, The word "GAAP" means generally accepted accounting principles.

GUARANTOR. The word "Guarantor" means each and every person or entity signing this Guaranty, including without limitation The Smith & Wollensky Restaurant Group, Inc.

GUARANTY. The word "Guaranty" means the guaranty from Guarantor to Lender, Including without limitation a guaranty of all or part of the Note.

INDEBTEDNESS. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, in principal, interest, costs, expenses and attorneys' fees and all other fees and charges together with all other Indebtedness and costs and expenses for which Borrower is responsible under this Guaranty or under any of the Related Documents.

LENDER, The word "Lender" means Hibernia National Bank, its successors and assigns, and any subsequent holder or holders of the Note or any interest therein.

NOTE. The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions of and promissory notes or credit agreements.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND

THE SECTION TITLED -"DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED MAY 26, 2004.

GUARANTOR:

THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.

BY: / S / Alan M. Mandel  
-----

Alan M. Mandel, Executive Vice President of The  
Smith & Wollensky Restaurant Group, Inc.

LINE OF CREDIT AGREEMENT

Dated as of July 21st, 2004

Between

S&W OF LAS VEGAS, L.L.C.

as Borrower,

THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.

and

SMITH & WOLLENSKY OF BOSTON LLC

as Guarantors

and

MORGAN STANLEY DEAN WITTER  
COMMERCIAL FINANCIAL SERVICES, INC.

as Lender

BASIC LOAN TERMS

Note: See Schedule I below for certain definitions of terms used in these Basic Loan Terms.

Line of Credit Commitment: \$2,000,000 (the "Commitment").

Use of Proceeds: The proceeds of the Advances shall be available (and the Borrower agrees that it shall use such

proceeds or cause such proceeds to be used) for (i) the Borrower's working capital purposes, (ii) other general corporate purposes of the Borrower, or (iii) closing costs incurred in connection herewith. No proceeds of any Advance will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

Repayment:

The Borrower shall repay to the Lender on the Termination Date the aggregate principal amount of the Advances then outstanding.

Interest:

The Borrower shall pay to the Lender interest on the unpaid principal amount of each Advance from the date of such Advance until such principal amount shall be paid in full, at a fluctuating rate per annum equal to the sum of (i) the LIBO Rate in effect from time to time plus (ii) 3.0% per annum, payable in arrears monthly on the last day of each month and on the date such Advance shall be paid in full. For purposes hereof, "LIBO Rate" means, for any day, an interest rate per annum equal to the interest rate set forth in The Wall Street Journal (New York City edition) as the one-month London Interbank Offered Rate (LIBOR) (or an equivalent rate) for such day (or, if The Wall Street Journal shall not be published on any Business Day, any other publication selected in good faith by the Lender that sets forth the one-month London Interbank Offered Rate), or, if such interest rate shall not be so set forth for such day, for the then most recent day for which such interest rate is so set forth.

Mandatory and Optional  
Prepayments:

The Borrower may, at any time, prepay all or any part of the Advances without premium or penalty. If at any time the aggregate unpaid principal amount of the Advances exceeds the Commitment, the Borrower shall immediately prepay Advances in an amount sufficient to reduce such aggregate unpaid principal amount to an amount that is not greater than the Commitment. Such payment shall be applied by the Lender to repayment of Advances in such order as the Lender in its sole discretion shall select. Upon such prepayment by the Borrower, the Lender shall advise the Borrower of, and the

Borrower shall immediately pay to the Lender, the amount of accrued and unpaid interest at the interest rate set forth herein on the amount of such prepayment of each Advance to the date of such prepayment.

Payments and Computations: The Borrower hereby irrevocably authorizes Morgan Stanley DW from time to time to pay or prepay to the Lender on behalf of the Borrower any amount due and payable hereunder or under the Note, by application of funds from any Free Credit Balance existing at such time or from redemption or other disposition of any MS BusinessScape Funds in the Borrower's MS BusinessScape Account (and the Borrower hereby authorizes Morgan Stanley DW from time to time to redeem or otherwise dispose of such MS BusinessScape Funds for the purpose of obtaining funds to make such payment or prepayment). The Borrower agrees to deposit or otherwise make available to the Borrower's MS BusinessScape Account for the account of the Lender on the day when due and payable, the amount necessary for the purpose of making payment of any amount due hereunder or under the Note. To the extent that such Free Credit Balance and the value of such MS BusinessScape Funds are insufficient for Morgan Stanley DW to so pay to the Lender on behalf of the Borrower any such amount due hereunder, the Lender may, in its sole discretion, make an Advance pursuant to (and to the extent permitted under) Section 2.02(a)(iii) in such amount.

The Borrower shall make each payment hereunder or under the Note in respect of interest on, principal of, or other amount related to the Advances, not later than 12:00 noon (New York City time) on the day when due and payable in United States Dollars in same day funds, with payments being so received by the Lender after such time being deemed to have been made on the next succeeding Business Day.

All computations of interest hereunder or under the Note shall be made by the Lender on the basis of a year of 365 or 366 days, as the case may be, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination by the Lender of an interest

rate hereunder or under the Note shall be conclusive and binding for all purposes, absent manifest error. Whenever any payment hereunder or under the Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest.

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Late Charge: If the Borrower fails to make any payment within 15 days after any such payment shall become due, the Borrower shall pay to the Lender a late charge equal to 5% of the amount of any such overdue payment.

Default Rate: Upon the occurrence and during the continuance of an Event of Default, the interest on the unpaid principal amount of all Advances shall be increased, at the option of the Lender, to a rate equal to the lesser of two (2%) percent per annum above the rate of interest provided herein or the Maximum Rate.

Facility Fee: The Borrower has or will pay to the Lender, on or before the date hereof, a facility fee in the amount of \$10,000.00.

Unused Availability Fee: The Borrower will pay to the Lender an unused availability fee equal to 1.75% per annum on the daily unused portion of the Commitment, which fee shall be payable quarterly in arrears.

Notices, Etc.: All notices and other communications provided for hereunder shall be in writing (including fax communication and any other method of communication authorized by the Lender) and mailed, faxed, or otherwise sent or delivered, if to the Borrower or the Guarantors, at its address at c/o The Smith & Wollensky Restaurant Group, Inc., 1114 First Avenue, New York, New York 10021, or fax number (212) 758-6028, Attention: Alan M. Mandel, CFO; if to the Lender, at its address at 2000 Westchester Avenue, Purchase, New York, or fax number (914) 225-6501, Attention: Director of Credit; or, as to the Borrower, the Guarantors or the Lender at such

other address or fax number as shall be designated by such party in a written notice to the other party. All such notices and communications shall, when mailed, faxed, or otherwise sent or delivered, be effective when deposited in the mails, faxed, or otherwise sent or delivered, respectively, except that notices and communications to the Lender pursuant to Article II shall not be effective until received by the Lender. Delivery by fax of an executed counterpart of any amendment or waiver of any provision of this Agreement or of any schedule or exhibit hereto to be executed and delivered hereunder shall be effective as delivery of an original executed counterpart thereof.

The foregoing Basic Loan Terms are incorporated into and made a part of this Line of Credit Agreement.

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#### LINE OF CREDIT AGREEMENT

LINE OF CREDIT AGREEMENT, dated as of July 21st, 2004 between S&W OF LAS VEGAS, L.L.C., a Delaware limited liability company (the "Borrower"), THE SMITH & WOLLENSKY RESTAURANT GROUP, INC., a Delaware corporation (the "Corporate Guarantor"), SMITH & WOLLENSKY OF BOSTON LLC, a Delaware limited liability company, ("S&W Boston" and together with the Corporate Guarantor, the "Guarantors") and MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC., a Delaware corporation (the "Lender").

#### PRELIMINARY STATEMENTS:

- (1) The Borrower and the Guarantors have requested that the Lender extend to the Borrower a commercial line of credit.
- (2) The Lender has agreed to extend to the Borrower a commercial line of credit on the terms and conditions hereinafter set forth.

NOW, THEREFORE, based on the foregoing premises and in consideration of the mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

#### ARTICLE I

#### DEFINITIONS, BASIC LOAN AND ACCOUNTING TERMS

Section 1.01 Certain Defined Terms. In addition to the terms defined elsewhere in this Agreement, the terms used herein shall have the meanings given thereto in Schedule I annexed hereto and incorporated by reference herein.

Section 1.02 Basic Loan Terms, Schedules and Exhibits. The Basic Loan Terms and all exhibits and schedules referred to herein are incorporated herein by reference as though set forth herein in full.

Section 1.03 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP, consistent with those applied in the preparation of the financial statements referred to in Paragraph (a) of Schedule II.

## ARTICLE II

### THE ADVANCES

Section 2.01 The Advances. The Lender agrees, on the terms and conditions hereinafter set forth, to make advances ("Advances") to the Borrower from time to time on any Business Day during the period from the Effective Date hereof until the Termination Date in an aggregate amount outstanding not to exceed at anytime the Commitment. Within the limits of the Commitment, the Borrower may borrow, repay and reborrow under this Section 2.01(a).

#### Section 2.02 Making the Advances.

(a) An Advance under this Agreement may be made by the Lender to the Borrower in any of the ways set forth in clauses (i), (ii) and (iii) below:

(i) The Borrower shall be deemed to have requested the Lender to make an Advance hereunder on the date of, and in the amount of, each Uncovered Debit resulting from each use of any Card or any Check, whether or not such use by any person is authorized by the Borrower. The Borrower will not be liable hereunder (x) for more than \$50.00 of principal (plus interest on such principal) in respect of any Advance made as a result of any unauthorized use of any Card by any person other than a person authorized by the Borrower as a Cardholder (including, without limitation, as such authorized person any person to whom such Cardholder has permitted to use such Card) and (y) for any amount in respect of any Advance made as a result of any unauthorized use of any Card after the Lender or Morgan Stanley DW shall have been notified of a loss, theft or unauthorized use of such Card (and, for purposes of this Agreement, no Advance referred to in clause (x) shall be outstanding in a principal amount more than \$50.00, and no Advance referred to in clause (y) shall be outstanding in any amount). The Lender shall make available to the Borrower, by means of a credit to the Borrower's MS BusinessScape Account in United States Dollars and in

same day funds, the amount of such Advance. The Borrower hereby authorizes Morgan Stanley DW to apply the proceeds of such Advance to pay itself in reimbursement for the amount paid by it to Bank One Indiana or Bank One Ohio relating to such use of such Card or such Check.

(ii) The Borrower may request the Lender, and the Lender or its Affiliates may make, at the sole and absolute discretion of the Lender, an Advance by wire transfer (or other means agreed to by the Lender) hereunder on written notice, given not later than 11:00 a.m. (New York City time) one (1) Business Day prior to the date of the proposed Advance, by the Borrower to the Lender. Each such notice of an Advance shall be by telephone, confirmed immediately in writing, or fax or other method then authorized by the Lender, and shall specify therein the requested (x) date of such Advance, (y) amount of such Advance and (z) the deposit account to which the wire transfer of such Advance is to be sent. To the extent of any unused availability under the Other Line of Credit Agreement, any request for an Advance by the Borrower under this Agreement shall be deemed to be a request for an "Advance" under and as defined in the Other Line of Credit Agreement. If the Lender consents to make a wire transfer, the Lender or its Affiliates shall, on such date, (A) make available to the Borrower, by means of a credit to the Borrower's MS BusinessScape Account, in United States Dollars and in same day funds, the amount of such Advance, and (B) cause the proceeds of such Advance to be sent by wire transfer to the deposit account at a bank in the United States as the Borrower may specify in the notice of such Advance.

(iii) If any accrued interest on any Advances, or any fee or other amount due and payable under Loan Documents (other than principal on any Advance) payable hereunder shall not be paid by or on behalf of the Borrower as contemplated by the Section entitled "Payments and Computations", as set forth in the Basic Loan Terms when such interest, fee or other amount becomes due and payable, the Borrower shall be deemed to have requested the Lender to make, and shall be deemed to agree to, an Advance hereunder on the due date of, and in the amount of, such interest, fee or other amount. Upon fulfillment of the applicable

conditions set forth in Article III, the Lender may, in its sole discretion on such date, (A) make available to the Borrower, by means of a credit to the Borrower's MS BusinessScape Account in United States Dollars and in same day funds, the amount of such Advance and (B) cause the proceeds of such Advance to be applied to the payment of such interest, fee or other amount. If, however, on such date the aggregate outstanding principal amount of the Advances shall be \$250,000 or less, the Borrower may, on or before the 20th day of the month next following such date, notify the Lender that the Borrower does not so request or

agree to such Advance made pursuant to this clause (iii) and that the Borrower has paid or will pay such interest, fee or other amount by other means. If the Borrower shall so notify the Lender, such Advance and such application of proceeds pursuant to this clause (iii) shall be cancelled and the Lender shall be deemed not to have so made such Advance or applied the proceeds thereof (and, for purposes of this Agreement, such Advance shall not be outstanding). If, however, the Borrower shall not so notify the Lender on or before such 20th day, the Borrower shall be deemed to have confirmed its agreement to such Advance.

(b) The obligation of the Lender to make the Advances is subject to fulfillment of the conditions set forth in Article III hereof.

Section 2.03 Terms of Advances and Repayment. The Advances shall bear interest and be repaid in accordance with the terms and conditions set forth in the Basic Loan Terms.

Section 2.04 Taxes. The Borrower shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery or registration or recording of, performing under, or otherwise with respect to, this Agreement, the Note, the Deed of Trust or any other Loan Document.

Section 2.05 Evidence of Debt. The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from the Advances from time to time, including the amounts of principal and interest payable and paid to the Lender from time to time hereunder or under the Note. Entries made in good faith by the Lender in such account or accounts shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to the Lender under this Agreement, absent manifest error, provided, however, that the failure of the Lender to make an entry, or any finding that an entry is incorrect, in such account or accounts shall not limit or otherwise affect the obligations of the Borrower under the Note, this Agreement or any other Loan Document.

Section 2.06 NRS 106.300-400. Notwithstanding anything to the contrary contained in this Agreement, if (a) the Lender shall receive a notice of termination contemplated under NRS 106.300-400 (referred to in Paragraph 55 of the Deed of Trust), or (b) the Lender shall receive any such notice of termination in connection with Paragraph 55 of the Third Deed of Trust the Commitment shall immediately and automatically terminate and the Borrower shall cease to be entitled to any Advance hereunder. Moreover, the Lender shall not be required to pay any Check or to fund any use of the Card after receipt of such notice. The Borrower and the Guarantor agree that no inference of a Commitment larger than \$2,000,000 shall be drawn from the \$3,000,000 figure set forth in the said Paragraph 55.

ARTICLE III

CONDITIONS OF LENDING

Section 3.01 Conditions Precedent to First Advance. The Borrower will be entitled to receive the first Advance on and as of the first date (the "Effective Date") on which all of the following conditions precedent have been satisfied:

(a) The MS BusinessScape Account shall continue to exist.

(b) The Lender shall have received, and be satisfied with, (i) any amendments to the organizational documents for the Borrower and the Corporate Guarantor since the date of the closing of the loan made pursuant to the Other Line of Credit Agreement, as may be requested by the Lender and (ii) the organization documents for S&W Boston.

(c) The Corporate Guarantor shall own all the membership interests in the Borrower and in S&W Boston and shall be the sole member of both the Borrower and S&W Boston.

(d) The Borrower shall have paid the facility fee payable pursuant to the Basic Loan Terms, as well as the other payment items set forth on the Closing Agenda including, without limitation, the fees and disbursements of New York counsel to the Lender associated herewith.

(e) The Lender shall have received, and be satisfied with, the documents and other items listed on the Closing Agenda including, without limitation, an estoppel certificate from the lessor under the Subject Lease.

(f) The following statements shall be true (and the execution and delivery of this Agreement and the other Loan Documents by the Borrower and the Guarantors shall constitute a representation and warranty by the Borrower and the Guarantors that on the date of such execution and delivery such statements are true):

(i) the representations and warranties of the Borrower and the Guarantors contained in Section 4.01 hereof and in each other Loan Document are correct on and as of the date of such execution and delivery of the Loan Documents, before and after giving effect to any Advance made that day and to the application of the proceeds therefrom, as though made on and as of such date, and

(ii) no event has occurred and is continuing, or would result from any Advance or from the application of the proceeds therefrom, that constitutes a Default.

(g) The Lender shall have received such other approvals, opinions

and documents as the Lender may reasonably request.

Upon satisfaction of such conditions, the Borrower hereby authorizes the Lender to insert the Effective Date of this Agreement on page 1 hereof, whereupon the requested Advances (if any) shall be made available to the Borrower in accordance with the terms and conditions hereof. At

any time prior to the Effective Date, the Lender may, in its sole and absolute discretion, terminate the obligation it may have, if any, to execute and deliver this Agreement and make the Advances, whereupon any obligation of the Lender to make the Advances set forth herein or in any other document executed in connection herewith shall terminate and be void and of no force and effect.

Section 3.02 Conditions Precedent to Each Advance. The obligation of the Lender to make each Advance shall be subject to the satisfaction of the following conditions precedent before or concurrently with the making of such Advance:

(a) The following statements shall be true (and the acceptance by the Borrower of the proceeds of such Advance shall constitute a representation and warranty by the Borrower that on the date of such Advance such statements are true):

(i) the representations and warranties of the Borrower and the Guarantors contained in Section 4.01 hereof and in each other Loan Document are correct in all material respects on and as of the date of such Advance, before and after giving effect to such Advance and to the application of the proceeds therefrom, as though made on and as of such date, and

(ii) no event has occurred and is continuing, or would result from such Advance or from the application of the proceeds therefrom, that constitutes a Default.

(b) After giving effect to such Advance, there would be no unused availability under the Other Line of Credit Agreement.

(c) The Lender shall have received such other approvals, opinions and documents as the Lender may reasonably request.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of the Borrower and the

Guarantors. In addition to the representations and warranties set forth in Schedule II, each of the Borrower and the Guarantors represents and warrants as follows:

(a) The Borrower and the Guarantors (i) are each duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) are each duly qualified and in good standing as a foreign limited liability company or corporation (as applicable) in each other jurisdiction (including Nevada, in the case of the Borrower, New York, in the case of the Corporate Guarantor and Massachusetts, in the case of S&W Boston) in which it owns or leases property or in which the conduct of its business requires it to so qualify, except where the failure to so qualify would not be reasonably likely to have a Material Adverse Effect, and (iii) has all requisite organizational power and authority (including, without limitation, all governmental licenses, agreements and other approvals) to own and lease and operate its respective properties and to carry on its respective business as now conducted and as proposed to be conducted.

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(b) The execution, delivery and performance by the Borrower and the Guarantors of the Loan Documents to which each of them is a party are within their respective organizational powers, have been duly authorized by all necessary limited liability company or corporate action (as applicable), and do not contravene (i) the Borrower's or the Guarantors' charter, by-laws, articles of organization or incorporation or limited liability company agreement (as applicable), (ii) any law or any contractual restriction binding on or affecting the Borrower or the respective Guarantors, (iii) result in the breach of, or constitute a default or require any payment to be made under, any loan agreement, credit agreement, indenture, mortgage, deed of trust, bond, note, lease or other instrument or agreement binding on or affecting the Borrower, either of the Guarantors or any of their properties, or (iv) except for the Liens created under the Loan Documents, result in or require the creation or imposition of any Lien upon or with respect to any of the properties of the Borrower or the Guarantors.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for (i) the due execution, delivery and performance by the Borrower or the Guarantors of the Loan Documents to which any of them is a party, or (ii) the grant by the Borrower of the Liens granted by it pursuant to the Collateral Documents to which it is a party.

(d) The Loan Documents to which any of the Borrower or the Guarantors are a party have been duly executed and delivered by the Borrower and the Guarantors, and are the legal, valid and binding obligations of the Borrower

and the Guarantors enforceable against the Borrower and the Guarantors in accordance with their respective terms. The "Loan Documents" (as such term is defined in each of the First Loan Agreement, the Second Loan Agreement, and the Other Line of Credit Agreement respectively) to which the Borrower or the Corporate Guarantor are a party remain in full force and effect, subject to the effect of the Covenants Agreement.

(e) Except as set forth in the Corporate Guarantor's most recent 10-Q filing with the Securities and Exchange Commission, there is no pending or threatened action or other proceeding affecting any of the Borrower or the Guarantors before any court, governmental agency or arbitrator that (i) could be reasonably likely to have a Material Adverse Effect, or (ii) purports to affect the legality, validity or enforceability of this Agreement, the Note, the Deed of Trust or any other Loan Document to which the Borrower or the Guarantors are a party, or any of the "Loan Documents" as that term is used in the First Loan Agreement, the Second Loan Agreement, the Other Line of Credit Agreement, or the consummation of any of the transactions contemplated hereby or thereby.

(f) The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, as defined in Regulation U issued by the Board of Governors of the Federal Reserve System, and no proceeds of any of the Advances will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

(g) The Corporate Guarantor owns all of the issued and outstanding membership interests in the Borrower and S&W Boston and is the sole manager of the Borrower and S&W Boston.

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(h) To the best of their knowledge, the Trust Property is in material compliance with all applicable laws, rules, regulations and orders including, without limitation, those relating to use, occupancy, fire, safety and zoning (including those in respect of parking and set-back requirements). To the best of their knowledge, the Trust Property is not the subject of any noted violation of law. To the best of their knowledge, there have been no changes or introductions to, removals from or activities conducted on the Trust Property that would adversely alter or effect the environmental assessment of the Trust Property which was reviewed in connection with the closing under the First Loan Agreement.

(i) There have been no exterior changes to the buildings or other improvements located at the Trust Property (and no additions at the Trust Property) other than conversion of a garbage shed to a concrete structure, since the date of the survey certified to the Lender and insured by the Lender's

existing title policies issued in connection with the closing under the First Loan Agreement, the Second Loan Agreement and the Other Line of Credit Agreement.

(j) The License Agreement and the Sublicense Agreement are unamended and in full force and effect, and there are no defaults thereunder, or events which with the giving of notice and/or the passage of time, could result in a default thereunder.

(k) "S&W of Las Vegas, L.L.C." is the proper legal name of the Borrower and it is a Delaware limited liability company. "The Smith & Wollensky Restaurant Group, Inc." is the proper legal name of the Corporate Guarantor and it is a Delaware Corporation. "Smith & Wollensky of Boston LLC" is the proper legal name of S&W Boston and it is a Delaware limited liability company. As of the Effective Date, each of the Borrower and the Guarantors have only those Subsidiaries and Affiliates as are listed on Schedule 4.01(k).

(l) To the best of their knowledge, there are no "Events of Default", or events that with the giving of notice, the passage of time or both, shall become "Events of Default", existing and/or continuing under the First Loan Agreement, the Second Loan Agreement, the Other Line of Credit Agreement, or under any documents entered into in connection with either of them. For the purposes of this clause (l), the term "Events of Default" shall have the meaning assigned to such term in the First Loan Agreement, the Second Loan Agreement or the Other Line of Credit Agreement, as applicable.

(m) The Borrower, each of its Affiliates and each Person who, to its knowledge has an economic interest in the Borrower, or, to the Borrower's knowledge, has or will have an interest in the transaction contemplated by this Agreement or in the Trust Property or will participate, in any manner whatsoever, in the Loan, is: (i) not a "blocked" person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224 and all modifications thereto or thereof (as used in this Section only, the "Annex"); (ii) in full compliance with the requirements of the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices, related to the subject matter of the Patriot Act, including Executive Order 13224 effective September 24, 2001 (the "Patriot Act") and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury (as used in this Section only, "OFAC"); (iii) operated under policies,

procedures and practices, if any, that are in compliance with the Patriot Act and available to the Lender for the Lender's review and inspection during normal

business hours and upon reasonable prior notice; (iv) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Act; (v) not listed as a Specially Designated Terrorist (as defined in the Patriot Act) or as a "blocked" person on any lists maintained by the OFAC pursuant to the Patriot Act or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Act or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Act; (vi) not a Person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Act; and (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any Person named in the Annex or any other list promulgated under the Patriot Act or any other Person who has been determined to be subject to the prohibitions contained in the Patriot Act.

## ARTICLE V

### COVENANTS OF THE BORROWER AND THE GUARANTORS

Section 5.01 Affirmative Covenants. So long as any Advance shall remain unpaid or the Lender shall have any Commitment hereunder, the Borrower (and, where specifically indicated, the Guarantors) will (in addition to those affirmative covenants set forth on Schedule II):

(a) Compliance with Laws, Etc. Comply and cause each of its Subsidiaries to comply, with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, compliance with ERISA.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property subject to the right to contest as set forth in the Deed of Trust and (ii) all lawful claims that, if unpaid, might by law become a Lien upon its property.

(c) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance as required under the Deed of Trust and the Security Agreement, and otherwise with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates. Each of the Borrower and the Guarantors shall maintain insurance coverage which complies with the workers' compensation and employees' liability laws of all states in which the Borrower and the Guarantors shall be required to maintain such insurance.

(d) Preservation of Corporate or Limited Liability Company Existence, Etc. Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, the Borrower's and S&W Boston's limited liability company existence, and the Corporate

Guarantor's corporate existence, as well as their respective rights (charter and statutory) and franchises.

(e) Visitation Rights. In the case of the Borrower and the Guarantors, at any reasonable time and from time to time, upon reasonable notice during normal business hours, permit the Lender or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and the Guarantors, and any of their respective Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and the Guarantors, and any of their respective Subsidiaries, with any of their officers or directors and with their independent certified public accountants.

(f) Keeping of Books. In the case of the Borrower and the Guarantors, keep, and cause each of their respective Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower and the Guarantors in accordance with GAAP.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties that are used or useful in the conduct of its business (i) as required under the Deed of Trust and the Security Agreement with respect to the Trust Property and (ii) otherwise in good working order and condition, ordinary wear and tear excepted.

(h) Transactions with Affiliates. Conduct, and cause each of its Subsidiaries to conduct, all business or transactions otherwise permitted under the Loan Documents with any of the Borrower's Affiliates on terms that are fair and reasonable and no less favorable to the Borrower than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate.

(i) Reporting Requirements. In the case of the Borrower and the Corporate Guarantor, furnish to the Lender all financial statements, reports, documents and other information at the times and in accordance with the requirements set forth in Paragraph (b) of Schedule II.

(j) Maintenance of MS BusinessScape Account. In the case of the Borrower and the Corporate Guarantor, maintain its MS BusinessScape Account.

(k) Further Assurances. In the case of the Borrower and the Guarantors, promptly upon request by the Lender, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all

such further acts, deeds, conveyances, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Lender may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject the Borrower's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure,

convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Lender the rights granted or now or hereafter intended to be granted to the Lender under any Loan Document or under any other instrument executed in connection with any Loan Document to which the Borrower or the Guarantors or any of their respective Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

(l) Subordination of Borrower Obligations. At the request of the Lender, all obligations of the Borrower to either of the Guarantors will be subordinated to the obligations of the Borrower to the Lender under the Loan Documents, which subordination shall be pursuant to documentation in form and substance satisfactory to the Lender.

(m) License Agreement. In the case of the Borrower and the Guarantors, preserve, protect, renew and keep in full force and effect its rights, licenses, permits, patents, trademarks, trade names and franchises, including, without limitation, the rights granted to the Corporate Guarantor under the License Agreement and the rights granted to the Borrower under the Sublicense Agreement.

Section 5.02 Negative Covenants. So long as any Advance shall remain unpaid or the Lender shall have any Commitment hereunder, the Borrower (and the Corporate Guarantor as to subparagraphs (i) and (j) below) will not (in addition to those negative covenants set forth in Schedule II):

(a) Liens, Etc. Create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, other than as set forth in Paragraph (c) of Schedule II.

(b) Mergers, Etc. Merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets to (whether now

owned or hereafter acquired), any Person, or permit any of its Subsidiaries to do so.

(c) Debt. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Debt other than as set forth in Paragraph (d) of Schedule II.

(d) Change in Nature of Business, Management or Ownership. Make, or permit any of its Subsidiaries to make, any material change in the nature of its business as carried on at the date hereof, in the identity of the manager of the Borrower (under its limited liability company agreement), or in the composition of the current executive management of the Borrower or in its equity ownership, or operate the restaurant at the Trust Property under any name other than "Smith & Wollensky". Notwithstanding the foregoing, the withdrawal of Alan N. Stillman from the management of the Borrower shall not constitute a breach of this Section 5.02(d), provided that the Lender is reasonably satisfied with the Borrower's management following such withdrawal.

(e) Sales, Etc., of Assets. Sell, lease, transfer or otherwise dispose of, or permit any of its Subsidiaries to sell, lease, transfer or otherwise dispose of, any assets, or grant

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any option or other right to purchase, lease or otherwise acquire any assets other than (i) assets to be sold in the ordinary course of business and (ii) assets to be sold or disposed of in the ordinary course of business which are no longer necessary or required in the conduct of its business. The foregoing exceptions (i) and (ii) are subject to compliance with the applicable Collateral Documents.

(f) Investments in Other Persons. Create or acquire any Subsidiary without the express written consent of the Lender, or make or hold, or permit any of its Subsidiaries to make or hold, any Investment in any Person.

(g) Restricted Payments. Declare or pay any dividends, purchase, redeem, retire, defease or otherwise acquire for value any of its membership interests now or hereafter outstanding, return any capital to its members (or the equivalent Persons thereof) as such, make any distribution of assets, membership interests, obligations or securities to its members (or the equivalent Persons thereof) as such, or issue or sell any membership interests.

(h) Lease Obligations. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to credit, incur, assume or suffer to exist, any obligations as lessee other than as set forth in Paragraph (e) of Schedule II.

(i) Fee Ownership of Property. Acquire, or permit any Affiliate of the Borrower (including either of the Guarantors) to acquire, fee ownership of the property leased under the Subject Lease (and the improvements and equipment thereon) unless simultaneously with such acquisition, the Lender obtains a first priority fee deed of trust encumbering such property, improvements and equipment in form and substance satisfactory to the Lender.

(j) License Agreement and Sublicense Agreement. Enter into any amendment to the License Agreement or the Sublicense Agreement without the written consent of the Lender, which consent shall not unreasonably withheld.

## ARTICLE VI

### EVENTS OF DEFAULT

Section 6.01 Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) The Borrower shall fail to pay (i) any principal of any Advance when the same becomes due and payable; or (ii) the Borrower shall fail to pay any interest or to make any payment of fees or other amounts payable under this Agreement or the Note within five days after the same becomes due and payable; or

(b) Any representation or warranty made by the Borrower or the Guarantors (or by any of their respective officers, or members) herein or in any other Loan Document, or in connection with this Agreement or any other Loan Document, shall prove to have been incorrect or misleading in any material respect when made or as of the date of the Loan; or

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(c) (i) The Borrower or the Guarantors (as applicable) shall fail to perform or observe any term, covenant or agreement contained in Section 5.01(c), (d), (h), (j), (l), or (m) or 5.02, or (ii) the Borrower or the Corporate Guarantor (as applicable) shall fail to perform or observe any term, covenant or agreement contained in the Covenants Agreement; or (iii) the Borrower or the Guarantors (as applicable) shall fail to perform or observe any other term, covenant or agreement contained in this Agreement on its part to be performed or observed if such failure described in this subsection (c)(iii) shall remain unremedied for 10 Business Days after the earlier of (x) the time the Borrower or such Guarantors (as applicable) becomes aware or should have reasonably become aware of such failure, or (y) notice from the Lender; or (iv) the Corporate Guarantor shall at any time cease to own all of the membership interests in the Borrower or S&W Boston; or (v) an "Event of Default" (as

defined therein, where applicable) or a default beyond applicable periods of notice and grace, if any, shall occur under a Loan Document other than this Agreement; or

(d) (i) The Borrower or the Guarantors shall fail to pay any principal of or premium or interest on any Debt (other than the Debt outstanding hereunder) of the Borrower or the Guarantors (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof. The provisions of clause (i) of this subparagraph (d) shall apply to (x) any Debt of the Borrower or the Guarantors to the Lender or any of its Affiliates in any amount, and (y) any Debt to any other creditor for borrowed money in excess of \$100,000 with respect to the Borrower or S&W Boston, and \$1,000,000 with respect to the Corporate Guarantor, unless the Lender determines, in its reasonable judgment, that the default to such other creditor is subject to a bona fide dispute; or

(e) Any of the Borrower or the Guarantors shall voluntarily dissolve, liquidate or terminate operations, or shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any of the Borrower or the Guarantors seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either (A) such proceeding shall remain undismissed or unstayed for a period of 10 days, or (B) any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its

property) shall occur; or any of the Borrower or the Guarantors shall take any action to authorize any of the actions set forth above in this subsection (e); or

(f) Any judgment or order for the payment of money in excess of \$100,000 shall be rendered against the Borrower or S&W Boston, or in excess of \$200,000 (or \$300,000 in the case of the lawsuit referred to in Paragraph 2(e) of the Covenants Agreement) shall be rendered against the Corporate Guarantor and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) Any of the Borrower or the Guarantors or any of the Borrower's or the Guarantors' ERISA Affiliates shall incur one or more of the following: (i) the occurrence of any ERISA Event; (ii) the partial or complete withdrawal of the Borrower or the Guarantors, or any of the Borrower's or the Guarantors' ERISA Affiliates from a Multiemployer Plan; or (iii) the reorganization or termination of a Multiemployer Plan; or

(h) Any Lien granted pursuant to any Collateral Document shall for any reason cease to be a valid and perfected first priority lien on and security interest in the Collateral purported to be covered thereby; or

(i) The Guaranty or the Environmental Guaranty shall for any reason cease to be a valid and binding obligation or enforceable against either of the Guarantors (or the Borrower, in the case of the Environmental Guaranty), or (ii) either of the Guarantors shall repudiate, revoke or deny any liability under the Guaranty or the Environmental Guaranty (or the Borrower shall do the same with respect to the Environmental Guaranty); or

(j) A default beyond any applicable notice and/or grace period shall have occurred under the License Agreement or the Sublicense Agreement; or

(k) A Change in Control with respect to the Corporate Guarantor shall have occurred; or

(l) Any of the Borrower or the Guarantors, or an Affiliate of either of them, or a holder of any substantial equity interest in any of the Borrower or the Guarantors or in any such Affiliate shall (i) become named on any list of persons who are or may be engaged in or who have been or may have been engaged in possible criminal activity or other wrongdoing, which list is promulgated under the Patriot Act, or (ii) be indicted, arraigned or custodially detained on charges involving money laundering or any predicate crime to money laundering;

then, and in any such event, the Lender may, by notice to the Borrower and the Guarantors, declare the Advances, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith

due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantors; provided, however, that upon the occurrence of any event described in subsection (e) above, the Loan, all such interest and all such amounts shall automatically become and be due

and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantors.

## ARTICLE VII

### MISCELLANEOUS

Section 7.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement nor consent to any departure by the Borrower or the Guarantors therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender, the Borrower and the Guarantors, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 7.02 Notices, Etc. All notices and other communications provided for hereunder shall be in writing (including fax communication and any other method of communication authorized by the Lender) and mailed, faxed, or otherwise sent or delivered as described in the Basic Loan Terms.

Section 7.03 No Waiver; Remedies. No failure on the part of the Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

#### Section 7.04 Costs and Expenses; Indemnification.

(a) The Borrower and the Guarantors jointly and severally agree to pay on demand all fees, costs and expenses reasonably incurred by the Lender in connection with the preparation, negotiation, execution, delivery, administration, modification and amendment of this Agreement, the Note, the Collateral Documents and the other Loan Documents, including, without limitation, search, filing and recording fees and taxes, costs of reappraisals required by the Lender and the fees and expenses of counsel for the Lender with respect thereto, and with respect to advising the Lender as to its rights and responsibilities under such documents. The Borrower and the Guarantors further jointly and severally agree to pay on demand all fees, costs and expenses

reasonably incurred by the Lender, if any (including, without limitation, counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement, the Note, the Collateral Documents and the other Loan Documents, including, without limitation, reasonable fees and expenses of counsel for the Lender in connection with the enforcement of rights under this Section 7.04(a). Each of the Borrower and the Guarantors hereby authorizes the Lender and its Affiliates at any time and from time to time, without notice to the Borrower or the Guarantors, and whether or not the Lender shall have made any demand or an Event of Default shall have occurred, to charge any account of any of the Borrower or the Guarantors maintained by the Lender or its Affiliates against such fees, costs and expenses. The rights of the Lender and its Affiliates under this Section are in addition to other rights and remedies (including, without limitation, rights of set-off) that the Lender and its Affiliates may have.

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(b) The Borrower and the Guarantors agree to indemnify and hold harmless the Lender and each of its Affiliates and officers, directors, employees, agents and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loan except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 7.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. Each of the Borrower and the Guarantors also agrees not to assert any claim against the Lender, any of its Affiliates, or any of their directors, officers, employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loan.

(c) Without prejudice to the survival of any other agreement of the Borrower or the Guarantors hereunder, the agreements and obligations of the Borrower and the Guarantors contained in this Section 7.04 shall survive the

payment in full of principal, interest and all other amounts payable hereunder, under the Note and the other Loan Documents.

Section 7.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Lender and its Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by law, to sell, liquidate, transfer or otherwise apply any assets or securities of any of the Borrower or the Guarantors held by the Lender or any of its Affiliates and set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lender or such Affiliates to or for the credit or the account of any of the Borrower or the Guarantors against any and all of the respective obligations of the Borrower or Guarantors now or hereafter existing under this Agreement, the Note, the Guaranty, the Environmental Guaranty or any other Loan Document, whether or not the Lender shall have made any demand under this Agreement or such other Loan Document and although such obligations may be unmatured. The rights of the Lender and its Affiliates under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that the Lender and its Affiliates may have.

Section 7.06 Binding Effect; Successors and Assigns. This Agreement shall become effective on the Effective Date and thereafter shall be binding upon and inure to the benefit of the Borrower, the Guarantors, the Lender and their respective successors and assigns, except that neither the Borrower nor the Guarantors shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lender.

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Section 7.07 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 7.08 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by fax shall be effective as delivery of an original executed counterpart of this Agreement.

Section 7.09 Interest Rate Limitation. Anything herein to the contrary notwithstanding, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the "Charges"), as provided for herein or in any other Loan Document, or otherwise contracted for, charged, received, taken or reserved by the Lender, shall exceed the maximum lawful rate (the "Maximum Rate") that may

be contracted for, charged, taken, received or reserved by the Lender in accordance with applicable law, the rate of interest payable on the Loan, together with all Charges payable to the Lender, shall be limited to the Maximum Rate. Neither the Borrower nor the Guarantor shall ever be liable for unearned interest thereon or shall ever be required to pay interest thereon in excess of the maximum amount that may be lawfully charged under applicable law from time to time in effect, and the provisions of this Section 7.09 shall control over all other provisions of the Loan Documents that may be in conflict. If (a) the maturity of the obligations of the Borrower under Note or this Agreement is accelerated for any reason, (b) any of such obligations are prepaid and as a result any amounts held to constitute interest are determined to be in excess of the legal maximum or (c) the Lender or any other holder of any or all of the obligations of the Borrower under this Agreement shall otherwise collect moneys that are determined to constitute interest that would otherwise increase the interest on any or all of such obligations to an amount in excess of that permitted to be charged by applicable law then in effect, then all such sums determined to constitute interest in excess of such legal limit shall, without premium, penalty, be promptly applied to reduce the then outstanding principal of such obligations or, at the Lender's or such holder's option, shall be promptly returned to the Borrower or the other payor thereof upon such determination.

#### Section 7.10 Jurisdiction, Etc.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto consents to the service of copies of any and all process which may be served in any such action or proceeding by the mailing of copies of such process to such party at its address specified in Section 7.02. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other

manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document in the courts of any other jurisdiction.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 7.11 Assignments and Participations. The Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment and the Advances owing to it), without notice to, or the consent of the Borrower or the Guarantors. The Lender may sell participations to one or more Persons (other than the Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment and the Advances owing to it). The Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrower and the Guarantors furnished to the Lender by or on behalf of the Borrower or the Guarantors. In addition, the terms of the Note relating to participations of the Note shall be applicable to participations of the Lender's rights and obligations under this Agreement. The Lender represents that as of the date hereof, it has no present intention of assigning its rights and obligations under this Agreement (including, without limitation, all or a portion of the Loan owing to it); provided, however, the foregoing shall in no way impair or otherwise alter the Lender's rights under this Section.

Section 7.12 WAIVER OF JURY TRIAL. EACH OF THE BORROWER, THE GUARANTORS AND THE LENDER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, THE ADVANCES OR THE ACTIONS OF THE LENDER OR ANY OF ITS AFFILIATES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF.

Section 7.13 Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 7.14 Headings. Article, section and paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose.

Section 7.15 Conflicts. Conflicts between this Agreement and any of the Collateral Documents shall be resolved in favor of the latter.

Section 7.16 Lender Action. The Lender shall have the right, but not the obligation, to take any action at the Borrower's expense if the Lender believes, in its reasonable discretion after consultation with Borrower or the Guarantors, that such action is necessary to avoid the occurrence of a Material Adverse Effect with respect to the Borrower or the Guarantors, including, without limitation, curing any defaults under the License Agreement.

Section 7.17 Other Loan Agreements. The parties agree that the Advances shall be a permitted "Debt", and the Collateral Documents (as they relate to the Borrower and the Trust Property) shall be permitted "Liens" as those terms are used in that certain Term Loan Agreement dated as of August 23, 2002 among the Borrower, the Corporate Guarantor and the Lender, as amended (the "First Loan Agreement"), in that certain Term Loan Agreement dated as of December 24, 2002 among the Borrower, the Corporate Guarantor, Dallas S & W, L.P. and the Lender, as amended (the "Second Loan Agreement") and in that certain Line of Credit Agreement dated as of January 30, 2004 among the Borrower, the Corporate Guarantor and the Lender (the "Other Line of Credit Agreement").

Section 7.18 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 7.19 Secured Obligation under Security Agreement. The parties agree that the obligations of the Borrower under this Agreement and the other Loan Documents shall be one of the "Secured Obligations" under the Security Agreement, and that: (a) the term "Deed of Trust" as used therein shall mean the "Deed of Trust" (as defined in the First Loan Agreement), the "Deed of Trust" (as defined in the Second Loan Agreement), the "Deed of Trust" (as defined in

the Other Line of Credit Agreement) (such Deed of Trust being herein referred to as the "Third Deed of Trust") and the "Deed of Trust" (as defined herein); (b) the term "Assignment of Leases" as used therein shall mean the "Assignment of Leases" (as defined in the First Loan Agreement), the "Assignment of Leases" (as defined in the Second Loan Agreement), the "Assignment of Leases" (as defined in the Other Line of Credit Agreement) and the "Assignment

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of Leases" (as defined herein); (c) the term "Credit Agreement" as used therein shall mean the First Loan Agreement, the Second Loan Agreement, the Other Line of Credit Agreement and this Agreement; and (d) all other capitalized terms used, but not defined, in the Security Agreement (including, without limitation, "Loan Documents" and "Note") shall have the meanings given to such terms in the First Term Loan Agreement, the Second Loan Agreement, the Other Line of Credit Agreement and in this Agreement, mutatis mutandis.

Section 7.20 Tax Information. Notwithstanding anything herein to the contrary, the Borrower and the Guarantors (and any employee, representative or other agent of any of them) may disclose to any and all Persons, without limitation of any kind, the U.S. federal income tax treatment and the U.S. federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower or the Guarantors (or any employee, representative or other agent of any of them) relating to such tax treatment and tax structure. However, no disclosure of any information relating to such tax treatment or tax structure may be made to the extent nondisclosure is reasonably necessary in order to comply with applicable securities laws.

Section 7.21 Collateral Account. The covenant added to the First Loan Agreement and the Second Loan Agreement pursuant to Section 3 of the Amendment to Term Loan Agreements dated as of August 20, 2003 is hereby incorporated by reference, mutatis mutandis, into this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective representatives thereunto duly authorized, as of

the date first above written.

S&W OF LAS VEGAS, L.L.C.

By: The Smith & Wollensky Restaurant Group,  
Inc., Sole Member

By: /s/ Alan M. Mandel

-----  
Name: Alan M. Mandel

Title: Secretary

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

On the 20th day of July in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang

-----  
Notary Public

THE SMITH & WOLLENSKY  
RESTAURANT GROUP, INC.

By: /s/ Alan M. Mandel

-----  
Name: Alan M. Mandel

Title: Secretary

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

On the 20th day of July in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel , personally known

to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang

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Notary Public

SMITH & WOLLENSKY OF BOSTON LLC

By: The Smith and Wollensky Restaurant Group,  
Inc., Sole Member

By: /s/ Alan M. Mandel

-----  
Name: Alan M. Mandel

Title: Secretary

STATE OF NEW YORK        )  
                                  ss.:  
COUNTY OF NEW YORK    )

On the 20th day of July in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument

and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang

-----

Notary Public

MORGAN STANLEY DEAN WITTER  
COMMERCIAL FINANCIAL SERVICES, INC.

By: /s/ Alan M. Mandel

-----

Name: Alan M. Mandel

Title: Secretary

STATE OF NEW YORK        )  
                                  ss.:  
COUNTY OF NEW YORK     )

On the 20th day of July in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his

capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang

-----

Notary Public

SCHEDULE I

TO LINE OF CREDIT AGREEMENT WITH

S&W OF LAS VEGAS, L.L.C. AND

THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.

CERTAIN DEFINED TERMS

As used in this Agreement, the following terms shall have the following meanings:

"Advance" means an advance by the Lender to the Borrower pursuant to Article II.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to vote 5% or more of the voting stock of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise.

"Assignment of Leases" means the Absolute Assignment of Rents and Leases of even date herewith made by the Borrower in favor of the Lender, as the same may be amended, replaced or restated from time to time.

"Bank One Indiana" means Bank One, Indiana, NA.

"Bank One Ohio" means Bank One, Columbus , NA, Delaware, Ohio.

"Business Day" means a day of the year on which banks are not required or authorized by law to close in New York City.

"Card" means any MasterCard Business Card debit card issued by Bank One Indiana for use in connection with the Borrower's MS BusinessScape Account applicable to the Advances.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of shares representing more than 33-1/3% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Corporate Guarantor, or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Corporate Guarantor by Persons who were neither (i) nominated by the board of directors of the Corporate Guarantor nor (ii) appointed by directors so nominated.

"Charges" has the meaning specified in Section 7.09.

Schedule I-Page 1

"Check" means any check drawn on Bank One Ohio for use in connection with the Borrower's MS BusinessScape Account applicable to the Advances.

"Closing Agenda" means the Closing Agenda prepared by the Lender and delivered to the Borrower setting forth the documents and other items to be executed and/or delivered, and payments to be made, by the parties in connection with this Agreement.

"Collateral" means all "Collateral" referred to in the Collateral Documents and all other property that is or is intended to be subject to any Lien in favor of the Lender.

"Collateral Documents" means the Security Agreement, Deed of Trust, the Assignment of Leases, all Uniform Commercial Code financing statements with respect to the Collateral and any other Loan Document pursuant to which any collateral is granted to the Lender by the Borrower.

"Corporate Guarantor" means The Smith & Wollensky Restaurant Group, Inc., a Delaware corporation.

"Covenants Agreement" means the Covenants Agreement and Amendment to Term Loan Agreements dated January 30, 2004 among the Lender, the Borrower, the Corporate Guarantor and Dallas S&W, L.P., detailing certain financial covenants made by the Borrower and/or or the Corporate Guarantor to the Lender, which agreement also amends the First Loan Agreement and the Second Loan Agreement.

"Debt" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of business), (b) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (c) all capital lease obligations of such Person, (d) all obligations of such Person, contingent or otherwise, in respect of acceptances, letters of credits or similar extensions of credit, (e) all liabilities secured by any Lien on any property owned by such Person, even though such Person has not assumed or otherwise become liable for the payment thereof, (f) all obligations of such Person in respect of interest rate or currency protection agreements, and (g) all Debt of others guaranteed directly or indirectly in any manner by such Person. The foregoing is intended to include any and all indebtedness arising under each of the First Loan Agreement, the Second Loan Agreement and the Other Line of Credit Agreement.

"Deed of Trust" means a fourth priority Leasehold Deed of Trust of even date herewith made by the Borrower to the trustee thereunder for the benefit of the Lender and encumbering the Trust Property, as the same may be amended,

replaced or restated from time to time, and shall include any new (or replacement) fee deed of trust entered into in the event the Borrower, either of the Guarantors or an Affiliate acquires the fee interest in the Trust Property.

"Default" means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"Effective Date" has the meaning specified in Section 3.01.

Schedule I-Page 2

"Environmental Guaranty" means the Joint and Several Hazardous Material Guaranty and Indemnification Agreement of even date herewith made by the Borrower and the Guarantors in favor of the Lender in respect of the Trust Property, as the same may be amended, replaced or restated from time to time.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any Person that for purposes of Title IV of ERISA is a member of the Borrower's or controlled group, or under common control with the Borrower or within the meaning of Section 414 of the Internal Revenue Code.

"ERISA Event" means (a) (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC, or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA (without regard to subsection (2) of such Section) are met with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of the Borrower or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by the Borrower or the Guarantors or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for the imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; (g) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA; or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section

4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Plan.

"Events of Default" has the meaning specified in Section 6.01.

"First Loan Agreement" has the meaning specified in Section 7.17.

"Free Credit Balance" means the amount of any cash that may be withdrawn from the Borrower's MS BusinessScape Account at any time without creating a negative balance therein or giving rise to interest charges thereon.

"GAAP" means the generally accepted accounting principles applied in the United States.

"Guarantors" means the Corporate Guarantor and S&W Boston.

"Guaranty" means the Guaranty of Payment of even date herewith made by the Guarantors in favor of the Lender in respect of the Loan, as the same may be amended, replaced or restated from time to time.

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"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Investment" in any Person means any loan or advance to such Person, any purchase or other acquisition of any capital stock or Debt or the assets comprising a division or business unit for a substantial part or all of the business of such Person, any capital contribution to such Person or any other direct or indirect investment in such Person, including, without limitation, any acquisition by way of a merger or consolidation.

"License Agreement" means the Sale and License Agreement dated August 16, 1996 between St. James Associates and The New York Restaurant Group, LLC pursuant to which, among other things, the Corporate Guarantor possesses the right to use and to sublicense the trademark "Smith & Wollensky".

"Lien" means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement having the effect of a lien or security interest, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property.

"Loan Documents" means this Agreement, the Note, the Collateral Documents, the Guaranty, the Environmental Guaranty and any other documents

executed and/or delivered by the Borrower or the Guarantors in connection therewith, in each case as amended, supplemented, replaced, restated or otherwise modified from time to time.

"Material Adverse Change" means any material adverse change in the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrower or the Guarantors, or the Borrower, or the Guarantors and its Subsidiaries taken as a whole.

"Material Adverse Effect" means a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrower or the Guarantors, or the Borrower or the Guarantors and its Subsidiaries taken as a whole, (b) the rights and remedies of the Lender under this Agreement or (c) the ability of the Borrower or the Guarantors to perform its obligations under any Loan Document to which it is a party.

"Maximum Rate" has the meaning specified in Section 7.09.

"Morgan Stanley DW" means Morgan Stanley DW Inc., a Delaware corporation, or any successor thereof.

"MS BusinessScape Account" means, in respect of the Borrower, the MS BusinessScape Account for Business maintained by the Borrower at Morgan Stanley DW, MS BusinessScape Account No.476-040-167 and in respect of the Corporate Guarantor, the MS BusinessScape Account for Business maintained by the Corporate Guarantor at Morgan Stanley DW, MS BusinessScape Account No. 476-027766-427.

"MS BusinessScape Funds" means any of the money market fund shares credited to the Borrower's MS BusinessScape Account.

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"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of the Borrower, the Guarantors or any ERISA Affiliate and at least one Person other than the Borrower, the Guarantors and the ERISA Affiliates or (b) was so maintained and in respect of which the Borrower, the Guarantors or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"Note" means the Promissory Note of even date herewith in the original principal amount of \$2,000,000.00 made by the Borrower in favor of the Lender.

"Patriot Act" has the meaning set forth in Section 4.01(m).

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor).

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"Second Loan Agreement" has the meaning specified in Section 7.17.

"Security Agreement" means the Security Agreement dated August 23, 2002 made by the Borrower to the Lender, as the same may have been or may be amended, replaced or restated from time to time.

"Single Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of the Borrower, the Guarantors or any ERISA Affiliate and no Person other than the Borrower, the Guarantors and the ERISA Affiliates or (b) was so maintained and in respect of which the Borrower, the Guarantors or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"Subject Lease" has the meaning set forth in the Deed of Trust.

"Sublicense Agreement" means the Sublicense Agreement dated August 23, 2002 between the Corporate Guarantor and the Borrower.

"Subordinated Debt" of any Person means all Debt completely subordinated to such Person's obligations to the Lender pursuant to a subordination agreement in form and substance satisfactory to the Lender.

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"Subsidiary" of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding voting stock of such corporation, (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person,

by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"Termination Date" means the earlier of (a) May 31, 2005, and (b) the date of termination in whole of the Commitment pursuant to Section 6.01.

"Trust Property" has the meaning given to the term "Trust Property" in the Deed of Trust.

"United States Dollars" means money of the United States of America.

"Uncovered Debit" means any debit that is at any time in the Borrower's MS BusinessScape Account resulting from any use of any Card or any Check and that exceeds the remainder of (i) the sum of the Free Credit Balance and the value of MS BusinessScape Funds shares in the Borrower's MS BusinessScape Account at such time minus (ii) any other debits at such time applicable to the Borrower's MS BusinessScape Account resulting from any transactions other than any use of any Card or any Check.

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SCHEDULE II  
TO LINE OF CREDIT AGREEMENT WITH  
S&W OF LAS VEGAS, L.L.C.,  
THE SMITH & WOLLENSKY RESTAURANT GROUP, INC. AND  
SMITH & WOLLENSKY OF BOSTON LLC

FINANCIAL REPRESENTATIONS, COVENANTS AND REPORTING

(a) Representation. The Borrower represents and warrants that the management prepared unaudited statements of operations for the period ended March 29, 2003, copies of which have been furnished to the Lender, fairly present the financial condition of the Borrower as at such dates, all in accordance with GAAP consistently applied. The Corporate Guarantor represents and warrants that (i) the 10-K statement for the 2003 fiscal year and (ii) the 10-Q statement for the fiscal quarter ended March 29, 2004 fairly present the financial condition of the Corporate Guarantor as at such dates, all in accordance with GAAP consistently applied. The Corporate Guarantor represents and warrants that the management prepared break-down of results for each individual restaurant operated by the Corporate Guarantor and each of its Subsidiaries for the period ended March 29, 2004, a copy of which have been furnished to the Lender, is true and complete in all material respects as at such date. Since the dates of such statements, there has been no Material

Adverse Change.

(b) Reporting Requirements. So long as any Advance shall remain unpaid or the Lender shall have any Commitment hereunder, the Borrower and the Corporate Guarantor (as applicable) will furnish to the Lender:

(i) For the Corporate Guarantor: as soon as available and in any event within 45 days after the end of each quarter of each fiscal year of the Corporate Guarantor, consolidated management prepared (10-Q) financial statements of the Corporate Guarantor and its Subsidiaries as of the end of such quarter, duly certified by the chief financial officer the Corporate Guarantor as having been prepared in accordance with GAAP, together with a certificate of the chief financial officer of the Corporate Guarantor setting forth in reasonable detail the calculations necessary to demonstrate compliance with the Covenants Agreement;

(ii) For the Borrower and the Corporate Guarantor: as soon as available and in any event within 45 days after the end of each quarter of each fiscal year of the Borrower, management prepared financial statements of the Borrower as of the end of such quarter, duly certified by the sole or managing member of the Borrower as having been prepared in accordance with GAAP, together with a certificate of the sole or managing member of the Borrower setting forth in reasonable detail the calculations necessary to demonstrate compliance with the Covenants Agreement;

(iii) For the Corporate Guarantor: as soon as available and in any event within 90 days after the end of each fiscal year of the Corporate Guarantor, a copy of the annual audited financial statements for such year for the Corporate Guarantor and its Subsidiaries (including the Borrower) containing a consolidated balance sheet of the Corporate Guarantor and

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its Subsidiaries as of the end of such fiscal year and a consolidated statement of income and cash flows of the Corporate Guarantor and its Subsidiaries for such fiscal year, in each case accompanied by an opinion acceptable to the Lender and an accountant letter, if issued, by independent public accountants acceptable to the Lender, together with a certificate of the chief certified financial officer of the Corporate Guarantor setting forth in reasonable detail the calculations necessary to demonstrate compliance with the Covenants Agreement;

(iv) For the Borrower as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, a copy of the annual reviewed financial statements for such year for the Borrower, containing a balance sheet of the Borrower as of the end of such fiscal year and

a statement of income and cash flows of the Borrower for such fiscal year, in each case accompanied by an opinion acceptable to the Lender and an accountant letter, if issued, by independent certified public accountants acceptable to the Lender, together with a certificate of the sole or managing member of the Borrower setting forth in reasonable detail the calculations necessary to demonstrate compliance with the Covenants Agreement;

(v) For the Borrower, not later than 90 days after the end of each fiscal year of the Borrower, a detailed rent roll for the Trust Property in form satisfactory to the Lender;

(vi) As soon as possible and in any event within five days after the occurrence of each Default continuing on the date of such statement, a statement of the sole or managing member of the Borrower or the chief financial officer of the Corporate Guarantor setting forth details of such Default and the action that the defaulting party has taken and proposes to take with respect thereto;

(vii) together with the filing of each 10-K and 10-Q statement with the Securities and Exchange Commission, a management prepared break-down of results for each individual restaurant operated by the Corporate Guarantor or any of its Subsidiaries, duly certified by the chief financial officer of the Corporate Guarantor as being true and complete; and

(viii) such other information respecting the Borrower or the Guarantors or any of the Corporate Guarantor's Subsidiaries as the Lender may from time to time reasonably request.

(c) Liens, Etc. So long as any Advance shall remain unpaid or the Lender shall have any Commitment hereunder, the Borrower will not create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign any right to receive income, other than: (i) Liens created or expressly permitted under the Loan Documents, (ii) purchase money Liens upon or in any real property or equipment acquired (or leased) or held by the Borrower in the ordinary course of business to secure the purchase price of such property or equipment or to secure Debt incurred solely for the purpose of financing the acquisition (or lease) of such property or equipment, or Liens existing on such property or equipment at the time of its acquisition or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided, however, that no such Lien shall extend to or cover any properties of any character other than the real property or equipment being

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acquired, and no such extension, renewal or replacement shall extend to or cover

any properties not theretofore subject to the Lien being extended, renewed or replaced, provided further that the aggregate principal amount of the indebtedness secured by the Liens referred to in this clause (ii) shall not exceed the amount specified therefor in Paragraph (d) of this Schedule II at any time outstanding, (iii) the Liens existing on the Effective Date and described on Schedule 5.02(a) hereto and (iv) Liens held by the Lender.

(d) Debt. So long as any Advance shall remain unpaid, the Borrower will not create, incur, assume or suffer to exist, any Debt other than: (i) Debt existing on the Effective Date and described on Schedule 5.02(c) hereto, (ii) Debt secured by Liens permitted by Paragraph (c)(ii) of this Schedule II aggregating not more than \$100,000.00 at any one time outstanding, (iii) Debt under the Loan Documents, (iv) unsecured Debt incurred in the ordinary course of business aggregating not more than \$200,000.00 at any one time outstanding and (v) Debt owing to the Lender.

(e) Lease Obligations. So long as any Advance shall remain unpaid, the Borrower will not create, incur, assume or suffer to exist, any obligations as lessee (i) for the rental or hire of real or personal property in connection with any sale and leaseback transaction, or (ii) otherwise, except for the Subject Lease and equipment leases made in the ordinary course of business, for the rental or hire of other real or personal property of any kind under leases or agreements to lease having an original term of one year or more.

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SCHEDULE 4.01(k)  
TO LINE OF CREDIT AGREEMENT WITH  
S&W OF LAS VEGAS, L.L.C.,  
THE SMITH & WOLLENSKY RESTAURANT GROUP, INC. AND  
SMITH & WOLLENSKY OF BOSTON LLC

SUBSIDIARIES/AFFILIATES

Atlantic & Pacific Grill Associates, L.L.C.

La Cite Associates, L.L.C.

Manhattan Ocean Club Associates L.L.C.

MOC D.C., L.L.C.

MOC of Miami, LLC

Mrs. Parks Sub, L.L.C.

New York RGI Sub, L.L.C.

Parade 59 Restaurant

Restaurant Group Management Services, L.L.C.

Smith & Wollensky of Boston LLC

S&W of Chicago, L.L.C.

S&W D.C., L.L.C.

S&W of Miami, L.L.C.

S&W of Las Vegas, L.L.C.

S&W of New Orleans, L.L.C.

S&W of Philadelphia, L.L.C.

S&W of Ohio, L.L.C.

S&W of Dallas, LLC

Smith & Wollensky of Houston, LLC

Smith & Wollensky of America, LLC

Schedule 4.01(g)-Page 1

1 Washington Avenue Corp.

South Pointe Hospitality, Inc.

Schedule 4.01(g)-Page 2

SCHEDULE 5.02 (a)  
TO LINE OF CREDIT AGREEMENT WITH  
S&W OF LAS VEGAS, L.L.C.,  
THE SMITH & WOLLENSKY RESTAURANT GROUP, INC. AND  
SMITH & WOLLENSKY OF BOSTON LLC

EXISTING LIENS

None.

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SCHEDULE 5.02 (c)  
TO LINE OF CREDIT AGREEMENT WITH  
S&W OF LAS VEGAS, L.L.C.,  
THE SMITH & WOLLENSKY RESTAURANT GROUP, INC. AND  
SMITH & WOLLENSKY OF BOSTON LLC

EXISTING DEBT

None.

Schedule 5.02 (c) -Page 1

GUARANTY OF PAYMENT  
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New York, New York  
July 21st, 2004

WHEREAS, S&W OF LAS VEGAS, L.L.C., a Delaware limited liability company, having an office at c/o The Smith & Wollensky Restaurant Group, Inc., 1114 First Avenue, New York, New York 10021 (the "Borrower"), has applied to MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC., a Delaware corporation, having an office at 2000 Westchester Avenue, Purchase, New York 10577 (the "Lender") for a line of credit, which line of credit will be (a) evidenced by the Note, (b) secured by, among other things, the Deed of Trust and (c) advanced pursuant to the Loan Agreement, all as defined in Exhibit A attached hereto (the "Line of Credit");

WHEREAS, the Lender is willing to enter into the Loan Agreement and to make the Advances (as defined in Exhibit A hereto) to the Borrower only if the undersigned executes and delivers this Guaranty and guarantees payment to the Lender of the Debt (as herein defined) in the manner hereinafter provided.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in order to induce the Lender to enter into the Loan Agreement and to make the Advances to the Borrower, the undersigned hereby acknowledges, agrees and confirms that all of the above recitals are true, correct and complete and hereby covenants and agrees with the Lender as follows:

1. The undersigned guarantees, absolutely, irrevocably and unconditionally, to the Lender the payment of the Debt. The term "Debt" as used in this Guaranty shall mean all liabilities of the Borrower to the Lender of whatever nature, whether now existing or hereafter incurred, whether created directly or acquired by the Lender, by assignment or otherwise, whether matured or unmatured and whether absolute or contingent, arising in connection with the Note, the Deed of Trust, the Loan Agreement, or any other document or instrument now or hereafter executed and/or delivered in connection therewith or otherwise with respect to the Line of Credit (said Note, Deed of Trust, Loan Agreement and other documents and instruments being collectively, the "Loan Documents"), including, without limitation, all principal, interest, additional interest (including specifically all interest accruing from and after the commencement of any case, proceeding or action under any existing or future laws relating to bankruptcy, insolvency or similar matters with respect to the Borrower) and other sums of any nature whatsoever which may or shall become due and payable pursuant to the provisions of the Loan Documents (all of the above unaffected by

modification thereof in any bankruptcy or insolvency proceeding), and even though the Lender may not have an allowed claim for the same against the Borrower as a result of any bankruptcy or insolvency proceeding.

2. The undersigned agrees that the undersigned shall indemnify and hold the Lender harmless and defend the Lender at the undersigned's sole cost and expense against any loss or liability, cost or expense (including, but not limited to, reasonable attorneys' fees and

disbursements of the Lender's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with:

(a) any ongoing matters arising out of the transaction contemplated hereby, this Guaranty, the Debt, the Deed of Trust, the Note, the Loan Agreement or any other Loan Document, including, but not limited to, all costs of appraisals and reappraisals of the property encumbered by the Deed of Trust or any part thereof;

(b) any amendment to, or restructuring of, this Guaranty, the Debt and the Deed of Trust, the Note, the Loan Agreement or any of the other Loan Documents; and

(c) any and all lawful action that may be taken by the Lender in connection with the enforcement of the provisions of this Guaranty, the Note, the Deed of Trust, the Loan Agreement or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with either or both of the undersigned, the Borrower and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding.

All sums expended by the Lender shall be payable on demand and, until reimbursed by the Borrower or by the undersigned pursuant hereto, shall bear interest at the default interest rate as set forth in the Note.

3. The undersigned hereby represents and warrants that all financial statements of the undersigned heretofore delivered to the Lender by or on behalf of the undersigned are true and correct in all material respects and fairly present the financial condition of the undersigned as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

4. In addition to any right available to the Lender under applicable law or any other agreement, the undersigned hereby gives to the Lender a continuing lien on, security interest in and right of set-off against all moneys, securities and other property of the undersigned and the proceeds thereof, now on deposit or now or hereafter delivered, remaining with or in

transit in any manner to the Lender, its affiliates, correspondents, participants or its agents from or for the undersigned (other than separate accounts maintained exclusively for payroll or taxes), whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of the Lender in any way, and also, any balance of any deposit or brokerage account and credits of the undersigned with, and any and all claims of the undersigned against, the Lender or any such affiliate, correspondent, participant or agent, at any time existing, as collateral security for the payment of the Debt and all of the other obligations of the undersigned under this Guaranty, including fees, contracted with or acquired by the Lender, whether joint, several, absolute, contingent, secured, matured or unmatured (for the purposes of this paragraph 4 and paragraphs 6, 8 and 16 below, collectively, the "Liabilities"), hereby authorizing the Lender at any time or times, without prior notice, to apply such balances, credits or claims, or any part thereof, to such Liabilities in such amounts as it may select, whether contingent, unmatured or otherwise and whether any collateral security therefor is deemed adequate or not. The collateral security described herein shall be in addition to any collateral security described in any separate

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agreement executed by either or both of the undersigned. The Lender, in addition to any right available to it under applicable law or any other agreement, shall have the right, at its option, to immediately set off against any Liabilities all monies owed by the Lender in any capacity to either or both of the undersigned, whether or not due, and the Lender shall, at its option, be deemed to have exercised such right to set off and to have made a charge against any such money immediately upon the occurrence of any events of default set forth below, even though such charge is made or entered on the books of the Lender subsequent to those events.

5. All moneys available to the Lender for application in payment or reduction of the Debt may be applied by the Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as the Lender may see fit to the payment or reduction of such portion of the Debt as the Lender may elect.

6. The undersigned hereby expressly agrees that this Guaranty is independent of, and in addition to, all collateral granted, pledged or assigned under the Loan Documents, and the undersigned hereby consents that from time to time, before or after any default by the Borrower, with or without further notice to or assent from either or both of the undersigned:

(a) any security at any time held by or available to the Lender for any obligation of the Borrower, or any security at any time held by or available to the Lender for any obligation of any other person or party primarily, secondarily or otherwise liable for all or any portion of the Debt, any other Liabilities and/or any other obligations of the Borrower or any other

person or party, other than the Lender, under any of the Loan Documents ("Other Obligations"), including any guarantor of the Debt and/or any of such Other Obligations, may be accelerated, settled, exchanged, surrendered or released and the Lender may fail to set off and may release, in whole or in part, any balance of any deposit account or credit on its books in favor of the Borrower, or of any such other person or party;

(b) any obligation of the Borrower, or of any such other person or party, may be changed, altered, renewed, extended, continued, accelerated, surrendered, compromised, settled, waived or released in whole or in part, or any default with respect thereto waived; and

(c) the Lender may extend further credit in any manner whatsoever to the Borrower, and generally deal with the Borrower or any of the above-mentioned security, deposit account, credit on its books or other person or party as the Lender may see fit;

and the undersigned shall remain bound in all respects under this Guaranty, without any loss of any rights by the Lender and without affecting the liability of the undersigned, notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. In addition, all moneys available to the Lender for application in payment or reduction of the Debt and/or any Other Obligations may be applied by the Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as the Lender may see fit.

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7. The undersigned hereby waives:

(a) notice of acceptance of this Guaranty and of the making of any Advances by the Lender to the Borrower;

(b) presentment and demand for payment of the Debt or any portion thereof;

(c) protest and notice of dishonor or default to either or both of the undersigned or to any other person or party with respect to the Debt or any portion thereof;

(d) all other notices to which either or both of the undersigned might otherwise be entitled; and

(e) any demand under this Guaranty.

8. If any of the following events should occur:

(a) default under any of the Loan Documents and its continuance beyond any applicable notice and/or grace periods therein contained; or

(b) either or both of the undersigned violates any provision of this Guaranty;

then, and in such event, the Lender may declare the Liabilities to be, and the same shall become, immediately due and payable.

9. This is a guaranty of payment and not of collection and the undersigned further waives any right to require that any action be brought against the Borrower or any other person or party or to require that resort be had to any security or to any balance of any deposit account or credit on the books of the Lender in favor of the Borrower or any other person or party. Any payment on account of or reacknowledgment of the Debt by the Borrower, or any other party liable therefor, shall be deemed to be made on behalf of the undersigned and shall serve to start anew the statutory period of limitations applicable to the Debt.

10. Each reference herein to the Lender shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to the undersigned shall be deemed to include the successors and assigns of the undersigned, all of whom shall be bound by the provisions of this Guaranty, provided, however, that the undersigned shall in no event nor under any circumstance have the right, without obtaining the prior written consent of the Lender, to assign or transfer the undersigned's obligations and liabilities under this Guaranty, in whole or in part, to any other person, party or entity.

11. The term "undersigned" as used herein shall, if this Guaranty is signed by more than one party, unless otherwise stated herein, mean the "undersigned and each of them" and each undertaking herein contained shall be their joint and several undertaking. If this Guaranty is signed by more than one party, all singular references to the undersigned shall be deemed to be plural. If any party hereto shall be a partnership, the agreements and obligations on the part of the undersigned herein contained shall remain in force and application notwithstanding any

changes in the individuals composing the partnership and the term "undersigned" shall include any altered or successive partnerships, but the predecessor partnerships and their partners shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a corporation, the agreements and obligations on the part of the undersigned herein contained shall remain in force and application notwithstanding the merger, consolidation, reorganization or absorption thereof, and the term "undersigned" shall include

such new entity, but the old entity shall not thereby be released from any obligations or liabilities hereunder.

12. No delay on the part of the Lender in exercising any right or remedy under this Guaranty or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on either or both of the undersigned shall be deemed to be a waiver of the obligations of either of the undersigned or of the right of the Lender to take further action without notice or demand as provided in this Guaranty. No course of dealing between either of the undersigned and the Lender shall change, modify or discharge, in whole or in part, this Guaranty or any obligations of the undersigned hereunder.

13. This Guaranty may only be modified, amended, changed or terminated by an agreement in writing signed by the Lender and the undersigned. No waiver of any term, covenant or provision of this Guaranty shall be effective unless given in writing by the Lender and if so given by the Lender shall only be effective in the specific instance in which given. The execution and delivery hereafter to the Lender by either or both of the undersigned of a new instrument of guaranty or any reaffirmation of guaranty, of whatever nature, shall not terminate, supersede or cancel this instrument, unless expressly so provided therein, and all rights and remedies of the Lender hereunder or under any instrument of guaranty hereafter executed and delivered to the Lender by either or both of the undersigned shall be cumulative and may be exercised singly or concurrently.

14. The undersigned acknowledges that this Guaranty and the undersigned's obligations under this Guaranty are and shall at all times continue to be absolute, irrevocable and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Guaranty and the obligations of either or both of the undersigned under this Guaranty or the obligations of any other person or party (including, without limitation, the Borrower) relating to this Guaranty or the obligations of either or both of the undersigned hereunder or otherwise with respect to the Debt, including, but not limited to, a foreclosure of the Deed of Trust or the realization upon any other collateral given, pledged or assigned as security for all or any portion of the Debt, or the filing of a petition under Title 11 of the United States Code with regard to the Borrower or either or both of the undersigned, or the commencement of an action or proceeding for the benefit of the creditors of the Borrower or the undersigned, or the obtaining by the Lender of title to, respectively, the premises encumbered by the Deed of Trust or any other collateral given, pledged or assigned as security for the Debt by reason of the foreclosure or enforcement the Deed of Trust or any other pledge or security agreement, the acceptance of a deed or assignment in lieu of foreclosure or sale, or otherwise. This Guaranty sets forth the entire agreement and understanding of the Lender and the undersigned with respect to the matters covered by this Guaranty and the undersigned acknowledges that no oral or other agreements, understandings, representations or warranties exist with respect to this Guaranty or

with respect to the obligations of the undersigned under this Guaranty, except those specifically set forth in this Guaranty.

15. This Guaranty has been validly authorized, executed and delivered by the undersigned. The undersigned represents and warrants to the Lender that it has the corporate or other organizational power to do so and to perform its obligations under this Guaranty and this Guaranty constitutes the legally binding obligation of the undersigned fully enforceable against the undersigned in accordance with the terms hereof. The undersigned further represents and warrants to the Lender that:

(a) neither the execution and delivery of this Guaranty nor the consummation of the transactions contemplated hereby nor compliance with the terms and provisions hereof will violate any applicable provision of law or any applicable regulation or other manifestation of governmental action; and

(b) all necessary approvals, consents, licenses, registrations and validations of any governmental regulatory body, including, without limitation, approvals required to permit the undersigned to execute and carry out the provisions of this Guaranty, for the validity of the obligations of the undersigned hereunder and for the making of any payment or remittance of any funds required to be made by the undersigned under this Guaranty, have been obtained and are in full force and effect.

16. Notwithstanding any payments made by the undersigned pursuant to the provisions of this Guaranty, the undersigned irrevocably waives all rights to enforce or collect upon any rights which it now has or may acquire against the Borrower either by way of subrogation, indemnity, reimbursement or contribution for any amount paid under this Guaranty or by way of any other obligations whatsoever of the Borrower to either or both of the undersigned, nor shall either or both of the undersigned file, assert or receive payment on any claim, whether now existing or hereafter arising, against the Borrower in the event of the commencement of a case by or against the Borrower under Title 11 of the United States Code. In the event either a petition is filed under said Title 11 of the United States Code with regard to the Borrower or the commencement of an action or proceeding for the benefit of the creditors of the Borrower, this Guaranty shall at all times thereafter remain effective in regard to any payments or other transfers of assets to the Lender received from or on behalf of the Borrower prior to notice of termination of this Guaranty and which are or may be held voidable on the grounds of preference or fraud, whether or not the Debt has been paid in full. The provisions of this paragraph 16 shall survive the term of this Guaranty and the payment in full of the Debt and all other Liabilities.

17. Any notice, request or demand given or made under this Guaranty shall be in writing and shall be given in the manner and to the notice

parties set forth in the Loan Agreement.

18. This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New York and shall be in all respects governed, construed, applied and enforced in accordance with the laws of the State of New York without regard to

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principles of conflicts of laws. The undersigned acknowledges and agrees that this Guaranty is, and is intended to be, an instrument for the payment of money only, as such phrase is used in Section 3213 of the Civil Practice Law and Rules of the State of New York, and the undersigned has been fully advised by its counsel of the Lender's rights and remedies pursuant to said Section 3213.

19. The undersigned agrees to submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Guaranty. In furtherance of such agreement, the undersigned hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the undersigned in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New York and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the undersigned by registered or certified mail to, or by personal service at, the last known address of the undersigned, whether such address be within or without the jurisdiction of any such court. The undersigned hereby further agrees that the venue of any litigation arising in connection with the Debt or in respect of any of the obligations of the undersigned under this Guaranty, shall, to the extent permitted by law, be in New York County. Nothing in this paragraph shall limit the right of the Lender to bring an action or proceeding arising out of the Guaranty in any other jurisdiction.

20. The undersigned absolutely, unconditionally and irrevocably waives any and all right to assert or interpose any defense (other than the final and indefeasible payment in full of the Debt), setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Guaranty or the obligations of the undersigned under this Guaranty, or the obligations of any other person or party (including without limitation, the Borrower) relating to this Guaranty, or the obligations of the undersigned hereunder or otherwise with respect to the Line of Credit in any action or proceeding brought by the Lender to collect the Debt, or any portion thereof, or to enforce the obligations of the undersigned under this Guaranty (provided, however, that the foregoing shall not be deemed a waiver of the right of the undersigned to assert any compulsory counterclaim maintained in a court of the United States, or of the State of New York if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the right of the undersigned to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against the Lender in any separate action or

proceeding). The undersigned hereby undertakes and agrees that this Guaranty shall remain in full force and effect for all of the obligations and liabilities of the undersigned hereunder, notwithstanding the maturity of the Advances or termination of the Commitment (as defined in the Loan Agreement), whether by acceleration, scheduled maturity or otherwise.

21. No exculpatory provisions which may be contained in the Note, the Deed of Trust or in any other Loan Document shall in any event or under any circumstances be deemed or construed to modify, qualify, or affect in any manner whatsoever the obligations and liabilities of the undersigned under this Guaranty.

22. The obligations and liabilities of the undersigned under this Guaranty are in addition to the obligations and liabilities of the undersigned under the Other Guaranties (as hereinafter defined). The discharge of the undersigned's obligations and liabilities under any one or more of the Other Guaranties by the undersigned or by reason of operation of law or otherwise

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shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the undersigned's obligations and liabilities under this Guaranty. Conversely, the discharge of any of the undersigned's obligations and liabilities under this Guaranty by the undersigned or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the undersigned's obligations and liabilities under any of the Other Guaranties. The term "Other Guaranties" as used herein shall mean any other guaranty of payment, guaranty of performance, completion guaranty, indemnification agreement or other guaranty or instrument creating any obligation or undertaking of any nature whatsoever (other than this Guaranty) now or hereafter executed and delivered by either or both of the undersigned to the Lender in connection with the Line of Credit.

23. This Guaranty may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement of guaranty.

24. The undersigned hereby irrevocably and unconditionally waives, and the Lender by its acceptance of this Guaranty irrevocably and unconditionally waives, any and all right to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Guaranty.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the undersigned has duly executed this Guaranty the day and year first above set forth.

THE SMITH & WOLLENSKY RESTAURANT GROUP, INC.

By: /s/ Alan M. Mandel  
-----  
Name: Alan M. Mandel  
Title: Secretary

SMITH & WOLLENSKY OF BOSTON LLC

By: The Smith & Wollensky Restaurant Group, Inc.

By: /s/ Alan M. Mandel  
-----  
Name: Alan M. Mandel  
Title: Secretary

STATE OF NEW YORK )  
                          ss.:  
COUNTY OF NEW YORK )

On the 20th day of July in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang  
-----  
Notary Public

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

On the 20th day of July in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang

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Notary Public

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EXHIBIT A

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Advances: The term "Advances" as used in this Guaranty shall have the meaning assigned to such term in the Loan Agreement.

Deed of Trust: The term "Deed of Trust" as used in this Guaranty shall have the meaning assigned to such term in the Loan Agreement.

Loan Agreement: The term "Loan Agreement" as used in this Guaranty shall mean that certain Line of Credit Agreement, of even date herewith, entered into among the Borrower, The Smith & Wollensky Restaurant Group, Inc., Smith & Wollensky of Boston LLC and the Lender, together with any and all modifications, supplements, replacement or substitutions therefor as may exist from time to time.

Loan Documents: The term "Loan Documents" as used in this Guaranty shall have the meaning assigned to such term in the Loan Agreement.

Note: The term "Note" as used in this Guaranty shall mean the Promissory Note, of even date herewith, referred to in the Loan Agreement, together with any and all modifications, supplements, replacements or substitutions therefor as may exist from time to time.

LEASEHOLD DEED OF TRUST

THIS LEASEHOLD DEED OF TRUST (this "Deed of Trust") made as of the 21st day of July, 2004, by S&W OF LAS VEGAS, L.L.C., a Delaware limited liability company, having an address at c/o The Smith & Wollensky Restaurant Group, Inc., 1114 First Avenue, New York, New York 10021 (the "Grantor") to FIRST AMERICAN TITLE COMPANY OF NEVADA, INC., as trustee, having an address at 3760 Pecos-McLeod, #7, Las Vegas, Nevada 89121 (the "Trustee"), for the benefit of MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC., a Delaware corporation, having an address at 2000 Westchester Avenue, 2nd Floor N.E., Purchase, New York 10577 (the "Beneficiary").

W I T N E S S E T H:

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WHEREAS, the Grantor is the owner of a leasehold estate in the premises described in Exhibit A attached hereto (the "Premises") under and pursuant to the provisions of the lease described in Exhibit A-1 attached hereto (the "Subject Lease");

WHEREAS, the Grantor is a party to a certain Line of Credit Agreement of even date herewith among the Grantor, The Smith & Wollensky Restaurant Group, Inc., Smith & Wollensky of Boston LLC, and the Beneficiary (such agreement and any and all amendments, modifications, extensions, renewals or replacements thereto, is referred to herein as the "Loan Agreement"; all capitalized terms used herein which are not defined herein shall have the meanings given to them in the Loan Agreement);

WHEREAS, subject to the terms and conditions of the Loan Agreement, the Beneficiary has agreed to extend a commercial line of credit under which the Beneficiary will make advances to the Grantor (the "Advances"), which is evidenced by a Promissory Note of even date herewith in the principal amount of up to Two Million and 00/100 Dollars (\$2,000,000.00) [as the same may be amended or restated from time to time, the "Note"]; and

WHEREAS, it is a condition to the obligation of the Beneficiary to make the Advances that the Grantor execute and deliver this Deed of Trust.

NOW THEREFORE, TO SECURE PAYMENT AND PERFORMANCE OF THE FOLLOWING OBLIGATIONS (collectively, the "Obligations"):

- (i) Prompt payment and performance of all obligations of the Grantor under, with respect to and arising in connection with the Loan Agreement, the Note, this Deed of Trust and the other Loan Documents (as herein defined), including without limitation, all obligations to the Beneficiary for

fees, costs and expenses, including attorneys' fees, as provided herein or therein;

(ii) Payment of all sums advanced by the Beneficiary or the Trustee to protect the Trust Property (as defined herein), with interest thereon at the Default Rate (as defined herein);

(iii) All renewals, extensions, amendments, restatements and changes of, or substitutions or replacements for, all or any part of any of the obligations described in clause (i) hereof; and

(iv) Payment of all sums advanced and costs and expenses incurred by the Beneficiary (or by the Trustee) in connection with any of the foregoing obligations or in connection with the perfection and the security therefor, whether such advances, costs and expenses were made or incurred at the request of the Grantor or the Beneficiary (or the Trustee);

THE GRANTOR BY THESE PRESENTS HEREBY IRREVOCABLY grants, gives, bargains, sells, alienates, enfeoffs, conveys, confirms, sets over, delivers, assigns and transfers to the Trustee and its successors and assigns, IN TRUST FOREVER, WITH POWER OF SALE, pursuant to this Deed of Trust and applicable law, for the benefit of the Beneficiary, all right, title and interest of the Grantor now owned, or hereafter acquired, in and to the property, rights and interests hereinafter described in granting clauses (a) through (l) [all property of any kind described in said clauses (a) through (l) being, collectively, the "Trust Property"] including, without limitation, (i) such Trust Property that is real property under the laws of the State of Nevada (such Trust Property that is also such real property being collectively, the "RP Collateral"); (ii) any RP Collateral or UCC Collateral (defined below) that is deemed a "fixture" under the Uniform Commercial Code of the State of Nevada (the "Nevada UCC"); and (iii) Trust Property that is not RP Collateral to the full extent that Trust Property may be subject to the Uniform Commercial Code of the State of New York (collectively, the "UCC Collateral"); provided, however, such grant of the Leases and Rents shall be absolute and unconditional as set forth in Paragraph 7 below:

(a) (i) the Subject Lease and the leasehold estate in the Premises created thereunder; (ii) the buildings and improvements owned by the Grantor now or hereafter located on the Premises (the "Improvements"); (iii) all modifications, extensions and renewals of the Subject Lease and all credits, deposits, options, purchase options, privileges and rights of the Grantor under the Subject Lease, including, but not limited to, the right, if any, to renew or extend the Subject Lease for a succeeding term or terms, or to acquire fee title to or other interest in all or any portion of the Premises or to the Improvements; and (iv) all of the Grantor's rights and remedies at any time arising under or pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"), including, without limitation, all

of the Grantor's rights thereunder to remain in possession of the Premises and the Improvements;

(b) all of the estate, right, title, claim or demand of any nature whatsoever of the Grantor, either in law or in equity, in possession or expectancy, in and to the Premises or any part thereof;

(c) all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Premises or now or hereafter transferred to the Premises);

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(d) all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever and all additions thereto and renewals and replacements thereof, and all substitutions therefor now owned or hereafter acquired by the Grantor, or in which the Grantor has or shall have an interest, now or hereafter located upon or in, or attached to, any portion of the Premises or appurtenances thereto, or located off-site from the Premises but purchased with the proceeds of the Advances or of any other loans made to the Grantor by the Beneficiary and used or usable in connection with the present or future operation and occupancy of the Premises and all building equipment, materials and supplies of any nature whatsoever owned by the Grantor, or in which the Grantor has or shall have an interest, now or hereafter located upon the Premises and whether stored at the Premises or off-site if used in connection with such operation and occupancy (collectively, the "Equipment"), and the right, title and interest of the Grantor in and to any of the Equipment which may be subject to any security agreements (as defined in the Nevada UCC), superior in lien to the lien of this Deed of Trust and all proceeds and products of any of the above;

(e) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Premises, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Premises;

(f) all leases and other agreements (other than the Subject Lease) affecting the use or occupancy of the Premises now or hereafter entered into (the "Leases") and the right to receive and apply the rents, issues and profits of the Premises (the "Rents") to the payment of the Obligations;

(g) all right, title and interest of the Grantor in and to (i)

all contracts from time to time executed by the Grantor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Premises or any part thereof and all agreements relating to the purchase or lease of any portion of the Premises or any property which is adjacent or peripheral to the Premises, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses (to the extent such grant is permitted by law), building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Premises or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Premises;

(h) all trade names, trademarks, logos, copyrights, good will and books and records relating to or used in connection with the operation of the Premises or any part thereof; all general intangibles related to the operation of the Premises now existing or hereafter arising;

(i) all accounts and revenues arising from the operation of the Premises, including, without limitation, (i) any right to payment now existing or hereafter arising for goods sold or for services rendered, whether or not yet earned by performance, arising from the operation of the Premises and (ii) all rights to payment from any consumer credit-charge card organization or entity, including, without limitation, payments arising from the use of any credit or debit card, including those now existing or hereafter created, substitutions therefor, proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received upon

the sale, exchange, transfer, collection or other disposition or substitution thereof and any and all of the foregoing and proceeds therefrom;

(j) all proceeds of and any unearned premiums on any insurance policies covering the Premises, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Premises and all refunds of Taxes (as herein defined);

(k) the right, in the name and on behalf of the Grantor, to appear in and defend any action or proceeding brought with respect to the Premises and to commence any action or proceeding to protect the interest of the Beneficiary in the Premises; and

(l) all rights and estates in reversion or remainder to any existing and future corrections, modifications, supplements or amendments to, or renewals, extensions or ratifications of, or replacements or substitutions for, or accessions, additions or attachments to, or proceeds (both cash and non-cash) of, any of the foregoing, and all privileges and appurtenances thereunto

belonging.

IN FURTHERANCE OF THE FOREGOING GRANTS, BARGAINS, SALES, ASSIGNMENTS, TRANSFERS AND CONVEYANCES, AND TO PROTECT THE TRUST PROPERTY AND THE SECURITY GRANTED BY THIS DEED OF TRUST, THE GRANTOR COVENANTS AND AGREES WITH AND REPRESENTS AND WARRANTS TO THE BENEFICIARY AS FOLLOWS:

1. Payment of Obligations.

The Grantor will pay the Obligations at the time and in the manner provided for the payment thereof in the Loan Agreement, the Note and the other Loan Documents. The Loan Agreement and the Note provide for a variable rate of interest.

2. Habendum and Warranty of Title.

(a) The Grantor represents that the Grantor is the lawful owner of the Trust Property in existence on the date hereof, with good right and authority to encumber and convey it, and that the RP Collateral is free and clear of all liens, claims and encumbrances, subject to the terms and condition of the Subject Lease and the other title exceptions expressly set forth in the title insurance policy issued to the Beneficiary in connection with the Advances and insuring the lien of this Deed of Trust. The Grantor hereby binds the Grantor and the Grantor's successors and assigns to forever WARRANT and DEFEND the Trust Property and every part of it unto the Trustee, his successors or substitutes in the Trust, and his or their assigns, against the claims and demands of every person whomsoever lawfully claiming or to claim it or any part of it (such warranty to supersede any provision contained in this Deed of Trust limiting the liability of the Grantor), subject to the terms and conditions of the Subject Lease and the other title exceptions expressly set forth in the title insurance policy issued to the Beneficiary in connection with the Advances and insuring the lien of this Deed of Trust. The Grantor further represents and warrants (i) the Subject Lease is in full force and effect and has not been modified in any manner whatsoever, (ii) there are no defaults under the Subject Lease and no event has occurred,

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which but for the passage of time, or notice, or both, would constitute a default under the Subject Lease, (iii) all rents, additional rents and other sums due and payable under the Subject Lease have been paid in full, and (iv) no action has commenced and no notice has been given or received for the purpose of terminating the Subject Lease.

(b) The Grantor also represents and warrants that (i) the Grantor is now, and after giving effect to this Deed of Trust, will be in a solvent condition, (ii) the execution and delivery of this Deed of Trust by the Grantor does not constitute a "fraudulent conveyance" within the meaning of

Title 11 of the United States Code as now constituted or under any other applicable statute, and (iii) no bankruptcy or insolvency proceedings are pending or contemplated by or against the Grantor.

3. Insurance.

At all times prior to the termination of this Deed of Trust, the Grantor (i) will keep the Improvements and the Equipment insured against loss or damage by fire, standard extended coverage perils and such other hazards as the Beneficiary shall from time to time require in amounts approved by the Beneficiary on a so-called "special form" policy, which amounts shall in no event be less than 100% of the full insurable replacement value of the Improvements and the Equipment and shall be sufficient to meet all applicable co-insurance requirements and will maintain such other forms of insurance coverage with respect to the Trust Property as the Beneficiary shall require, and (ii) will maintain rental and business interruption insurance and such other insurance as the Beneficiary may from time to time require, in amounts approved by the Beneficiary, including, without limitation, comprehensive general public liability insurance covering injury and damage to persons and property naming the Beneficiary as an additional insured. All policies of insurance (the "Policies") shall be issued by insurers having a minimum policy holders rating of "A-" per the latest rating publication of Property and Casualty Insurers by A.M. Best Company and shall have a financial size category of not less than IX, and who are lawfully doing business in the state of Nevada and are otherwise acceptable in all respects to the Beneficiary. All Policies shall include a provision that such Policy (a) will not be cancelled, altered or in any way limited in coverage or reduced in amount unless the Beneficiary is notified in writing at least thirty (30) days prior to such cancellation or change, (b) shall contain a mortgagee non-contribution clause endorsement or an equivalent endorsement satisfactory to the Beneficiary naming the Beneficiary as the person to which all payments made by the insurer thereunder shall be paid and shall otherwise be in form and substance satisfactory in all respects to the Beneficiary and (c) shall indicate the Beneficiary's address as Morgan Stanley Dean Witter Commercial Financial Services, Inc., 2000 Westchester Avenue, 2nd Floor N.E., Purchase, New York 10577, or such other address as the Beneficiary may designate from time to time. Blanket insurance policies shall not be acceptable for the purposes of this Paragraph 3 unless otherwise approved to the contrary by the Beneficiary. The Grantor shall pay the premiums for the Policies as the same become due and payable. At the request of the Beneficiary, the Grantor will deliver the Policies to the Beneficiary. Not later than ten (10) days prior to the expiration date of each of the Policies, the Grantor will deliver to the Beneficiary a renewal policy or policies marked "premium paid" or accompanied by other evidence satisfactory to the Beneficiary that the Policies are in effect and the premiums have been paid. If at any time the Beneficiary is not in receipt of written evidence that all insurance required hereunder is in full force and effect, the Beneficiary shall have the right without notice to the

Grantor to take such action as the Beneficiary deems necessary to protect its interest in the Trust Property, including, without limitation, the obtaining of such insurance coverage as the Beneficiary in its sole discretion deems appropriate, and all expenses incurred by the Beneficiary in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Grantor to the Beneficiary upon demand. The Grantor shall at all times comply with and shall cause the Improvements and Equipment and the use, occupancy, operation, maintenance, alteration, repair and restoration thereof to comply with the terms, conditions, stipulations and requirements of the Policies. If the Premises, or any portion of the Improvements or the Equipment, is located in a Federally designated "special flood hazard area," in addition to the other Policies required under this Paragraph 3, a flood insurance policy shall be delivered by the Grantor to the Beneficiary. If no portion of the Premises is located in a Federally designated "special flood hazard area" such fact shall be substantiated by a certificate in form satisfactory to the Beneficiary from a licensed surveyor, appraiser or professional engineer or other qualified person. If the Trust Property shall be damaged or destroyed, in whole or in part, by fire or other property hazard or casualty, the Grantor shall give prompt notice thereof to the Beneficiary. Sums paid to the Beneficiary by any insurer may be retained and applied by the Beneficiary toward payment of the Obligations, or held as cash collateral therefor, whether or not then due and payable in such order, priority and proportions as the Beneficiary in its discretion shall deem proper or, at the discretion of the Beneficiary, the same may be paid, either in whole or in part, to the Grantor for such purposes as the Beneficiary shall designate. If the Beneficiary shall receive and retain such insurance proceeds, the lien of this Deed of Trust shall be reduced only by the amount thereof received and retained by the Beneficiary and actually applied by the Beneficiary in reduction of the Obligations. This Paragraph 3 is subject to the terms of the Subject Lease.

4. Payment of Taxes, etc.

(a) To the extent that the Grantor is obligated to pay the same under the Subject Lease or under applicable law, the Grantor shall pay all taxes, assessments, water rates, sewer rents and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed against the Trust Property and the Premises (the "Taxes") prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof, and the Grantor shall deliver to the Beneficiary, upon request, receipted bills, canceled checks and other evidence satisfactory to the Beneficiary evidencing the payment of the Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof.

(b) After prior notice to the Beneficiary, in the case of any material item, the Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of

the Taxes, provided that (i) no default shall have occurred and shall be continuing under the Note or this Deed of Trust, (ii) the Grantor is permitted to do so under the provisions of the Subject Lease, (iii) such proceeding shall suspend the collection of the contested Taxes from the Grantor and from the Trust Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Grantor or the Trust Property is subject and shall not constitute a default thereunder, (v) neither

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the Trust Property nor any part thereof nor any interest therein will in the opinion of the Beneficiary be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) the Grantor shall have set aside in an interest-bearing account with the Beneficiary, and otherwise in a manner satisfactory to the Beneficiary, adequate cash reserves for the payment of the contested Taxes, together with all interest and penalties thereon, or in the alternative the Grantor shall have furnished such security as may be required in the proceeding, or as may otherwise be requested or required by the Beneficiary to insure the payment of the contested Taxes, together with all interest and penalties thereon, and, provided further, that if at any time the Beneficiary determines, in its sole and absolute discretion, that payment of any tax, assessment or other charge shall become necessary to prevent the delivery of a tax deed conveying the Trust Property or any portion thereof because of non-payment of any such sums, then the Grantor shall pay or cause to be paid the sums in sufficient time to prevent the delivery of such tax deed.

(c) If a default shall occur under the Note or this Deed of Trust either prior to, or after, initiating said proceeding, the Beneficiary shall have the right to either initiate or continue said proceeding, as the case may be, either in its own name or as agent of the Grantor. The Grantor shall cooperate with the Beneficiary and make available to the Beneficiary upon demand any and all information, and execute any documents or pleadings, which the Beneficiary may reasonably require. The Beneficiary shall then conduct said proceeding in a manner it deems appropriate, and at its own expense, subject to any right of reimbursement from the Grantor in accordance with the provisions of this Deed of Trust.

#### 5. Escrow Fund.

To the extent that the Grantor is obligated to pay the Taxes under the Subject Lease or under applicable law, the Grantor will, at the option of the Beneficiary, pay to the Beneficiary on the first day of each calendar month one-twelfth of an amount (the "Escrow Fund") which would be sufficient to pay the Taxes payable, or estimated by the Beneficiary to be payable, during the ensuing twelve (12) months. The Beneficiary will apply the Escrow Fund to the payment of Taxes which are required to be paid by the Grantor pursuant to the provisions of this Deed of Trust. If the amount of the Escrow Fund shall exceed

the amount of the Taxes payable by the Grantor pursuant to the provisions of this Deed of Trust, the Beneficiary shall, in its discretion, (a) return any excess to the Grantor, (b) credit such excess against future payments to be made to the Escrow Fund or (c) credit such excess against the Debt in such priority and proportions as the Grantor in its sole discretion shall deem proper. In returning such excess, the Beneficiary may deal with the person shown on the records of the Beneficiary to be the owner of the Trust Property. If the Escrow Fund is not sufficient to pay the Taxes, as the same become payable, the Grantor shall pay to the Beneficiary, upon request, an amount which the Beneficiary shall estimate as sufficient to make up the deficiency. Any amounts in the Escrow Fund may not be commingled with the general funds of the Beneficiary and shall constitute additional security for the Obligations and shall bear interest.

6. Condemnation.

Notwithstanding any taking of all or any portion of the Trust Property by any public or quasi-public authority through eminent domain or otherwise, the Grantor shall continue to pay the Obligations at the times and in the manner provided therefor in the Note, this Deed of

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Trust and the other Loan Documents, and the Obligations shall not be reduced until any award or payment therefor shall have been actually received and applied by the Beneficiary to the reduction of the Obligations. The Beneficiary may hold such award or payment as cash collateral for the Obligations and/or apply all or any of the same to the reduction of the Obligations whether or not then due and payable in such order, priority and proportions as the Beneficiary in its discretion shall deem proper. If the Trust Property is sold, through foreclosure or otherwise, prior to the receipt by the Beneficiary of such award or payment, the Beneficiary shall have the right, whether or not a deficiency judgment shall have been sought, recovered or denied with respect to the Obligations, to receive such award or payment, or a portion thereof sufficient to pay the Obligations, whichever is less. The Grantor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to the Beneficiary. The Grantor hereby irrevocably authorizes and empowers the Beneficiary, in the name of the Grantor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, the Grantor shall, upon demand of the Beneficiary, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Beneficiary, free and clear of any encumbrances of any kind or nature whatsoever.

7. Leases and Rents.

(a) Grantor hereby absolutely and unconditionally assigns, sells, transfers and conveys all of the right, title and interest in and to all Leases and all renewals, replacements and guarantees thereof along with all of the Rents to Beneficiary. This assignment is absolute in nature and not an assignment for additional security only. Subject to the terms of this Paragraph 7, the Beneficiary waives the right to enter the Premises for the purposes of collecting the Rents, and grants the Grantor the right to collect the Rents. The Grantor shall hold the Rents, or an amount sufficient to discharge all current sums due in respect of the Obligations in trust for use in payment of the Obligations. The right of the Grantor to collect the Rents may be revoked by the Beneficiary without notice upon any default under the terms of the Note or this Deed of Trust. Following such revocation, the Beneficiary may retain and apply the Rents toward payment of the Obligations, in such order, priority and proportions as the Beneficiary, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Trust Property, and irrespective of whether the Beneficiary shall have commenced any sale or foreclosure of this Deed of Trust or shall have applied or arranged for the appointment of a receiver. The Grantor shall not, without the consent of the Beneficiary, make, or suffer to be made, any Leases or modify or cancel any Leases, or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Notwithstanding the foregoing, the Beneficiary will not unreasonably withhold its consent to the Grantor making a new Lease or renewing an existing Lease provided that (i) no Event of Default has occurred hereunder and (ii) such new or renewed Lease is (a) for actual occupancy, (b) at market rents, (c) for a reputable use as reasonably determined by the Beneficiary and (d) made pursuant to documentation in form and substance satisfactory in all respect to the Beneficiary. The Grantor shall (a) fulfill or perform each and every provision of the Leases on the part of the Grantor to be fulfilled or performed, (b) promptly send copies of all notices of default which the Grantor shall send or receive under the Leases to the Beneficiary, and (c) enforce the performance or observance of the provisions thereof by the tenants thereunder. The Grantor

shall from time to time, but not less frequently than once every 180 days, provide to the Beneficiary a complete and detailed leasing status report with respect to the Improvements, which leasing status report shall be in form and substance satisfactory in all respects to the Beneficiary. In addition to the rights which the Beneficiary may have herein, in the event of any default under this Deed of Trust, the Beneficiary, at its option, may require the Grantor to pay monthly in advance to the Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be in possession of the Grantor. Upon default in any such payment, the Grantor will vacate and surrender possession of the Premises to the Beneficiary, or to such receiver, and, in default thereof, the Grantor may be evicted by summary proceedings or otherwise. Nothing contained in this Paragraph 7(a) shall be construed as imposing on the Beneficiary any of the

obligations of the lessor under the Leases or of a "mortgagee in possession" (or equivalent).

(b) The Grantor acknowledges and agrees that, upon recordation of this Deed of Trust, the Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to the Grantor and all third parties, including without limitation any subsequently appointed trustee in any case under the Bankruptcy Code (as hereinafter defined), without the necessity of (i) commencing an action for the sale or foreclosure of the Trust Property, (ii) furnishing notice to the Grantor or tenants under the Leases, (iii) making formal demand for the Rents, (iv) taking possession of the Premises, (v) obtaining the appointment of a receiver of the rents and profits of the Premises, (vi) sequestering or impounding the Rents, or (vii) taking any other affirmative action.

(c) For purposes of Section 552(b) of the Bankruptcy Code, the Grantor and the Beneficiary agree that this Deed of Trust shall constitute a "security agreement," that the security interest created by such security agreement extends to property of the Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and that such security interest shall extend to all Rents acquired by the estate after the commencement of a case in bankruptcy.

(d) The Grantor acknowledges and agrees that all Rents shall be deemed to be "Cash Collateral" under Section 363 of the Bankruptcy Code in the event that the Grantor files a voluntary petition in bankruptcy or is made subject to any involuntary bankruptcy proceeding. After the filing of such petition, the Grantor may not use Cash Collateral without the consent of the Beneficiary and/or an order of any bankruptcy court pursuant to Section 363(b)(2) of the Bankruptcy Code.

(e) It is agreed and understood that the Beneficiary hereby reserves the right and shall have the right, at any time and from time to time, without the consent or joinder of any other party, to subordinate this Deed of Trust and the liens, assignments and security interests created by this Deed of Trust to all or any of the Leases regardless of the respective priority of any of such Leases and this Deed of Trust. Upon doing so, a foreclosure of the Beneficiary's liens, assignments and security interests under this Deed of Trust shall be subject to and shall not operate to extinguish any of said Leases as to which such subordination is operative.

## 8. Maintenance of the Trust Property.

The Grantor represents and warrants that, to the best of its knowledge, the uses to which the Trust Property is put are, as of the date hereof, in material compliance with all zoning, land use and similar laws, rules

and regulations (including, without limitation, all parking requirements). The Grantor shall cause the Trust Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Trust Property. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment), without the prior written consent of the Beneficiary. The Grantor shall promptly comply with all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Trust Property, or any portion thereof or the use thereof. The Grantor shall promptly repair, replace or rebuild any part of the Trust Property which may be damaged or destroyed by fire or other property hazard or casualty (including any fire or other property hazard or casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such fire or other property hazard or casualty shall be covered by the Policies, the Grantor's obligation to repair, replace or rebuild such portion of the Trust Property shall be contingent upon the Beneficiary paying the Grantor the proceeds of the Policies, or such portion thereof as shall be sufficient to complete such repair, replacement or rebuilding, whichever is less. The Grantor will not, without obtaining the prior consent of the Beneficiary, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Trust Property or any part thereof.

9. Environmental Provisions.

(a) For the purposes of this Paragraph 9, the following terms shall have the following meanings: (i) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions. For purposes of this Paragraph 9 only, the term "Trust Property" shall include the land comprising the Premises, (ii) the "Environmental Requirements" shall collectively mean all present and future laws, statutes, common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials or polychlorinated biphenyls.

(b) The Grantor hereby represents and warrants to the Beneficiary to the best of its knowledge that (i) except as specifically set forth in the Phase I Environmental Assessment dated October 19, 1994 prepared by Terracon Consultants Western, Inc. (heretofore reviewed by

the Beneficiary or its consultant), no Hazardous Material is currently located at, on, in, under or about the Trust Property in violation of any Environmental Requirements, (ii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Material from the Trust Property onto any other property or from any other property onto or into the Trust Property has occurred or is occurring in violation of any Environmental Requirement, (iii) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Trust Property is presently outstanding under any Environmental Requirement, nor does the Grantor have knowledge or reason to believe that any such notice will be received or is being threatened, and (iv) the Trust Property and the operation thereof are in full compliance with all Environmental Requirements.

(c) The Grantor shall comply, and shall cause all tenants or other occupants of the Trust Property deriving their interests through the Grantor to comply, in all respects with all Environmental Requirements, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Trust Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, or about the Trust Property in a manner that could lead or potentially lead to the imposition on the Grantor, the Beneficiary or the Trust Property of any liability or lien of any nature whatsoever under any Environmental Requirement. The Grantor shall notify the Beneficiary promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Trust Property which is required to be reported to a Governmental Authority under any Environmental Requirement, will promptly forward to the Beneficiary copies of any notices received by the Grantor relating to alleged violations of any Environmental Requirement or any potential liability under any Environmental Requirement and will promptly pay when due any fine or assessment against the Beneficiary, the Grantor or the Trust Property relating to any Environmental Requirement. If at any time it is determined that the operation or use of the Trust Property is in violation of any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Trust Property which violate any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Trust Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any form of cleanup or corrective action, the Grantor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from the Beneficiary, take, at the Grantor's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements, provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, the Grantor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental

Requirements.

(d) If the Grantor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion (as determined by the Beneficiary in its sole and absolute discretion), any such action described in clause (c) above, the Beneficiary may, in its sole and absolute discretion, make advances or payments toward the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by the Beneficiary (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or

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proceeding relating thereto, will immediately, upon demand, become due and payable from the Grantor and shall bear interest at the Default Rate from the date any such sums are so advanced or paid by the Beneficiary until the date any such sums are repaid by the Grantor to the Beneficiary. The Grantor will execute and deliver, promptly upon request, such instruments as the Beneficiary may deem useful or necessary to permit the Beneficiary to take any such action, and such additional notes and instruments, as the Beneficiary may require to secure all sums so advanced or paid by the Beneficiary. If a lien is filed against the Trust Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of the Grantor or for which the Grantor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the state of Nevada where the Trust Property is located, then the Grantor will, within thirty (30) days from the date that the Grantor is first given notice that such lien has been placed against the Trust Property (or within such shorter period of time as may be specified by the Beneficiary if such Governmental Authority has commenced steps to cause the Trust Property to be sold pursuant to such lien), either (i) pay the claim and remove the lien, or (ii) furnish a cash deposit, bond, or such other security with respect thereto as is satisfactory in all respects to the Beneficiary and is sufficient to effect a complete discharge of such lien on the Trust Property.

(e) The Beneficiary may, at its option, at any time or times, but not more than one time per year, cause an environmental audit of the Trust Property or portions thereof to be conducted to confirm the Grantor's compliance with the provisions of this Paragraph 9; provided, however, the Grantor shall not unreasonably withhold its consent to the Beneficiary's request to cause an environmental audit more than one time per year. In addition, the Beneficiary may, at its option if the Beneficiary reasonably believes that a Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental audit of the Trust Property or

portions thereof to be conducted to confirm the Grantor's compliance with the provisions of this Paragraph 9. The Grantor shall cooperate in all reasonable ways with the Beneficiary in connection with any such audit. If any audit discloses that a violation of or a liability under an Environmental Requirement exists, or if such audit was required by the Beneficiary under the second sentence of this subparagraph (e), or was prescribed by law, regulation or governmental or quasi-governmental authority, the Grantor shall pay all costs and expenses incurred in connection with such audit; otherwise, the costs and expenses of such audit shall, notwithstanding anything to the contrary set forth in this Paragraph 9, be paid by the Beneficiary.

(f) If this Deed of Trust is foreclosed, or if the Trust Property is sold pursuant to the provisions of this Deed of Trust, or if the Grantor tenders a deed or assignment in lieu of foreclosure or sale, the Grantor shall deliver the Trust Property to the purchaser at foreclosure or sale or to the Beneficiary, its nominee, or wholly-owned subsidiary, as the case may be, in a condition that complies in all respects with all Environmental Requirements.

(g) The Grantor will defend, indemnify, and hold harmless the Beneficiary, its employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including,

without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by the Grantor of any of the provisions of this Paragraph 9, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Trust Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Trust Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Trust Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material, (iv) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation of any Environmental Requirement or any policy or requirement of the Beneficiary hereunder. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any other document or instrument now or hereafter executed and delivered in connection with the Advances and secured by this Deed of Trust, constitute the personal recourse undertakings, obligations and liabilities of the Grantor. Notwithstanding the foregoing, the aforesaid indemnification shall not be applicable with respect to any claim, demand, penalty, cause of action, fine, liability, settlement, damage, cost or other expense of any type

whatsoever occasioned, arising and caused solely and directly as the result of the gross negligence or willful misconduct of the Beneficiary, its nominee or wholly-owned subsidiary or their respective employees or agents subsequent to the date upon which the Beneficiary, its nominee or wholly-owned subsidiary acquires possession of the Trust Property following foreclosure of this Deed of Trust, a sale of the Trust Property pursuant to the provisions of this Deed of Trust, acceptance of a deed or assignment in lieu of foreclosure or sale or otherwise, or occasioned, arising and caused solely and directly as the result of any act of any person (other than (i) an act of the Grantor or a Guarantor or any subsidiary, employee, agent or affiliate of any of them, or an act of the Beneficiary, its nominee or affiliate or their respective employees or agents which does not constitute gross negligence or willful misconduct, or (ii) an act of any governmental authority, including, without limitation, any change in any Environmental Requirements) and occurring subsequent to the earlier to occur of (x) the date of payment to the Beneficiary in cash of the Obligations, and (y) the date upon which the Beneficiary, its nominee or affiliate acquires possession of the Trust Property by foreclosure of this Deed of Trust, a sale of the Trust Property pursuant to the provisions of this Deed of Trust, acceptance of a deed or assignment in lieu of foreclosure or sale, or otherwise.

(h) The obligations and liabilities of the Grantor under this Paragraph 9 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Obligations have been paid in full and irrespective of any foreclosure of this Deed of Trust, sale of the Trust Property pursuant to the provisions of this Deed of Trust or acceptance by the Beneficiary, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

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10. Estoppel Certificates.

The Grantor, within fifteen (15) days after request by the Beneficiary and at its expense, will furnish the Beneficiary with a statement, duly acknowledged and certified, setting forth the amount of the Obligations and the offsets or defenses thereto, if any.

11. Transfer or Encumbrance of the Trust Property.

(a) No part of the Trust Property nor any interest of any nature whatsoever therein nor any interest of any nature whatsoever in the Grantor (whether stock, equity, beneficial, profit, loss or otherwise) shall in any manner, directly or indirectly, be further encumbered, sold, transferred or conveyed, or permitted to be further encumbered, sold, transferred, assigned or conveyed without the prior consent of the Beneficiary, which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Beneficiary. The provisions of the foregoing sentence of this Paragraph 11 shall

apply to each and every such further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not the Beneficiary has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law or is otherwise made.

(b) Anything contained in this Paragraph 11 to the contrary notwithstanding, indirect transfers of interests in the Grantor arising from transfers of interests in The Smith & Wollensky Restaurant Group, Inc. shall not be a default hereunder provided that such transfers do not constitute a Change in Control (as defined in the Loan Agreement) in The Smith & Wollensky Restaurant Group, Inc.

12. Notice.

Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be addressed, delivered and deemed delivered as provided in the Loan Agreement.

13. Sale of Trust Property.

If this Deed of Trust is foreclosed, the Trust Property, or any interest therein, may, at the discretion of the Beneficiary, be sold in one or more parcels or in several interests or portions and in any order or manner.

14. Changes in Laws Regarding Taxation.

In the event of the passage after the date of this Deed of Trust of any law of the state of Nevada deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of deeds of trust or mortgages or the obligations secured by deeds of trust or mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on the Loan Agreement, this Deed of Trust, the Note or the Obligations, the Grantor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or

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within twenty (20) days after demand by the Beneficiary, whichever is less, provided, however, that if, in the opinion of the attorneys for the Beneficiary, the Grantor is not permitted by law to pay such taxes, the Beneficiary shall have the right, at its option, to declare the Obligations due and payable on a date specified in a prior notice to the Grantor of not less than thirty (30) days.

15. No Credits on Account of the Obligations.

The Grantor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes assessed against the Trust Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Trust Property, or any part thereof, by reason of this Deed of Trust or the Obligations. If at any time this Deed of Trust shall secure less than all of the principal amount of the Obligations, it is expressly agreed that any repayment of any portion of the Obligations shall not reduce the amount of the lien of this Deed of Trust until the lien amount shall equal the principal amount of the Obligations outstanding.

16. Offsets, Counterclaims and Defenses.

Any assignee of this Deed of Trust, the Note and/or the Obligations shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which the Grantor may have against any assignor of this Deed of Trust, the Note and the Loan Agreement, and no such offset, counterclaim or defense shall be interposed or asserted by the Grantor in any action or proceeding brought by any such assignee upon this Deed of Trust, the Note or the Loan Agreement, and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Grantor.

17. Other Security for the Obligations.

The Grantor shall observe and perform all of the terms, covenants and provisions contained in the Loan Agreement, the Note and the other Loan Documents to which the Grantor is a party.

18. Documentary Stamps.

If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note or this Deed of Trust, then except to the extent prohibited under the laws of the state of Nevada, the Grantor will pay for the same, with interest and penalties thereon, if any.

19. Right of Entry.

Upon prior notice, the Beneficiary and its agents shall have the right to enter and inspect the Trust Property at all reasonable times.

20. Books and Records.

In addition to the covenant regarding financial reporting set forth in the Loan Agreement, the Grantor will keep and maintain or will cause to be kept and maintained on a

fiscal year basis in accordance with generally accepted accounting practices consistently applied, proper and accurate books, records and accounts reflecting all of the financial affairs of the Grantor and all items of income and expense in connection with the operation of the Trust Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Trust Property, whether such income or expense be realized by the Grantor or by any other person whatsoever excepting lessees unrelated to and unaffiliated with the Grantor who have leased from the Grantor portions of the Trust Property for the purpose of occupying the same. The Beneficiary shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of the Grantor or other person maintaining such books, records and accounts and to make copies or extracts thereof as the Beneficiary shall desire.

21. Performance of Other Agreements.

The Grantor shall observe and perform each and every term to be observed or performed by the Grantor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Trust Property.

22. Events of Default.

The occurrence of any of the following events ("Events of Default") shall (except in the case of clause (a) below where no such exercise of an option shall be necessary to the extent the effect of an "Event of Default" thereunder is automatic under the terms of the Loan Agreement itself), at the option of the Beneficiary, 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 hereby expressly waived by the Grantor, and the lien, encumbrance and security interest evidenced or created hereby shall be subject to sale or foreclosure in any manner provided for herein or provided for by law:

(a) if an "Event of Default" as defined therein shall occur under the Loan Agreement;

(b) if any Federal tax lien is filed against the Grantor which encumbers the Trust Property and the same is not discharged of record within thirty (30) days after the same is filed;

(c) if without the consent of the Beneficiary any Improvement or the Equipment (except for the normal replacement of the Equipment) is removed, demolished or materially altered, or if the Trust Property is not kept in good condition and repair;

(d) if the Grantor shall fail to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Trust Property within three (3) months from the issuance thereof, or the time period set forth therein, whichever is

less;

(e) if the Policies are not kept in full force and effect, or if the Policies are not delivered to the Beneficiary upon request;

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(f) if the Grantor shall fail to pay the Beneficiary on demand for all Premiums and/or Taxes paid by the Beneficiary pursuant to this Deed of Trust, together with any late payment charge and interest thereon calculated at the Default Rate;

(g) if, except as expressly permitted under Paragraph 7 hereof, any Leases are made, canceled or modified, or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned, without the consent of the Beneficiary in each instance;

(h) if the Grantor ceases to occupy at least 75% of the rentable square feet at the Premises for the conducting of the business operated thereon on the date of this Deed of Trust;

(i) if the Trust Property shall become subject (i) to any tax lien by virtue of any act or omission of the Grantor, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of the Beneficiary by any title company insuring the lien of this Deed of Trust within a period of the shorter of (i) the time provided therefor under the Subject Lease and (ii) 45 days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Deed of Trust and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Trust Property or is only a matter of record or notice;

(j) if (i) the Grantor shall default in the observance or performance of any term, covenant or condition of the Subject Lease on the part of the Grantor, as lessee thereunder, to be observed or performed, unless any such observance or performance shall have been waived or not required in writing by the lessor under the Subject Lease, which default continues beyond notice and cure periods, applicable thereto, if any, or (ii) any one or more events shall occur which would or may cause the Subject Lease to terminate without notice or action by the lessor thereunder or which would entitle the lessor under the Subject Lease to terminate the Subject Lease and the term thereof by giving notice to the Grantor, as lessee thereunder, or (iii) the leasehold estate created by the Subject Lease shall be surrendered, in whole or in part, or (iv) the Subject Lease shall be terminated or canceled for any reason or under any

circumstance whatsoever, or (v) any of the terms, covenants or conditions of the Subject Lease shall be modified, changed, supplemented, altered or amended in any material manner without the consent of the Beneficiary, or (vi) the Grantor shall, without the Beneficiary's prior written approval, elect to treat the Subject Lease as terminated under section 365(h)(1) of the Bankruptcy Code (it being understood that any such election made by the Grantor, as holder of the leasehold estate in the Trust Property, without the Beneficiary's prior written consent, in addition to constituting an Event of Default, shall be void); or

(k) if the Grantor shall continue to be in default under any of the terms, covenants or conditions of this Deed of Trust (other than as described in any of Subparagraphs (a) through (j) of this Paragraph 22) for ten (10) days after written notice from the Beneficiary in the case of any default which can be cured by the payment of a sum of money or for thirty (30)

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days after written notice from the Beneficiary in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and the Grantor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require the Grantor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days.

### 23. Remedies.

(a) General. Upon the occurrence and during the continuance of any one or more Events of Default, the Beneficiary may, in addition to any rights or remedies available to it hereunder or under the other Loan Documents, but subject to any applicable provisions of the Loan Agreement and to the extent permitted by applicable law, take such action personally or by its agents or attorneys, with or without entry, and without notice of intent to accelerate, notice of acceleration or other notice, demand, presentment or protest (each and all of which are hereby expressly WAIVED), as it deems necessary or advisable to protect and enforce the Beneficiary's rights and remedies against the Grantor and in and to the Trust Property, including, without limitation, the actions described in this Paragraph 23, each of which may be pursued concurrently or otherwise, at such time and in such order as the Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting its other capitalized rights or remedies.

(b) Acceleration; Notice. Time is of the essence with respect to the Grantor's obligations hereunder. Upon the occurrence of any Event of Default, at the Beneficiary's option and in addition to any other remedy the Beneficiary may have under the Loan Agreement, the Note, and the other Loan Documents, the Beneficiary may, at its option, declare all sums secured by this

Deed of Trust immediately due and payable (except in the case of an Event of Default under Subparagraph 22(a) above where no such exercise of an option shall be necessary to the extent the effect of an "Event of Default" thereunder is automatic under the terms of the Loan Agreement itself) and elect to have the Trust Property sold in the manner provided herein. In the event the Beneficiary elects to sell the Trust Property, the Beneficiary may execute or cause the Trustee to execute a written notice of default and of election to cause the Trust Property to be sold to satisfy the obligations hereof, and the Trustee shall file such notice for record in the office of the County Recorder of the county wherein the Trust Property is located. Beneficiary shall also deposit with the Trustee the Note and all documents evidencing expenditures secured by this Deed of Trust.

(c) Exercise of Power of Sale. Upon receipt of such notice from the Beneficiary, the Trustee shall cause to be recorded, published and delivered to the Grantor such Notice of Default and Election to Sell as then required by Chapter 107 of the Nevada Revised Statutes ("NRS"), or any successor statutes. The Trustee shall, without demand on the Grantor, after lapse of such time as may be required by law and after recordation of such Notice of Default and Election to Sell first give notice of the time and place of such sale, in the manner provided by the laws of the State of Nevada for the sale of real property under execution, and may from time to time postpone such sale by such advertisement as it may deem reasonable, or without further advertisement, by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale, and on the day of sale so advertised, or to which such sale may have been postponed, the Trustee may sell the Trust Property so

advertised, at public auction, at the time and place specified in the notice, either in the county in which the Trust Property, or any part thereof, to be sold, is situated, or at the principal office of the Trustee located in Clark County, State of Nevada, in its discretion, to the highest cash bidder (subject to the Beneficiary's right to credit upon the amount of the bid made therefor the amount payable to it). The Trustee shall execute and deliver to the purchaser a trustee's deed conveying the Trust Property so sold, but without any covenant of warranty, express or implied. The recitals in the trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Beneficiary, may bid at the sale, and Beneficiary shall have the right to credit upon the amount of the bid made therefor the amount payable to it out of the net proceeds of such sale. All other sales shall be, to the extent permitted by applicable law, on a cash basis. The Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's, and both the Trustee's and the Beneficiary's attorneys', fees and costs; (b) the cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof in conjunction with any default provision

hereunder, not then repaid, with accrued interest at the rate then provided for in the Note; (d) all sums then secured by this Deed of Trust, including interest and principal on the Note; and (e) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in the Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of the county wherein the Trust Property is located.

(d) Surrender of Possession. The Grantor shall surrender possession of the Trust Property to the purchaser immediately after the sale of the Trust Property as provided in Subsection 23(c) above, in the event such possession has not previously been surrendered by Grantor.

(e) UCC Remedies.

(i) Notwithstanding anything to the contrary in Subparagraphs 23(c) and (d) above, the Beneficiary, with regard to all the UCC Collateral, shall have the right to exercise, from time to time, any and all rights and remedies available to the Beneficiary, as a secured party under the Nevada UCC or the N.Y. UCC (hereinafter defined), as applicable, and any and all rights and remedies available to the Beneficiary under any other applicable law. Upon written demand from the Beneficiary, the Grantor shall, at the Grantor's expense, assemble the UCC Collateral and make such available to the Beneficiary at a reasonably convenient place designated by the Beneficiary. The Beneficiary shall have the right to enter upon any premises where the UCC Collateral or records pertaining to the UCC Collateral may be and take possession of the UCC Collateral and records relating to the UCC Collateral. The Beneficiary may sell, lease or otherwise dispose of any or all of the UCC Collateral and, after deducting the reasonable costs and out of pocket expenses incurred by the Beneficiary, including, without limitation, (a) reasonable attorneys' fees and legal expenses, (b) transportation and storage costs, (c) advertising of sale of the UCC Collateral, (d) sale commissions, (e) sales tax, (f) costs for improving or repairing the UCC Collateral, and (g) costs for preservation and protection of the UCC Collateral, apply the remainder to pay, or to hold as a reserve against, the Obligations.

(ii) The rights and remedies of the Beneficiary upon the occurrence of one or more Events of Default (whether such rights and remedies are conferred by statute, by rule of

law, by this Deed of Trust, the Loan Documents or otherwise) may be exercised by the Beneficiary, either alternatively, concurrently, or consecutively in any order. The exercise by the Beneficiary or the Trustee at the express direction of the Beneficiary of any one or more of such rights and remedies shall not be construed to be an election of remedies nor waiver of any other rights and remedies the Beneficiary might have unless, and limited to the extent that, the Beneficiary shall elect or so waive by an instrument in writing delivered to the

Trustee. Without limiting the generality of the foregoing, to the extent that this Deed of Trust covers both real property and personal property, the Beneficiary may, in the sole discretion of the Beneficiary, either alternatively, concurrently or consecutively in any order:

(1) Proceed as to the Trust Property in accordance with the Beneficiary's rights and remedies in respect to real property.

(2) Proceed as to the RP Collateral in accordance with the Beneficiary's rights and remedies in respect to real property and proceed as to the UCC Collateral in accordance with Beneficiary's rights and remedies in respect to the personal property.

(iii) The Beneficiary may, in the sole discretion of the Beneficiary, appoint the Trustee as the agent of the Beneficiary for the purpose of disposition of the UCC Collateral in accordance with applicable law.

(iv) If the Beneficiary should elect to proceed as to the Trust Property in accordance with Beneficiary's rights and remedies in respect to real property:

(1) All the UCC Collateral may be sold, in the manner and at the time and place provided in this Deed of Trust, in one lot, or in separate lots consisting of any combination or combinations of the RP Collateral and the UCC Collateral, as the Beneficiary may elect, in the sole discretion of the Beneficiary.

(2) The Grantor acknowledges and agrees that a disposition of the UCC Collateral in accordance with the Beneficiary's rights and remedies in respect to real property, as hereinabove provided, is a commercially reasonable disposition of the UCC Collateral.

(v) If the Beneficiary should elect to proceed as to the UCC Collateral that is subject to the Nevada UCC pursuant to this Deed of Trust, in accordance with the Beneficiary's rights and remedies in respect thereto, the Beneficiary shall have all the rights and remedies conferred on a secured party by NRS 104.9601 to NRS 104.9628, both inclusive.

(f) Foreclosure as a Mortgage. If an Event of Default occurs hereunder, the Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and the Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees and costs in such amounts as shall be fixed by the court. Any such foreclosure may be a complete or partial foreclosure.

(g) Receiver. If an Event of Default occurs, the Beneficiary, as a matter of right and without regard to, or the necessity to prove or disprove, the value of the Trust Property or the adequacy of the security for the sums secured by this Deed of Trust or the solvency or insolvency of the Grantor or any other person liable for the payment of such sums, apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Property and the Grantor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Trust Property or the foreclosure proceeding, unless the receivership is sooner terminated.

(h) Specific Performance. The Beneficiary or the Trustee may institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained herein or in any of the other Loan Documents.

(i) Grantor's Right to Possession. To the extent permitted by applicable law, the Beneficiary may enter upon the Premises, and exclude the Grantor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other Trust Property, and the Grantor agrees to surrender possession of the Trust Property and of such books, records and accounts to the Beneficiary on demand after the happening of any Event of Default and for so long as an Event of Default shall continue; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from the Grantor; and upon each such entry and from time to time thereafter may, at the expense of the Grantor and the Trust Property, without interference by the Grantor and as the Beneficiary may deem advisable, (i) insure or reinsure the Premises, (ii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon and (iii) in every such case in connection with the foregoing have the right to exercise all rights and powers of the Grantor with respect to the Trust Property, either in the Grantor's name or otherwise. For the purpose of carrying out the provisions of this Paragraph 23(i), the Grantor hereby constitutes and appoints the Beneficiary the true and lawful attorney-in-fact of the Grantor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in the Grantor's name and stead, to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does by these presents ratify and confirm any and all actions of said attorney-in-fact in and with respect to the Trust Property.

(j) No Remedy Exclusive. No remedy conferred upon or reserved to the Beneficiary under this Deed of Trust shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Deed of Trust or any other Loan Document, or now or hereafter existing at law or in equity or by statute. No delay or failure to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to

time and as often as may be deemed expedient.

(k) Rights Upon Default. In making the Advances, the Beneficiary has relied upon the rights available to the Beneficiary under this Deed of Trust upon the occurrence of any

Event of Default, including, without limitation, the rights to accelerate the payment of any and all amounts secured by this Deed of Trust, to sell the Trust Property encumbered by this Deed of Trust pursuant to the power of sale granted hereunder, the right to foreclose this Deed of Trust as a mortgage, and the right to have a receiver appointed. In addition to any other damages that might be recoverable by the Beneficiary under the terms of this Deed of Trust, the Grantor shall be liable for any damages incurred by the Beneficiary because the Beneficiary is, for any reason, denied the opportunity to exercise the Beneficiary's rights upon the occurrence of an Event of Default, including, without limitation, such damages as are occasioned by depreciation of the Trust Property, loss of use of the Trust Property by the Beneficiary, and all opportunity costs incurred through the loss of use of any funds as would have been received by the Beneficiary through exercise of the power of sale or foreclosure, or the appointment of a receiver.

(l) Incorporation of Certain Nevada Covenants. The following covenants, Nos. 1, 3, 4 (Default Rate), 6, 7 (reasonable), 8 and 9 of NRS 107.030, where not in conflict with the express provisions of any Loan Document, are hereby adopted and made a part of this Deed of Trust. Upon any Event of Default by the Grantor hereunder, the Beneficiary may (a) declare all sums secured immediately due and payable without demand or notice or (b) have a receiver appointed as a matter of right without regard to the sufficiency of said property or any other security or guaranty and without any showing as required by NRS 107.100. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity and may be exercised concurrently, independently or successively. The sale of said property conducted pursuant to Covenants Nos. 6, 7 and 8 of NRS 107.030 may be conducted either as to the whole of said property or in separate parcels and in such order as the Trustee may determine.

24. Right to Cure Defaults.

If default in the performance of any of the covenants of the Grantor herein occurs, the Beneficiary may, at its discretion, remedy the same and for such purpose shall have the right to enter upon the Trust Property or any portion thereof without thereby becoming liable to the Grantor or any person in possession thereof holding under the Grantor. If the Beneficiary shall remedy such a default or appear in, defend, or bring any action or proceeding to protect its interest in the Trust Property or to foreclose this Deed of Trust or collect the Obligations, the costs and expenses thereof (including reasonable

attorneys' fees to the extent permitted by law), with interest as provided in this Paragraph 24, shall be paid by the Grantor to the Beneficiary upon demand. All such costs and expenses incurred by the Beneficiary in remedying such default or in appearing in, defending, or bringing any such action or proceeding shall be paid by the Grantor to the Beneficiary upon demand, with interest (calculated for the actual number of days elapsed on the basis of a 365-366 day year) at a rate equal to two percentage points above the then applicable rate under the Note (the "Default Rate"); provided, however, that the Default Rate shall in no event exceed the maximum interest rate which the Grantor may by law pay, for the period after notice from the Beneficiary that such costs or expenses were incurred to the date of payment to the Beneficiary. In each such event, such costs, expenses and amounts, together with interest thereon at the Default Rate, shall be added to the indebtedness secured by this Deed of Trust and shall be secured by this Deed of Trust.

25. Non-Waiver.

The failure of the Beneficiary to insist upon strict performance of any term of this Deed of Trust shall not be deemed to be a waiver of any term of this Deed of Trust. The Grantor shall not be relieved of the Grantor's obligation to pay the Obligations at the time and in the manner provided therefor in the Note, this Deed of Trust or any other Loan Documents by reason of (a) failure of the Beneficiary to comply with any request of the Grantor to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of any other deed of trust, instrument or document evidencing, securing or guaranteeing payment of the Obligations or any portion thereof, (b) the release, regardless of consideration, of the whole or any part of the Trust Property or any other security for the Obligations, or (c) any agreement or stipulation between the Beneficiary and any subsequent owner or owners of the Trust Property or other person extending the time of payment or otherwise modifying or supplementing the terms of the Note or this Deed of Trust or any other deed of trust, instrument or document evidencing, securing or guaranteeing payment of the Obligations or any portion thereof, without first having obtained the consent of the Grantor, and in the latter event, the Grantor shall continue to be obligated to pay the Obligations at the times and in the manner provided in the Note and this Deed of Trust, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by the Beneficiary in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Trust Property, the Beneficiary may release any person at any time liable for the payment of the Obligations or any portion thereof or any part of the security held for the Obligations and may extend the time of payment or otherwise modify the terms of the Note, this Deed of Trust, the Loan Agreement or any other Loan Document including, without limitation, a modification of the interest rate, without impairing or affecting this Deed of Trust or the lien or the priority of this

Deed of Trust, as so extended and modified, as security for the Obligations over any such subordinate lien, encumbrance, right, title or interest. The Beneficiary may resort for the payment of the Obligations to any other security held by the Beneficiary in such order and manner as the Beneficiary, in its discretion, may elect. The Beneficiary may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Beneficiary thereafter to realize on the collateral covered by this Deed of Trust. The Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of the Beneficiary under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

26. Liability.

If the Grantor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

27. Construction/Severability.

The proceeds of the Advances secured hereby were disbursed from the state of New York, which state the parties agree has a substantial relationship to the underlying

transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance. This Deed of Trust and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the state of New York applicable to contracts made and performed in New York State and any applicable laws of the United States of America, without regard to conflict of law rules and principles. Notwithstanding such provisions, however, (i) matters respecting title to the RP Collateral and the creation, perfection, priority and foreclosure (including the nature of any interest in property that results therefrom) of the liens on the RP Collateral shall be governed by, and construed and enforced in accordance with, the internal law of the state of Nevada without giving effect to the conflicts-of law rules and principals of such state; (ii) the Grantor agrees that whether or not deficiency judgments are available under the laws of the state of Nevada, after a foreclosure (judicial or nonjudicial) of the Trust Property, or any portion thereof, or any other realization thereon by the Beneficiary, the Beneficiary shall have the right to seek such a deficiency judgment against the Grantor in other states or foreign jurisdictions; and (iii) the Grantor agrees that, to the extent the Beneficiary obtains a deficiency judgment in any other state or foreign jurisdiction, then

such party shall have the right to enforce such judgment in the state of Nevada, as well as in other states or foreign jurisdictions.

28. Security Agreement and Fixture Filing.

(a) This Deed of Trust constitutes both a real property mortgage or deed of trust and a "security agreement," within the meaning of the Nevada UCC and the Uniform Commercial Code of the State of New York (the "N.Y. UCC"), and the Trust Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of the Grantor in the Trust Property. The Grantor by executing and delivering this Deed of Trust has granted to the Beneficiary, as security for the Obligations, a security interest in the UCC Collateral. If an Event of Default shall occur hereunder, the Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Nevada UCC, including, without limiting the generality of the foregoing, the rights set forth under Subparagraph 23(e) above. Any notice of sale, disposition or other intended action by the Beneficiary with respect to the UCC Collateral sent to the Grantor in accordance with the provisions of this Deed of Trust at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to the Grantor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Nevada UCC or the N.Y. UCC, as applicable, unless objected to in writing by the Grantor within five (5) days after receipt by the Grantor of such notice. The proceeds of any sale or disposition of the UCC Collateral, or any part thereof, may be applied by the Beneficiary to the payment of the Obligations in such order, priority and proportions as the Beneficiary in its discretion shall deem proper. If any change shall occur in the Grantor's name, the Grantor shall promptly cause to be filed at its own expense, new financing statements as required under the Nevada UCC or the N.Y. UCC, as applicable, to replace those on file in favor of the Beneficiary. With respect to UCC Collateral, conflicts between this Paragraph 28 and/or Paragraph 23 above, on the one hand, and any provision of the Security Agreement (as defined in the Loan Agreement), on the other, shall be resolved in favor of the Security Agreement.

(b) Certain of the Trust Property described in paragraphs (a) through (l) of the granting clause of this Deed of Trust is or will become "fixtures" (as that term is defined in the Nevada UCC ) on the Premises, and this Deed of Trust, upon being filed for record with the Nevada Secretary of State and in the real estate records of Clark County, Nevada, shall be effective and operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the Nevada UCC upon such of the Trust Property that is or may become fixtures. In connection with this fixture filing, the names and addresses of the Grantor, as the debtor, and the

Beneficiary, as the secured party, are as set forth in the introductory paragraph of the first page of this Deed of Trust. The foregoing address of the Beneficiary, as the secured party, is also the address from which any interested party may obtain information concerning the security interest. The property subject to this fixture filing is the Trust Property as described in paragraphs (a) through (l) of the granting clauses set forth above. Portions of the property subject to this fixture filing as identified in the first sentence of this Paragraph 28(b) are or are to become fixtures related to the Premises described in Exhibit A to this Deed of Trust.

29. Further Acts, etc.

The Grantor will, at the cost of the Grantor, and without expense to the Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as the Beneficiary shall, from time to time, demand for the better assuring, conveying, assigning, transferring and confirming unto the Beneficiary the property and rights conveyed, assigned and transferred hereunder or intended now or hereafter so to be, or which the Grantor may be or may hereafter become bound to convey, assign or transfer to the Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust and, on demand, will execute, deliver and/or file, and hereby authorizes the Beneficiary to execute and/or file in the name of the Grantor to the extent the Beneficiary may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the interests in the Trust Property granted to the Beneficiary hereunder.

30. Headings, etc.

The headings and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defined or limiting, in any way, the scope or intent of the provisions hereof.

31. Filing of Instrument, etc.

The Grantor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust, and any security instrument creating a lien or evidencing the lien hereof upon the Trust Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien hereof upon, and the interest of the Beneficiary in, the Trust Property. The Grantor will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any deed of trust

supplemental hereto, any security instrument with respect to the Trust Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust supplemental hereto, any security instrument with respect to the Trust Property or any instrument of further assurance. The Grantor shall hold harmless and indemnify the Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Deed of Trust.

32. Usury Laws.

The Grantor and the Beneficiary stipulate and agree that it is their common and overriding intent to contract in strict compliance with applicable usury laws. In furtherance thereof, none of the terms of this Deed of Trust shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. The Grantor shall never be liable for interest in excess of the maximum rate permitted by applicable laws. If, for any reason whatever, such interest paid or received during the full term of the applicable indebtedness produces a rate which exceeds the maximum rate permitted by applicable laws, the Beneficiary shall credit against the principal of such indebtedness (or, if such indebtedness shall have been paid in full, shall refund to the payor of such interest) such portion of said interest as shall be necessary to cause the interest paid to produce a rate equal to the maximum rate permitted by applicable laws. All sums paid or agreed to be paid to the Beneficiary for the use, forbearance or detention of money shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the applicable indebtedness. The provisions of this Paragraph 32 shall control all agreements, whether now or hereafter existing and whether written or oral, between the Grantor and the Beneficiary.

33. Sole Discretion of The Beneficiary.

Except as may otherwise be expressly provided to the contrary, wherever pursuant to this Deed of Trust, the Beneficiary exercises any right given to it to consent or not consent, or to approve or disapprove, or any arrangement or term is to be satisfactory to the Beneficiary, the decision of the Beneficiary to consent or not consent, or to approve or disapprove, or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of the Beneficiary and shall be final and conclusive.

34. Reasonableness.

If at any time the Grantor believes that the Beneficiary has not acted reasonably in granting or withholding any approval or consent under this Deed of Trust as to which approval or consent either (a) the Beneficiary has expressly agreed to act reasonably, or (b) absent such agreement, applicable

law would nonetheless require the Beneficiary to act reasonably, then the Grantor's sole remedy shall be to seek injunctive relief or specific performance, and no action for monetary damages or punitive damages shall in any event or under any circumstance be maintained by the Grantor against the Beneficiary.

35. Recovery of Sums Required To Be Paid.

The Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of the Beneficiary thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Grantor existing at the time such earlier action was commenced.

36. Actions and Proceedings.

The Beneficiary shall have the right to appear in and defend any action or proceeding brought with respect to the Trust Property and to bring any action or proceeding, in the name and on behalf of the Grantor, which the Beneficiary, in its discretion, determines should be brought to protect the Beneficiary's interest in the Trust Property.

37. Inapplicable Provisions.

If any term, covenant or condition of this Deed of Trust shall be held to be invalid, illegal or unenforceable in any respect, this Deed of Trust shall be construed without such provision.

38. Duplicate Originals.

This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same Instrument.

39. Certain Definitions.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided in this Deed of Trust, words used in this Deed of Trust shall be used interchangeably in singular or plural form; the word "Grantor" shall mean each Grantor and any subsequent owner or owners of the Trust Property or any part thereof or interest therein; the word "Loan Documents" shall have the meaning set forth in the Loan Agreement; the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity;

the words "Trust Property" shall include any portion of the Trust Property or interest therein; and the word "Obligations" shall mean all sums secured by this Deed of Trust; the word "default" shall mean the occurrence of any default by the Grantor or other person in the observance or performance of any of the terms, covenants or provisions of this Deed of Trust on the part of the Grantor or such other person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Deed of Trust; and words such as "herein" or "hereunder" shall be deemed to refer to this Deed of Trust as a whole and not merely to the sentence or paragraph in which they appear. References to "the lien of this Deed of Trust" or words to that effect are also references to this Deed of Trust. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

40. Waiver of Notice.

The Grantor shall not be entitled to any notices of any nature whatsoever from the Beneficiary except with respect to matters for which this Deed of Trust specifically and expressly provides for the giving of notice by the Beneficiary to the Grantor, and the Grantor hereby expressly waives the right to receive any notice from the Beneficiary with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by the Beneficiary to the Grantor.

41. No Oral Change.

This Deed of Trust may only be modified, amended or changed by an agreement in writing signed by the Grantor, the Beneficiary and, to the extent required by applicable law, the Trustee, and may only be released, discharged or satisfied of record by an agreement in writing signed by the Beneficiary and, to the extent required by applicable law, the Trustee. No waiver of any term, covenant or provision of this Deed of Trust shall be effective unless given in writing by the Beneficiary and if so given by the Beneficiary shall only be effective in the specific instance in which given. No course of dealing between the parties, no usage of trade and no extrinsic or parol evidence may be used to supplement or modify the terms of this Deed of Trust. The Grantor acknowledges that the Note, this Deed of Trust, the Loan Agreement and the other Loan Documents set forth the entire agreement and understanding of the Grantor and the Beneficiary with respect to the Obligations secured hereby and that no oral or other agreements, understanding, representation or warranties exist with respect to the Obligations secured hereby other than those set forth in the Note, this Deed of Trust, the Loan Agreement and the other Loan Documents.

42. Absolute and Unconditional Obligation.

The Grantor acknowledges that the Grantor's obligation to pay the Obligations in accordance with the Note, this Deed of Trust and the other Loan Documents is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to the payment of the Obligations in accordance with the Note, this Deed of Trust or the other Loan Documents, and the Grantor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to the payment of the Obligations in accordance with the provisions of the Note, this Deed of Trust and the other Loan Documents or otherwise with respect to the Obligations secured hereby in any action or proceeding brought to collect the Obligations, or any portion thereof, or to enforce, the trust or foreclose and realize upon the Beneficiary's interest in the Trust Property created by this Deed of Trust.

43. Waiver of Trial by Jury.

The Grantor hereby irrevocably and unconditionally waives, and the Beneficiary by its acceptance of the Note irrevocably and unconditionally waives, any and

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all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Deed of Trust, the Note or the other Loan Documents.

44. Waiver of Statutory Rights.

The Grantor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws to the full extent that the Grantor may do so under applicable law. The Grantor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Trust Property marshaled upon any foreclosure of the lien of this Deed of Trust and agrees that the Trust Property may be sold as an entirety or in separate parcels and in such order as may be determined by the Beneficiary, or by any court in which any action or suit hereunder may be pending. The Grantor hereby waives for itself and all who may claim through or under it, and to the full extent the Grantor may do so under applicable law, any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust or granted under any statute now existing or hereafter enacted.

45. Brokerage.

The Grantor covenants and agrees that no brokerage commission or other fee, commission or compensation is to be paid by the Beneficiary on account of the Advances or any other obligations secured by this Deed of Trust and the Grantor agrees to indemnify the Beneficiary against any claims for any of the same.

46. Indemnity.

Anything in this Deed of Trust, the Note, the Loan Agreement or the other Loan Documents to the contrary notwithstanding, the Grantor shall indemnify and hold the Beneficiary harmless and defend the Beneficiary at the Grantor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, title insurance premiums and charges and reasonable attorneys' fees and disbursements of the Beneficiary's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with (a) any ongoing matters arising out of the deed of trust transaction contemplated hereby, this Deed of Trust, and/or the Trust Property, including, but not limited to, all costs of reappraisal of the Trust Property or any part thereof, whether required by law, regulation, the internal policies of the Beneficiary or any governmental or quasi-governmental authority, (b) any amendment to, or restructuring of this Deed of Trust and (c) any and all lawful action that may be taken by the Beneficiary in connection with the enforcement of the provisions of this Deed of Trust, whether or not suit is filed in connection with the same, or in connection with the Grantor, any guarantor of the Advances and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding. The foregoing indemnity shall not apply to matters caused by the gross negligence, willful misconduct or bad faith of the Beneficiary. All sums expended by the Beneficiary shall be payable within five (5) days after written demand and, until reimbursed

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by the Grantor pursuant hereto, shall be deemed additional principal of the Obligations and secured hereby and shall bear interest at the Default Rate.

47. Relationship.

The relationship of the Beneficiary to the Grantor hereunder is strictly and solely that of lender and obligor and grantor and beneficiary, and nothing contained in the Note, this Deed of Trust or any other Loan Document is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Beneficiary and the Grantor other than as set forth in this Paragraph 47.

48. Loan Agreement.

The Grantor shall fully and faithfully observe and perform all of the terms, covenants, conditions, provisions and agreements contained in the Loan Agreement.

49. Prior Leasehold Deed of Trust.

The lien of this Deed of Trust is subject and subordinate to the lien of (i) that certain Leasehold Deed of Trust dated August 23, 2002 made by the Grantor to the Trustee for the benefit of the Beneficiary and recorded on August 23, 2002 in the Official Records of Clark County, Nevada (the "Recorder's Office") as Instrument No. 00054, as amended by that certain Agreement of Modification of Leasehold Deed of Trust dated October 25, 2002 and recorded in the Recorder's Office on October 25, 2002 as Instrument No. 00231, and by an Agreement of Second Modification of Leasehold Deed of Trust dated December 23, 2002 and recorded in the Recorder's Office on December 23, 2002 as Instrument No. 00764, (ii) that certain Leasehold Deed of Trust dated December 23, 2002, made by the Grantor to the Trustee for the benefit of the Beneficiary and recorded on December 23, 2002 in the Recorder's Office as Instrument No. 00765, and (iii) that certain Leasehold Deed of Trust dated January 30, 2004, made by the Grantor to the Trustee for the benefit of the Beneficiary and recorded on January 30, 2004 in the Recorder's Office as Instrument No. 04359.

50. Intentionally Omitted.

51. The Subject Lease.

(a) The Grantor shall: (i) pay all rents, additional rents and other sums required to be paid by the Grantor as lessee under and pursuant to the provisions of the Subject Lease, (ii) diligently perform and observe all of the terms, covenants and conditions of the Subject Lease on the part of the Grantor, as lessee thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the lessor under the Subject Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Grantor, as lessee, under the Subject Lease, (iii) promptly notify the Beneficiary in writing of any default by the Grantor or lessor under the Subject Lease in the performance or observance of any of the terms, covenants or conditions on the part of, respectively, the Grantor or such lessor to be performed or observed under the Subject Lease, (iv) promptly notify the Beneficiary of the giving of any notice by the lessor under the Subject

Lease to the Grantor (other than notices customarily sent on a regular basis) and of any notice noting or claiming any default by the Grantor in the performance or observance of any of the terms, covenants or conditions of the

Subject Lease on the part of the Grantor, as lessee thereunder, to be performed or observed, and deliver to the Beneficiary a true copy of each such notice, (v) promptly notify the Beneficiary in writing of any request made by either party to the Subject Lease for arbitration proceedings pursuant to the Subject Lease and of the institution of any arbitration proceedings, as well as of all proceedings thereunder, and promptly deliver to the Beneficiary a copy of the determination of the arbitrators in each such arbitration proceeding, it being acknowledged and agreed that the Beneficiary shall have the right to participate in such arbitration proceedings in association with the Grantor or on its own behalf as an interested party, (vi) furnish to the Beneficiary, within fifteen (15) days after demand, proof of payment of all items which are required to be paid by the Grantor pursuant to the Subject Lease, and (vii) not consent to the subordination of the Subject Lease to any deed of trust with respect to the fee interest of the lessor under the Subject Lease in the Trust Property except such as may be agreed to by the Beneficiary.

(b) The Grantor, shall not, without the prior written consent of the Beneficiary, surrender the leasehold estate created by the Subject Lease or terminate or cancel the Subject Lease or modify, change, supplement, alter or amend the Subject Lease, in any material respect, either orally or in writing, and the Grantor hereby assigns to the Beneficiary, as further security for the payment of the Obligations and for the performance and observance of the terms, covenants and conditions of this Deed of Trust, all of the rights, privileges and prerogatives of the Grantor, as lessee under the Subject Lease, to surrender the leasehold estate created by the Subject Lease or to terminate, cancel, modify, change, supplement, alter or amend the Subject Lease in any material respect, and any such surrender of the leasehold estate created by the Subject Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Subject Lease without the prior written consent of the Beneficiary shall be voidable at the Beneficiary's option, and of no force and effect.

(c) Supplementing the provisions of Paragraph 51(b), it is understood and agreed that the Grantor shall not, without the Beneficiary's prior written consent, elect to treat the Subject Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without the Beneficiary's prior written consent shall be void. The Grantor hereby unconditionally assigns, transfers and set over to the Beneficiary all of the Grantor's claims and rights to the payment of damages arising under the Bankruptcy Code from any rejection by the lessor under the Subject Lease. The Beneficiary shall have the right to proceed in its own name or in the name of the Grantor in respect of any claim, suit, action or proceeding relating to the rejection of the Subject Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of such lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Obligations secured by this Deed of Trust shall have been satisfied and discharged in full. Any amounts received by the Beneficiary as damages arising out of the rejection of the Subject Lease as aforesaid shall be applied first to all costs and expenses of

the Beneficiary (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Paragraph 51 and then shall be applied against the Obligations in such order, priority and

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proportion as the Beneficiary shall determine. If any action, motion or notice shall be commenced or filed in respect of the Grantor, as lessee under the Subject Lease, or all or any portion of the Trust Property in connection with any case under the Bankruptcy Code, the Grantor shall give the Beneficiary prompt written notice thereof and the Beneficiary shall have the option, to the exclusion of the Grantor, exercisable upon notice from the Beneficiary to the Grantor, to conduct and control any such litigation with counsel of the Beneficiary's choice. The Beneficiary may proceed in its own name or in the name of the Grantor in connection with any such litigation, and the Grantor agrees to execute any and all powers, authorizations, consents and other documents required by the Beneficiary in connection therewith. The Grantor shall, upon demand, pay to the Beneficiary all costs and expenses (including, without limitation, attorneys' fees) paid or incurred by the Beneficiary in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by the Grantor as aforesaid shall be secured by this Deed of Trust and shall be added to the Obligations. The Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Subject Lease in any such case under the Bankruptcy Code without the prior written consent of the Beneficiary. The Grantor shall, immediately after obtaining knowledge thereof, notify the Beneficiary and its counsel, by telecopy to the numbers set forth in the Loan Agreement, of any filing by or against the lessor under the Subject Lease of a petition under the Bankruptcy Code. The Grantor shall thereafter forthwith give written notice of such filing to the Beneficiary, setting forth the date of such filing, the court in which the petition was filed and the relief sought therein. The Grantor shall promptly deliver to the Beneficiary, following receipt, any and all notices, summonses, pleadings, applications and other documents received by the Grantor in connection with any such petition and any proceedings relating thereto.

(d) If the Grantor shall default in the performance or observance of any term, covenant or condition of the Subject Lease on the part of the Grantor, as lessee thereunder, to be performed or observed, then, without limiting the generality of the other provisions of this Deed of Trust and without waiving or releasing the Grantor from any of its obligations hereunder, the Beneficiary shall have the right, subject to the last sentence of this Paragraph 51(d), but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Subject Lease on the part of the Grantor, as lessee thereunder, to be performed or observed to be promptly performed or observed on behalf of the Grantor, to the end that the rights of the Grantor in, to and under the Subject Lease shall be kept unimpaired and free from default.

If the Beneficiary shall make any payment or perform any act or take action in accordance with the preceding sentence, the Beneficiary will notify the Grantor of the making of any such payment, the performance of any such act, or the taking of any such action. All sums so paid by the Beneficiary and all costs and expenses incurred by the Beneficiary in connection with the performance of any such act shall be paid by the Grantor to the Beneficiary upon demand with interest at the Default Rate from the date of the payment or incurrence thereof, and the same shall be deemed to be secured by this Deed of Trust and shall be a lien on the Trust Property prior to any right, title to, interest in or claim upon the Trust Property attaching subsequent to the lien of this Deed of Trust. In any such event, subject to the rights, if any, of sublessees and other occupants under the Leases, the Beneficiary and any person designated by the Beneficiary shall have, and are hereby granted, the right to enter upon the Trust Property at any time and from time to time for the purpose of taking any such action. If the lessor under the Subject Lease shall deliver to the Beneficiary a copy of

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any notice of default sent by said lessor to the Grantor, as lessee under the Subject Lease, or otherwise notify the Beneficiary of such a default, any such notice shall provide full protection to the Beneficiary for any action taken or omitted to be taken by the Beneficiary, in good faith, in reliance thereon and, in any case, irrespective of whether or not an Event of Default shall have occurred hereunder.

(e) The Grantor hereby irrevocably appoints the Beneficiary its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which in the reasonable opinion of the Beneficiary may be necessary or desirable to preserve any rights of the Grantor in, to or under the Subject Lease, or any occupancy lease, license, franchise or concession, including, without limitation, the right (but not the obligation) to cure any defaults of the Grantor as lessee under the Subject Lease, preserve any rights of the Grantor whatsoever in respect of any part of the Trust Property or to execute an extension or renewal of the Subject Lease as hereinafter set forth. Subject to the Grantor's rights to require the same under the Subject Lease, the Grantor shall, within five (5) days of request by the Beneficiary, request from the lessor under the Subject Lease such certificates of estoppel with respect to compliance by the Grantor with the terms of the Subject Lease as may be requested by the Beneficiary and shall thereafter use reasonable efforts to obtain such certificates of estoppel from such lessor.

(f) The generality of the provisions of this Paragraph 51 relating to the Subject Lease shall not be limited by other provisions of this Deed of Trust or any other agreement between the Beneficiary and the Grantor, setting forth particular obligations of the Grantor which are also required of the Grantor as tenant under the Subject Lease.

(g) If the Grantor shall become the fee owner of the Premises and/or the Improvements, the Trust Property shall be deemed to include all right, title and interest of the Grantor (as fee owner) in and to the Premises, the Improvements and the remaining Trust Property, and this Deed of Trust shall be spread accordingly.

(h) If a deed of trust shall be placed against the fee interest in the Premises and for the Improvements of the lessor under the Subject Lease, the Grantor shall not subordinate the Subject Lease to the lien of any such fee deed of trust.

52. New Subject Lease with The Beneficiary.

If the Subject Lease shall be terminated prior to the scheduled expiration of its term due to a default or event of default thereunder, and if pursuant to any provision of the Subject Lease or otherwise pursuant to an agreement between the Beneficiary and such lessor, the Beneficiary or its designee shall acquire from the lessor under the Subject Lease a new lease of the Premises and the Improvements, the Grantor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

53. No Merger of Fee and Leasehold Estates.

So long as any portion of the Obligations shall remain unpaid, and unless the Beneficiary shall otherwise consent, the fee title to the Premises and the Improvements and the

leasehold estate therein created pursuant to the provisions of the Subject Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in the Grantor or in any other person, by purchase, operation of law or otherwise. If the Beneficiary shall acquire the fee title to the Premises and the Improvements and the leasehold estate therein created pursuant to the provisions of the Subject Lease, by foreclosure of this Deed of Trust or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until the Beneficiary shall elect to merge such estates.

54. The Trustee.

(a) Successor Trustee. The Trustee may resign by the giving of notice of such resignation in writing addressed to the Beneficiary, or may be removed at any time, with or without cause, by an instrument in writing duly executed by the Beneficiary. The Beneficiary shall concurrently give notice of any such resignation or removal to the Grantor. In case of the death, resignation or removal of the Trustee, a successor Trustee may be appointed by

the Beneficiary without other formality than an appointment and designation in writing unless otherwise required by applicable law. Such appointment and designation will be full evidence of the right and authority to make the same and of all facts therein recited, and upon the making of any such appointment and designation, this Deed of Trust will vest in the named successor the Trustee all the right, title and interest of the Trustee in the Trust Property, and said successor will thereupon succeed to all the rights, powers, privileges, immunities and duties hereby conferred upon the Trustee. All references herein to the Trustee will be deemed to refer to the Trustee or trustees from time to time acting hereunder.

(b) Trustee's Powers. At any time, or from time to time without liability therefor and without notice, upon written request of the Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Trust Property, the Trustee may (i) reconvey any part of the Trust Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

(c) Request for Notice. The Grantor hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder be mailed to the Grantor at the address set forth in the heading of this Deed of Trust.

(d) Full Reconveyance by the Trustee. To the extent that the Trustee's signature is necessary on any full reconveyance of this Deed of Trust then, upon written request of the Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to the Trustee for cancellation and retention (or disposal in accordance with applicable law), and upon payment by the Grantor of the Trustee's fees, the Trustee shall reconvey to the Grantor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as the person or persons legally entitled thereto.

(e) Indemnity. The Grantor shall indemnify the Trustee against all claims, actions, liabilities, judgments, costs, attorneys' fees or other charges of whatsoever kind or nature made against or incurred by the Trustee, and arising out of the performance by the Trustee of the duties of the Trustee hereunder (except those arising from the Trustee's grossly negligent acts). The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Deed of Trust.



EXHIBIT A

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Legal Description

All that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

The South 120 feet of the West Half (W 1/2) of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4);

AND

The North 10 feet of the West One-Half (W 1/2) of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 21, Township 21 South, Range 61 East, M.D.B. & M.

EXCEPTING THEREFROM all State and County roads and highways.

EXHIBIT A-1

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(Description of Subject Lease)

Lease With An Option to Purchase, dated February 9, 1998, as modified by a First Amendment to Lease Agreement, dated May 8, 1998 and by a Second Amendment to Lease Agreement dated April 29, 2003; a memorandum of which was recorded pursuant to an instrument entitled Memorandum of Lease with an Option to Purchase recorded on February 12, 1998 in Book 980212 as Instrument No. 00979 in the official records of Clark County, Nevada and also recorded on February 17, 1998 in Book 980217 as Instrument No. 00838.

Assessor's Parcel No. 162-21-301-014

S&W OF LAS VEGAS, L.L.C., Grantor  
TO FIRST AMERICAN TITLE COMPANY OF NEVADA, INC., Trustee  
FOR THE BENEFIT OF  
MORGAN STANLEY DEAN WITTER  
COMMERCIAL FINANCIAL SERVICES, INC., Beneficiary

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LEASEHOLD DEED OF TRUST  
( NEVADA )

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Dated: As of July \_\_, 2004  
Location: 3767 Las Vegas Boulevard South  
Las Vegas, Clark County, Nevada

RECORD AND RETURN TO:

Herrick, Feinstein LLP  
2 Park Avenue  
New York, New York 10016  
Attention: Stephen D. Brodie, Esq.

ABSOLUTE ASSIGNMENT OF LEASES AND RENTS  
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THIS ASSIGNMENT made as of the 21st day of July, 2004, between S&W OF LAS VEGAS, L.L.C., a Delaware limited liability company, having an office at c/o The Smith & Wollensky Restaurant Group, Inc., 1114 First Avenue, New York, New York 10021 (the "Assignor") and MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC., a Delaware corporation, having an office at 2000 Westchester Avenue, Purchase, New York 10577 (the "Assignee").

W I T N E S S E T H:  
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THAT the Assignor for good and valuable consideration, receipt and sufficiency whereof is hereby acknowledged, hereby absolutely and unconditionally grants, transfers and assigns to the Assignee the entire landlord's right, title and interest in and to all existing leases, tenancies and occupancy agreements (other than the Ground Lease, as hereinafter defined) covering or affecting all or any part of that certain lot or piece or parcel of land and building(s), more particularly described in Exhibit A annexed hereto and made a part hereof (the said premises, together with the buildings and improvements now or hereafter erected thereon, being hereinafter collectively referred to as the "Premises"). This assignment is absolute in nature and not an assignment for additional security only. The term "Ground Lease" shall mean the current ground lease pursuant to which the Assignor presently occupies space at the Premises, which is the "Subject Lease" under the Deed of Trust (defined below).

THIS Assignment is made TOGETHER WITH all leases, tenancies and occupancy agreements hereafter made (all present and future leases, tenancies and occupancy agreements (other than the Ground Lease) are hereinafter collectively referred to as the "Leases"); this assignment of present and future Leases being effective without any further or supplemental assignment of any nature whatsoever;

TOGETHER WITH all modifications, extensions and guaranties of all Leases;

TOGETHER WITH all Rents (as hereinafter defined).

THIS Assignment is made in connection with a Line of Credit Agreement, of even date herewith, among the Assignor, the Assignee, Smith & Wollensky of Boston LLC and The Smith & Wollensky Restaurant Group, Inc. (the "Loan Agreement"). Pursuant to the Loan Agreement, the Assignee has committed to make Advances (as defined in the Loan Agreement) of up to \$2,000,000, on a revolving

basis, to the Assignor, subject to and in accordance with the terms of the Loan Agreement. The obligation of the Assignor to repay the Advances and any other amounts owed under the Loan Agreement is evidenced by a certain Promissory Note and secured by, among other things, a certain Leasehold Deed of Trust encumbering the Premises (the "Deed of Trust"), both of even date herewith (the Loan Agreement, the Deed of Trust and the said Note (which terms include all modifications, extensions, increases, renewals and guaranties thereof now or hereafter made) and the other documents and instruments executed and delivered in connection therewith, all as modified, extended, renewed and guaranteed, as applicable, are hereinafter collectively referred to as the "Loan Documents"). All sums payable by the Assignor pursuant to the Loan Documents and all other sums with interest thereon

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becoming due and payable to the Assignee under the provisions of this Assignment or the other Loan Documents are hereinafter collectively referred to as the "Debt").

THE ASSIGNOR WARRANTS AND REPRESENTS to the Assignee, in order to induce the Assignee to enter into the Loan Agreement and to accept this Assignment and knowing that the Assignee will rely hereon, that: (i) the Assignor is the sole owner of the entire landlord's interest in the Leases; (ii) the Leases are valid and enforceable and in full force and effect and have not been altered, modified or amended in any manner whatsoever except as herein set forth; (iii) no rent reserved in the Leases has been assigned, pledged or in any manner transferred or hypothecated, except pursuant to (w) that certain Absolute Assignment of Leases and Rents dated August 23, 2002 made by the Assignor to the Assignee and recorded on August 23, 2002 in the Official Records of Clark County, Nevada as Instrument No. 00055, (x) that certain Absolute Assignment of Leases and Rents, dated December 23, 2002, made by the Assignor to the Assignee and recorded on December 23, 2002 in the Official Records of Clark County, Nevada as Instrument No. 00766, (y) that certain Absolute Assignment of Leases and Rents, dated January 30, 2004, made by the Assignor to the Assignee and recorded on January 30, 2004 in the Official Records of Clark County, Nevada as Instrument No. 04360, and (z) this Assignment; and (iv) no rent for any period subsequent to the date of this Assignment has been collected in advance of the time when the same became due under the terms of the Leases.

THE ASSIGNOR COVENANTS WITH THE ASSIGNEE to observe and perform all the obligations imposed upon the landlord under the Leases and not to do or permit to be done anything to impair the interests granted to the Assignee hereunder; to promptly send to the Assignee copies of all notices of default which the Assignor shall send or receive under the Leases; to enforce the performance or observance of the provisions thereof by the tenants thereunder; not to collect any of the rents, income and profits arising from the Leases and/or the Premises (the "Rents") except as herein below set forth; not to subordinate any of the Leases to any deed of trust (other than the Deed of Trust

and any other deed of trust made for the benefit of the Assignee) or other encumbrance or permit, consent, or agree to such subordination without the prior written consent of the Assignee; not to alter, modify or change the terms of any of the Leases nor give any consent to exercise any option required or permitted by such terms without the prior written consent of the Assignee, nor cancel or terminate any of the Leases or accept a surrender thereof, nor convey or transfer, nor suffer or permit a conveyance or transfer of, the Premises, or of any interest therein, so as to effect directly or indirectly, approximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of the tenant thereunder; not to alter, modify or change the terms of any guaranty of any of the Leases nor cancel or terminate such guaranty, without the prior written consent of the Assignee; not to consent to any assignment of, or further subletting under, any of the Leases, without the prior written consent of the Assignee; except as expressly provided in Paragraph 7 of the Deed of Trust, not make, or suffer to be made, any Lease of all or any portion of the Premises, nor otherwise let all or any portion of the Premises, without the prior written consent of the Assignee; at the Assignee's request, to execute any documentation confirming the assignment and transfer to the Assignee of any and all subsequent Leases upon all or any part of the Premises, and to execute and deliver at the request of the Assignee all other further assurances, confirmations and assignments in the Premises as the Assignee shall, from time to time, reasonably require in connection herewith.

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THIS ASSIGNMENT IS MADE ON THE FOLLOWING TERMS, COVENANTS AND CONDITIONS:

1. So long as there shall exist no default under any of the Loan Documents (an "Event of Default"), nor any default by the Assignor in the performance of any obligation contained herein and/or in any of the Leases on the part of the Assignor to be performed or to cause to be performed, the Assignee waives the right to enter the Premises for the purpose of collecting the Rents and to let the Premises or any part thereof, and the Assignor may continue to collect the Rents at the time of, but not more than one (1) month prior to, the date provided for the payment thereof, and to retain, use and enjoy the same and to let the Premises or any part thereof, all subject to the provisions hereof and of the Loan Documents.

2. Upon, or at any time after, the occurrence of any Event of Default, or of any default with respect to any obligation contained herein and/or in any of the Leases on the part of the Assignor to be performed or to cause to be performed, the Assignee, without in any way waiving such default or Event of Default or releasing the Assignor from any obligation hereunder, at its option, without notice and without regard to the adequacy of the indebtedness secured by the Deed of Trust, and irrespective of whether the Assignee shall have commenced a foreclosure of the Deed of Trust, may revoke the right of the Assignor to let all or any portion of the Premises and collect the Rents and may, either in

person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Premises and have, hold, manage, lease and operate the same on such terms and for such period of time as the Assignee may in its sole discretion deem proper and either with or without taking possession of the Premises in its own name: (a) make any payment and/or perform any act which the Assignor has failed to make or perform, in such manner and to such extent as the Assignee may deem necessary to protect the interests granted to the Assignee hereunder, or otherwise, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the interests granted to the Assignee hereunder, or the rights or powers of the Assignee; (b) let the Premises or any portion thereof in such manner and for such Rents as the Assignee shall determine in its sole and absolute discretion; and/or (c) demand, sue for, or otherwise collect and receive from all persons and entities (including the Assignor, as provided in the Deed of Trust) all Rents, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee and to apply the Rents to the payment of: (i) all expenses of managing the Premises, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as the Assignee may deem necessary or desirable, (ii) all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which the Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements, and all expenses incidental to taking and retaining possession of the Premises, and (iii) all or any portion of the Debt, together with (iv) all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this clause 2(c), as the Assignee, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding. The Assignee shall give to the Assignor notice of its revocation, pursuant to this Paragraph 2, of the right to let and collect the Rents within a reasonable time thereafter (except that no such notice shall be necessary if revocation results from a "Event of Default" under the Loan Agreement with respect to which acceleration of debt thereunder is automatic). The exercise by the Assignee of any rights or powers under this Paragraph 2,

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including, without limitation, the collection of the Rents and the application thereof as herein provided, shall not be considered a waiver by the Assignee of any default by the Assignor under any of the Loan Documents or the Leases or this Assignment, any statute, law, custom or use to the contrary notwithstanding.

3. The Assignee shall not be liable for any loss sustained by the Assignor resulting from the Assignee's failure to let the Premises after default or from any other act or omission of the Assignee in managing the Premises after default, unless such loss is caused by the gross negligence, willful misconduct or bad faith of the Assignee. Nor shall the Assignee be obligated to perform or

discharge, nor does the Assignee hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this Assignment, and the Assignor shall, and does hereby agree, to indemnify the Assignee for, and to hold the Assignee harmless from, any and all liability, loss or damage which may or might be incurred under any of the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, unless resulting from the willful misconduct, gross negligence or bad faith of the Assignee. Should the Assignee incur any such liability under any of the Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees shall be secured by the Deed of Trust, and the Assignor shall reimburse the Assignee therefor within five (5) days after written demand and, upon the failure of the Assignor so to do within such five (5) day period, the Assignee may, at its option, declare all sums secured by the Deed of Trust immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon the Assignee, nor for the carrying out of any of the terms and conditions of any of the Leases; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Premises by the tenants or any other parties, nor for any dangerous or defective condition of the Premises, nor for any negligence in the management, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee or stranger, unless resulting from the willful misconduct, gross negligence or bad faith of the Assignee.

4. Upon payment in full by the Assignor of the Debt, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, agent or attorney of the Assignee showing any part of the Debt to remain unpaid shall be and constitute presumptive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon; provided, however, that the full reconveyance of the Deed of Trust by the Assignee shall conclusively terminate this Assignment. The Assignor hereby authorizes and directs the tenants named in the Leases or any other tenants or future tenants or occupants of all or any portion of the Premises, upon receipt from the Assignee of written notice to the effect that the Assignee is then the beneficiary of the Deed of Trust and the indebtedness secured thereby and that a default exists thereunder or under this Assignment, to pay over to the Assignee (or as the Assignee may direct) all rents, income and profits arising or accruing under the Leases or from the Premises and to continue so to do until otherwise notified by the Assignee.

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5. The Assignee may take or release any security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may

apply any security held by it to the satisfaction of the Debt without prejudice to any of its rights under this Assignment.

6. Anything in this Assignment or in any of the other Loan Documents to the contrary notwithstanding, the Assignor shall indemnify and hold the Assignee harmless and defend the Assignee at the Assignor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of the Assignee's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with (i) any ongoing matters arising out of the transaction contemplated hereby, the Debt, this Assignment, any other Loan Document or the Leases, including, but not limited to, all costs of reappraisal of the Leases, whether required by law, regulation, the Assignee or any governmental or quasi-governmental authority, (ii) any amendment to, or restructuring of, the Debt and this Assignment, any of the other Loan Documents or the Leases, and (iii) any and all lawful action that may be taken by the Assignee in connection with the enforcement of the provisions of this Assignment, the other Loan Documents or the Leases, whether or not suit is filed in connection with the same, or in connection with the Assignor, any guarantor of the Debt or any tenant and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding. The foregoing indemnity shall not apply to matters resulting from the gross negligence, willful misconduct or bad faith of the Assignee. All sums expended by the Assignee shall be payable within five (5) days after written demand and, until reimbursed by the Assignor pursuant hereto, shall be deemed additional principal of the Debt and secured by this Assignment, and shall bear interest at the Default Rate (as defined in the Deed of Trust). The obligations of the Assignor under this paragraph shall, notwithstanding any exculpatory or other provisions of any nature whatsoever set forth in this Assignment, or any of the other Loan Documents, constitute the personal recourse undertakings, obligations and liabilities of the Assignor.

7. Nothing herein contained, and no act done or omitted by the Assignee pursuant to the powers and rights granted to it hereunder, shall be deemed to be a waiver by the Assignee of its rights and remedies under the Deed of Trust or any of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms thereof. The rights of the Assignee to collect the Debt, and to enforce any security therefor held by it, may be exercised by the Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. The Assignor hereby absolutely, unconditionally and irrevocably waives any and all right to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of the Assignor under this Assignment, the other Loan Documents or otherwise with respect to the matters covered by the Loan Agreement in any action or proceeding brought by the Assignee to collect same, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by the Deed of Trust or any other Loan Document securing repayment of same, in whole or in part (provided, however, that the foregoing shall not be deemed a waiver of the Assignor's right to assert any compulsory counterclaim maintained in a court of the United

States, or of the State of New York if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the Assignor's right to assert any claim

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which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against the Assignee in any separate action or proceeding).

8. Nothing herein contained shall be construed as constituting the Assignee a "mortgagee in possession" (or equivalent) in the absence of the taking of actual possession of the Premises by the Assignee pursuant to the provisions herein contained. In the exercise of the powers herein granted to the Assignee, no liability shall be asserted or enforced against the Assignee, all such liability being expressly waived and released by the Assignor.

9. In case of any inconsistency or conflict between the terms of this Assignment and the terms of the Deed of Trust, the terms of this Assignment shall in all cases govern and control.

10. The Assignor will, at the cost of the Assignor, and without expense to the Assignee, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as the Assignee shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto the Assignee the property and rights hereby assigned or intended now or hereafter so to be, or which the Assignor may be or may hereafter become bound to convey or assign to the Assignee, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes the Assignee to execute in the name of the Assignor to the extent the Assignee may lawfully do so, one or more financing statements or comparable security instruments, to evidence more effectively the lien hereof upon the Leases.

11. All notices given pursuant hereto shall be given (and deemed received) in the manner set forth in the Loan Agreement.

12. This Assignment, together with the covenants, representations and warranties herein contained, shall inure to the benefit of the Assignee and any subsequent beneficiary of the Deed of Trust and shall be binding upon the Assignor, and its successors and assigns and any subsequent owner of the Premises.

13. This Assignment may only be modified, amended or changed by an agreement in writing signed by the Assignor and the Assignee, and may only be released, discharged or satisfied of record by an agreement in writing signed by the Assignee. No waiver of any term, covenant or provision of this Assignment

shall be effective unless given in writing by the Assignee and if so given by the Assignee shall only be effective in the specific instance in which given. Whenever possible, each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be unenforceable or prohibited by, or invalid under, applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Assignment. The Assignor acknowledges that this Assignment and the other Loan Documents set forth the entire agreement and understanding of the Assignor and the Assignee with respect to the matters covered by the Loan Agreement and that no oral or other agreement, understanding, representation or warranty exists with respect thereto other than those set forth in this Assignment and the other Loan Documents.

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14. The Assignor hereby irrevocably and unconditionally waives, and the Assignee by its acceptance of the Deed of Trust and this Assignment irrevocably and unconditionally waives, any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Assignment and any other Loan Documents heretofore, now or hereafter executed and/or delivered in connection therewith, the Advances or in any way related to this transaction or otherwise with respect to the Premises or the Leases.

15. The Assignor acknowledges and agrees that, upon recordation of this Assignment, the Assignee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to the Assignor and all third parties, including without limitation any subsequently appointed trustee in any case under the Bankruptcy Code (as defined in the Deed of Trust), without the necessity of (i) commencing a foreclosure action with respect to the Deed of Trust, (ii) furnishing notice to the Assignor or tenants under the Leases, (iii) making formal demand for the Rents, (iv) taking possession of the Premises as mortgagee-in-possession (or equivalent), (v) obtaining the appointment of a receiver of the rents and profits of the Premises, (vi) sequestering or impounding the Rents, or (vii) taking any other affirmative action.

16. The Assignor acknowledges and agrees that all Rents shall be deemed to be "Cash Collateral" under Section 363 of the Bankruptcy Code in the event that the Assignor files a voluntary petition in bankruptcy or is made subject to any involuntary bankruptcy proceeding. After the filing of such petition, the Assignor may not use Cash Collateral without the consent of the Assignee and/or an order of any bankruptcy court pursuant to Section 363(b)(2) of the Bankruptcy Code.

17. It is expected that all Advances, if any, made pursuant to the Loan Agreement will be disbursed from the State of New York, which state the parties agree has a substantial relationship to the underlying transaction



EXHIBIT A

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(Legal Description of Premises)

All that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

The South 120 feet of the West Half (W 1/2) of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4);

AND

The North 10 feet of the West One-Half (W 1/2) of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 21, Township 21 South, Range 61 East, M.D.B. & M.

EXCEPTING THEREFROM all State and County roads and highways.

Assessor's Parcel No. 162-21-301-014

S&W OF LAS VEGAS, L.L.C.

AND

MORGAN STANLEY DEAN WITTER

COMMERCIAL FINANCIAL SERVICES, INC.

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ABSOLUTE ASSIGNMENT  
OF LEASES AND RENTS

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Dated: As of July \_\_\_, 2004

Location: 3767 Las Vegas Boulevard  
South Las Vegas, Nevada

RECORD AND RETURN TO:

Herrick, Feinstein LLP  
2 Park Avenue  
New York, New York 10016  
Attention: Stephen D. Brodie, Esq.

JOINT AND SEVERAL  
HAZARDOUS MATERIAL  
GUARANTY AND INDEMNIFICATION AGREEMENT  
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New York, New York  
July 21st, 2004

WHEREAS, MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC., a Delaware corporation, having an office at 2000 Westchester Avenue, Purchase, New York 10577 (the "Lender") has agreed to make one or more advances under a line of credit to S&W OF LAS VEGAS, L.L.C., a Delaware limited liability company, having an office at c/o The Smith & Wollensky Restaurant Group, Inc., 1114 First Avenue, New York, New York 10021 (the "Borrower"), which line of credit will be (a) evidenced by the Note, (b) secured by, among other things, the Deed of Trust and (c) advanced pursuant to the Loan Agreement, all as defined in Exhibit A attached hereto (the "Line of Credit"); and

WHEREAS, the Lender is willing to enter into the Loan Agreement and to make available the Line of Credit to the Borrower only if the undersigned executes and delivers this Joint and Several Hazardous Material Guaranty and Indemnification Agreement (this "Guaranty and Indemnification Agreement").

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in order to induce the Lender to enter into the Loan Agreement and to make Advances (as defined in Exhibit A hereto) thereunder, the undersigned hereby acknowledges, agrees and confirms that all of the above recitals are true, correct and complete and hereby covenants and agrees with the Lender as follows:

1. For the purposes of this Guaranty and Indemnification Agreement the following terms shall have the following meanings:

(a) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any Environmental Requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product;

(b) the term "Environmental Requirements" shall collectively mean all present and future laws, statutes, ordinances, rules, regulations,

orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health;

(c) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions;

(d) the term "Trust Property" shall have the meaning given to such term in the Deed of Trust, and shall include, for purposes of this Guaranty and Indemnification Agreement, the land comprising the Premises (as defined in the Deed of Trust); and

(e) the term "Debt" shall mean all principal, interest, additional interest (including specifically all interest accruing from and after the commencement of any case, proceeding or action under any existing or future laws relating to bankruptcy, insolvency or similar matters with respect to the Borrower) and other sums of any nature whatsoever which may or shall become due and payable pursuant to the provisions of the Note, the Deed of Trust, the Loan Agreement, or any other document or instrument now or hereafter executed and/or delivered in connection therewith or otherwise with respect to the Line of Credit (said Note, Deed of Trust, Loan Agreement and other documents and instruments being, collectively, the "Loan Documents") [all of the above unaffected by modification thereof in any bankruptcy or insolvency proceeding], and even though the Lender may not have an allowed claim for the same against the Borrower as a result of any bankruptcy or insolvency proceeding.

2. The undersigned hereby represents and warrants to the Lender that to the best of the undersigned's knowledge:

(a) except as set forth in the Phase I Environmental Site Assessment dated October 19, 1994 prepared by Terracon Consultants Western, Inc. (heretofore reviewed by the Lender or its consultant), no Hazardous Material is currently located at, on, in, under or about the Trust Property in violation of any Environmental Requirements;

(b) no releasing, emitting, discharging, leaching, dumping or disposing of any Hazardous Material from the Trust Property onto or into any other property or from any other property onto or into the Trust Property has occurred or is occurring in violation of any Environmental Requirement;

(c) no notice of violation, lien, complaint, suit, order or other notice with respect to the Trust Property is presently outstanding under any Environmental Requirement; and

(d) the Trust Property and the operation thereof are in full compliance with all Environmental Requirements.

3. The undersigned absolutely and unconditionally guarantees to the Lender that the Borrower will fully comply with all of the terms, covenants and provisions of paragraph 9 of the

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Deed of Trust (titled, "Environmental Provisions"). If the Borrower does not fully comply with all of the terms, covenants and provisions of paragraph 9 of the Deed of Trust, the undersigned shall reimburse the Lender upon demand for all sums and costs and expenses incurred by the Lender to the extent not otherwise reimbursed to the Lender by the Borrower pursuant to said paragraph in the Deed of Trust and/or in connection with the Lender performing the Borrower's obligations as set forth in paragraph 9 of the Deed of Trust (including specifically all such sums and interest thereon accruing from and after the commencement of any case, proceeding or action under any existing or future laws relating to bankruptcy, insolvency or similar matters with respect to the Borrower), it being understood and agreed that, the undersigned's obligations hereunder shall be unaffected by modification of any of the Borrower's obligations in any bankruptcy or insolvency proceeding, nor by the fact that the Lender may not have an allowed claim for the same against the Borrower as a result of any bankruptcy or insolvency proceeding.

4. The undersigned will defend, indemnify, and hold harmless the Lender its employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to:

(a) any breach by the Borrower of any of the provisions of paragraph 9 of the Deed of Trust;

(b) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Trust Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Trust Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Trust Property or on any other property or otherwise;

(c) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material;

(d) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material; or

(e) any violation of any Environmental Requirement.

5. The undersigned hereby indemnifies and shall hold harmless and defend the Lender at the undersigned's sole cost and expense against any loss or liability, cost or expense (including, but not limited to, reasonable attorneys' fees and disbursements of the Lender's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures

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and suits arising out of or in connection with:

(a) any ongoing matters arising out of this Guaranty and Indemnification Agreement and any document or instrument now or hereafter executed and/or delivered in connection herewith (the "Indemnity Documents");

(b) any amendment to, or restructuring of the obligations of any of the undersigned hereunder; and

(c) any and all lawful action that may be taken by the Lender in connection with the enforcement of the provisions of this Guaranty and Indemnification Agreement or any of the other Indemnity Documents and the obligations of any of the undersigned thereunder, whether or not suit is filed in connection with the same, or in connection with the Borrower, any of the undersigned and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding.

All sums expended by the Lender shall be payable within five (5) days after written demand and, until reimbursed by the undersigned pursuant hereto, shall bear interest at the default interest rate set forth in the Note.

6. In addition to any right available to the Lender under applicable law or any other agreement, the undersigned hereby gives to the Lender a continuing lien on, security interest in and right of set-off against all moneys, securities and other property of the undersigned and the proceeds thereof, now on deposit or now or hereafter delivered, remaining with or in transit in any manner to the Lender, its affiliates, correspondents, participants or its agents from or for the undersigned (other than separate accounts maintained exclusively for payroll or taxes), whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of the Lender in any way, and also, any balance of any deposit or brokerage account and credits of the undersigned with, and any and all claims of the

undersigned against, the Lender or any such affiliate, correspondent, participant or agent, at any time existing, as collateral security for all of the obligations of the undersigned under this Guaranty and Indemnification Agreement, including fees, contracted with or acquired by the Lender, whether joint, several, absolute, contingent, secured, matured or unmatured (for the purposes of this paragraph 6 and paragraphs 8, 10 and 18 below, collectively, the "Liabilities"), hereby authorizing the Lender at any time or times, without prior notice, to apply such balances, credits or claims, or any part thereof, to such Liabilities in such amounts as it may select, whether contingent, unmatured or otherwise and whether any collateral security therefore is deemed adequate or not. The collateral security described herein shall be in addition to any collateral security described in any separate agreement executed by any or all of the undersigned. The Lender, in addition to any right available to it under applicable law or any other agreement, shall have the right, at its option, to immediately set off against any Liabilities all monies owed by the Lender in any capacity to any or all of the undersigned, whether or not due, and the Lender shall, at its option, be deemed to

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have exercised such right to set off and to have made a charge against any such money immediately upon the occurrence of any events of default set forth below, even though such charge is made or entered on the books of the Lender subsequent to those events.

7. The obligations and liabilities of the undersigned under this Guaranty and Indemnification Agreement shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of the Deed of Trust, sale of the Trust Property pursuant to the provisions of the Deed of Trust or acceptance by the Lender, its nominee or wholly-owned subsidiary of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

8. The undersigned hereby expressly agrees that this Guaranty and Indemnification Agreement is independent of, and in addition to, all collateral granted, pledged or assigned under the Loan Documents, and the undersigned hereby consents that from time to time, before or after any default by the Borrower, with or without further notice to or assent from any of the undersigned:

(a) any security at any time held by or available to the Lender for any obligation of the Borrower, or any security at any time held by or available to the Lender for any obligation of any other person or party primarily, secondarily or otherwise liable for all or any portion of the Debt, any other Liabilities and/or any other obligations of the Borrower or any other person or party, other than the Lender, under any of the Loan Documents ("Other

Obligations"), including any guarantor of the Debt, the Liabilities and/or of any of such Other Obligations, may be accelerated, settled, exchanged, surrendered or released and the Lender may fail to set off and may release, in whole or in part, any balance of any deposit account or credit on its books in favor of the Borrower, or any such other person or party;

(b) any obligation of the Borrower, or of any such other person or party, may be changed, altered, renewed, extended, continued, accelerated, surrendered, compromised, settled, waived or released in whole or in part, or any default with respect thereto waived; and

(c) the Lender may extend further credit in any manner whatsoever to the Borrower, and generally deal with the Borrower or any of the abovementioned security, deposit account, credit on its books or other person or party as the Lender may see fit;

and the undersigned shall remain bound under this Guaranty and Indemnification Agreement, without any loss of rights by the Lender and without affecting the liability of the undersigned, notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. In addition, all moneys available to the Lender for application in payment or reduction of the Debt, the Liabilities and/or any Other Obligations may be applied by the Lender in such manner and in

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such amounts and at such time or times and in such order, priority and proportions as the Lender may see fit.

9. The undersigned hereby waives:

(a) notice of acceptance of this Guaranty and Indemnification Agreement;

(b) protest and notice of dishonor or default to any or all of the undersigned or to any other person or party with respect to any obligations hereby guaranteed;

(c) all other notices to which any or all of the undersigned might otherwise be entitled; and

(d) any demand under this Guaranty and Indemnification Agreement.

10. If any of the following events should occur:

(a) any or all of the undersigned defaults under any of the

Loan Documents and its continuance beyond any applicable notice and/or grace period therein contained; or

(b) any or all of the undersigned violates any provision of this Guaranty and Indemnification Agreement or any other guaranty or other agreement executed by them with respect to the Line of Credit or this Guaranty and Indemnification Agreement;

then, and in such event, the Lender may declare the Liabilities to be, and the same shall become, immediately due and payable and/or may exercise any or all of its remedies as set forth herein or at law or in equity.

11. This is a guaranty of payment and not of collection and the undersigned further waives any right to require that any action be brought against the Borrower or any other person or party or to require that resort be had to any security or to any balance of any deposit account or credit on the books of the Lender in favor of the Borrower or any other person or party. Any payment on account of or reacknowledgement of the Debt by the Borrower, or any other party liable therefor or action taken, payment or reacknowledgement made, or any of the obligations of the Borrower under paragraph 9 of the Deed of Trust or otherwise with respect to any Environmental Requirements or to the Lender in connection therewith, shall be deemed to be taken or made on behalf of the undersigned and shall serve to start anew the statutory period of limitations applicable to the obligations of the Borrower and/or the undersigned pursuant to said paragraph 9 of the Deed of Trust hereunder or otherwise with respect to any Environmental Requirement or to the Lender in connection therewith or herewith.

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12. Each reference herein to the Lender shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty and Indemnification Agreement shall also inure. Each reference herein to the undersigned shall be deemed to include the heirs, executors, administrators, legal representatives, successors and assigns of the undersigned, all of whom shall be bound by the provisions of this Guaranty and Indemnification Agreement, provided, however, that the undersigned shall in no event nor under any circumstance have the right, without obtaining the prior written consent of the Lender, to assign or transfer the undersigned's obligations and liabilities under this Guaranty and Indemnification Agreement, in whole or in part, to any other person, party or entity.

13. The term "undersigned" as used herein shall, if this Guaranty and Indemnification Agreement is signed by more than one party, unless otherwise stated herein, mean the "undersigned and each of them" and each undertaking herein contained shall be their joint and several undertaking. If the Guaranty is signed by more than one party, all singular references to the undersigned shall be deemed to be plural. The Lender may proceed against none, one or more of the undersigned at one time or from time to time as it sees fit in its sole

and absolute discretion. If any party hereto shall be a partnership, the agreements and obligations on the part of the undersigned herein contained shall remain in force and application notwithstanding any changes in the individuals composing the partnership and the term "undersigned" shall include any altered or successive partnerships but the predecessor partnerships and their partners shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a corporation, the agreements and obligations on the part of the undersigned herein contained shall remain in force and application notwithstanding the merger, consolidation, reorganization or absorption thereof, and the term "undersigned" shall include such new entity, but the old entity shall not thereby be released from any obligations or liabilities hereunder. The Borrower is executing this Guaranty and Indemnification Agreement as a further assurance that its obligations set forth herein will remain in full force and effect, notwithstanding the assignment or discharge of record of the Deed of Trust or any other fact or circumstances whatsoever.

14. No delay on the part of the Lender in exercising any right or remedy under this Guaranty and Indemnification Agreement or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on any or all of the undersigned shall be deemed to be a waiver of the obligation of any or all of the undersigned or of the right of the Lender to take further action without notice or demand as provided in this Guaranty and Indemnification Agreement. No course of dealing between any or all of the undersigned and the Lender shall change, modify or discharge, in whole or in part, this Guaranty and Indemnification Agreement or any obligations of the undersigned hereunder.

15. This Guaranty and Indemnification Agreement may only be modified, amended, changed or terminated by an agreement in writing signed by the Lender and the undersigned. No waiver of any term, covenant or provision of this Guaranty and Indemnification Agreement shall

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be effective unless given in writing by the Lender and if so given by the Lender shall only be effective in the specific instance in which given. The execution and delivery hereafter to the Lender by any or all of the undersigned of a new instrument of guaranty or any reaffirmation of guaranty, of whatever nature, shall not terminate, supersede or cancel this instrument, unless expressly so provided therein, and all rights and remedies of the Lender hereunder or under any instrument of guaranty hereafter executed and delivered to the Lender by any or all of the undersigned shall be cumulative and may be exercised singly or concurrently.

16. The undersigned acknowledges that this Guaranty and Indemnification Agreement and the undersigned's obligations under this Guaranty and Indemnification Agreement are and shall at all times continue to be absolute, irrevocable and unconditional in all respects, and shall at all times

be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Guaranty and Indemnification Agreement and the obligations of any or all of the undersigned under this Guaranty and Indemnification Agreement or the obligations of any other person or party (including, without limitation, the Borrower) relating to this Guaranty and Indemnification Agreement or the obligations of any or all of the undersigned hereunder or otherwise with respect to the Debt, including, but not limited to, a foreclosure of the Deed of Trust or the realization upon any other collateral given, pledged or assigned as security for all or any portion of the Debt, or the filing of a petition under Title 11 of the United States Code with regard to the Borrower or any or all of the undersigned, or the commencement of an action or proceeding for the benefit of the creditors of the Borrower or the undersigned, or the obtaining by the Lender of title to, respectively, the Trust Property or to any collateral given, pledged or assigned as security for the Debt by reason of the foreclosure or enforcement of the Deed of Trust or any other pledge or security agreement, the acceptance of a deed or assignment in lieu of foreclosure or sale, or otherwise. This Guaranty and Indemnification Agreement sets forth the entire agreement and understanding of the Lender and the undersigned with respect to the matters covered by this Guaranty and Indemnification Agreement, and the undersigned acknowledges that no oral or other agreements, understandings, representations or warranties exist with respect to this Guaranty and Indemnification Agreement or with respect to the obligations of the undersigned under this Guaranty and Indemnification Agreement, except those specifically set forth in this Guaranty and Indemnification Agreement.

17. This Guaranty and Indemnification Agreement has been validly authorized, executed and delivered by the undersigned. The undersigned represents and warrants to the Lender that it has the corporate or other organizational power to do so and to perform its obligations under this Guaranty and Indemnification Agreement. The undersigned represents and warrants to the Lender that this Guaranty and Indemnification Agreement constitutes the legally binding obligation of the undersigned fully enforceable against the undersigned in

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accordance with the terms hereof. The undersigned further represents and warrants to the Lender that:

(a) neither the execution and delivery of this Guaranty and Indemnification Agreement nor the consummation of the transactions contemplated hereby nor compliance with the terms and provisions hereof will violate any applicable provision of law or any applicable regulation or other manifestation of governmental action; and

(b) all necessary approvals, consents, licenses, registrations and validations of any governmental regulatory body, including, without

limitation, approvals required to permit the undersigned to execute and carry out the provisions of this Guaranty and Indemnification Agreement, for the validity of the obligations of the undersigned hereunder and for the making of any payment or remittance of any funds required to be made by the undersigned under this Guaranty and Indemnification Agreement, have been obtained and are in full force and effect.

18. Notwithstanding any payments made by any or all of the undersigned pursuant to the provisions of this Guaranty and Indemnification Agreement, the undersigned irrevocably waives all rights to enforce or collect upon any rights which it now has or may acquire against the Borrower either by way of subrogation, indemnity, reimbursement or contribution for any amount paid under this Guaranty and Indemnification Agreement or by way of any other obligations whatsoever of the Borrower to any or all of the undersigned, nor shall any or all of the undersigned file, assert or receive payment on any claim, whether now existing or hereafter arising, against the Borrower in the event of the commencement of a case by or against the Borrower under Title 11 of the United States Code. In the event either a petition is filed under said Title 11 of the United States Code with regard to the Borrower or an action or proceeding is commenced for the benefit of the creditors of the Borrower, this Guaranty and Indemnification Agreement shall at all times thereafter remain effective in regard to any payments or other transfers of assets to the Lender received from or on behalf of the Borrower prior to notice of termination of this Guaranty and Indemnification Agreement and which are or may be held voidable on the grounds of preference or fraud, whether or not the Debt has been paid in full. Any payment on account of or reacknowledgment of the Debt by the Borrower, or any other party liable therefor, or action taken, or payment or reacknowledgment made, of any of the obligations of the Borrower to take and complete the actions specified in paragraph 9 of the Deed of Trust shall serve to start anew the statutory period of limitations applicable to the Borrower with respect to said paragraph 9 and the undersigned hereunder. The provisions of this paragraph 18 shall survive the term of this Guaranty and the payment in full of the Debt and all other Liabilities.

19. Any notice, request or demand given or made under this Guaranty and Indemnification Agreement shall be in writing and shall be given in the manner and to the notice parties set forth in the Loan Agreement.

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20. This Guaranty and Indemnification Agreement is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New York and shall be in all respects governed, construed, applied and enforced in accordance with the laws of the State of New York without regard to principles of conflicts of laws. The undersigned acknowledges and agrees that this Guaranty and Indemnification Agreement is, and is intended to be, an instrument for the payment of money only, as such phrase is used in Section 3213 of the Civil Practice Law and Rules of the State of New York, and the

undersigned has been fully advised by its counsel of the Lender's rights and remedies pursuant to said Section 3213.

21. The undersigned agrees to submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Guaranty and Indemnification Agreement. In furtherance of such agreement, the undersigned hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the undersigned in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New York and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the undersigned by registered or certified mail to, or by personal service at, the last known address of the undersigned, whether such address be within or without the jurisdiction of any such court. The undersigned hereby further agrees that the venue of any litigation arising in connection with the Debt or in respect of any of the obligations of the undersigned under this Guaranty and Indemnification Agreement, shall, to the extent permitted by law, be in New York County. Nothing in this paragraph shall limit the right of the Lender to bring an action or proceeding arising out of this Guaranty and Indemnification Agreement in any other jurisdiction.

22. The undersigned absolutely, unconditionally and irrevocably waives any and all right to assert or interpose any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Guaranty and Indemnification Agreement or the obligations of the undersigned under this Guaranty and Indemnification Agreement, or the obligations of any other person or party (including, without limitation, the Borrower) relating to this Guaranty and Indemnification Agreement, or the obligations of the undersigned hereunder or otherwise with respect to the Line of Credit in any action or proceeding brought by the Lender to collect the Debt, or any portion thereof, or to enforce the obligations of the undersigned under this Guaranty and Indemnification Agreement (provided, however, that the foregoing shall not be deemed a waiver of the right of the undersigned to assert any compulsory counterclaim maintained in a court of the United States, or of the State of New York if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the right of the undersigned to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against the Lender in any separate action or proceeding). The undersigned hereby undertakes and agrees that this Guaranty shall remain in full force and effect for all of the obligations and liabilities of the undersigned hereunder, notwithstanding the maturity of the Advances or termination of the Commitment (as defined in the Loan Agreement), whether by acceleration, scheduled maturity or otherwise.

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23. No exculpatory provisions which may be contained in any Loan Document shall in any event or under any circumstances be deemed or construed to

modify, qualify, or affect in any manner whatsoever the obligations and liabilities of the undersigned under this Guaranty and Indemnification Agreement.

24. The obligations and liabilities of the undersigned under this Guaranty and Indemnification Agreement are in addition to the obligations and liabilities of the undersigned under the Other Guaranties (as hereinafter defined). The discharge of any or all of the undersigned's obligations and liabilities under any one or more of the Other Guaranties by the undersigned or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the undersigned's obligations and liabilities under this Guaranty and Indemnification Agreement. Conversely, the discharge of any or all of the undersigned's obligations and liabilities under this Guaranty and Indemnification Agreement by the undersigned or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the undersigned's obligations and liabilities under any of the Other Guaranties. The term "Other Guaranties" as used herein shall mean any other guaranty of payment, guaranty of performance, completion guaranty, indemnification agreement or other guaranty or instrument creating any obligation or undertaking of any nature whatsoever (other than this Guaranty and Indemnification Agreement) now or hereafter executed and delivered by any or all of the undersigned to the Lender in connection with the Line of Credit.

25. This Guaranty and Indemnification Agreement may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement of guaranty. The failure of any party listed below to execute this Guaranty and Indemnification Agreement, or any counterpart hereof, or the ineffectiveness for any reason of any such execution, shall not relieve the other signatories from their obligations hereunder.

26. The undersigned hereby irrevocably and unconditionally waives, and the Lender by its acceptance of this Guaranty and Indemnification Agreement irrevocably and unconditionally waives, any and all right to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Guaranty and Indemnification Agreement.

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IN WITNESS WHEREOF, the undersigned have duly executed this Guaranty and Indemnification Agreement the day and year first above set forth.

S&W OF LAS VEGAS, L.L.C.

By: The Smith & Wollensky Restaurant  
Group, Inc., Sole Member



ss.:

COUNTY OF NEW YORK )

On the 20th day of July in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang

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Notary Public

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

On the 20th day of July in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang

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Notary Public

EXHIBIT A

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Advances: The term "Advances" as used in this Guaranty and Indemnification Agreement shall have the meaning assigned to such term in the Loan Agreement.

Deed of Trust: The term "Deed of Trust" as used in this Guaranty and Indemnification Agreement shall have the meaning assigned to such term in the

Loan Agreement.

Loan Agreement: The term "Loan Agreement" as used in this Guaranty and Indemnification Agreement shall mean that certain Line of Credit Agreement, of even date herewith, entered into among the Borrower, The Smith & Wollensky Restaurant Group, Inc., Smith & Wollensky of Boston LLC and the Lender, together with any and all modifications, supplements, replacement or substitutions therefor as may exist from time to time.

Note: The term "Note" as used in this Guaranty and Indemnification Agreement shall mean the Promissory Note, of even date herewith, referred to in the Loan Agreement, together with any and all modifications, supplements, replacements or substitutions therefor as may exist from time to time.

## PROMISSORY NOTE

\$2,000,000

As of July 21st, 2004

FOR VALUE RECEIVED, S&W OF LAS VEGAS, L.L.C., a Delaware limited liability company, having an office at c/o The Smith & Wollensky Restaurant Group, Inc., 1114 First Avenue, New York, New York 10021 (the "Borrower"), hereby unconditionally promises to pay to the order of MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC., a Delaware corporation, as lender, having an address at 2000 Westchester Avenue, Purchase, New York 10577 (the "Lender"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of TWO MILLION AND NO/100 DOLLARS (\$2,000,000), or, if less than such principal amount, the aggregate unpaid principal amount of all Advances (as defined in the Line of Credit Agreement of even date herewith by and among the Borrower, The Smith & Wollensky Restaurant Group, Inc., Smith & Wollensky of Boston LLC and the Lender (as the same may be amended, supplemented or otherwise modified, the "Loan Agreement"), in lawful money of the United States of America with interest thereon to be computed from the date of this Note (this "Note") at the rate determined in accordance with the Basic Loan Terms portion of the Loan Agreement (as such rate may increase pursuant to the terms of the Loan Agreement), and to be paid in accordance with the terms of this Note and the Loan Agreement. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

## ARTICLE 1 - PAYMENT TERMS

This Note is the Note referred to in the Loan Agreement and is subject to the terms and provisions of the Loan Agreement including, without limitation, the said Basic Loan Terms and Article II. Any outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon shall be due and payable on the Termination Date. All Advances made by the Lender to the Borrower under the Loan Agreement shall be recorded by the Lender and endorsed on the grid schedule attached hereto (or a similar record maintained by the Lender).

## ARTICLE 2 - DEFAULT AND ACCELERATION

The Advances shall without notice become due and payable at the option of the Lender (or immediately upon the occurrence of an Event of Default under Section 6.01(e) of the Loan Agreement) in accordance with the provisions of Section 6.01 of the Loan Agreement. The Borrower agrees to pay default interest and late charges, as provided for in the said Basic Loan Terms.

## ARTICLE 3 - OTHER DOCUMENTS

This Note is secured by the Deed of Trust and the other Collateral Documents. All of the terms, covenants and conditions contained in the Loan Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

#### ARTICLE 4 - SAVINGS CLAUSE

Anything herein to the contrary notwithstanding, if at any time the interest rate under this Note, together with all fees and charges that are treated as interest under applicable law (collectively, the "Charges"), as provided for in the Loan Agreement or herein or in any other Loan Document, or otherwise contracted for, charged, received, taken or reserved by the Lender, shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the

Lender in accordance with applicable law, the rate of interest payable on this Note, together with all Charges payable to the Lender, shall be limited to the Maximum Rate. The Borrower shall never be liable for unearned interest thereon or shall ever be required to pay interest thereon in excess of the maximum amount that may be lawfully charged under applicable law from time to time in effect. If (a) the maturity of the obligations of the Borrower under this Note is accelerated for any reason, (b) any of such obligations are prepaid and as a result any amounts held to constitute interest are determined to be in excess of the legal maximum or (c) the Lender or any other holder of any or all of the obligations of the Borrower under this Note or the Loan Agreement shall otherwise collect moneys that are determined to constitute interest that would otherwise increase the interest on any or all of such obligations to an amount in excess of that permitted to be charged by applicable law then in effect, then all such sums determined to constitute interest in excess of such legal limit shall, without penalty, be promptly applied to reduce the then outstanding principal of such obligations or, at the Lender's or such holder's option, promptly returned to the Borrower or the other payor thereof upon such determination.

#### ARTICLE 5 - NO ORAL CHANGE

No amendment or waiver of any provision of this Note nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

#### ARTICLE 6 - WAIVERS

The Borrower and all others who may become liable for the payment of

all or any part of the Advances do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind except as expressly provided in the Loan Agreement. No release of any security for the Advances or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or any of the other Loan Documents made by agreement between the Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of the Borrower, and any other Person who may become liable for the payment of all or any part of the Advances, under this Note, the Loan Agreement or the other Loan Documents (except as otherwise specifically provided in writing by any such alterations, amendments or waivers of this Note, the Loan Agreement or the other Loan Documents). No notice to or demand on the Borrower shall be deemed to be a waiver of the obligation of the Borrower or of the right of the Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents.

ARTICLE 7 - GOVERNING LAW

This Note shall be governed, construed, applied and enforced in accordance with the laws of the State of New York and applicable laws of the United States of America without regard to conflicts of laws principles of New York State law other than Section 5-1401 of the New York General Obligations Law.

ARTICLE 8 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 7.02 (and the said Basic Loan Terms) of the Loan Agreement.

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IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

BORROWER:

S&W OF LAS VEGAS, L.L.C.

By: The Smith & Wollensky Restaurant Group, Inc.

By:/s/ Alan M. Mandel

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Name: Alan M. Mandel

STATE OF NEW YORK )  
 )  
 ) ss.:  
 )  
COUNTY OF NEW YORK )

On the 20th day of July in the year 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Alan M. Mandel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Maria A. Chang  
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Notary Public

NOTE

Grid Schedule of Advances/Payments

Date	Advances	Interest Rate	Payments	Unpaid Principal Balance	Name of Person Making Notation
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_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____



CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002

I, Alan N. Stillman, Chairman of the Board and Chief Executive Officer of The Smith & Wollensky Restaurant Group, Inc., certify that:

1. I have reviewed this quarterly report of The Smith & Wollensky Restaurant Group, Inc. (the "registrant") on Form 10-Q for the period ended June 28, 2004;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the

registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 11, 2004

/s/ Alan N. Stillman

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Alan N. Stillman  
Chairman of the Board and  
Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002

I, Alan M. Mandel, Chief Financial Officer, Executive Vice President of Finance, Secretary and Treasurer of The Smith & Wollensky Restaurant Group, Inc., certify that:

1. I have reviewed this quarterly report of The Smith & Wollensky Restaurant Group, Inc. (the "registrant") on Form 10-Q for the period ended June 28, 2004;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred

during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 11, 2004

/s/ Alan M. Mandel

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Alan M. Mandel  
Chief Financial Officer, Executive  
Vice President of Finance, Secretary  
and Treasurer

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of The Smith & Wollensky Restaurant Group, Inc. (the "Company") on Form 10-Q for the period ending June 28, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Alan Stillman, Chief Executive Officer of the Company, and Alan Mandel, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respect, the financial condition and results of operations of the Company.

Date August 11, 2004  
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By: /s/ Alan N. Stillman  
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Alan N. Stillman  
Chairman of the Board, Chief  
Executive Officer and Director  
(principal executive officer)

Date August 11, 2004  
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By: /s/ Alan M. Mandel  
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Alan M. Mandel  
Chief Financial Officer, Executive  
Vice President of Finance, Secretary  
and Treasurer (principal financial and  
accounting officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.



## RISK FACTORS

You should carefully consider the risks described below in connection with your investment in our common stock. Unless the context requires otherwise, references to "we", "us", "our" and the "Company" refer specifically to The Smith & Wollensky Restaurant Group, Inc. and its subsidiaries and predecessor entities.

## RISKS RELATED TO OUR BUSINESS

Our unfamiliarity with new markets may present risks, which could have a material adverse effect on our future growth and profitability.

Our strategy depends on our ability to successfully expand our Smith & Wollensky brand into new markets in which we have no operating experience. We began to open Smith & Wollensky restaurants outside of New York City in 1997. Historically, new restaurants opened in expanded markets generally take about 15 to 36 months to achieve expected company-wide targeted levels of performance. This is due to higher operating costs caused by temporary inefficiencies typically associated with expanding into new regions and opening new restaurants, such as lack of market awareness and acceptance and limited availability of experienced staff. These new markets may have different competitive conditions, consumer tastes and discretionary spending patterns than our existing markets, which may cause our restaurants in these new markets to be less successful than our restaurants in our existing markets. As a result, our continued expansion may result in an increase in these operating costs. We cannot assure you that restaurants in new markets will be successful. Our planned expansion involves a number of risks, which could delay or prevent the opening of new restaurants.

Our success in profitably pursuing our strategy of expansion will depend on our ability to open new restaurants efficiently. Our ability to open new restaurants efficiently is subject to a number of factors beyond our control, including:

- Selection and availability of suitable restaurant sites;
- Negotiation of acceptable lease or purchase terms for such sites;
- Negotiation of reasonable construction contracts and adequate supervision of construction;
- Our ability to secure required governmental permits and approvals for both construction and operation;
- Availability of adequate capital; and
- General economic conditions.

We may not be successful in addressing these risks, which could adversely

affect our ability to open our planned new restaurants on a timely basis, or at all. Delays in opening or failures to open planned new restaurants could cause our growth, results of operations and financial condition to suffer.

Terrorism and war may have material adverse effect on our operating results.

Terrorist attacks, such as the attacks that occurred in New York and Washington, D.C. on September 11, 2001, and other acts of violence or war in the United States or abroad, such as the

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war in Iraq, may affect the markets in which we operate and our operations and profitability. The potential near-term and long-term effects these events may have on our business operations, our customers, the markets in which we operate and the economy is uncertain. Because consequences of any terrorist attacks, or any armed conflicts are unpredictable, we may not be able to foresee events that could have an adverse effect on our markets or our business.

Our profitability is dependent in large measure on food and supply costs which are not within our control.

Our profitability is dependent in large measure on our ability to anticipate and react to changes in food and supply costs. Various factors beyond our control, including climatic changes and government regulations, may affect food costs. Specifically, our dependence on frequent, timely deliveries of fresh beef, poultry, seafood and produce subjects us to the risks of possible shortages or interruptions in supply caused by adverse weather or other conditions, which could adversely affect the availability and cost of any such items. We cannot assure you that we will be able to anticipate or react to increasing food and supply costs in the future. The failure to react to these increases could materially and adversely affect our business and result of operations.

The restaurant industry is affected by changes in consumer preferences and discretionary spending patterns that could force us to modify our menus and concepts and could result in a reduction in our revenues.

Consumer preferences could be affected by health concerns about the consumption of beef, the primary item on our Smith & Wollensky restaurants' menus, or by specific events such as the outbreak or scare caused by "mad cow disease". If we were to have to modify the emphasis on beef in our restaurants' menus, we may lose customers who would be less satisfied with a modified menu, and we may not be able to attract a new customer base to generate the necessary revenues to maintain our income from restaurant operations. A change in our menus may also result in us having different competitors. We may not be able to

successfully compete against established competitors in the general restaurant market. Our success also depends on various factors affecting discretionary consumer spending, including economic conditions, disposable consumer income, consumer confidence and the United States participation in military activities. Adverse changes in these factors could reduce our customer base and spending patterns, either of which could reduce our revenues and results of operations.

The failure to enforce and maintain our trademarks and trade names could adversely affect our ability to establish and maintain brand awareness.

We license from St. James Associates the exclusive and perpetual right to use and sublicense the trademarks "Smith & Wollensky" and "Wollensky's Grill" and any variations of such names throughout the United States and the world, except that St. James Associates has reserved the exclusive right to use the licensed names, subject to receiving our consent in specified circumstances, within a 100-mile radius of the Smith & Wollensky in New York, subject to our exclusive right to use the name within a 10-mile radius of City Hall in Philadelphia, Pennsylvania. Consequently, we may not open new Smith & Wollensky restaurants or pursue retailing or merchandising opportunities within such reserved territory. St. James Associates has the right to terminate the license agreement due to specified defaults, including non-payment of amounts due under the agreement and certain events of bankruptcy or insolvency. St. James also has the right to terminate the agreement if we fail to perform any term, covenant or condition under the agreement, and we do not remedy such failure within 30 days after receiving notice of

such failure. St. James can also terminate if we, Alan Stillman, or any affiliate of Alan Stillman owns or manages any new steakhouses that does not utilize the licensed names. This does not include situations where a restaurant sells steak incidentally, continues to be operated under an original name, or is located outside of the reserved territory. If we terminate or default on the Smith & Wollensky license, we are subject to a fee of \$2.0 million upon termination or \$2.5 million to be paid over four years.

Our current operations and marketing strategy depend significantly on the strength of trademarks and service marks, especially Smith & Wollensky. The success of our growth strategy depends on our continued ability to use our existing trademarks and service marks in order to increase brand awareness and further develop our branded products. Although we are not aware of any infringing uses of any of the trademarks or service marks that we believe could materially affect us; we cannot assure you that we will be free from such infringements in the future. For example, we do not own or manage the restaurant

located in South Africa or the restaurant located in Argentina, each of which is named "Smith & Wollensky." Although the existence of these restaurants has not had any material impact on our operations to date, we cannot assure you that they will not have a negative impact on our future plans for growth or on our future operations.

The name "Smith & Wollensky" represents our core concept. The termination of our right to use this name or our failure to maintain any of our other existing trademarks could materially and adversely affect our growth and marketing strategies.

Several of our material agreements may be terminated if Alan Stillman is no longer our chief executive officer, if Mr. Stillman ceases to direct our business, or if Mr. Stillman's ownership interests fall below certain levels.

Our success has been, and will continue to be, dependent on Alan Stillman, our Chief Executive Officer. The loss of Mr. Stillman's services could materially and adversely affect our business, financial condition and development. Pursuant to our management agreement for the Smith & Wollensky restaurant in New York with St. James Associates, the agreement can be terminated if we cease to be operated and directed by Alan Stillman, whether by death, incapacity, retirement or otherwise and a notice of termination is sent to us within 60 days of receipt by St. James Associates of financial statements indicating that restaurant sales, available funds or gross profit margin fall below defined levels.

Pursuant to our management agreement relating to ONEc.p.s, the agreement can be terminated if the individual who directs our daily operations or has overall control and decision making authority is replaced other than in the ordinary course of business, or in connection with the merger, consolidation or other transfer of any direct or indirect interest in us. Termination of the agreement would result in the loss of any management fee income from ONEc.p.s.

Pursuant to our lease agreement for Cite with Rockefeller Center North, Inc., Rockefeller Center may terminate the lease agreement if Mr. Stillman does not own at least 35% of the shares of each class of the tenant's stock, or if there is a failure to obtain their consent to an assignment of the lease. We are currently in default with respect to these requirements, although Rockefeller Center has not given us notice of default. Rockefeller Center may also terminate the lease agreement if Mr. Stillman does not have effective working control of the business of the tenant. The default existing under the lease agreement for Cite could subject us to renegotiation of the financial terms of the lease, or could result in a termination of this agreement which would result in the loss of this restaurant at this location. This event could have a material adverse effect on

our business and our financial condition and results of operations. To date, none of the parties to this agreement has taken any action to terminate the agreement.

We entered into an employment agreement with Mr. Stillman that has a term ending in May 2006. However, the employment agreement can be terminated by Mr. Stillman at any time with 15 business days notice, or if we materially breach the agreement, remove Mr. Stillman as Chief Executive Officer, materially diminish Mr. Stillman's responsibilities, or relocate Mr. Stillman outside of New York City.

Mr. Stillman's duties to St. James Associates and MW Realty Associates on the one hand and us on the other hand, may result in a conflict of interest.

An entity controlled by Mr. Stillman is one of the two general partners of St. James Associates, which owns the Smith & Wollensky restaurant in New York and the rights to the trademark "Smith & Wollensky," and is one of the two general partners of MW Realty Associates, which owns the property on which the Smith & Wollensky restaurant in New York is located. As a result, in the event that a dispute arose between us on the one hand, and St. James Associates and/or MW Realty Associates on the other hand, it is possible that Mr. Stillman would have a conflict of interest as a result of his duties to all parties. Such a conflict of interest could make the resolution of any such dispute more difficult.

Because we maintain a small number of restaurants, the negative performance of a single restaurant could have a substantial impact on our operating results.

We currently operate 17 restaurants, 12 of which we own. Due to this relatively small number of restaurants, poor financial performance at any owned restaurant could have a significant negative impact on our profitability as a whole. Future growth in sales and profits will depend to a substantial extent on our ability to increase sales and profits at our restaurants open less than fifteen months, to operate our existing restaurants at higher sales levels that generate equal or higher operating profits and to increase the number of our restaurants. The results achieved to date by our relatively small restaurant base may not be indicative of the results of a larger number of restaurants in a more geographically dispersed area with varied demographic characteristics. We cannot assure you that we will be able to increase sales and profits at our restaurants open less than 15 months, operate our existing restaurants at higher sales levels that generate equal or higher operating profits or increase the number of our restaurants sufficiently to offset the impact of poor performance at any one restaurant. Because many of our restaurants are located in New York City, we are highly sensitive to negative occurrences there.

We currently operate seven restaurants in New York City, three of which we own. As a result, we are particularly susceptible to adverse trends and economic conditions in New York City, including its labor market, which could have a negative impact on our profitability as a whole. In addition, given our

geographic concentration, negative publicity regarding any of our restaurants in New York City could have a material adverse effect on our business and operations, as could other regional occurrences such as acts of terrorism, local strikes, natural disasters or changes in laws or regulations.

Our management agreement relating to ONEc.p.s. may be terminated at any time.

We are subject to a right of the other party to terminate, at any time, the management agreement relating to ONEc.p.s. We have not been notified by the other party to this agreement that it plans to terminate the agreement and management has no reason to believe that the

agreement will be terminated. Termination of the management agreement would result in the loss of any management fee income from ONEc.p.s. We have notified the other party to this agreement of our unwillingness to fund any future working capital requirements. Since that notification the other party has funded all working capital requirements. However, either party may terminate the agreement if neither party is willing to fund the required additional working capital, as defined.

We plan to incur substantial costs over the near-term in connection with our expansion plans. We may need to seek additional financing sooner than we anticipate as a result of any of the following factors:

- changes in our operating plans;
- acceleration of our expansion plans;
- lower than anticipated sales;
- increased costs of expansion, including construction costs;
- increased food and/or operating costs; and
- potential acquisitions.

Additional financing may not be available on acceptable terms or at all. If we fail to get additional financing as needed, our business, results of operations and expansion plans would likely suffer.

Our operating results may fluctuate significantly due to seasonality and other factors beyond our control.

Our business is subject to seasonal fluctuations, which may vary greatly depending upon the region of the United States in which a particular restaurant is located. In addition to seasonality, our quarterly and annual operating results and comparable unit sales may fluctuate significantly as a result of a variety of factors, including:

- the amount of sales contributed by new and existing restaurants;
- the timing of new openings;
- increases in the cost of key food or beverage products;
- labor costs for our personnel;
- our ability to achieve and sustain profitability on a quarterly or annual basis;
- consumer confidence and changes in consumer preferences;
- health concerns, including adverse publicity concerning food-related illness;
- the level of competition from existing or new competitors in the high-end segment of the restaurant industry; and
- economic conditions generally and in each of the market in which we are located.

These fluctuations make it difficult for us to predict and address in a timely manner factors that may have a negative impact on our results of operations.

Our expansion may strain our infrastructure, which could slow restaurant development.

Our growth strategy may place a strain on our management systems, financial controls, and information systems. To manage our growth effectively, we must maintain the high level of quality and service at our existing and future restaurants. We must also continue to enhance our

operational, information, financial and management systems and locate, hire, train and retain qualified personnel, particularly restaurant managers. We cannot predict whether we will be able to respond on a timely basis to all of the changing demands that our planned expansion will impose on management and those systems and controls. If we are not able to effectively manage any one or more of these or other aspects of our expansion, our business, financial condition, operating results or cash flows could be materially adversely affected.

We could face labor shortages, increased labor costs and other adverse effects of varying labor conditions.

The development and success of our restaurants depend, in large part, on the efforts, abilities, experience and reputations of the general managers and chefs at such restaurants. In addition, our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified

employees, including restaurant managers, kitchen staff and wait staff, especially in light of our expansion schedule. Qualified individuals needed to fill these positions are in short supply and the inability to recruit and retain such individuals may delay the planned openings of new restaurants or result in high employee turnover in existing restaurants. A significant delay in finding qualified employees or high turnover of existing employees could materially and adversely affect our results of operations or business. Also, competition for qualified employees could require us to pay higher wages to attract sufficient qualified employees, which could result in higher, labor costs. In addition, increases in the minimum hourly wage, employment tax rates and levies, related benefits costs, including health insurance, and similar matters over which we have no control may increase our operating costs.

The employees of three of our managed restaurants in New York, Smith & Wollensky, The Post House and ONEc.p.s. are members of a union. The terms of our collective bargaining agreements, as well as future collective bargaining agreements could result in increased labor costs. In addition, our failure to negotiate an agreement in a timely manner could result in an interruption of operations at these managed locations, which would materially and adversely affect our business and our results of operations.

Unanticipated costs or delays in the development or construction of our restaurants could prevent our timely and cost-effective opening of new restaurants.

We depend on contractors and real estate developers to construct our restaurants. Many factors may adversely affect the cost and time associated with the development and construction of our restaurants, including:

- labor disputes;
- shortages of materials or skilled labor;
- adverse weather;
- unforeseen engineering problems;
- environmental problems;
- construction or zoning problems;
- local government regulations;
- modifications in design; and
- other unanticipated increases in costs.

Any of these factors could give rise to delays or cost overruns, which may prevent us from developing additional restaurants within our anticipated budgets or time periods or at all. Any such failure could cause our business, results of operations and financial condition to suffer.

We may not be able to obtain and maintain necessary federal, state and local permits which could delay or prevent the opening of new restaurants.

Our business is subject to extensive federal, state and local government regulations, including regulations relating to:

- alcoholic beverage control;
- the purchase, preparation and sale of food;
- public health and safety;
- sanitation, building, zoning and fire codes; and
- employment and related tax matters.

All these regulations impact not only our current operations but also our ability to open new restaurants. We will be required to comply with applicable state and local regulations in new locations into which we expand. Any difficulties, delays or failures in obtaining licenses, permits or approvals in such new locations could delay or prevent the opening of a restaurant in a particular area or reduce operations at an existing location, either of which would materially and adversely affect our growth and results of operations.

The restaurant industry is affected by litigation and publicity concerning food quality, health and other issues, which can cause guests to avoid our restaurants and result in liabilities.

Health concerns, including adverse publicity concerning food-related illness, although not specifically related to our restaurants, could cause guests to avoid our restaurants, which would have a negative impact on our sales. We may also be the subject of complaints or litigation from guests alleging food-related illness, injuries suffered on the premises or other food quality, health or operational concerns. A lawsuit or claim could result in an adverse decision against us that could have a material adverse effect on our business and results of operations. We may also be subject to litigation which, regardless of the outcome, could result in adverse publicity. Adverse publicity resulting from such allegations may materially adversely affect us and our restaurants, regardless of whether such allegations are true or whether we are ultimately held liable. Such litigation, adverse publicity or damages could have a material adverse effect on our business, competitive position and results of operations.

The covenants contained in the agreements governing our indebtedness may limit our ability to expand our business, and our ability to comply with these covenants may be affected by events that are beyond our control.

The agreements governing our indebtedness contain financial and other covenants requiring us, among other things, to maintain financial ratios and meet financial tests, and restrict our ability to incur indebtedness and declare or pay dividends. In addition, certain of our lenders have security interests in certain of our personal property and fixtures and mortgages on several of our

properties. These provisions could cause acceleration in the due date of our outstanding debt, limit and our ability to expand our business. Our ability to comply with these covenants and restrictions may be affected by events beyond our control.

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## RISKS RELATED TO OUR COMMON STOCK

The large number of shares of our common stock eligible for public sale and the fact that a relatively small number of investors hold our publicly traded common stock could cause our stock price to fluctuate.

The market price of our common stock could fluctuate as a result of sales by our existing stockholders of a large number of shares of our common stock in the market or the perception that such sales could occur. A large number of shares of our unregistered stock is eligible for public sale and our registered common stock is concentrated in the hands of a small number of institutional investors and is thinly traded. An attempt to sell by a large holder could adversely affect the price of our stock. These sales or the perception that these sales might occur could also make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

Our certificate of incorporation and by-laws may delay or prevent a change of control transaction.

Delaware corporate law contains, and our Amended and Restated Certificate of Incorporation and By-laws contain, provisions that could have the effect of delaying, deferring or preventing our ability to experience a change in control on terms, which you may deem advantageous. These provisions include:

- providing for a board of directors with staggered terms;
- prohibiting stockholder action, without a meeting of stockholders, by less than unanimous written consent; and
- establishing advance notice requirements for proposing matters to be acted upon by stockholders at a meeting.

These provisions could limit the price that investors might be willing to pay in the future for shares of our common stock.

Ownership of approximately 29.4% of our outstanding common stock by seven stockholders will limit your ability to influence corporate matters.

A substantial majority of our capital stock is held by a limited number of stockholders. Eight stockholders, including our officers and directors and

parties affiliated with or related to such persons or to us, own approximately 29.4% of the shares of common stock outstanding. Accordingly, such stockholders will likely have a strong influence on major decisions of corporate policy, and the outcome of any major transaction or other matters submitted to our stockholders or board of directors, including potential mergers or acquisitions, and amendments to our Amended and Restated Certificate of Incorporation. Stockholders other than these principal stockholders are therefore likely to have little influence on decisions regarding such matters.

The price of our common stock may fluctuate significantly.

The price at which our common stock will trade may fluctuate significantly. The stock market has from time to time experienced significant price and volume fluctuations. The trading price of our common stock could be subject to wide fluctuations in response to a number of factors, including:

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- fluctuations in quarterly or annual results of operations;
- changes in published earnings estimates by analysts and whether our actual earnings meet or exceed such estimates;
- additions or departures of key personnel; and
- changes in overall stock market conditions, including the stock prices of other restaurant companies.

In the past, companies that have experienced extreme fluctuations in the market price of their stock have been the subject of securities class action litigation. If we were to be subject to such litigation, it could result in substantial costs and a diversion of our management's attention and resources, which may have a material adverse effect on our business, financial condition and results of operations.

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