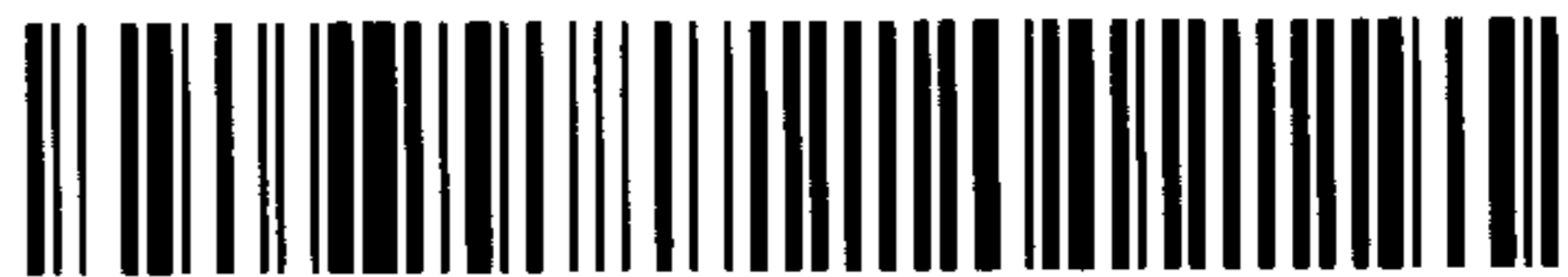


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**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS,
AND FIXTURE FILING**

made by

SHN PROPERTIES, LLC and CAPTAIN D'S, LLC,

Mortgagor,

in favor of

**JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, Mortgagee**

Dated as of July 21, 2006

THIS MORTGAGE SECURES A REVOLVING CREDIT OBLIGATION UNDER WHICH BORROWER HAS THE RIGHT, SUBJECT TO CERTAIN CONDITIONS, TO BORROW, MAKE PAYMENTS AND REBORROW FROM TIME TO TIME WHICH WHEN MADE, SHALL HAVE THE SAME PRIORITY AS ADVANCES OR READVANCES MADE ON THE DATE HEREOF WHETHER OR NOT (I) ANY ADVANCES OR READVANCES WERE MADE ON THE DATE HEREOF AND (II) ANY INDEBTEDNESS IS OUTSTANDING AT THE TIME ANY ADVANCE OR RE-ADVANCE IS MADE.

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9A-502(C), CODE OF ALABAMA 1975, AS AMENDED, AND SHOULD BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS

THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE SHALL NOT EXCEED \$430,000,000 AT ANY ONE TIME

TABLE OF CONTENTS

	Page
Background	1
Granting Clauses	2
Terms and Conditions	5
1. Defined Terms	5
2. Warranty of Title.....	5
3. Payment of Obligations.....	5
4. Requirements	5
5. Payment of Taxes and Other Impositions.....	6
6. Insurance	6
7. Restrictions on Liens and Encumbrances	7
8. Due on Sale and Other Transfer Restrictions	7
9. Condemnation/Eminent Domain	7
10. Leases.....	7
11. Further Assurances.....	8
12. Mortgagee's Right to Perform	8
13. Remedies.....	8
14. Right of Mortgagee to Credit Sale.....	9
15. Appointment of Receiver.....	10
16. Extension, Release, etc	10
17. Security Agreement under Uniform Commercial Code; Fixture Filing	11
18. Assignment of Rents	12
19. Additional Rights.....	12
20. Notices	12
21. No Oral Modification.....	12
22. Partial Invalidity.....	13
23. Mortgagor's Waiver of Rights	13
24. Remedies Not Exclusive.....	13
25. Multiple Security	14
26. Successors and Assigns.....	15
27. No Waivers, etc.....	15
28. Governing Law, etc.....	15
29. Certain Definitions.....	16
30. Mortgaged Lease Provisions.....	16
31. Duty of Mortgagee; Authority of Mortgagee.....	20
32. Last Dollars Secured; Priority.....	21
33. Enforcement Expenses; Indemnification	21
34. Release	21
35. Revolving Credit.....	21
36. Household Purposes.....	22

MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING, dated as of July 21, 2006 is made by SHN PROPERTIES, LLC, a Delaware limited liability company ("SHN"), and CAPTAIN D'S, LLC, a Delaware limited liability company ("Captain D's"; together with SHN, collectively, "Mortgagor"), each of whose address is 1717 Elm Hill Pike, Suite A-1, Nashville, TN 37210, in favor of JPMORGAN CHASE BANK, N.A., as administrative agent (in such capacity, "Mortgagee"), whose address is 10 South Dearborn Street, 19th Floor, Chicago, IL 60603-2003. References to this "Mortgage" shall mean this instrument and any and all renewals, modifications, amendments, supplements, extensions, consolidations, substitutions, spreaders and replacements of this instrument.

Background

A. F&C Restaurant Holdings, Sagittarius Restaurants LLC, as Borrower, the several banks and other financial institutions or entities from time to time parties thereto (the "Lenders"), Credit Suisse Securities (USA) LLC, as syndication agent, Wells Fargo Bank, N.A. and GE Antares Capital Corporation, as documentation agents, and Mortgagee, as administrative agent, are parties to that certain Credit Agreement, dated as of March 29, 2006 (as amended, supplemented, restated, replaced, substituted, or otherwise modified from time to time, the "Credit Agreement"). The terms of the Credit Agreement are incorporated by reference in this Mortgage as if the terms thereof were fully set forth in the Credit Agreement.

B. Borrower has borrowed certain indebtedness from the Lenders in the form and upon the terms and subject to the conditions set forth in the Credit Agreement.

C. The Borrower is a member of an affiliated group of companies that includes Mortgagor.

D. The Lenders or certain affiliates thereof may enter into Specified Swap Agreements with Mortgagor.

E. The proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrower to make valuable transfers to Mortgagor in connection with the operation of its business.

F. The Borrower and Mortgagor are engaged in related businesses, and Mortgagor will derive substantial direct and indirect benefit from the extensions of credit under the Credit Agreement and from the Specified Swap Agreements.

G. SHN is the owner of the fee simple estate (excluding the fixtures) in the parcel(s) of real property, if any, described on Schedule A attached hereto (the "Owned Land"), and Captain D's is the owner of the fixtures on the Owned Land (the "Captain D's Fixtures"); and/or Captain D's is the owner of a leasehold estate in the parcel(s) of real property, if any, described on Schedule B attached hereto (the "Leased Land"; together with the Owned Land,

collectively, the "Land"), pursuant to the agreement described on Schedule B attached hereto (as the same may be amended, supplemented, restated, replaced, or otherwise modified from time to time, the "Mortgaged Lease"); and SHN and/or Captain D's owns and/or, leases or otherwise has the right to use all of the buildings, improvements, structures, and fixtures now or subsequently located on the Land (the "Improvements"; the Land, the Improvements and the Captain D's Fixtures being collectively referred to as the "Real Estate").

H. It is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that Mortgagor shall have executed and delivered this Mortgage to Mortgagee for the ratable benefit of the Secured Parties.

Granting Clauses

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees that to secure the payment of all obligations and liabilities of Mortgagor which may arise under or in connection with the Guarantee and Collateral Agreement (including, without limitation, Section 2 thereof) or any other Loan Document or Specified Swap Agreement to which Mortgagor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Mortgagee or to any Secured Party that are required to be paid by Mortgagee pursuant to the terms of this Mortgage or any other Loan Document) (collectively, the "Obligations");

MORTGAGOR HEREBY MORTGAGES, GRANTS, ASSIGNS, TRANSFERS AND SETS OVER TO MORTGAGEE, FOR THE RATABLE BENEFIT OF THE SECURED PARTIES, AND GRANTS MORTGAGEE A SECURITY INTEREST IN:

- (a) the Owned Land;
- (b) the leasehold estate created under and by virtue of the Mortgaged Lease, any interest in any fee, greater or lesser title to the Leased Land and Improvements located thereon that Mortgagor may own or hereafter acquire (whether acquired pursuant to a right or option contained in the Mortgaged Lease or otherwise) and all credits, deposits, options, privileges and rights of Captain D's under the Mortgaged Lease (including all rights of use, occupancy and enjoyment) and under any amendments, supplements, extensions, renewals, restatements, replacements and modifications thereof (including, without limitation, (i) the right to give consents, (ii) the right to receive moneys payable to Mortgagor, (iii) the right, if any, to renew or extend the Mortgaged Lease for a succeeding term or terms, (iv) the right, if any, to purchase the Leased Land and Improvements located thereon, and (v) the right to terminate or modify the Mortgaged Lease); all of Captain D's's claims and rights to the payment of damages arising under the Bankruptcy Code (as defined below) from any rejection of the Mortgaged Lease by the lessor thereunder or any other party;
- (c) all right, title and interest Mortgagor now has or may hereafter acquire in and to the Improvements or any part thereof (whether owned in fee by Mortgagor or held

pursuant to the Mortgaged Lease or otherwise) and all the estate, right, title, claim or demand whatsoever of Mortgagor, in possession or expectancy, in and to the Real Estate or any part thereof;

(d) all right, title and interest of Mortgagor in, to and under all easements, rights of way, licenses, operating agreements, abutting strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water and flowage rights, development rights, air rights, mineral and soil rights, plants, standing and fallen timber, and all estates, rights, titles, interests, privileges, licenses, tenements, hereditaments and appurtenances belonging, relating or appertaining to the Real Estate, and any reversions, remainders, rents, issues, profits and revenue thereof and all land lying in the bed of any street, road or avenue, in front of or adjoining the Real Estate to the center line thereof;

(e) all of the fixtures, chattels, business machines, machinery, apparatus, equipment, furnishings, fittings, appliances and articles of personal property of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts and accessories) currently owned or subsequently acquired by Mortgagor and now or subsequently attached to, or contained in or used or usable in any way in connection with any operation or letting of the Real Estate, including but without limiting the generality of the foregoing, all screens, awnings, shades, blinds, curtains, draperies, artwork, carpets, rugs, storm doors and windows, furniture and furnishings, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilating, air conditioning and air-cooling apparatus, refrigerating, incinerating equipment, escalators, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description (all of the foregoing in this paragraph (e) being referred to as the "Equipment");

(f) all right, title and interest of Mortgagor in and to all substitutes and replacements of, and all additions and improvements to, the Real Estate and the Equipment, subsequently acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor on the Real Estate, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Real Estate or offsite, and, in each such case, without any further deed, conveyance, assignment or other act by Mortgagor;

(g) all right, title and interest of Mortgagor in, to and under all leases, subleases, underlettings, concession agreements, management agreements, licenses and other agreements relating to the use or occupancy of the Real Estate or the Equipment or any part thereof, now existing or subsequently entered into by Mortgagor and whether written or oral and all guarantees of any of the foregoing (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, the "Leases"), and all rights of Mortgagor in respect of cash and securities deposited

thereunder and the right to receive and collect the revenues, income, rents, issues and profits thereof, together with all other rents, royalties, issues, profits, revenue, income and other benefits arising from the use and enjoyment of the Mortgaged Property (as defined below) (collectively, the "Rents");

(h) all unearned premiums under insurance policies now or subsequently obtained by Mortgagor relating to the Real Estate or Equipment and Mortgagor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds, subject to the provisions relating to insurance generally set forth below; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Real Estate or Equipment for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Estate or any easement or other right therein;

(i) to the extent not prohibited under the applicable contract, consent, license or other item unless the appropriate consent has been obtained, all right, title and interest of Mortgagor in and to (i) all contracts from time to time executed by Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Real Estate or Equipment or any part thereof and all agreements and options relating to the purchase or lease of any portion of the Real Estate or any property which is adjacent or peripheral to the Real Estate, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Real Estate or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Real Estate; and

(j) all proceeds, both cash and noncash, of the foregoing;

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by Mortgagor and described in the foregoing clauses (a) through (d) are collectively referred to as the "Premises", and those described in the foregoing clauses (a) through (j) are collectively referred to as the "Mortgaged Property").

TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby mortgaged unto Mortgagee, its successors and assigns for the uses and purposes set forth, until the Obligations are fully paid and performed, provided, however, that the condition of this Mortgage is such that if the Obligations are fully paid and performed, then the estate hereby granted shall cease, terminate and become void.

This Mortgage covers present and future advances and re-advances, in the aggregate amount of the obligations secured hereby, made by the Secured Parties for the benefit of Mortgagor, and the lien of such future advances and re-advances shall relate back to the date of this Mortgage.

Terms and Conditions

Mortgagor further represents, warrants, covenants and agrees with Mortgagee and the Secured Parties as follows:

1. Defined Terms. Capitalized terms used herein (including in the "Background" and "Granting Clauses" sections above) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. References in this Mortgage to the "Default Rate" shall mean the interest rate applicable pursuant to Section 2.14(c) of the Credit Agreement. References herein to the "Secured Parties" shall mean the collective reference to (i) Mortgagee, (ii) the Lenders (including any Issuing Lender in its capacity as Issuing Lender), (iii) any affiliate of any Lender to which any Obligations are owed, and (iv) the respective successors, endorsees, transferees and assigns of each of the foregoing.

2. Warranty of Title. SHN warrants that it has good record title in fee simple to, or a valid leasehold interest in, the Real Estate (excluding the Captain D's Fixtures), and Captain D's warrants that it has good record title to the Captain D's Fixtures. Mortgagor warrants that it has good title to, or a valid leasehold interest in, the rest of the Mortgaged Property, subject only to the matters that are set forth in Schedule B of the title insurance policy or policies, if any, being issued to Mortgagee to insure the lien of this Mortgage and any other lien or encumbrance as permitted by Section 7.3 of the Credit Agreement (the "Permitted Exceptions"). Mortgagor shall warrant, defend and preserve such title and the lien of this Mortgage against all claims of all persons and entities (not including the holders of the Permitted Exceptions). Mortgagor represents and warrants that (a) it has the right to mortgage the Mortgaged Property; (b) the Mortgaged Lease is in full force and effect and Mortgagor is the holder of the lessee's or tenant's interest thereunder; (c) the Mortgaged Lease has not been amended, supplemented or otherwise modified, except as may be specifically described in Schedule B attached to this Mortgage; (d) Mortgagor has paid all rents and other charges to the extent due and payable under the Mortgaged Lease (except to the extent Mortgagor is contesting in good faith by appropriate proceedings any such rents and other charges in accordance with and to the extent permitted by the terms of the relevant Mortgaged Lease), is not in default under the Mortgaged Lease in any material respect, has received no notice of default from the lessor thereunder and knows of no material default by the lessor thereunder; and (e) the granting of this Mortgage does not violate the terms of the Mortgaged Lease nor is any consent of the lessor under the Mortgaged Lease required to be obtained in connection with the granting of this Mortgage unless such consent has been obtained.

3. Payment of Obligations. Mortgagor shall pay and perform the Obligations at the times and places and in the manner specified in the Loan Documents.

4. Requirements. Mortgagor shall comply with all covenants, restrictions and conditions now or later of record which may be applicable to any of the Mortgaged Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Mortgaged Property, except where a failure to do so could not reasonably be expected to have a material adverse effect (considered both individually and together with other such failures) on (i) the current business, operations or condition (financial or

otherwise) of the Mortgagor, (ii) the current use of the Mortgaged Property, or (iii) the value of the Mortgaged Property (assuming its current use).

5. Payment of Taxes and Other Impositions. (a) Prior to the date on which any fine, penalty, interest or cost may be added thereto or imposed, Mortgagor shall pay and discharge all material taxes, material charges and assessments of every kind and nature, all material charges for any easement or agreement maintained for the benefit of any of the Real Estate, all material general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, vault taxes and all other material public charges even if unforeseen or extraordinary, imposed upon or assessed against or which may become a lien on any of the Real Estate, or arising in respect of the occupancy, use or possession thereof, together with any penalties or interest on any of the foregoing (all of the foregoing are collectively referred to herein as the "Impositions"), except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, and (ii) the Mortgagor has set aside on its books adequate reserves with respect thereto in accordance with GAAP. Upon request by Mortgagee, Mortgagor shall deliver to Mortgagee evidence reasonably acceptable to Mortgagee showing the payment of any such Imposition. If by law any Imposition, at Mortgagor's option, may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Mortgagor may elect to pay such Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

(b) Nothing herein shall affect any right or remedy of Mortgagee under this Mortgage or otherwise, without notice or demand to Mortgagor, to pay any Imposition after the date such Imposition shall have become delinquent, and add to the Obligations the amount so paid, together with interest from the time of payment at the Default Rate. Any sums paid by Mortgagee in discharge of any Impositions shall be (i) a lien on the Premises secured hereby prior to any right or title to, interest in, or claim upon the Premises subordinate to the lien of this Mortgage, and (ii) payable on demand by Mortgagor to Mortgagee, as the case may be, together with interest at the Default Rate as set forth above.

6. Insurance. (a) Mortgagor shall maintain, with financially sound and reputable companies, insurance policies (i) insuring the Real Estate against loss by fire, explosion, theft and such other casualties as are usually insured against in the same general area by companies engaged in the same or similar businesses, and (ii) insuring Mortgagor, the Mortgagee and the other Secured Parties against liability for personal injury and property damage relating to such Real Estate, such policies to be in such form and amounts and having such coverage as may be reasonably satisfactory to the Mortgagee. All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Mortgagee of written notice thereof, (ii) name the Mortgagee as an additional insured party or loss payee, (iii) include deductibles consistent with past practice or consistent with industry practice or otherwise reasonably satisfactory to the Mortgagee.

(b) If any portion of the Premises is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, Mortgagor shall maintain or cause to be maintained, flood insurance in an amount reasonably

satisfactory to Mortgagee, but in no event less than the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended.

(c) Mortgagor promptly shall comply with and conform in all material respects to (i) all provisions of each such insurance policy, and (ii) all requirements of the insurers applicable to Mortgagor or to any of the Mortgaged Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Mortgaged Property. Mortgagor shall not use or permit the use of the Mortgaged Property in any manner which would permit any insurer to cancel any insurance policy or void coverage required to be maintained by this Mortgage.

(d) If Mortgagor is in default of its obligations to insure or deliver any such prepaid policy or policies, then Mortgagee, at its option upon five (5) days' notice to Mortgagor, may effect such insurance from year to year at rates substantially similar to the rate at which Mortgagor had insured the Premises, and pay the premium or premiums therefor, and Mortgagor shall pay to Mortgagee on demand such premium or premiums so paid by Mortgagee with interest from the time of payment at the Default Rate.

(e) If the Mortgaged Property, or any part thereof, shall be destroyed or damaged and the reasonably estimated cost thereof would exceed \$500,000, Mortgagor shall give prompt notice thereof to Mortgagee. All insurance proceeds paid or payable in connection with any damage or casualty to the Real Estate shall be deemed proceeds from a Recovery Event and applied in the manner specified in the Credit Agreement.

(f) In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee, subject to compliance with any procedures of the applicable insurance companies.

7. Restrictions on Liens and Encumbrances. Except for the lien of this Mortgage and the Permitted Exceptions or as otherwise permitted under the Credit Agreement, Mortgagor shall not further grant, nor otherwise encumber the Mortgaged Property nor create or suffer to exist any lien, charge or encumbrance on the Mortgaged Property, or any part thereof, whether superior or subordinate to the lien of this Mortgage and whether recourse or non-recourse.

8. Due on Sale and Other Transfer Restrictions. Except as permitted under Section 7.5 of the Credit Agreement, Mortgagor shall not sell, transfer, convey or assign all or any portion of, or any interest in, the Mortgaged Property.

9. Condemnation/Eminent Domain. Promptly upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property, or any material portion thereof, Mortgagor will notify Mortgagee of the pendency of such proceedings. All awards and proceeds relating to such condemnation shall be deemed proceeds from a Recovery Event and applied in the manner specified in the Credit Agreement.

10. Leases. Except as permitted under the Credit Agreement, Mortgagor shall not (a) execute an assignment or pledge of any Lease relating to all or any portion of the Mortgaged

Property other than in favor of Mortgagee, or (b) execute or permit to exist any Lease of any of the Mortgaged Property.

11. Further Assurances. To further assure Mortgagee's rights under this Mortgage, Mortgagor agrees promptly upon demand of Mortgagee to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty included or to be included in the Mortgaged Property and a separate assignment of each Lease in recordable form) as may be reasonably required by Mortgagee to confirm the lien of this Mortgage and all other rights or benefits conferred on Mortgagee by this Mortgage.

12. Mortgagee's Right to Perform. If Mortgagor fails to perform any of the covenants or agreements of Mortgagor, within the applicable grace period, if any, provided for in the Credit Agreement, Mortgagee, without waiving or releasing Mortgagor from any obligation or default under this Mortgage, may, at any time upon 5 days' notice to Mortgagor (but shall be under no obligation to) pay or perform the same, and the amount or cost thereof, with interest at the Default Rate, shall immediately be due from Mortgagor to Mortgagee (as the case may be) and the same shall be secured by this Mortgage and shall be a lien on the Mortgaged Property prior to any right, title to, interest in, or claim upon the Mortgaged Property attaching subsequent to the date of this Mortgage. No payment or advance of money by Mortgagee under this Section shall be deemed or construed to cure Mortgagor's default or waive any right or remedy of Mortgagee.

13. Remedies. (a) Upon the occurrence and during the continuance of any Event of Default, Mortgagee may immediately take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) Mortgagee may, to the extent permitted by applicable law, (A) institute and maintain an action of mortgage foreclosure against all or any part of the Mortgaged Property, (B) institute and maintain an action on the Loans (including any notes issued to evidence the Loans), (C) sell all or part of the Mortgaged Property (Mortgagor expressly granting to Mortgagee the power of sale), or (D) take such other action at law or in equity for the enforcement of this Mortgage or any of the Loan Documents as the law may allow. Mortgagee may proceed in any such action to final judgment and execution thereon for all sums due hereunder, together with interest thereon as provided in the Facilities Agreements and all reasonable costs of suit, including, without limitation, reasonable attorneys' fees and disbursements. Interest at the Default Rate shall be due on any judgment obtained by Mortgagee from the date of judgment until actual payment is made of the full amount of the judgment.

(ii) Mortgagee shall have the right, with or without taking possession of the Mortgaged Property, sell the Mortgaged Property en masse or in lots of parcels, as Mortgagee may deem best, at public outcry in front of the courthouse door of the county in which the Mortgaged Property is located, to the highest

bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in such county. Upon the payment of the purchase price, Mortgagee or any person conducting the sale for Mortgagee is authorized and empowered to execute and deliver to the purchaser at the sale a deed or bill of sale to the property so purchased, in the name and on behalf of Mortgagor.

(iii) Mortgagee may, to the extent permitted by applicable law, personally, or by its agents, attorneys and employees and without regard to the adequacy or inadequacy of the Mortgaged Property or any other collateral as security for the Obligations enter into and upon the Mortgaged Property and each and every part thereof and exclude Mortgagor and its agents and employees therefrom without liability for trespass, damage or otherwise (Mortgagor hereby agreeing to surrender possession of the Mortgaged Property to Mortgagee upon demand at any such time) and use, operate, manage, maintain and control the Mortgaged Property and every part thereof. Following such entry and taking of possession, Mortgagee shall be entitled, to the extent permitted by applicable law, without limitation, (x) to lease all or any part or parts of the Mortgaged Property for such periods of time and upon such conditions as Mortgagee may, in its discretion, deem proper, (y) to enforce, cancel or modify any Lease and (z) generally to execute, do and perform any other act, deed, matter or thing concerning the Mortgaged Property as Mortgagee shall deem appropriate as fully as Mortgagor might do.

(b) In case of a foreclosure sale, the Real Estate may be sold, at Mortgagee's election, in one parcel or in more than one parcel and Mortgagee is specifically empowered (without being required to do so, and in its sole and absolute discretion) to cause successive sales of portions of the Mortgaged Property to be held.

(c) In the event of any breach of any of the covenants, agreements, terms or conditions contained in this Mortgage, Mortgagee shall be entitled to enjoin such breach and obtain specific performance of any covenant, agreement, term or condition and Mortgagee shall have the right to invoke any equitable right or remedy as though other remedies were not provided for in this Mortgage.

(d) It is agreed that if an Event of Default shall occur and be continuing, any and all proceeds of the Mortgaged Property received by Mortgagee shall be held by Mortgagee for the benefit of the Secured Parties as collateral security for the Obligations (whether matured or unmatured), and shall be applied in payment of the Obligations in the manner set forth in Section 6.5 of the Guarantee and Collateral Agreement.

14. Right of Mortgagee to Credit Sale. Upon the occurrence of any sale made under this Mortgage, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof. In lieu of paying cash therefor, Mortgagee may make settlement for the purchase price by crediting upon the Obligations or other sums secured by this Mortgage, the

net sales price after deducting therefrom the expenses of sale and the cost of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. In such event, this Mortgage, the Credit Agreement, the Guarantee and Collateral Agreement and documents evidencing expenditures secured hereby may be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon the Obligations as having been paid.

15. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Mortgagee as a matter of right and without notice to Mortgagor, unless otherwise required by applicable law, provided Mortgagor hereby waives notice if and to the full extent any such requirement may be waived under applicable law, and without regard to the adequacy or inadequacy of the Mortgaged Property or any other collateral or the interest of Mortgagor therein as security for the Obligations, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers or other manager of the Mortgaged Property, without requiring the posting of a surety bond, and without reference to the adequacy or inadequacy of the value of the Mortgaged Property or the solvency or insolvency of Mortgagor or any other party obligated for payment of all or any part of the Obligations, and whether or not waste has occurred with respect to the Mortgaged Property, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor (except as may be required by law). Any such receiver or receivers or manager shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in this Mortgage, including, without limitation and to the extent permitted by law, the right to enter into leases of all or any part of the Mortgaged Property, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated.

16. Extension, Release, etc. (a) Without affecting the encumbrance or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of the Obligations, Mortgagee may, from time to time and without notice, agree to (i) release any person liable for the indebtedness borrowed or guaranteed under the Loan Documents, (ii) extend the maturity or alter any of the terms of the indebtedness borrowed or guaranteed under the Loan Documents or any other guaranty thereof, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

(b) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect the encumbrance of this Mortgage or any liens, rights, powers or remedies of Mortgagee hereunder, and such liens, rights, powers and remedies shall continue unimpaired.

(c) If Mortgagee shall have the right to foreclose this Mortgage or to direct the Mortgagee to exercise its power of sale, Mortgagor authorizes Mortgagee at its option to foreclose the lien of this Mortgage (or direct the Mortgagee to sell the Mortgaged Property, as the case may be) subject to the rights of any tenants of the Mortgaged Property. The failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose

their rights, or to provide notice to such tenants as required in any statutory procedure governing a sale of the Mortgaged Property by Mortgagee, or to terminate such tenant's rights in such sale will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the Obligations or to foreclose the lien of this Mortgage.

(d) Unless expressly provided otherwise, in the event that Mortgagee's interest in this Mortgage and title to the Mortgaged Property or any estate therein shall become vested in the same person or entity, this Mortgage shall not merge in such title but shall continue as a valid lien on the Mortgaged Property for the amount secured hereby.

17. Security Agreement under Uniform Commercial Code; Fixture Filing. (a) It is the intention of the parties hereto that this Mortgage shall constitute a "security agreement" within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Mortgaged Property is located. If an Event of Default shall occur and be continuing, then in addition to having any other right or remedy available at law or in equity, Mortgagee shall have the option of either (i) proceeding under the Code and exercising such rights and remedies as may be provided to a secured party by the Code with respect to all or any portion of the Mortgaged Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Mortgaged Property in accordance with Mortgagee's rights, powers and remedies with respect to the real property (in which event the default provisions of the Code shall not apply). If Mortgagee shall elect to proceed under the Code, then ten (10) days' notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses. At Mortgagee's request, Mortgagor shall assemble the personal property and make it available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties.

(b) Certain portions of the Mortgaged Property are or will become "fixtures" (as that term is defined in the Code) on the Land, and this Mortgage, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Code upon such portions of the Mortgaged Property that are or become fixtures. The real property to which the fixtures relate is described in Exhibit A hereto. The record owner of the real property described in Exhibit A hereto is SHN, and the record owner of the Captain D's Fixtures is Captain D's. The record owner of the real property described on Exhibit B attached hereto is set forth on Exhibit B attached hereto. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Mortgagor set forth in the first paragraph of this Mortgage, and the name of the secured party for purposes of this financing statement is the name of the Mortgagee set forth in the first paragraph of this Mortgage. The mailing address of the Mortgagor/debtor is the address of the Mortgagor set forth in the first paragraph of this Mortgage. The mailing address of the Mortgagee/secured party from which information concerning the security interest hereunder may be obtained is the address of the Mortgagee set forth in the first paragraph of this Mortgage. SHN's organizational identification number is 2812238, and Captain D's organizational identification number is 3062036.

18. Assignment of Rents. (a) Mortgagor hereby assigns to Mortgagee the Rents as further security for the payment of and performance of the Obligations, and Mortgagor grants to Mortgagee the right to enter the Mortgaged Property for the purpose of collecting the same and to let the Mortgaged Property or any part thereof, and to apply the Rents on account of the Obligations. The foregoing assignment and grant is present and absolute and shall continue in effect until the Obligations are fully paid and performed, but Mortgagee hereby waives the right to enter the Mortgaged Property for the purpose of collecting the Rents and Mortgagor shall be entitled to collect, receive, use and retain the Rents until the occurrence of an Event of Default; such right of Mortgagor to collect, receive, use and retain the Rents may be revoked by Mortgagee upon the occurrence and during the continuance of any Event of Default by giving not less than five (5) days' written notice of such revocation to Mortgagor; and upon default in any such payment Mortgagor and any such affiliate will vacate and surrender the possession of the Mortgaged Property to Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings or otherwise.

(b) Mortgagor has not affirmatively done any act which would prevent Mortgagee from, or limit Mortgagee in, acting under any of the provisions of the foregoing assignment.

(c) Except for any matter disclosed in the Credit Agreement, no action has been brought or, so far as is known to any Responsible Officer of Mortgagor, is threatened, which would interfere in any material respect with the right of Mortgagor to execute the foregoing assignment and perform all of Mortgagor's obligations contained in this Section and in the Leases.

19. Additional Rights. The holder of any subordinate lien or subordinate deed of trust on the Mortgaged Property shall have no right to terminate any Lease whether or not such Lease is subordinate to this Mortgage nor shall Mortgagor consent to any holder of any subordinate lien or subordinate deed of trust joining any tenant under any Lease in any trustee's sale or action to foreclose the lien or modify, interfere with, disturb or terminate the rights of any tenant under any Lease. By recordation of this Mortgage all subordinate lienholders and the trustees and beneficiaries under subordinate deeds of trust are subject to and notified of this provision, and any action taken by any such lienholder or trustee or beneficiary contrary to this provision shall be null and void. Any such application shall not be construed to cure or waive any Default or Event of Default or invalidate any act taken by Mortgagee on account of such Default or Event of Default.

20. Notices. All notices, requests and demands to or upon the Mortgagee or the Mortgagor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement; provided that any such notice, request or demand to or upon Mortgagor shall be addressed to Mortgagor at its address set forth above.

21. No Oral Modification. This Mortgage may not be amended, supplemented or otherwise modified except in accordance with the provisions of Section 10.1 of the Credit Agreement. Any agreement made by Mortgagor and Mortgagee after the date of this Mortgage relating to this Mortgage shall be superior to the rights of the holder of any intervening or subordinate lien or encumbrance. Mortgagee's execution of any written agreement between

Mortgagor and Mortgagee shall not be required for the effectiveness thereof as between Mortgagor and Mortgagee.

22. Partial Invalidity. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included. Notwithstanding to the contrary anything contained in this Mortgage or in any provisions of any Loan Document, the obligations of Mortgagor and of any other obligor under any Loan Documents shall be subject to the limitation that Mortgagee shall not charge, take or receive, nor shall Mortgagor or any other obligor be obligated to pay to Mortgagee, any amounts constituting interest in excess of the maximum rate permitted by law to be charged by Mortgagee.

23. Mortgagor's Waiver of Rights. (a) Mortgagor hereby voluntarily and knowingly releases and waives any and all rights to retain possession of the Mortgaged Property after the occurrence of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure (whether full or partial), pursuant to rights, if any, therein granted, as allowed under any applicable law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirectly) by, through or under each constituent of Mortgagor and on behalf of each and every person acquiring any interest in the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of each constituent of Mortgagor and all such other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law or replacement statute. Each constituent of Mortgagor shall not invoke or utilize any such law or laws or otherwise hinder, delay, or impede the execution of any right, power, or remedy herein or otherwise granted or delegated to Mortgagee, but shall permit the execution of every such right, power, and remedy as though no such law or laws had been made or enacted.

(b) To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that may subsequently be enacted providing for (i) any appraisalment before sale of any portion of the Mortgaged Property, (ii) any extension of the time for the enforcement of the collection of the Obligations or the creation or extension of a period of redemption from any sale made in collecting such debt and (iii) exemption of the Mortgaged Property from attachment, levy or sale under execution or exemption from civil process. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Mortgage before exercising any other remedy granted hereunder and Mortgagor, for Mortgagor and its successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature (except as provided in the Credit Agreement) or declare due the whole of the secured indebtedness and marshalling in the event of exercise by Mortgagee of the power of sale, or other rights hereby created.

24. Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of the Obligations and to exercise all rights and powers under this Mortgage or

under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by deed of trust, mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may determine in its absolute discretion. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee or to which either may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, as the case may be. In no event shall Mortgagee, in the exercise of the remedies provided in this Mortgage (including, without limitation, in connection with the assignment of Rents to Mortgagee, or the appointment of a receiver and the entry of such receiver on to all or any part of the Mortgaged Property), be deemed a "mortgagee in possession," and neither Mortgagee nor Mortgagee shall in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

25. Multiple Security. If (a) the Premises shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Mortgage, Mortgagee shall now or hereafter hold or be the beneficiary of one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) for the Obligations upon other property in the State in which the Premises are located (whether or not such property is owned by Mortgagor or by others) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Mortgagee may, at its election, commence or consolidate in a single trustee's sale or foreclosure action all trustee's sale or foreclosure proceedings against all such collateral securing the Obligations (including the Mortgaged Property), which action may be brought or consolidated in the courts of, or sale conducted in, any county in which any of such collateral is located. Mortgagor acknowledges that the right to maintain a consolidated trustee's sale or foreclosure action is a specific inducement to Mortgagee to extend the indebtedness borrowed pursuant to or guaranteed by the Loan Documents, and Mortgagor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. Mortgagor further agrees that if Mortgagee shall be prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any collateral other than the Mortgaged Property, which collateral directly or indirectly secures the Obligations, or if Mortgagee shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral (or, in the case of a trustee's sale, shall have met the statutory requirements therefor with respect to such collateral), then, whether or not such proceedings are being maintained or judgments were obtained in or outside the State in which the Premises are located, Mortgagee may commence or continue any trustee's sale or foreclosure proceedings and exercise its other remedies granted in this Mortgage against all or any part of the Mortgaged Property and Mortgagor waives any objections to the commencement or continuation of a foreclosure of this Mortgage or exercise of any other remedies hereunder based on such other

proceedings or judgments, and waives any right to seek to dismiss, stay, remove, transfer or consolidate either any action under this Mortgage or such other proceedings on such basis. The commencement or continuation of proceedings to sell the Mortgaged Property in a trustee's sale to foreclose this Mortgage, or the exercise of any other rights hereunder or the recovery of any judgment by Mortgagee or the occurrence of any sale by the Mortgagee in any such proceedings shall not prejudice, limit or preclude Mortgagee's right to commence or continue one or more trustee's sales, foreclosure or other proceedings or obtain a judgment against (or, in the case of a trustee's sale, to meet the statutory requirements for, any such sale of) any other collateral (either in or outside the State in which the Premises are located) which directly or indirectly secures the Obligations, and Mortgagor, to the extent permitted by applicable law, expressly waives any objections to the commencement of, continuation of, or entry of a judgment in such other sales or proceedings or exercise of any remedies in such sales or proceedings based upon any action or judgment connected to this Mortgage, and Mortgagor also waives any right to seek to dismiss, stay, remove, transfer or consolidate either such other sales or proceedings or any sale or action under this Mortgage on such basis. It is expressly understood and agreed that to the fullest extent permitted by law, Mortgagee may, at its election, cause the sale of all collateral which is the subject of a single trustee's sale or foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Obligations (directly or indirectly) in the most economical and least time-consuming manner.

26. Successors and Assigns. All covenants of Mortgagor contained in this Mortgage are imposed solely and exclusively for the benefit of Mortgagee, and its successors and assigns, and no other person or entity shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Mortgagee at any time if in the sole discretion of either of them such a waiver is deemed advisable. All such covenants of Mortgagor shall run with the land and bind Mortgagor, the successors and assigns of Mortgagor (and each of them) and all subsequent owners, encumbrancers and tenants of the Mortgaged Property, and shall inure to the benefit of Mortgagee and its successors and assigns. The word "Mortgagor" shall be construed as if it read "Mortgagors" whenever the sense of this Mortgage so requires and if there shall be more than one Mortgagor, the obligations of the Mortgagors shall be joint and several.

27. No Waivers, etc. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the security held for the obligations secured by this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien or deed of trust.

28. Governing Law, etc. This Mortgage shall be governed by and construed and interpreted in accordance with the laws of the State in which the Mortgaged Property is located, except that Mortgagor expressly acknowledges that by their respective terms the Credit

Agreement and the Guarantee and Collateral Agreement shall be governed and construed in accordance with the laws of the State of New York, and for purposes of consistency, Mortgagor agrees that in any in personam proceeding related to this Mortgage the rights of the parties to this Mortgage shall also be governed by and construed in accordance with the laws of the State of New York governing contracts made and to be performed in that State.

29. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "SHN and/or Captain D's, as the case may be, or any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein," the word "Mortgagee" shall mean "Mortgagee or any successor agent for the Lenders," the word "Mortgagee" shall mean "Mortgagee and any successor trustee hereunder," the word "person" shall include any individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, or other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property or interest therein. 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. The captions in this Mortgage are for convenience or reference only and in no way limit or amplify the provisions hereof.

30. Mortgaged Lease Provisions. (a) Captain D's shall pay or cause to be paid all rent and other material charges required under the Mortgaged Lease as the same are due prior to a default under such Mortgaged Lease and shall perform or cause to be performed all other material terms, obligations, covenants, conditions, agreements, indemnities, representations, warranties or liabilities of the lessee under the Mortgaged Lease, excluding the right of Mortgagee to engage in a good faith dispute with respect to the foregoing. Captain D's shall not (i) in any manner that would, individually, or in the aggregate, cause a Material Adverse Effect, cancel, terminate or surrender, or permit the cancellation, termination or surrender, of the Mortgaged Lease, in whole or in part except as may be permitted under the Credit Agreement, (ii) either orally or in writing, modify, amend or permit any modification or amendment of any of the terms of the Mortgaged Lease in any respect which is materially adverse to Captain D's or Mortgagee without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, or (iii) after the date hereof, and except as required under the Mortgaged Lease, permit the subordination of the Mortgaged Lease to any Mortgage and any attempt to do any of the foregoing shall be null and void and of no effect and shall constitute an Event of Default.

(b) Captain D's shall do, or cause to be done, all things reasonably necessary to preserve and keep unimpaired all rights of Captain D's as lessee under the Mortgaged Lease, and to prevent any default by Captain D's under the Mortgaged Lease, or any termination, surrender, cancellation, forfeiture, subordination or impairment thereof. Captain D's does hereby authorize and irrevocably appoint and constitute Mortgagee as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, (i) to do and take, but without any obligation so to do, if Captain D's fails to do so at least 5 Business Days prior to the expiration of any applicable cure period, any action which Mortgagee deems necessary to cure any default, or to prevent any imminent default, by Captain D's under

the Mortgaged Lease and (ii) to enter into and upon the Premises or any part thereof to such extent and as often as Mortgagee, in its sole discretion, deems necessary in order to take any action permitted to be taken by Mortgagee pursuant to clause (i) (in each case, with respect to all of the actions described in clauses (i) and (ii), after ten days' notice to Captain D's, unless Captain D's has itself taken the action(s) in question within such ten day period), to the end that the rights of Captain D's in and to the leasehold estate created by the Mortgaged Lease shall be kept unimpaired and free from default. All sums so expended by Mortgagee, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Captain D's to Mortgagee promptly upon demand by Mortgagee. Captain D's shall, within 5 Business Days after written request by Mortgagee, execute and deliver to Mortgagee, or to any person designated by Mortgagee, such further instruments, agreements, powers, assignments, conveyances or the like as may be necessary to complete or perfect the interest, rights or powers of Mortgagee pursuant to this paragraph.

(c) Captain D's shall use commercially reasonable efforts to enforce the material obligations of the lessor under the Mortgaged Lease. Captain D's shall deliver to Mortgagee, within ten business days after receipt, a copy of any notice of default or noncompliance, demand or complaint made by the lessor under the Mortgaged Lease. If the lessor shall deliver to Mortgagee a copy of any notice of default given to Captain D's, such notice shall constitute full authority and protection to Mortgagee for any actions taken or omitted to be taken in good faith by Mortgagee on such notice.

(d) If any action or proceeding shall be instituted to evict Captain D's or to recover possession of the Mortgaged Property from Captain D's or any part thereof or interest therein or any action or proceeding otherwise affecting the Mortgaged Lease or this Mortgage shall be instituted, then Captain D's shall, promptly after receipt deliver to Mortgagee a true and complete copy of each petition, summons, complaint, notice of motion, order to show cause and all other pleadings and papers, however designated, served in any such action or proceeding.

(e) Captain D's covenants and agrees that the fee title to the Leased Land and the leasehold estate created under the Mortgaged Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in Captain D's or a third party by purchase or otherwise; and in case Captain D's acquires the fee title or any other estate, title or interest in and to the Leased Land, the lien of this Mortgage shall, without further conveyance, simultaneously with such acquisition, be spread to cover and attach to such acquired estate and as so spread and attached shall be prior to the lien of any Mortgage placed on the acquired estate after the date of this Mortgage.

(f) No release or forbearance of any of Captain D's's obligations under the Mortgaged Lease, pursuant to the Mortgaged Lease or otherwise, shall release Captain D's from any of its obligations under this Mortgage, including its obligations to pay rent and to perform all of the terms, provisions, covenants, conditions and agreements of the lessee under the Mortgaged Lease.

(g) Upon the occurrence and during the continuance of any Event of Default, all rights of consent and approval, and all elections of Captain D's as lessee under the Mortgaged Lease, together with the right to terminate or to modify the Mortgaged Lease, which have been

assigned for collateral purposes to Mortgagee, shall automatically vest exclusively in and be exercisable solely by Mortgagee.

(h) Captain D's will give Mortgagee prompt written notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of the Mortgaged Lease involving amounts in excess of \$100,000 on a present value basis. Automatically upon the occurrence of an Event of Default and for so long as it shall be continuing, Mortgagee shall have the sole authority to conduct any such proceeding and Captain D's hereby irrevocably appoints and constitutes Mortgagee as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to exercise, at the expense of Captain D's, all right, title and interest of Captain D's in connection with such proceeding, including the right to appoint arbitrators and to conduct arbitration proceedings on behalf of Captain D's, following and during the continuance of an Event of Default. Nothing contained herein shall obligate Mortgagee to participate in such proceeding.

(i) Except as may be permitted under the Credit Agreement, Captain D's shall exercise any option or right to renew or extend the term of the Mortgaged Lease not less than 30 days before the expiration of the exercise right. Captain D's shall give Mortgagee simultaneous written notice of any decision not to exercise such option or right. In the event that Captain D's fails to exercise any such option or right by the date 30 days prior to the date of expiration of the exercise right or upon the occurrence of any Event of Default, Mortgagee may (at Mortgagee's sole option) act in its stead and Captain D's hereby irrevocably authorizes and appoints Mortgagee as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to execute and deliver, for and in the name of Captain D's, all of the instruments and agreements necessary under the Mortgaged Lease or otherwise to cause any extension of the term thereof. Nothing contained herein shall affect or limit any rights of Captain D's or Mortgagee granted under the Mortgaged Lease.

(j) Captain D's shall, within ten days after written demand from Mortgagee, deliver to Mortgagee proof of payment of all material items that are required to be paid by Captain D's under the Mortgaged Lease, including, without limitation, rent, taxes, operating expenses and other charges.

(k) (i) The lien of this Mortgage shall attach to all of Captain D's's rights and remedies at any time arising under or pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), as the same may hereafter be amended (the "Bankruptcy Code"), including, without limitation, all of Captain D's's rights to remain in possession of the Leased Land. Except as may be permitted under the Credit Agreement, Captain D's shall not, without Mortgagee's prior written consent, elect to treat the Mortgaged Lease as terminated under Section 365(h)(1)(A)(i) of the Bankruptcy Code. Any such election made without Mortgagee's consent shall be void.

(ii) Mortgagee shall have the right, if an Event of Default shall have occurred and be continuing or if Captain D's fails to do so at least 5 Business Days prior to the last day on which the Captain D's has the right to do so, to proceed in its own name or in the name of Captain D's in respect of any claim, suit, action or proceeding relating to the rejection of the Mortgaged Lease by the

lessor or any other party, including, without limitation, the right to file and prosecute under the Bankruptcy Code, without joining or the joinder of Captain D's, any proofs of claim, complaints, motions, applications, notices and other documents. Any amounts received by Mortgagee as damages arising out of the rejection of the Mortgaged Lease as aforesaid shall be applied first to all costs and expenses of Mortgagee (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph and thereafter in accordance with Section 13(d) of this Mortgage. Captain D's acknowledges that the assignment of all claims and rights to the payment of damages from the rejection of the Mortgaged Lease made under the granting clauses of this Mortgage constitutes a present irreversible and unconditional assignment and Captain D's shall, at the request of Mortgagee, promptly make, execute, acknowledge and deliver, in form and substance reasonably satisfactory to Mortgagee, a UCC Financing Statement (Form UCC-1) and all such additional instruments, agreements and other documents, as may at any time hereafter be reasonably required by Mortgagee to carry out such assignment.

(iii) If pursuant to Section 365(h)(1)(B) of the Bankruptcy Code, Captain D's shall seek to offset against the rent reserved in the Mortgaged Lease the amount of any damages caused by the nonperformance by the lessor or any other party of any of their respective obligations under such Mortgaged Lease after the rejection by the lessor or such other party of such Mortgaged Lease under the Bankruptcy Code, then Captain D's shall, if an Event of Default shall have occurred and be continuing, prior to effecting such offset, notify Mortgagee of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. In such event, Mortgagee shall have the right to object to all or any part of such offset that, in the reasonable judgment of Mortgagee, would constitute a breach of such Mortgaged Lease, and in the event of such objection, Captain D's shall not effect any offset of the amounts found objectionable by Mortgagee. Neither Mortgagee's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Mortgagee.

(iv) Captain D's shall, after obtaining knowledge thereof, promptly notify Mortgagee of any filing by or against the lessor or other party with an interest in the Real Estate of a petition under the Bankruptcy Code. Captain D's shall promptly deliver to Mortgagee, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Captain D's in connection with any such petition and any proceedings relating thereto.

(v) If there shall be filed by or against Captain D's a petition under the Bankruptcy Code and Captain D's, as lessee under the Mortgaged Lease, shall determine to reject the Mortgaged Lease pursuant to Section 365(a) of the Bankruptcy Code, then Captain D's shall give Mortgagee not less than 20 days' prior written notice of the date on which Captain D's shall apply to the Bankruptcy Court for authority to reject the Mortgaged Lease.

(l) Captain D's shall request and use commercially reasonable efforts to furnish to Mortgagee, from time to time upon receipt of reasonable notice from Mortgagee, in form and substance reasonably satisfactory to Mortgagee, an estoppel certificate from the lessor under the Mortgaged Lease with respect to such Mortgaged Lease.

(m) If the Mortgaged Lease shall be terminated prior to the natural expiration of its term, and if, pursuant to any provision of the Mortgaged Lease or otherwise, Mortgagee or its designee shall acquire from the lessor under such Mortgaged Lease a new lease of the Real Estate or any part thereof, Captain D's shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

(n) Notwithstanding anything to the contrary set forth herein, to the extent that any covenant or other obligation of Captain D's contained herein shall be expressly imposed upon the lessor under a Mortgaged Lease pursuant to the provisions thereof, Captain D's shall not be deemed to be in default of such obligation or covenant with respect to such portion of the Premises as is covered by such Mortgaged Lease, provided that Captain D's shall be using commercially reasonable efforts to enforce such obligations of such lessor in accordance with the terms of the Mortgaged Lease.

31. Duty of Mortgagee; Authority of Mortgagee. (a) The Mortgagee's sole duty with respect to the custody, safekeeping and physical preservation of the Mortgaged Property which is in its possession, or otherwise, shall be to deal with it in the same manner as the Mortgagee deals with similar property for its own account. Neither the Mortgagee, any Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Mortgaged Property or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Mortgaged Property upon the request of Mortgagor or any other Person or to take any other action whatsoever with regard to the Mortgaged Property or any part thereof. The powers conferred on the Mortgagee and the Secured Parties hereunder are solely to protect the Mortgagee's and the Secured Parties' interests in the Mortgaged Property and shall not impose any duty upon the Mortgagee or any Secured Party to exercise any such powers. The Mortgagee and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to Mortgagor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

(b) Mortgagor acknowledges that the rights and responsibilities of the Mortgagee under this Mortgage with respect to any action taken by the Mortgagee or the exercise or non-exercise by the Mortgagee of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Mortgage shall, as between the Mortgagee and the Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Mortgagee and Mortgagor, the Mortgagee shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and Mortgagor shall be under no obligation, or entitlement, to make any inquiry respecting such authority.

32. Last Dollars Secured; Priority. To the extent that this Mortgage secures only a portion of the indebtedness owing or which may become owing by Mortgagor to the Secured Parties, the parties agree that any payments or repayments of such indebtedness shall be and be deemed to be applied first to the portion of the indebtedness that is not secured hereby, it being the parties' intent that the portion of the indebtedness last remaining unpaid shall be secured hereby. If at any time this Mortgage shall secure less than all of the principal amount of the Obligations, it is expressly agreed that any repayments of the principal amount of the Obligations shall not reduce the amount of the lien of this Mortgage until the lien amount shall equal the principal amount of the Obligations outstanding.

33. Enforcement Expenses; Indemnification. (a) Mortgagor agrees to pay, or reimburse each Secured Party and the Mortgagee for, all its reasonable costs and expenses incurred in collecting against Mortgagor or otherwise enforcing or preserving any rights under this Mortgage, including, without limitation, the reasonable fees and disbursements of counsel to each Secured Party and of counsel to the Mortgagee.

(b) Mortgagor agrees to pay, and to save the Mortgagee and the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Mortgaged Property or in connection with any of the transactions contemplated by this Mortgage.

(c) Mortgagor agrees to pay, and to save the Mortgagee and the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Mortgage to the extent the Borrower would be required to do so pursuant to Section 10.5 of the Credit Agreement.

(d) The agreements in this Section shall survive repayment of the Obligations and all other amounts payable.

34. Release. If any of the Mortgaged Property shall be sold, transferred or otherwise disposed of by any Mortgagor in a transaction permitted by the Credit Agreement and the Net Cash Proceeds are applied in accordance with the terms of the Credit Agreement, then the Mortgagee, at the request and sole expense of such Mortgagor, shall execute and deliver to such Mortgagor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Mortgaged Property. The Mortgagor shall deliver to the Mortgagee, at least five Business Days prior to the date of the proposed release, a written request for release identifying the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Mortgagor stating that such transaction is in compliance with, and permitted by, the Credit Agreement and the other Loan Documents.

35. Revolving Credit. This Mortgage secures, among other obligations, a revolving line of credit pursuant to the terms and conditions of the Credit Agreement, under the terms of which funds may be advanced, paid back, and readvanced. The sums advanced pursuant to and

in accordance with the terms and conditions of the Credit Agreement after the effective date of this Mortgage shall have the same priority over liens, encumbrances, and other matters as if such advances had been made as of the effective date of this Mortgage.

36. Household Purposes. The money, property or services that are the subject of the transactions provided for in the Credit Agreement is not primarily for personal, family or household purposes as contemplated by Section 5-19-1(2) of the Code of Alabama 1975, as amended.

This Mortgage has been duly executed by Mortgagor as of the date first above written and is intended to be effective as of such date.

CAPTAIN D'S, LLC

By: Michael T. Folks
Name: Michael T. Folks
Title: Vice President


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Shelby Cnty Judge of Probate, AL
04/05/2007 02:23:11PM FILED/CERT

STATE OF TENNESSEE)

Davidson COUNTY)



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Shelby Cnty Judge of Probate, AL
04/05/2007 02:23:11PM FILED/CERT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Michael T. Folks, whose name as Vice President of CAPTAIN D'S, LLC, a Delaware limited liability company, the is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, in his or her capacity as such Vice President and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 26th day of July, 2006.

Wanda G. Parsons
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 5/23/09





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Shelby Cnty Judge of Probate, AL
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Schedule A

Description of the Owned Land

None

Schedule B,

Description of the Mortgaged Leases

That certain Restaurant Lease between Avondale Development Co. Inc. & Jashlyn, LLC as landlord (successor-in-interest to CNL Funding 2001-A, L.P.) and Captain D's, LLC as tenant, dated December 26, 20002, a memorandum of which was recorded as Instrument Number 20030102000003480, all of record in the Office of the County Clerk of Shelby County, Alabama.

Description of the Leased Land

(see attached)

Exhibit A-1

Land in Shelby County, Alabama, being more particularly described as follows :

Tract I:

A part of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 25, Township 20 South, Range 3 West, being more particularly described as follows: Commence at the Southwest corner of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 25, Township 20 South, Range 3 West and run East along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 130.60 feet to a point on the Westerly right-of-way line of U. S. Highway No. 31; thence an angle left of 75 degrees 29 minutes and run Northerly along said Westerly right-of-way line a distance of 560 feet to the point of beginning; thence an angle left of 90 degrees and run Northwesterly a distance of 200 feet; thence an angle right of 90 degrees and run Northerly a distance of 115 feet; thence an angle right of 90 degrees and run Easterly a distance of 200 feet to the Westerly right-of-way line of U. S. Highway No. 31; thence an angle right of 90 degrees and run along said Westerly right-of-way line 115 feet to the point of beginning.

Tract II:

A parcel of land situated in the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southwest one quarter of the Southwest one quarter of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama, and run East along the South line of said quarter-quarter section 130.60 feet to a point on the westerly right of way of U. S. Highway No 31; thence 75 degrees 29 minutes left and run northerly along said westerly right of way 560 feet; thence 90 degrees left leaving said right of way and run northwesterly 200 feet to the point of beginning; thence continue along last stated course 118.23 feet to the easterly right of way of the Louisville-Nashville Railroad; thence 82 degrees 21 minutes thirty seconds right along said railroad right of way 116.03 feet; thence 97 degrees 38 minutes 30 seconds right leaving said railroad right of way and run 133.66 feet; thence 90 degrees right 115 feet to the point of beginning.



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Shelby Cnty Judge of Probate, AL
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Exhibit A-2

Land. in the Town of Pelham, Shelby County, Alabama, being more particularly described as follows:

A parcel of land lying in the Southeast Quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows;

Commence at the Southwest corner of the Southeast Quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence Easterly along the South line of said Quarter Section 1,826.71 feet to a point; thence turn a right interior angle of $57^{\circ} 00' 07''$ and run Northwesterly 1,620.77 feet to a point on the Southeast right-of-way line of Alabama Highway No. 119, being 100 feet Southeasterly of the centerline of said highway; thence turn a left interior angle of 88 degrees 41 minutes 21 seconds and run Northeasterly and parallel to said highway centerline 160.62 feet to the point of beginning of said parcel; thence continue on last described course a distance of 92.45 feet to a point that is 100 feet Southeasterly of and at right angles to the centerline of said highway at Station 37+00; thence turn a left interior angle of 165 degrees 57 minutes 50 seconds and run Northeasterly 9.51 feet; thence turn a left interior angle of 149 degrees 02 minutes 10 seconds and run Southeasterly 62.56 feet; thence turn, a left interior angle of 135 degrees 00 minutes 00 seconds and run in a Southeasterly direction a distance of 167.00 feet; thence turn a left interior angle of 90 degrees 00 minutes and run in a Southwesterly direction a distance of 145.83 feet; thence turn a left interior angle of 90 degrees 00 minutes and run in a Northwesterly direction a distance of 213.46 feet to the point of beginning.