



MTG 2003122854

RICHARD N. TAYLOR  
RECORDS OF NEBRASKA  
RECORDS DIVISION



JUN 24 2003 16:17 P 25

RECORDED

**REAL PROPERTY LEASEHOLD MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING**

**VICORP RESTAURANTS, INC.**, a Colorado corporation, with its principal place of business at 400 West 48<sup>th</sup> Avenue, Denver, CO 80216 (the "Mortgagor"), in consideration of Ten Dollars (\$10) and other good and valuable consideration, including extensions of credit in a maximum aggregate principal amount of \$115,000,000 received from the Agent and the other Lenders who are now or may become parties to the Credit Agreement (as defined in the Leasehold Mortgage Rider attached hereto as Exhibit C), does hereby mortgage to **SUNTRUST BANK**, a Georgia banking corporation, with its principal place of business at 303 Peachtree Street, 25<sup>th</sup> Floor, Atlanta, GA 30308, Attention: Agency Services, as Administrative Agent for itself and the other Lenders who are or may become parties to the Credit Agreement (the "Mortgagee"), the real estate and other property located in the State of Nebraska described in Exhibit A attached hereto and made a part hereof (together with the other rights and interests described in the Leasehold Mortgage Rider as the "Property").

And the Mortgagor does hereby covenant with the Mortgagee and with the Mortgagee's successors and assigns that the Mortgagor is lawfully seized of said premises, that they are free from encumbrance, except Permitted Encumbrances as provided in the Leasehold Mortgage Rider, that the Mortgagor has good right and lawful authority to convey the same, and that the Mortgagor warrants and will defend the title to said premises against the lawful claims of all persons whomsoever.

This Leasehold Mortgage is given to secure the payment and full performance of the Obligations (as defined in the Leasehold Mortgage Rider), including extensions of credit to the Borrower at any time arising, existing and outstanding under and by virtue of the Credit Agreement, said Credit Agreement providing for (a) extensions of revolving credit to the Borrower and letters of credit for the account of the Borrower in a maximum aggregate amount of \$25,000,000 by way of principal advances from time to time henceforth drawn by the Borrower upon terms and conditions therein specified and (b) two (2) term loans (Term A Loan and Term B Loan) to the Borrower in an aggregate principal amount of \$90,000,000. If not sooner paid all (a) revolving credit indebtedness pursuant to the Credit Agreement shall be paid on \_\_\_\_\_, 2008, (b) all Term A Loan indebtedness pursuant to the Credit Agreement shall be paid on \_\_\_\_\_, 2008 and (c) all Term B Loan indebtedness pursuant to the Credit Agreement shall be paid on \_\_\_\_\_, 2009.

The covenants, agreements, conditions, representations and warranties contained in the Leasehold Mortgage Rider which is annexed hereto as Exhibit C are incorporated

ATL01/11439101v1  
Vicorp (L241)  
Omaha, NE 110008

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BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP JK  
DEL \_\_\_\_\_ SCAN CR FV \_\_\_\_\_

*NE Title  
633 S. 9th  
Lincoln, NE 68508  
Ann: Cori  
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herein by reference as if fully set out herein; and all references to the covenants, agreements, conditions, representations and warranties contained in this Leasehold Mortgage shall be deemed to include the covenants, agreements, conditions, representations and warranties contained in the Leasehold Mortgage Rider.

In case of default in the payment of the principal sum or any installment thereof or of any interest thereon when the same shall become due or in case of the non-payment of any taxes or assessments or of the failure to maintain insurance as herein provided, the Mortgagee may at the option of the Mortgagee, without notice, at any time during the continuance of such default or breach, declare the whole debt secured by this Leasehold Mortgage to be immediately due and payable and may foreclose this Leasehold Mortgage.

Upon the occurrence of an Event of Default (as defined in the Leasehold Mortgage Rider), the Mortgagee shall be entitled to immediate possession of the property above described and all the rents, revenue and income derived therefrom during such time as the Leasehold Mortgage indebtedness remains unpaid shall be applied by the Mortgagee to the payment of the Obligations and all other sums secured hereby after deduction of any necessary costs of collection.

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IN WITNESS WHEREOF, this Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents and Fixture Filing has been executed as of the date hereof.

Dated: June 13, 2003

**VICORP RESTAURANTS, INC.**

By: Debra Koenig  
Name: DEBRA KOENIG  
Title: CHIEF EXECUTIVE OFFICER

STATE OF ILLINOIS  
COUNTY OF COOK

Before me, a notary public qualified in said county, personally came Debra Koenig, the Chief Executive Officer of Vicorp Restaurants, Inc., known to me (or satisfactorily proven) to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be her/his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

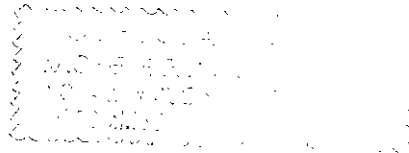
Witness my hand and notarial seal on this 13 day of June, 2003.

(SEAL)

*Michelle Elaine Wagnum*  
Notary Public  
My Commission expires: 7/12/2005

This instrument was drafted by and after recording should be returned to:

Joe All  
Alston & Bird, LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424



**EXHIBIT A**  
**DESCRIPTION OF PREMISES**

**SEE NEXT PAGE**

Lots 4, 5, 6, 7, 33, 34, 35, EXCEPT that part thereof previously acquired for streets, and all of the West 30 feet Lots 3 and 36, Together with the vacated alley lying between the West 30 feet of lots 3 and 36 and lying between lots 4 through and including 8 and Lots 33 through and including 35, all in Block 4, in Briggs Place, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, EXCEPTING THEREFROM that part conveyed by Corporate Warranty Deed filed July 2, 1999 in Book 2125 at Page 511 of the Records of Douglas County, Nebraska; to the city of Omaha, Nebraska, a Municipal Corporation organized and existing under the laws of the State of Nebraska described as follows:

An irregular tract of land located in Lot 8, block 4, Briggs Place, an Addition to the City of Omaha, Douglas County, Nebraska, more particularly described as follows:  
BEGINNING at a point 8 feet West of the Northeast corner of said Lot 8; thence North 89°06'00" West along the North lot line for a distance of 42 feet; thence South 00°11'33" West along the West lot line of said Lot 8 for a distance of 23.52 feet; thence South 44°23'49" East along the Northerly right of way of the Dodge Street Ramp connecting Dodge St. to Saddle Creek road, for a distance of 59.48 feet to a point, said point being 65.36 feet South and 8 feet West of the Northeast corner of said Lot 8; thence North 00°23'43" east and along a line parallel with and 8 feet west of the East lot line of said Lot 8 for a distance of 65.36 feet and to a point on the North line of said Lot 8, said point also being 8 feet West of the Northeast corner of said Lot 8 and the POINT OF BEGINNING.

The leasehold estate created pursuant to that certain Lease Agreement dated as of May 1, 1993, by and between Farmers and Merchants Bank and Trust of Watertown, South Dakota, Trustee of the Morton A. Ives Trust, as lessor, and Vicorp Restaurants, Inc., as lessee, a memorandum of which was recorded on May 26, 1993 in Book 1074, Page 461 in the Douglas County Register of Deeds, which lease demises all or a portion of the property described above.

Vicorp # 110008

The Leasehold Estate created pursuant to that certain Lease Agreement,  
dated as of

**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

Those exceptions appearing in Schedule B of a certain Title Insurance Policy issued by Chicago Title Insurance Company with respect to the Premises described in Exhibit A.



## EXHIBIT C

### LEASEHOLD MORTGAGE RIDER

Leasehold Mortgage Rider attached to and made a part of that certain Leasehold Mortgage, dated as of June 13, 2003 (the "Leasehold Mortgage") between **VICORP RESTAURANTS, INC.**, a Colorado corporation, having its principal place of business at 400 West 48<sup>th</sup> Avenue, Denver, Colorado 80216 (the "Mortgagor"), and **SUNTRUST BANK**, a Georgia banking corporation, whose address is 303 Peachtree Street, 25<sup>th</sup> Floor, Atlanta, Georgia 30308, Attention: Agency Services, as Administrative Agent for itself and the other Lenders who are now or may become parties to the Credit Agreement (in such capacity, the "Mortgagee").

With intent to be legally bound, Mortgagor and Mortgagee agree that the following terms and conditions are herein made a part of the Leasehold Mortgage as an integral part thereof. The provisions of this Leasehold Mortgage Rider are supplementary to the provisions of the Leasehold Mortgage to which this Leasehold Mortgage Rider is attached and to the extent any provision of this Leasehold Mortgage Rider deals with the same subject matter as similar provisions of the Leasehold Mortgage, the provisions hereof are to be construed to expand such similar provisions and not to limit the general application of any general provision contained in the Leasehold Mortgage. To the extent any provision of this Leasehold Mortgage Rider conflicts with the Leasehold Mortgage, the language in the Leasehold Mortgage shall control. In case any one or more provisions of this Leasehold Mortgage Rider may be found to be invalid or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of any other provisions of this Leasehold Mortgage Rider. Unless otherwise defined herein, capitalized terms used in the Leasehold Mortgage and this Leasehold Mortgage Rider shall have meanings ascribed to them in the Credit Agreement.

#### **1. REPRESENTATIONS AND WARRANTIES.**

The Mortgagor hereby represents, covenants and warrants to Mortgagee as follows.

**1.1. Title to Property.** The Mortgagor warrants its title to the Property, subject only to the Permitted Encumbrances.

**1.2. Authority; No Encumbrances.** The Property is now free and clear of all encumbrances whatsoever except Permitted Encumbrances, and the Mortgagor has good right and lawful authority to mortgage and convey the same in the manner and form hereby mortgaged and conveyed.

**1.3. Governmental Filings.** Other than the recording of this Leasehold Mortgage and the filing of financing statements with the appropriate recording and filing offices in the state where the Property is located, no approval, authorization or other action by, or filing with, any federal, state, or local commission, board or agency, is required under existing law in connection with the execution and delivery by Mortgagor of this Leasehold Mortgage.

**1.4. No Subleases.** There are presently in effect no subleases of the Property or any part thereof that have not previously been disclosed to Mortgagee in writing.

**1.5. Compliance with Law.** Mortgagor shall indemnify and hold Mortgagee harmless (including, but not limited to reasonable attorney's fees) from any claims arising in connection with the failure of the Property to be in compliance with all applicable laws and governmental regulations, including but not limited to those governing zoning, land use, subdivision control, health, safety, fire protection and protection of the environment.

## **2. CERTAIN COVENANTS AND CONDITIONS.**

The Mortgagor covenants and agrees as follows.

**2.1. Rent and Governmental Charges.** Mortgagor shall duly pay and discharge or cause to be duly paid and discharged before the same become overdue (i) all rent, additional rent and other payments required to be paid by the lessee under the Lease, and (ii) all taxes, charges, sewer use fees, water rates, assessments and other governmental charges of every name and nature, assessed or imposed against the Property, or any part thereof, or applicable or related to any of the Obligations, which, if unpaid, might by law become a lien or charge upon all or any part of the Property; provided, however, that so long as no distraint, foreclosure sale or other levy upon or transfer with respect to the Property or any part thereof shall have been effected or threatened, Mortgagor shall not be required to pay any such taxes, charges, fees, rates and assessments by reason of this §2.1 if (i) the amount or validity thereof is currently being contested by Mortgagor in good faith by appropriate legal proceedings, and (ii) Mortgagor shall have set aside on its books adequate reserves with respect thereto; and provided further, that Mortgagor will pay all such taxes, assessments, charges, levies or claims forthwith upon the commencement of proceedings to foreclose any lien against the Property or any portion thereof that may have attached as security therefor.

**2.2. Provision for Payment of Governmental Charges and Other Obligations.** Only after an Event of Default, to assure the payment of all taxes, charges, sewer use fees, water rates, ground rents and assessments of every name and nature, or any other obligations which may have or acquire priority over this Leasehold Mortgage, and which are assessed or payable with reference to the Property, Mortgagor, if so requested by Mortgagee, shall deposit with Mortgagee, on the first day of each month, a sum determined by Mortgagee to be sufficient to provide, in the aggregate, a fund adequate to pay any such amounts at least ten (10) days before the same become delinquent; and whenever Mortgagee determines sums accumulated under the provisions of this §2.2 to be insufficient to meet the obligation for which such deposits were made, Mortgagor shall

pay, on the demand of Mortgagee, any amount required to cover the deficiency therein. Every such deposit may, at the option of Mortgagee, be applied directly against the obligation with reference to which it was made, or, to the fullest extent permissible according to law, any other obligation of Mortgagor secured hereby. Such deposits may, to the fullest extent permitted by law, be commingled with other assets of Mortgagee and, in the discretion of Mortgagee, invested by Mortgagee for its own account, without any obligation to pay income from such investment, or interest on such deposits, to Mortgagor, or to account to Mortgagor for such income in any manner.

**2.3. Maintenance of Property; Alterations.** Mortgagor shall (i) keep and maintain that portion of the Property which constitutes personal property of Mortgagor in good condition, repair and working order, (casualty and reasonable wear and tear excepted), (ii) keep and maintain such portion of the Property as Mortgagor is required to maintain pursuant to the terms of the Lease, in the condition required under the terms of the Lease, (iii) shall make all such needful and proper repairs, replacements, additions and improvements thereto as shall be necessary for the proper conduct of its business thereon, and (iv) shall not permit or commit waste on the Property. Mortgagor shall not permit removal or alteration of anything which constitutes a part of the Property without the consent of Mortgagee except that Mortgagor may remove personal property or fixtures which have become obsolete, damaged, redundant or useless for Mortgagor's operations at the Property, provided that Mortgagor shall substitute personal property or fixtures of equal utility and equal or greater value for the items so removed, unless such items are redundant or are no longer useful for operations at the Property. Subject to the terms and conditions of the Lease, the Mortgagor shall have the right at all times to make or permit such alterations, improvements or new construction, structural or otherwise, (herein sometimes called collectively "alterations"), of or on the Property to be made in all cases subject to the following conditions:

(a) all work done in connection with any alterations shall be done promptly and in a first-class and workmanlike manner;

(b) the cost of all alterations shall be paid promptly so as to keep the Property free of all liens;

(c) no alterations of any kind shall be made to the Property which shall change the use or reduce the value of the Property in any respect; and

(d) no alteration involving an estimated cost of materials and construction labor as estimated by a licensed architect or contractor reasonably approved by the Mortgagor in excess of \$50,000 shall be undertaken unless permitted by the Credit Agreement without the prior written consent of Mortgagee, which shall not be unreasonably withheld or delayed.

Mortgagor shall permit Mortgagee to enter the Property at any reasonable time to determine whether Mortgagor is in compliance with its obligations under this Leasehold Mortgage. All construction on the Property shall comply with, and each and every part of the Property shall be maintained and used in accordance with, all applicable federal, state

and local laws and governmental regulations, and any lawful private restrictions or other requirements or provisions, relating to the maintenance or use thereof.

**2.4. Insurance.** The Mortgagor agrees, at Mortgagor's sole cost and expense, to keep the Property insured or to cause the Landlord to keep the Property insured (in accordance with the terms of the Lease), at all times throughout the term of this Leasehold Mortgage with policies of insurance as follows:

(a) property or physical hazard insurance on an "all risks" basis, with broad form flood and earthquake coverages, and building code, valuable papers, extra expenses, extended period of indemnity and electronic data processing coverages, with a full replacement cost endorsement (including builder's risk during any period or periods of time that construction or remodeling is being performed on the Property) and an "agreed amount" clause, in an amount equal to 100% of the full replacement cost of all improvements (excluding only the reasonable value of footings and foundations) and Mortgagor's contents therein, such amount to be determined annually by an insurer or qualified appraiser selected and paid for by Mortgagor and acceptable to Mortgagee, and in any event in an amount sufficient to prevent Mortgagor from incurring any coinsurance liability; and

(b) if at any time the Property or any portion thereof is located in a "Flood Hazard Area" pursuant to the Flood Disaster Protection Act of 1973 (or any successor thereto), flood insurance in such total amount as Mortgagee shall reasonably require from time to time (or the maximum amount available, if less); and

(c) insurance with respect to other insurable risks and coverages relating to the Property (including, without limitation, commercial general liability insurance (broad form), boiler insurance, builder's risk insurance and worker's compensation insurance) in such amounts and containing such terms and conditions as Mortgagee may reasonably require from time to time.

The Mortgagor shall deposit certified copies of all insurance policies (or certificates thereof acceptable to Mortgagee) providing coverage applicable to the Property, whether or not required by this Leasehold Mortgage, with Mortgagee forthwith after the binding thereof, and shall deliver to Mortgagee new policies (or certificates acceptable to Mortgagee) for any insurance about to expire at least thirty (30) days before such expiration. All such insurance policies (other than liability policies) shall be first payable in case of loss to Mortgagee by means of a standard non-contributory mortgagee clause, shall be written by such companies, on such terms, in such form and for such periods and amounts as Mortgagee shall from time to time approve, shall be primary and without right of contribution from other insurance which may be available, shall waive any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of Mortgagor and Mortgagee, shall provide that with respect to Mortgagee, the insurance shall not be invalidated by any action or inaction by Mortgagor including without limitation any representations made by Mortgagor in the procurement of such insurance,

and shall provide that such policies shall not be cancelled or amended without at least thirty (30) days prior written notice to Mortgagee. All liability insurance policies shall include Mortgagee as an additional insured. All such insurance policies shall provide that all losses thereunder shall be adjusted by (but not disbursed to) Mortgagor, so long as no Event of Default has occurred and is continuing provided, however, that in no event shall Mortgagor approve or consent to any final adjustment in an amount exceeding \$100,000 without obtaining Mortgagee's prior written approval of the amount of such adjustment, and after an Event of Default has occurred and so long as any such Event of Default continues, Mortgagor shall not consent to a final adjustment in any amount without obtaining Mortgagee's prior written approval. After the occurrence of an Event of Default, Mortgagor hereby grants Mortgagee full power and authority as irrevocable attorney-in-fact of Mortgagor to cancel or transfer such insurance, to collect and endorse any checks issued in the name of Mortgagor and to retain any premium and to apply the same to the Obligations secured hereby.

Unless the Lease provides otherwise, the proceeds of any casualty insurance described in this §2.4, in respect of any loss of any of the Property shall be disbursed in accordance with §2.5.

**2.5. Casualties and Takings.** All proceeds of any property or hazard insurance on account of any damage or injury to the Property shall be held by the Mortgagee or disbursed to the Mortgagor in the manner provided in Section 7.2 of the Security Agreement. All proceeds of any awards of damages on account of any taking or condemnation for public use of the Property shall be disbursed as set forth below. So long as no Event of Default exists, if requested by the Mortgagor and so long as such proceeds do not exceed \$500,000 in the aggregate in any fiscal year, the Mortgagee shall disburse from time to time all or any part of such proceeds so held as cash collateral, upon such terms and conditions as Mortgagee may reasonably prescribe. If an Event of Default exists or if such proceeds exceed \$500,000 in the aggregate in any fiscal year, Mortgagee may apply all or any part of such awards to the Obligations with the Total Commitment (as defined in the Credit Agreement), if not then terminated, being reduced by the amounts so applied to the Obligations.

The provisions of this §2.5 shall be subject to the terms of the Lease governing the disposition of property insurance proceeds and taking awards and, in the event of a conflict between this Section 2.5 and the Lease, the provisions of the Lease shall control.

**2.6. Notice of Condemnation.** Mortgagor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation or requisition of the Property or any portion thereof, shall notify Mortgagee of the pendency of such proceeding. The Mortgagee may participate in such proceedings, and Mortgagor from time to time shall deliver to Mortgagee all instruments requested by Mortgagee to permit such participation.

**2.7. Subleases; Assignments; Subordination.** Mortgagor shall not sublease the Property or any part thereof without the prior written consent of Mortgagee. If Mortgagor shall enter into a sublease, Mortgagor shall faithfully keep, observe and satisfy all the

obligations on the part of the sublessor to be kept, performed and satisfied under every sublease from time to time in force with reference to the Property, and shall not modify or terminate any such sublease, or any guarantee of such sublease, except in the ordinary course of business, or accept any rentals for more than one month in advance. Mortgagor hereby assigns to Mortgagee all rents and profits under any and all subleases of the Property, provided, however, that Mortgagor shall be entitled to retain such rents and profits until an Event of Default shall have occurred. At any time on notice from Mortgagee, Mortgagor shall submit to Mortgagee for examination all such subleases and on the demand of Mortgagee, shall execute and deliver a separate instrument collaterally assigning any or all such subleases, or the rents and profits thereof, in form satisfactory to Mortgagee. The Mortgagee shall have the right, by the execution of suitable written instruments from time to time, to subordinate this Leasehold Mortgage, and the rights of Mortgagee hereunder, to any sublease or subleases from time to time in force with reference to the Property, and, on the execution of any such instrument, this Leasehold Mortgage shall be subordinate to the sublease for which such subordination is applicable with the same force and effect as if such sublease had been executed and delivered, and a notice thereof recorded to the extent required to give notice to third persons, prior to the execution, delivery and recording of this Leasehold Mortgage.

**2.8. Prior Mortgages.** If this Leasehold Mortgage, by its terms, is now, or at any time hereafter, becomes subject or subordinate to a prior mortgage or deed of trust, Mortgagor shall fully perform its obligations under such prior mortgage or deed of trust and shall not, without the consent of Mortgagee, agree to the modification, amendment or extension of the terms or conditions of such prior mortgage or deed of trust. Nothing contained in this §2.8 is intended, nor shall it be deemed, to constitute consent by Mortgagee to a subordination of the lien of this Leasehold Mortgage.

**2.9. Encumbrances.** Mortgagor shall not create or permit to be created or permit to exist any encumbrance on the Property (other than any lien for property taxes not yet due and payable and the Permitted Encumbrances) even if such encumbrance is inferior to this Leasehold Mortgage, without the prior express written consent of Mortgagee. Mortgagor shall promptly bond off or otherwise cause to be released any mechanics' liens affecting the Property.

**2.10. Transfers of Ownership.** Mortgagor shall not sell or permit any transfer of any interest in the Property, or any part thereof, without the prior express written consent of Mortgagee, except as expressly permitted by the Credit Agreement.

**2.11. Priority of Lien; After Acquired Property.** This Leasehold Mortgage is and will be maintained as a valid mortgage lien on the Property subject only to the Permitted Encumbrances. All property of every kind acquired by Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Leasehold Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien of this Leasehold Mortgage. The Mortgagor will do, execute, acknowledge and deliver all and every such further conveyances, mortgages, and assurances as Mortgagee shall reasonably require for accomplishing the purposes of this Leasehold Mortgage. If

any action or proceeding shall be instituted to recover possession of the Property or for the foreclosure of any other mortgage or Leasehold Mortgage or for any other purpose affecting the Property or this Leasehold Mortgage, Mortgagor will immediately, upon service thereof on or by Mortgagor, deliver to Mortgagee a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers, however designated, served in any such action or proceeding.

The Mortgagor will not release, surrender or terminate the Lease without the prior written consent of the Mortgagee, nor without similar consent will the Mortgagor modify the Lease so as to reduce the term thereof, or to increase the rentals payable thereunder, or to alter those provisions relating to grace periods, notices to be given to the Mortgagee, construction, use, reconstruction, or demolition of the building on the Premises, payment of governmental charges as provided in the Lease, renewal privileges or in any other manner which would impair the security of this Leasehold Mortgage. The Mortgagor further covenants and agrees that there shall be no merger of the Lease, or of the leasehold estate created thereby, or of any building, Building Service Equipment or other improvement now or hereafter constituting a portion of the Property, with the fee estate of the owner or owners of the land and premises described in the Lease, by reason of the fact that the Lease or the leasehold interest created thereby, or any interest in any such building, equipment or other improvements, may be held by or for the account of any person or persons who shall be the owner or owners of such fee estate in said land and premises, unless and until all persons at the time having an interest in the fee estate in said land and premises and all persons, including the Mortgagee, at the time having an interest in the Lease, leasehold estate, buildings, equipment and improvements, shall join in a written instrument effecting such merger and shall duly record the same. If any action or proceeding shall be instituted to evict the Mortgagor or recover possession of the Property or for the foreclosure of any other mortgage or for any other purpose affecting the Lease or this Leasehold Mortgage, the Mortgagor will immediately, upon service thereof on or by the Mortgagor, deliver to the Mortgagee a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers however designated, served in such action or proceeding and in any such action or proceeding.

**2.12. Fixtures and Equipment; Financing Statement.** This Leasehold Mortgage constitutes a security agreement under the Uniform Commercial Code, and Mortgagor hereby grants to Mortgagee to secure the payment and performance of the Obligations and also to secure the performance of all agreements and covenants herein contained, a security interest in all fixtures, Building Service Equipment and any other property included in the Property, now owned or hereafter acquired by Mortgagor, which might otherwise be deemed "personal property" (and all accessions thereto and the proceeds thereof). Some of such "personal property" is now or is to become fixtures on the Premises. Mortgagor covenants and agrees that, upon the subsequent acquisition of fixtures, Building Service Equipment or such personal property included in the Property, it will provide to Mortgagee such further assurances as may be required by Mortgagee to establish Mortgagee's first and prior security interest in such fixtures, Building Service

Equipment and property. **IT IS INTENDED BY MORTGAGOR AND MORTGAGEE THAT THIS LEASEHOLD MORTGAGE BE EFFECTIVE AS A FINANCING STATEMENT FILED WITH THE REAL ESTATE RECORDS AS A FIXTURE FILING.** For this purpose, Mortgagor is the "debtor" and Mortgagee is the "secured party", and the record owner of the fee simple estate of the premises is defined in Exhibit A attached hereto. A mailing address for the Mortgagor and an address of Mortgagee from which information concerning the security interest may be obtained are set forth in the introductory paragraph of this Leasehold Mortgage. Mortgagor shall execute, deliver and cause to be recorded and filed from time to time with all necessary public offices, at Mortgagor's sole cost and expense, continuances and such other instruments as will maintain Mortgagee's priority of security in all fixtures, Building Service Equipment and other personal property included in the Property. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election.

**2.13. Performance of Lease.** Mortgagor covenants that the Mortgagor will:

(a) diligently perform and observe all of the terms, covenants and conditions of the Lease required to be performed and observed by the Mortgagor as such lessee unless such performance or observance shall have been waived or not required by the lessor;

(b) promptly notify the Mortgagee in writing of any material default by the lessor in the performance or observance of any of the terms, covenants or conditions on the part of lessor to be performed or observed;

(c) promptly advise the Mortgagee in writing of the giving of any notice by the lessor to the Mortgagor of any default by the Mortgagor under the Lease;

(d) exercise any option to renew or extend the term of the Lease in such manner as will cause the term of the Lease to be effectively renewed or extended for the period provided by such option if this Leasehold Mortgage continues beyond such Lease term, and give immediate written notice thereof to the Mortgagee;

(e) promptly after the execution and delivery of this Leasehold Mortgage or of any instrument or agreement supplemental thereto, notify the lessor in writing of the execution and delivery thereof and deliver to the lessor a copy of each such instrument or agreement; and

(f) within thirty (30) days after written demand by the Mortgagee, upon the request of Mortgagee, use reasonable efforts to obtain from the lessor and furnish to the Mortgagee the estoppel certificate of the lessor in such form as may be reasonably required by Mortgagee.



### 3. DEFAULT AND REMEDIES.

**3.1. Default; Acceleration of Obligations.** If an Event of Default shall occur then Mortgagee may exercise the remedies provided under this Leasehold Mortgage, under the Credit Agreement, under any and all other instruments and documents providing security for the Obligations, or under the laws of the state where the Property is situated, or any one or more of such remedies.

**3.2. Remedies Cumulative.** No remedy herein conferred on Mortgagee is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing.

**3.3. Right of Mortgagee to Cure an Event of Default.** If an Event of Default shall occur and be continuing, Mortgagee shall have the right, but without any obligation so to do, to cure such default for the account of Mortgagor and to make any payment or take any action necessary to effect such cure. Without limiting the generality of the foregoing, Mortgagor hereby authorizes Mortgagee to pay any rents, additional rents or other payments required to be paid by lessee under the Lease; to pay all taxes, sewer use fees, water rates and assessments, with interest, costs and charges accrued thereon, which may at any time be a lien upon the Property, or any part thereof; to pay the premiums for any insurance required hereunder; to incur and pay reasonable expenses in protecting its rights hereunder and the security hereby granted; and to pay any balance due under any security agreement on any fixtures and equipment included as a part of the Property; and the payment of all amounts so incurred shall be secured hereby as fully and effectually as any other obligation of Mortgagor secured hereby. If Mortgagee shall make any payment or take action in accordance with this §3.3, Mortgagee will give to Mortgagor written notice of the making of any such payment or the taking of any such action. In any such event, Mortgagee and any person designated by Mortgagee shall have, and is hereby granted, the right to enter upon the Property at reasonable times and from any time and from time to time for the purpose of taking any such action, and all monies expended by Mortgagee in connection therewith (including, but not limited to, reasonable legal expenses and disbursements), together with interest thereon at an annual rate of interest equal to the rate applicable to overdue payments under the Credit Agreement (or the highest rate permitted by law, whichever shall be less), from the date of each such expenditure, shall be paid by Mortgagor to Mortgagee forthwith upon demand by Mortgagee, and shall be secured by this Leasehold Mortgage, and Mortgagee shall have, in addition to any other right or remedy of Mortgagee, the same rights and remedies in the event of non-payment of any such sums by Mortgagor as in the case of a default by Mortgagor in the payment of any installment of principal or interest due and payable under the Credit Agreement.

**3.4. Operation of Property.** Upon the occurrence of an Event of Default, Mortgagee may hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Mortgagee may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto

and taking any and all other action with reference thereto, from time to time, as Mortgagee shall deem necessary or desirable), and apply all rents, profits and other amounts collected in connection therewith in accordance with the other provisions of this Leasehold Mortgage.

**3.5. Receiver.** Upon the occurrence of an Event of Default, or any actual or threatened waste to all or any part of the Property, or at any time while a suit is pending to foreclose or reform this Leasehold Mortgage or to enforce any provision hereof, Mortgagee shall have the right to apply without notice for the appointment of a receiver of all or any part of the Property and the rents and profits thereof, and such receiver shall have all the broad and effective functions and powers anywhere entrusted by a court to a receiver. Mortgagee shall be entitled to the appointment of said receiver forthwith as a matter of absolute right, without regard to the adequacy or inadequacy of the value of the Property or the solvency or insolvency of Mortgagor or any other defendant, and Mortgagor hereby waives any right to object to the appointment of such receiver and expressly consents thereto. The income, profits, rents, issues and revenues from the Property shall be applied by such receiver according to the provisions of this Leasehold Mortgage and the practice of the court appointing such receiver.

**3.6. Certain Terms of Foreclosure Sale.** At any foreclosure sale, any combination, or all, of the Property or security given to secure the indebtedness secured hereby, may be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshaling; and, in case Mortgagee, in the exercise of the power of sale herein given, elects to sell in parts or parcels, said sales may be held from time to time, and the power shall not be fully executed until all of the property or security not previously sold shall have been sold.

**3.7. Uniform Commercial Code.** If the provisions of the Uniform Commercial Code are applicable to any property or security given to secure the indebtedness secured hereby which is sold in combination with or as a part of the Property, or any part thereof, at one or more foreclosure sales, any notice required under such provisions shall be fully satisfied by the notice given in execution of the power of sale or other provision in accordance with which the sale of real property pursuant to such foreclosure is held with respect to the Property or any part thereof.

**3.8. Other Mortgage Instruments.** The Obligations secured by this Leasehold Mortgage may also be secured by various other deeds of trust and/or mortgages or both (collectively, including this Leasehold Mortgage, the "Mortgage Instruments") conveying or encumbering real estate in the state in which the Property is situated and in other jurisdictions. An Event of Default under the Credit Agreement shall be an Event of Default under all Mortgage Instruments. Except as may be expressly stated in this Leasehold Mortgage or in such other Mortgage Instruments, all the property conveyed or encumbered by the Mortgage Instruments is security for the Obligations secured by the Mortgage Instruments without allocation of any one or more of the parcels or properties serving as security under the Mortgage Instruments to any part of the Obligations. The

Mortgagee may act at the same time or at different times to pursue a remedy or remedies under the Mortgage Instruments or under any of them by proceedings appropriate to the state in which the property serving as security lies, and no such action shall stay or bar enforcement, or be construed as a waiver of, any remedy of Mortgagee under any other instrument in the same state or jurisdiction or in any other state or jurisdiction.

**3.9. Rights Cumulative.** Each right, power and remedy conferred upon Mortgagee by this Leasehold Mortgage, the Credit Agreement and by all other documents evidencing or securing the Obligations and conferred by law or in equity is cumulative and in addition to every other right, power and remedy herein or therein set forth or otherwise so existing, may be exercised from time to time, as often, and in such order, as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of, or discontinuance by, Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. To constitute a waiver, there must be a writing signed by an officer of Mortgagee and directed to Mortgagee, specifying the waiver.

In case Mortgagee shall have proceeded to enforce any right or remedy under this Leasehold Mortgage or the Credit Agreement by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken. In the event of a breach or default under this Leasehold Mortgage or under the Credit Agreement or any other document evidencing or securing the Obligations, Mortgagor agrees to pay and to indemnify and hold harmless Mortgagee and the Lenders for all reasonable expenses, attorneys' fees, taxes and other court costs occasioned by such breach or default.

#### **4. DEFINITIONS.**

The following terms as used herein shall have the following meanings:

"Borrower" shall mean Vicorp Restaurants, Inc., a Colorado corporation.

"Building Service Equipment" shall mean all apparatus, fixtures and articles of personal property owned by Mortgagor now or hereafter attached to or used or procured for use in connection with the operation or maintenance of any building, structure or other improvement located on or included in the Property (except apparatus, fixtures or articles of personal property belonging to lessees or other occupants of such building or to persons other than Mortgagor unless the same be abandoned by any such lessee or other occupant or person), together with any and all replacements thereof and additions thereto.

"Credit Agreement" shall mean that certain Credit Agreement dated as of \_\_\_\_\_, 2003 among VI Acquisition Corp., Midway Investors Holdings, Inc., Borrower, and the Lenders (as defined in the Credit Agreement), as such Credit Agreement is originally executed, or if varied, supplemented, amended or restated from time to time, as so varied, supplemented, amended or restated.

"Default" shall mean any Default under the Credit Agreement (as therein defined).

"Event of Default" shall mean any Event of Default under the Credit Agreement (as therein defined).

"Hazardous Materials" shall mean oil, hazardous materials, hazardous wastes, hazardous substances or toxic substances, as defined in 42 U.S.C. 9601 et seq., 42 U.S.C. 6901 et seq., 15 U.S.C. 2601 et seq., and the regulations promulgated thereunder, and all applicable federal, state and local laws, rules and regulations.

"Issuing Bank" shall have the meaning set forth in the Credit Agreement.

"Lease" shall mean the Lease referred to and described in Exhibit A to this Leasehold Mortgage.

"Leasehold Mortgage" shall have the meaning assigned to it in the recitals to this Leasehold Mortgage Rider.

"Lenders " shall mean SunTrust Bank and such other lending institutions which are or may become parties to the Credit Agreement.

"Letter of Credit" shall have the meaning set forth in the Credit Agreement.

"Letter of Credit Application" shall have the meaning set forth in the Credit Agreement.

"Loan Documents" shall have the meaning set forth in the Credit Agreement.

"Loans" shall mean the Revolving Credit Loans (as defined in the Credit Agreement) and the Term Loans (as defined in the Credit Agreement).

"Mortgage Instruments" shall have the meaning assigned to it in §3.8 hereof.

"Mortgagee" shall mean the grantee or mortgagee named at the beginning of this instrument, any subsequent holder or holders of this Leasehold Mortgage or the indebtedness secured hereby, or any state or county official engaged in any part of the enforcement of the lien of this Leasehold Mortgage, and their respective successors and assigns. The word "Mortgagee" as used in this Leasehold Mortgage Rider shall also mean, if this instrument forms part of a deed of trust, the beneficiary of this Mortgage Instrument and any subsequent owner of the beneficiary's interest in the Property or this Mortgage Instrument.

"Mortgagor" shall mean the person or persons named at the beginning of this instrument as Mortgagor, and any subsequent owner or owners of the equity of redemption of the Property.

"Notes" shall mean the Revolving Credit Notes (as defined in the Credit Agreement), the Term A Notes (as defined in the Credit Agreement), and the Term B Notes (as defined in the Credit Agreement).

"Obligations" shall mean all indebtedness, obligations and liabilities of any of the Parent (as defined in the Credit Agreement) and its Subsidiaries (as defined in the Credit Agreement) to any of the Lenders and the Mortgagee, individually or collectively, existing on the date of the Credit Agreement or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under the Credit Agreement or any of the other Loan Documents or any Interest Rate Agreement or in respect of any of the Loans made or Reimbursement Obligations incurred or any of the Notes, Letter of Credit Applications, Letters of Credit, or other instruments at any time evidencing any thereof.

"Permitted Encumbrances" shall mean the encumbrances listed on Exhibit B to this Leasehold Mortgage and incorporated herein by reference as if fully set out herein and any other encumbrances within the definition of Permitted Liens (as defined in the Credit Agreement).

"Premises" shall mean all that certain tract or parcel of land more particularly described and set forth in Exhibit A attached to this Leasehold Mortgage and made a part hereof.

"Property" shall mean all of the described property, rights, privileges, interests and franchises more particularly described in paragraphs (a) through (i) below:

(a) The leasehold estate created pursuant to the Lease with respect to the land described in Exhibit A annexed hereto and all buildings and other improvements now or hereafter erected or placed on the land, and all fixtures attached to the improvements or the land, and renewals or replacements thereof or articles in substitution therefor;

(b) All of Mortgagor's right, title and interest under the Lease; together with the appurtenances and all the estate and rights of the Mortgagor of, in and to the premises which are subject to the Lease; all and each of the tenements, hereditaments and appurtenances of the Mortgagor belonging or in anywise appertaining to said premises, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof,

(c) All Building Service Equipment, and all renewals or replacements thereof or articles in substitution therefor;

(d) All modifications, extensions and renewals of the Lease and all rights to renew or extend the term of the Lease; all credits, deposits, options, privileges and rights of the Mortgagor, as lessee under the Lease; and to the extent not prohibited by or inconsistent with the terms of the Lease, all awards heretofore made or hereafter to be made for the taking by eminent domain of the whole or any part of the above described premises, or any estate or easement therein, including any awards for change of grade of streets, all of which awards are hereby assigned to the Mortgagee;

(e) All present and future subleases and licenses of space of the premises which are subject to the Lease or any other portion of said premises, and the rents, issues and profits payable thereunder subject, however, to the right of Mortgagor to receive and use the same and to exercise all rights and privileges as landlord under all of the subleases until an Event of Default shall have occurred under this Leasehold Mortgage, together with all rights and privileges of the Mortgagor as landlord thereunder;

(f) All unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor pursuant to the provisions of the Leasehold Mortgage;

(g) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, but without limitation, proceeds of insurance provided for in this Leasehold Mortgage and proceeds of condemnation awards;

(h) All transferable building service, building maintenance, construction, management and other similar agreements and contracts, written or oral, express or implied, now or hereafter entered into arising or in any manner related to the construction, design, improvement, use, operation, occupation, enjoyment, sale, conversion or other disposition (voluntary or involuntary) of the premises which are subject to the Lease, or the buildings and improvements now or hereafter located thereon, or any other interest in said premises, or any combination thereof, including all property management agreements, sales contracts, contract deposits, earnest money deposits, prepaid items and payments due and to become due thereunder, and further including all payment and performance bonds, construction guaranties, warranties, construction contracts, architects agreements, general contract agreements, design agreements, engineering agreements, technical service agreements, architectural plans and specifications, sewer and water and other utility agreements, permits, approvals, licenses, building permits, service contracts, advertising contracts, purchase orders and equipment leases; and

(i) All proceeds and products of the foregoing of every type.

"Reimbursement Obligation" shall mean the Borrower's obligation to reimburse Issuing Bank and the Lenders on account of any drawing under any Letter of Credit as provided in §5.2 of the Credit Agreement.

"Release" shall have the meaning specified in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq. ("CERCLA") and the term "Disposal" (or "disposed") shall have the meaning specified in the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq. ("RCRA") and regulations promulgated thereunder; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply as of the effective date of such amendment and provided further, to the extent that the laws of the state where the Property is located establish a meaning for "release" or "disposal" which is broader than specified in either CERCLA or RCRA, such broader meaning shall apply.

"Security Agreement" shall mean that certain Borrower's Security Agreement dated as of \_\_\_\_\_, 2003, between Borrower and the Mortgagee.

## 5. MISCELLANEOUS.

**5.1. Notices.** All notices, requests and other communications hereunder shall be made in writing and shall be given in the manner set forth in the Credit Agreement.

**5.2. Successors and Assigns; Joint and Several Liability; Partial Invalidity.** All the covenants and agreements of Mortgagor herein contained shall be binding upon Mortgagor and the successors and assigns of Mortgagor. In case any one or more of the provisions of this Leasehold Mortgage may be found to be invalid, or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of any other provision thereof.

**5.3. Future Advances; Revolving Credit Advances.** This Leasehold Mortgage shall secure, and constitute a lien upon the Property for, all future advances and revolving credit advances or readvances made by Mortgagee or any of the Lenders under the Credit Agreement at any time or times hereafter, whether or not any reference is made to this Leasehold Mortgage at the time such advances are made, and all such sums shall be equally secured with and, to the extent permitted by law, have the same priority as the Obligations outstanding as of the date hereof. A portion of the indebtedness evidenced by the Notes is revolving credit indebtedness. The Credit Agreement provides that the principal sum of \$25,000,000 may be advanced, repaid and readvanced from time to time in accordance with the terms and provisions of the Credit Agreement. Accordingly, the aggregate principal advances of revolving credit indebtedness and term credit indebtedness during the term of the Credit Agreement shall at no time exceed \$115,000,000. Mortgagor agrees that if the outstanding balance of the Credit Agreement, principal and interest, is ever repaid to zero (despite any express prohibition to the contrary contained in the Credit Agreement), the lien and security interest of this Leasehold Mortgage shall not be deemed released or extinguished by operation of law or implied intent of the parties. This Leasehold Mortgage shall remain in full force and

effect as to any further advances or readvances under the Credit Agreement made after any such zero balance until (i) payment in full of the Obligations (other than contingent reimbursement and indemnification obligations to the extent no unsatisfied claim has been asserted), (ii) termination of the Commitments (as defined under the Credit Agreement) under the Credit Agreement, (iii) either termination of all Letters of Credit or delivery by the Mortgagor of cash collateral or back-up letters of credit issued by a bank acceptable to the Issuing Bank in favor of the Issuing Bank, in amounts and on terms satisfactory to the Issuing Bank, covering all obligations of the Lenders with respect to all Letters of Credit, and (iv) and this Leasehold Mortgage has been canceled of record. Mortgagor waives the operation of any applicable statute, case law or regulation having a contrary effect. The outstanding principal amount of the indebtedness under the Credit Agreement will bear interest at a variable rate or rates calculated in accordance with the terms and conditions of the Credit Agreement. The Credit Agreement is hereby incorporated into this Leasehold Mortgage with regard to all references made to it in this Leasehold Mortgage. A copy of the Credit Agreement may be obtained from the Mortgagee upon written request for the same.

**5.4. Modification.** No change, amendment, modification, cancellation or discharge of this Leasehold Mortgage, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

**5.5. Captions.** Section headings are inserted for convenience of reference only, do not form part of this Leasehold Mortgage and shall be disregarded for purposes of the interpretation of the terms of this Leasehold Mortgage.

**5.6. Governing Law.** The Credit Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, but this Leasehold Mortgage and the perfection and enforcement of the lien and security interest hereunder (and any financing statement filed in connection herewith) shall be governed by and construed and enforced in accordance with the laws of the state in which the Property is situated.

**5.7. Release of Collateral.** (a) Upon (i) payment in full of the Obligations (other than contingent reimbursement and indemnification obligations to the extent no unsatisfied claim has been asserted), (ii) termination of the Commitments (as defined under the Credit Agreement) under the Credit Agreement, and (iii) either termination of all Letters of Credit or delivery by the Mortgagor of cash collateral or back-up letters of credit issued by a bank acceptable to the Issuing Bank in favor of the Issuing Bank, in amounts and on terms satisfactory to the Issuing Bank, covering all obligations of the Lenders with respect to all Letters of Credit, Mortgagee, at the request and expense of Mortgagor, shall execute such documents as may be reasonably requested by Mortgagor to evidence the discharge and satisfaction of this Leasehold Mortgage and the release of Mortgagor from liability to Mortgagee.

(b) Unless Mortgagee otherwise consents in writing, the Property or any part thereof shall not be released from the lien of this Leasehold Mortgage until (i) the Obligations (other than contingent reimbursement and indemnification obligations to the extent no unsatisfied claim has been asserted) have been paid in full, (ii) the



Commitments (as defined under the Credit Agreement) under the Credit Agreement have been terminated, and (iii) either (1) all Letters of Credit have been terminated or (2) the Mortgagor has delivered to the Agent cash collateral or back-up letters of credit issued by a bank acceptable to the Issuing Bank in favor of the Issuing Bank, in amounts and on terms satisfactory to the Issuing Bank, covering all obligations of the Lenders with respect to all Letters of Credit.

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