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Shelby Cnty Judge of Probate, AL
05/28/2008 11:25:10AM FILED/CERT

THIS INSTRUMENT PREPARED
BY AND WHEN RECORDED MAIL TO:

Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 13th Floor
San Francisco, California 94111
Attention: Stephen P. Lieske, Esq.

Space Above This Line For Recorder's Use

Loan No. 17-0204458
Homewood Suites – Birmingham, Alabama

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

by

APPLE EIGHT SPE BIRMINGHAM, INC.,
a Virginia corporation,
and
APPLE EIGHT SERVICES BIRMINGHAM, INC.,
a Virginia corporation
(as Mortgagor)

to

LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THOSE CERTAIN
ML-CFC COMMERCIAL MORTGAGE TRUST 2007-5, COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2007-5
(as Mortgagee)

Dated: As of May 23, 2008

Location: 215 Inverness Center Drive
Birmingham, Alabama

NOTE TO RECORDER/CLERK:

THIS DOCUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING
PURSUANT TO ALA. CODE §7-9A-502 (c) (1975), AND SHOULD BE INDEXED IN THE
INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF MORTGAGOR, AS
DEBTOR, AND MORTGAGEE, AS SECURED PARTY.

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

THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE IS \$12,350,000.00, it being understood that such maximum principal indebtedness shall be the last \$11,850,000.00 outstanding under the Note.

THIS AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage"), dated as of May 23, 2008, is made by APPLE EIGHT SPE BIRMINGHAM, INC., a Virginia corporation, having an address of c/o Apple Eight Hospitality Ownership, Inc., 814 E. Main Street, Richmond, Virginia 23219, as mortgagor ("Borrower"), and APPLE EIGHT SERVICES BIRMINGHAM, INC., a Virginia corporation, having an address of c/o Apple Eight Hospitality Ownership, Inc., 814 E. Main Street, Richmond, Virginia 23219, as mortgagor ("Operating Lessee"; Borrower and Operating Lessee sometimes referred to herein individually, each as a "Mortgagor" and together, as "Mortgagor") in favor of LASALLE BANK NATIONAL ASSOCIATION, as Trustee for those certain ML-CFC Commercial Mortgage Trust 2007-5, Commercial Mortgage Pass-Through Certificates, Series 2007-5,, having an address of c/o Wells Fargo Bank, N.A., Commercial Mortgage Servicing, 1320 Willow Pass Road, Suite 300, Concord, California 94520, Attention: Servicing (together with its successors and assigns, "Mortgagee").

RECITALS

WHEREAS, Countrywide Commercial Real Estate Finance, Inc., a California corporation ("Original Lender"), made a loan (the "Loan") to Homecourt Hospitality Birmingham 1, LLC, a South Carolina limited liability company, Homecourt Hospitality Birmingham 2, LLC, a South Carolina limited liability company, and PHREG-Birmingham, LLC, a South Carolina limited liability company (collectively, "Original Borrower") in the original principal amount of \$11,850,000.00, evidenced by a certain promissory note from Original Borrower to Original Lender dated January 19, 2007 (the "Note").

WHEREAS, the Loan is secured by, among other things, (i) that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated January 19, 2007 from Original Borrower to Original Lender (the "Original Mortgage"), which was recorded as Instrument No. 20070122000033020, in the Official Records of Shelby County, Alabama (the "Official Records"), the Original Lender's interest under which was assigned to Mortgagee by instrument recorded on April 11, 2007, as Instrument No. 20070411000166260, in the Official Records, and (ii) that certain Assignment of Leases and Rents dated January 19, 2007 from Original Borrower to Original Lender (the "Original Assignment of Leases and Rents"), which was recorded as Instrument No. 20070122000033030, in the Official Records, the Original Lender's interest under which was assigned to Mortgagee by instrument recorded on April 11, 2007, as Instrument No. 20070411000166260, in the Official Records.

WHEREAS, Original Lender has assigned to Mortgagee all of Original Lender's right, title, and interest in the Loan and all documents executed and delivered in connection with the Loan.

WHEREAS, Original Borrower has sold and conveyed the Property (as defined herein) to Borrower, pursuant to that certain Purchase Contract between Original Borrower and Apple Eight Hospitality Ownership, Inc., a Virginia corporation ("Apple Eight") dated November 5, 2007 (the "Purchase Contract"). Apple Eight assigned its interest in the Purchase Contract to Borrower pursuant to that certain Assignment of Purchase Contract dated as of the date of this Mortgage.

WHEREAS, Original Borrower, Borrower, Mortgagee, and Operating Lessee have entered into a certain Assumption Agreement, dated as of the date hereof (the "Assumption Agreement"), pursuant to which, among other things, Mortgagee has agreed to waive any right Mortgagee may have under the Loan Documents to accelerate the Maturity Date (as defined in the Note), and Borrower has agreed to assume the obligations of Original Borrower with respect to the Loan.

WHEREAS, as a condition precedent to the willingness of Mortgagee to enter into the Assumption Agreement, and to conform to Borrower's request to enter into the Operating Lease (as hereinafter defined) with the Operating Lessee and certain related aspects of that structure, Borrower and Mortgagee are contemporaneously entering into that certain Amended and Restated Loan Agreement of even date herewith (said Amended and Restated Loan Agreement, as modified and supplemented and in effect from time to time, the "Loan Agreement"), which amends, restates and supersedes that certain Loan Agreement dated as of January 19, 2007 between Original Lender and Original Borrower.

WHEREAS, as a further condition precedent to the willingness of Mortgagee to enter into the Assumption Agreement, and to conform to Borrower's request to enter into the Operating Lease (as hereinafter defined) with the Operating Lessee and certain related aspects of that structure, Mortgagor is required to amend and restate the Original Mortgage and the Original Assignment of Leases and Rents.

WHEREAS, Borrower and Operating Lessee are parties to that certain Lease Agreement, dated as of the date of this Mortgage (as the same may be amended or otherwise modified in accordance with the Loan Agreement, the "Operating Lease"), pursuant to which Operating Lessee leases the Property from Borrower.

WHEREAS, Operating Lessee, in giving this Mortgage and executing various other documents in connection with the Loan in order to induce Mortgagee to enter into the Assumption Agreement, knows that, without such Loan, Borrower would be unable to acquire the Property and Operating Lessee would be unable to become the lessee under the Operating Lease and operate the Property in accordance therewith.

WHEREAS, it is a condition to the obligation of Mortgagee to enter into the Assumption Agreement that Mortgagor execute and deliver this Mortgage.

GRANT

NOW, THEREFORE, in consideration of the willingness of Mortgagee to enter into the Assumption Agreement and the covenants, agreements, representations and warranties set forth in the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and for the purpose of securing the payment and performance of the following (collectively, the "Loan Obligations"): (a) all principal (including, without limitation, any advance to Borrower now or hereafter made), interest thereon and all other sums due and/or payable, and all obligations owing by Mortgagor, under any Loan Document and amendments, modifications, extensions, substitutions, exchanges and renewals thereof (each of which shall enjoy the same priority as the advance made on the Closing Date as evidenced by the Note); and (b) all covenants, agreements and other obligations of Mortgagor under the Loan Documents;

Mortgagor hereby irrevocably grants, bargains, sells, releases, conveys, warrants, assigns, transfers, mortgages, pledges, sets over and confirms unto Mortgagee, its successors and assigns, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, to have and to hold forever for the security and benefit of Mortgagee and its successors and assigns, all of Mortgagor's right, title and interest in and to the following property, rights, interests and estates, now existing or hereafter coming into existence (the property, rights, interests and estates hereinafter described are collectively referred to herein as the "Property"): (i) all the land located in the County and State identified on Exhibit A attached hereto, as more particularly described on such Exhibit A (the "Land"), (ii) the Accounts, (iii) the Account Collateral, (iv) the Appurtenant Rights, (v) the Contracts, (vi) the Equipment, (vii) the Improvements, (viii) the Instruments, (ix) the Inventory, (x) the General Intangibles, (xi) the Leases, (xii) the Permits (to the fullest extent assignable), (xiii) the Rents, (xiv) the Proceeds, (xv) the Chattel Paper (including Electronic Chattel Paper and Tangible Chattel Paper), Commercial Tort Claims, Deposit Accounts, Documents, Goods, Investment Property, Letter of Credit Rights, Payment Intangibles and Supporting Obligations (as all such terms in this clause (xv) are defined in the UCC), (xvi) all of Operating Lessee's estate, right, title and interest in and under the Operating Lease and the leasehold estate created thereby in the real property leased thereby (the "Operating Lease Land"), together with all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, now or hereafter erected on the Operating Lease Land, and together with all appurtenances including, but not limited to: (A) extension, renewal, modification, and option rights, and all of the estate and right of Operating Lessee of, in, and to the Operating Lease Land under and by virtue of the Operating Lease, (B) all credits to and deposits of Operating Lessee under the Operating Lease and all other options, privileges, and rights granted and demised to Operating Lessee under the Operating Lease and (C) all of the right or privilege of Operating Lessee to terminate, cancel, surrender or merge the Operating Lease, and (xvii) any and all other rights of Mortgagor in and to the items set forth in clauses (i) through (xvi) above, all whether now owned or hereafter acquired, and all other property which is or hereafter may become subject to a Lien in favor of Mortgagee pursuant to any Loan Document.

TO HAVE AND TO HOLD the Property and all parts thereof unto and to the use and benefit of Mortgagee, its successors and assigns forever;

PROVIDED, HOWEVER, that these presents are upon the express condition that, if Mortgagor shall pay or cause to be paid to Mortgagee all sums due Mortgagee with respect to the Loan under the Loan Documents and keep, perform and observe all the covenants and promises in each of the Loan Documents, all without fraud and delay, then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate and be void; otherwise the same shall remain in full force and effect.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1 DEFINITIONS

Section 1.1. Certain Defined Terms. For all purposes of this Mortgage, all capitalized terms shall have the meaning ascribed thereto in the Loan Agreement or the Note, as applicable, unless defined herein, and:

"Account Collateral" means the Reserve Accounts (as defined in the Loan Agreement), together with all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Reserve Accounts, all interest, dividends, cash, instruments, investment property and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing.

"Accounts" means all of Mortgagor's "accounts," as such term is defined in the UCC.

"Appurtenant Rights" means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, air rights, development rights and powers, and, to the extent now or hereafter owned by Mortgagor, all minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used in connection with, or located on, under or above the Land or any part or parcel thereof, and all "as extracted collateral" (as defined in the UCC), and all ground leases, subleases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Land or any part thereof.

"Contracts" means, collectively, (a) all contracts between Mortgagor and third parties in connection with the management, construction, repair, renovation, use, operation or maintenance of the Property, in each case as the same may thereafter from time to time be amended or modified; and (b) all warranties, guarantees, and other rights of Mortgagor or Manager, direct and indirect, against manufacturers, dealers, suppliers, and others in connection with the above contracts and agreements or the work done or to be done and the materials supplied or to be supplied to or for the Property.

"Equipment" means all of Mortgagor's "equipment," as such term is defined in the UCC, and, to the extent not included in such definition, all fixtures, appliances, machinery, "software" (as defined in the UCC), furniture, furnishings, decorations, tools and supplies, now owned or hereafter acquired by Mortgagor, including without limitation, all beds, linens, radios, televisions, carpeting, telephones, cash registers, computers, electronic data-processing or other

office equipment, lamps, glassware, restaurant and kitchen equipment, and building equipment, including, without limitation, all heating, lighting, incinerating, waste removal and power equipment, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, washing machines, dryers, stoves, refrigerators, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts, and compressors, materials and supplies, and all other machinery, apparatus, equipment, fixtures and fittings now owned or hereafter acquired by Mortgagor wherever located, any portion thereof or any appurtenances thereto, together with all additions, replacements, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing.

“General Intangibles” means all of Mortgagor’s “general intangibles,” as such term is defined in the UCC, and, to the extent not included in such definition, all intangible personal property of Mortgagor (other than Accounts, Rents, Instruments, Inventory, money and Permits), including, without limitation, choses in action, settlements, judgments, contract rights, rights to performance (including, without limitation, rights under warranties) refunds of real estate taxes and assessments and other rights to payment of money, copyrights, trademarks, trade names, service marks, trade secrets, and patents, the goodwill associated with any of the foregoing, and all applications for any of the foregoing, in each case whether now existing or hereafter in existence.

“Improvements” means all buildings, structures and improvements of every nature whatsoever situated on the Land on the Closing Date or thereafter, including, without limitation, to the extent of Mortgagor’s right, title or interest therein or thereto, all gas and electric fixtures, radiators, heaters, washing machines, dryers, refrigerators, ovens, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, antennas, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to the Land or said buildings, structures or improvements.

“Instruments” means all of Mortgagor’s “instruments,” as such term is defined in the UCC, and, to the extent not included in such definition, all instruments, chattel paper, documents or other writings obtained by Mortgagor from or in connection with the ownership or operation of the Property evidencing a right to the payment of money, including, without limitation, all notes, drafts, acceptances, documents of title, and policies and certificates of insurance, including but not limited to, liability, hazard, rental and credit insurance, guarantees and securities, now or hereafter received by Mortgagor or in which Mortgagor has or acquires an interest pertaining to the foregoing.

“Inventory” means all of Mortgagor’s “inventory,” as such term is defined in the UCC.

“Permits” means all licenses, registrations, permits, allocations, filings, authorizations, approvals and certificates used in connection with the ownership, operation, construction, renovation, use or occupancy of the Property, including, without limitation, building permits, business licenses, state health department licenses, food service licenses, liquor licenses, licenses to conduct business and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning the ownership, construction, operation, renovation, use or occupancy of the Property.

“Proceeds” means all of Mortgagor’s “proceeds” as such term is defined in the UCC and, to the extent not included in such definition, all proceeds, whether cash or non-cash, movable or immovable, tangible or intangible (including Insurance Proceeds, Condemnation Proceeds, and proceeds of proceeds), from the Security Interest Property, including, without limitation, those from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Security Interest Property and all income, gain, credit, distributions and similar items from or with respect to the Security Interest Property.

“Rents” means, with respect to the Property, all rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), receipts, issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Mortgagor in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time due under the Leases, including, without limitation, (i) rights to payment earned under the Leases for space in the Improvements for the operation of ongoing businesses, such as restaurants, news stands, barber shops, beauty shops and pharmacies, and (ii) all other income, consideration, issues, accounts, profits or benefits of any nature arising from the ownership, possession, use or operation of the Property, including, without limitation, all revenues, receipts, income, receivables and accounts relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, banquet rooms, food and beverage facilities, recreational facilities, spas, vending machines, telephone and television systems, guest laundry, and the provision or sale of other goods and services, as well as all room rents, accounts, accounts receivable and hotel receivables and all other payments and rights to payment of any nature whatsoever made for or with respect to hotel room occupancy by any person, which includes any payment or monies received or to be received in whole or in part, whether actual or deemed to be, for the sale of services or products in connection with such occupancy, advance registration fees by hotel guests, tour or junket proceeds or deposits, deposits for convention and/or party reservations, and other benefits, and all rights to payment with respect to conference facilities, dining or bar facilities, recreational facilities or other facilities in any way connected with the Property, all rights to payment from any consumer credit charge card organization or entity including, without limitation, payments arising from the use of the American Express Card, Discover Card, the Visa Card, the Carte Blanche Card, the MasterCard or any other credit card, including those now existing or hereafter created, substitutions therefor, and proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received from the sale, exchange, transfer, collection or other disposition or substitution thereof, and any other items of revenue, receipts or other income as identified in the most recent edition of the Uniform System of Accounts for Hotels, as adopted by the American Hotel and Motel Association.

“UCC” means the Uniform Commercial Code in effect in the jurisdiction in which the Property or any of the Security Interest Property is located, as applicable.

Section 1.2. Interpretation of Defined Terms. Singular terms shall include the plural forms and vice versa, as applicable, of the terms defined. All references to other documents or

instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

Section 1.3. Amendment and Restatement. This Mortgage amends, restates and supersedes the Original Mortgage in its entirety, but does not constitute a novation of the Original Mortgage.

ARTICLE 2 COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Secured Loan Obligations; Incorporation by Reference. Borrower shall pay when due the principal, interest thereon and all other sums, charges, fees and other Loan Obligations due and/or payable under any Loan Document, all as in accordance with the Loan Documents. All of the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

Section 2.2. Duty to Defend; Filing; Re-Filing; Etc.

(a) Mortgagor will forever defend the title to the Property and the validity and priority of the lien or estate hereof against the claims and demands of all Persons whomsoever.

(b) Mortgagor shall execute, acknowledge and deliver, from time to time, such further instruments as Mortgagee may reasonably require to accomplish the purposes of this Mortgage. Mortgagor hereby irrevocably authorizes and appoints Mortgagee as its attorney-in-fact, coupled with an interest, for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Mortgage.

(c) Mortgagor shall pay all intangible taxes, recording taxes, filing, registration and recording fees, all re-filing, re-registration and re-recording fees, and all expenses incident to the execution, filing, recording and acknowledgment of this Mortgage, any security agreement, mortgage, modification or amendment supplemental hereto and any document, instrument and agreement of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of the execution, delivery, filing, registration and recording of the Note, this Mortgage or any of the other Loan Documents, any security agreement or mortgage modification or amendment supplemental hereto or any document instrument or agreement of further assurance.

(d) Mortgagor hereby indemnifies and holds Mortgagee harmless from any sales or use tax that may be imposed on Mortgagee by virtue of the Loan other than taxes imposed on the income, stock or assets of Mortgagee.

Section 2.3. No Transfer. Mortgagor shall not and shall not cause, allow, or permit, and shall prevent from occurring, a Transfer, except as expressly permitted pursuant to the Loan Agreement. In the event of any violation of this Section 2.3, Mortgagee may, at its option, accelerate and declare the outstanding Indebtedness immediately due and payable, without notice or demand, and whether or not Mortgagee shall have commenced any foreclosure proceeding or

other action for the enforcement of its rights and remedies under any Loan Document with respect to any Property or all or any portion of the Security Interest Property.

ARTICLE 3 ASSIGNMENT OF LEASES AND RENTS

Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended that this Mortgage constitute a present, absolute assignment and not an assignment for additional security only. This Article 3 presently gives Mortgagee the right to collect Rents and to apply Rents in partial payment of the Loan Obligations and otherwise in accordance with the Loan Agreement. Mortgagor intends that the Rents and Leases be absolutely assigned and no longer be, during the term of this Mortgage, property of Mortgagor or Mortgagor's estate, as defined by 11 U.S.C. §541. If any law exists requiring Mortgagee to take actual possession of the Property (or some action equivalent to taking possession of the Property, such as securing the appointment of a receiver) for Mortgagee to "perfect" or "activate" the rights and remedies of Mortgagee as provided herein, Mortgagor waives the benefit of such law. Such assignment to Mortgagee shall not be construed to bind Mortgagee to perform any covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee, and notwithstanding this Mortgage, Mortgagor shall remain liable for any obligations undertaken by Mortgagor pursuant to any Lease. Subject to the terms of this Article 3 and the Loan Agreement, Mortgagee grants to Mortgagor a license, revocable as hereinafter provided, to operate and manage the Property and to collect and use the Rents. If an Event of Default occurs (except, for any Event of Default described in Section 8.1(f) of the Loan Agreement, for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license granted to Mortgagor herein may, at Mortgagee's election, be revoked by Mortgagee, and Mortgagee shall immediately be entitled to possession of all Rents then or thereafter payable (including Rents past due and unpaid) whether or not Mortgagee enters upon or takes control of the Property. Any Rents collected by Mortgagor from and after the date on which an Event of Default occurred and is continuing shall be held by Mortgagor in trust for Mortgagee. Mortgagor hereby grants and assigns to Mortgagee the right, at Mortgagee's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect Rents with or without taking the actual possession of the Property or any equivalent action. Mortgagee may apply any Rents collected after the license granted herein is revoked in Mortgagee's sole and absolute discretion to pay the Loan Obligations in such order and in such manner as Mortgagee shall elect.

ARTICLE 4 ASSIGNMENT OF CONTRACTS

Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to the Contracts to the maximum extent allowable under all Legal Requirements and to the maximum extent allowable under the terms of each individual Contract, it being intended that this assignment be an absolute assignment from Mortgagor to Mortgagee and not merely the granting of a security interest. Until the occurrence of an Event of Default, Mortgagor may retain, use and enjoy the benefits of the Contracts. Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default

described in Section 8.1(f) of the Loan Agreement for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license described in the preceding sentence shall, upon Mortgagee's election, be automatically revoked, and Mortgagee may elect to exercise any and all of Mortgagee's rights and remedies hereunder.

Without limiting the generality of the foregoing, Operating Lessee hereby assigns to Mortgagee as further security for the Borrower's obligation to pay the Indebtedness and for the performance and observance of the terms, covenants and conditions of the Loan Documents, all of Operating Lessee's right, title and interest in and to the Franchise Agreement, subject to the terms of the Comfort Letter, including, without limitation, all the rights, privileges and prerogatives of Operating Lessee to terminate or cancel the Franchise Agreement, or modify, change, supplement, alter or amend the Franchise Agreement, but Mortgagee shall only exercise the rights, privileges and prerogatives of such assignment during the existence of an Event of Default.

ARTICLE 5 SECURITY AGREEMENT AND FIXTURE FILING

As additional security, Mortgagor, as debtor, hereby grants to Mortgagee, as secured party, a continuing security interest in the portion of the Property which is or may be subject to the provisions of the UCC which are applicable to secured transactions, and in any property as to which a security interest can be created or perfected, now existing or hereafter coming into existence, and all substitutions, replacements, renewals and additions to and all products and Proceeds of the foregoing (collectively, the "Security Interest Property"). This Mortgage is intended to be and shall be effective as a security agreement and "fixture filing" under the UCC or other law applicable to the creation of liens on and security interests in personal property and fixtures. As further security for the payment and performance of the Loan Obligations, this Mortgage shall constitute a financing statement under the UCC with Mortgagor, as debtor, and Mortgagee, as secured party. To the extent permitted by law, Mortgagor hereby authorizes Mortgagee to file financing and continuation statements necessary to continue the lien of and security interest evidenced by this Mortgage with respect to the Security Interest Property (and confirms that Mortgagee is a person entitled to file a record, and that Mortgagor has authorized all such filings, within the meaning of Section 9-509 of the UCC). The principal places of business and mailing addresses of Mortgagor, as debtor, and Mortgagee, as secured party, respectively, are as set forth on page one hereof. Mortgagor's location, for purposes of Section 9-307 of the UCC, is Mortgagor's state of formation/incorporation/organization as set forth on page 1 hereof. Information relative to the security interest created hereby may be obtained by application to Mortgagee.

ARTICLE 6 REMEDIES

Section 6.1. Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Indebtedness and all other Loan Obligations shall, at the option of Mortgagee, become due and payable without notice or demand, time being of the essence; and any omission on the part of Mortgagee to exercise such option when entitled to do so shall not be considered as a

waiver of such right. Mortgagor hereby expressly waives presentment, demand for payment, notice of protest, notice of dishonor, notice of intent to accelerate the maturity of the Indebtedness and notice of acceleration of the maturity of the indebtedness secured hereby. Notwithstanding anything contained to the contrary herein, the Indebtedness shall be accelerated and immediately due and payable, without any election by Mortgagee, upon the occurrence of an Event of Default described in Section 8.1(f) of the Loan Agreement.

Section 6.2. Default Remedies.

(a) If an Event of Default shall have occurred and be continuing, this Mortgage may, to the maximum extent permitted by law, be enforced, and Mortgagee may exercise any right, power or remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or at law or in equity, and, without limiting the generality of the foregoing, Mortgagee may, personally or by its agents, to the maximum extent permitted by law:

(i) enter into and take possession of the Property or any part thereof, exclude Mortgagor and all Persons claiming under Mortgagor whose claims are junior to this Mortgage, wholly or partly therefrom, and use, operate, manage and control the Property or any part thereof either in the name of Mortgagor or otherwise as Mortgagee shall deem best, and upon such entry, from time to time at the expense of Mortgagor and the Property, make all such repairs, replacements, alterations, additions or improvements to the Property or any part thereof as Mortgagee may reasonably deem proper and, whether or not Mortgagee has so entered and taken possession of the Property or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that Mortgagee may be authorized to make under this Mortgage, the remainder to be applied to the payment of the Loan Obligations until the same shall have been repaid in full, take possession of all security deposits held with respect to the Property, whether or not Mortgagee enters upon or takes control of the Property and regardless of where any such security deposits are deposited or located; if Mortgagee demands or attempts to take possession of the Property or any part thereof in the exercise of any rights hereunder, Mortgagor shall promptly turn over and deliver complete possession thereof to Mortgagee;

(ii) effect new Permits and Contracts; amend, alter, renew, cancel or surrender existing Permits and Contracts; and make concessions to the Governmental Authorities, the Contractors, warrantors and others;

(iii) personally or by agents, with or without entry:

(x) invoke the power of sale and pursuant to the procedures prescribed by law as a result thereof, sell the Property or any part thereof, or cause the Property or any part thereof to be sold at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner and in such order as may be required by law, or, in the absence of any such requirements, as Mortgagee may deem appropriate and from time to time adjourn any such sale by announcement at the time and place specified for such sale or for such adjourned sale without further notice, except such as may be required by law;

(y) proceed to protect and enforce Mortgagee's rights under this Mortgage, by suit for specific performance of any covenant contained herein or in the Loan Documents or in aid of the execution of any power granted herein or in the Loan Documents, or for the foreclosure of this Mortgage (as a mortgage or otherwise) and the sale of the Property or any part thereof under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as Mortgagee shall elect, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on, and security interest in, the remaining portion of the Property; or

(z) exercise any or all of the remedies available to a secured party under the UCC, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Security Interest Property and exclude therefrom Mortgagor and all Persons claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to, and exercise all rights and powers of Mortgagor in respect of the Security Interest Property, or any part thereof; if Mortgagee demands or attempts to take possession of the Security Interest Property in the exercise of any rights hereunder, Mortgagor shall promptly turn over and deliver complete possession thereof to Mortgagee;

(2) without further notice to or demand upon Mortgagor (except those otherwise required hereby or by the Loan Agreement), make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Security Interest Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith, which expenses shall thereafter become part of the Loan Obligations secured by the lien of this Mortgage;

(3) require Mortgagor to assemble the Security Interest Property or any portion thereof, at a place designated by Mortgagee and reasonably convenient to both parties, and promptly to deliver the Security Interest Property to Mortgagee, or an agent or representative designated by Mortgagee, and its agents and representatives, shall have the right to enter upon the premises and property of Mortgagor to exercise Mortgagee's rights hereunder;

(4) sell, lease or otherwise dispose of the Security Interest Property, with or without having the Security Interest Property at the place of sale, and upon such terms and in such manner as Mortgagee may determine (and Mortgagee may be a purchaser at any such sale, provided, however, that Mortgagee may dispose of the Security Interest Property in accordance with Mortgagee's rights and remedies in respect of the Property pursuant to the provisions of this Mortgage in lieu of proceeding under the UCC); and

(5) unless the Security Interest Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee, as the case may be, shall give Mortgagor at least ten (10) days prior notice of the

time and place of any sale of the Security Interest Property or other intended disposition thereof, which notice Mortgagor agrees is commercially reasonable.

(b) Additionally, if Operating Lessee shall be in default under the Franchise Agreement, then Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Franchise Agreement on the part of Operating Lessee to be performed or observed. Mortgagee and any Person designated by Mortgagee shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If the franchisor shall deliver to Mortgagee a copy of any notice sent to Operating Lessee concerning a default under the Franchise Agreement, such notice shall constitute full protection to Mortgagee for any action taken or omitted to be taken by Mortgagee in good faith, in reliance thereon. Any sums expended by Mortgagee pursuant to this Section shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Mortgagee, shall be deemed to constitute a portion of the Indebtedness, shall be secured by the Lien of this Mortgage and the other Loan Documents, and shall be immediately due and payable upon demand by Mortgagee therefor.

(c) If an Event of Default shall have occurred, Mortgagee, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Property, without notice or demand, and without regard to the adequacy of the security for the Loan Obligations or the solvency of Mortgagor. Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers 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 and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

(d) In any sale under any provision of this Mortgage or pursuant to any judgment or decree of court, the Property, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as Mortgagee may elect, without regard to the right of Mortgagor or any Person claiming under Mortgagor to the marshalling of assets. The purchaser at any such sale shall take title to the Property or the part thereof so sold free and discharged of the estate of Mortgagor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Upon the completion of any such sale by virtue of this Section 6.2(d), Mortgagee shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of Mortgagor's estate, right, title, interest, property, claim and demand in and to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the reasonable judgment of Mortgagee, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Mortgage, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Mortgagor in, to and under the Property, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all Persons claiming or who may claim the

same, or any part thereof, by, through or under Mortgagor. The powers and agency herein granted are coupled with an interest and are irrevocable.

(e) All rights of action under any Loan Document may be enforced by Mortgagee without the possession of the original Loan Documents and without the production thereof at any trial or other proceeding relative thereto.

Section 6.3. Application of Proceeds.

(a) All proceeds of any repayment of or recoveries on the Loan shall be applied to pay the Indebtedness in such order and in such manner as Mortgagee shall elect in Mortgagee's discretion.

(b) No sale or other disposition of all or any part of the Property pursuant to this Section 6.3 shall be deemed to relieve Mortgagor of its obligations under any Loan Document except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Loan Obligations, Mortgagor shall remain liable for any deficiency subject to Section 7.11.

(c) Upon any sale made under the powers of sale herein granted and conferred, the receipt given by Mortgagee will be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and their heirs, devisees, personal representatives, successors and assigns thereof will not, after paying such purchase money and receiving such receipt of Mortgagee, be obligated to see to the application thereof or be in any way answerable for any loss, misapplication or non-application thereof.

(d) Operating Lessee hereby acknowledges and agrees to the terms and provisions of Article 7 (Insurance, Casualty, Condemnation and Restoration) of the Loan Agreement as if the same were set forth at length herein.

Section 6.4. Right to Sue. Mortgagee shall have the right from time to time to sue for any sums required to be paid by Mortgagor under the terms of this Mortgage as the same become due, without regard to whether or not the entire Loan Obligations shall be, or have become, due and without prejudice to the right of Mortgagee thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

Section 6.5. Powers of Mortgagee. Mortgagee may at any time or from time to time renew or extend this Mortgage or (with the agreement of Mortgagor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release or reconvey any portion of the Property or any other security, and grant such extensions and indulgences in relation to the Loan Obligations, or release any Person liable therefor as Mortgagee may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Mortgage on or in any part of the Property, and without affecting the liability of any other Person liable for any of the Loan Obligations.

Section 6.6. Remedies Cumulative.

(a) No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Mortgage, or under applicable law, whether now or hereafter existing; the failure of Mortgagee to insist at any time upon the strict observance or performance of any of the provisions of this Mortgage or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) To the maximum extent permitted by law, Mortgagee shall be entitled to enforce payment and performance of any of the obligations of Mortgagor and to exercise all rights and powers under this Mortgage or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, 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 stipulated 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, in its discretion, may determine; every power or remedy given by any Loan Documents to Mortgagee, or to which Mortgagee is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

Section 6.7. Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption. To the maximum extent permitted by law, Mortgagor shall not at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Mortgage; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Property or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 6.2; and Mortgagor, to the maximum extent permitted by law, hereby waives all benefit or advantage of any such law or laws. Mortgagor, for itself and all who may claim under it, hereby waives, to the maximum extent permitted by law, any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any foreclosure of this Mortgage and (if an Event of Default shall have occurred) all notice or notices of seizure, and all right to have the Property marshaled upon any foreclosure hereof. Mortgagee shall not be obligated to pursue or exhaust its rights or remedies as against any other part of the Property, and Mortgagor hereby waives any right or claim of right to have Mortgagee proceed in any particular order.

Section 6.8. No Assumption by Mortgagee. Except as otherwise expressly set forth in any Loan Document, Mortgagee will not be deemed in any manner to have assumed any liabilities or obligations relating to the Property or any portion thereof. Mortgagor agrees that the exercise by Mortgagee of one or more of its rights and remedies under this Mortgage shall in no way be deemed or construed to make Mortgagee a mortgagee-in-possession.

Section 6.9. Waiver of Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Loan Obligations, or any part thereof.

Section 6.10. Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, power of sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then 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 proceedings had occurred.

ARTICLE 7 MISCELLANEOUS

Section 7.1. Reconveyance by Mortgagee. Upon payment in full of the Loan Obligations or a complete defeasance with respect to the Property which complies with the Loan Agreement (if the Loan Agreement provides for defeasance), Mortgagee shall release the lien of this Mortgage, or upon the request of Mortgagor, and at Mortgagor's expense, assign this Mortgage without recourse to Mortgagor's designee, or to the Person or Persons legally entitled thereto, by an instrument duly acknowledged in proper form for recording.

Section 7.2. Notices. All notices, demands, consents, requests or other communications that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in Section 12.6 of the Loan Agreement.

Section 7.3. Amendments; Waivers; Etc. This Mortgage cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in proper form for recording, signed by Mortgagor and Mortgagee.

Section 7.4. Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds Mortgagor and Mortgagee and their respective successors and assigns, and shall run with the Land.

Section 7.5. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties hereto and are not a part of this Mortgage.

Section 7.6. Severability. If any term or provision of this Mortgage or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Loan Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Property, then any payments made in respect of the Loan Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Mortgage (except to the extent otherwise required by applicable law) be deemed to be made (a) first, in respect of the portion of the Loan Obligations not secured by the lien of this Mortgage, (b) second, in respect

of the portion of the Loan Obligations secured by the lien of this Mortgage, but which lien is on less than all of the Property, and (c) last, to the portion of the Loan Obligations secured by the lien of this Mortgage, and which lien is on all of the Property.

Section 7.7. Applicable Law. This Mortgage shall be governed by and construed in accordance with the laws of the State in which the Property is located.

Section 7.8. Limitation of Interest. This Mortgage is subject to the limitations on the payment of interest set forth in Section 8 of the Note.

Section 7.9. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under all Loan Documents.

Section 7.10. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF MORTGAGOR AND/OR MORTGAGEE WITH RESPECT TO ANY LOAN DOCUMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS MORTGAGE OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH OF MORTGAGOR AND MORTGAGEE AGREE THAT THE OTHER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF MORTGAGOR AND MORTGAGEE IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT TO MORTGAGEE TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN MORTGAGOR AND MORTGAGEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

Section 7.11. Bankruptcy Matters.

(a) In any case commenced by or against either Borrower or Operating Lessee (in either case, the "Reorganized Party") under Chapter 11 of the Federal Bankruptcy Code or any similar provision thereof or any similar federal or state statute (a "Reorganization Proceeding"), Mortgagee shall have the exclusive right to exercise any voting rights in respect of this Mortgage and the Indebtedness and neither Borrower nor Operating Lessee shall have the right to, and may not, vote affirmatively in favor of any plan of reorganization unless Mortgagee grants its permission thereto or Mortgagee votes to accept such plan.

(b) In any Reorganization Proceeding with respect to the Reorganized Party (i) either of Borrower or Operating Lessee, as applicable, that is not the Reorganized Party (the "Other Party"), shall file a proof of claim in respect of its claims against the Reorganized Party and shall send to Mortgagee a copy thereof together with evidence of the filing with the

appropriate court or other authority, (ii) the Other Party should fail to file such proof of claim by the tenth (10th) Business Day before the last day for filing proofs of claim, or if Mortgagee reasonably believes that the proof of claim so filed is less than the proper amount thereof, then Mortgagee may file such proof of claim, or corrected proof of claim, on behalf of the Other Party, and (iii) if objection is made to the allowance of any claim of Mortgagee, Mortgagee shall have the right to intervene and fully participate in such proceedings and if such rights are denied and the Other Party fails to defend such claim, then Mortgagee may defend such claim in the name of the Other Party and the Other Party grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising any and all rights and remedies available to Mortgagee at law and in equity.

(c) The Other Party unconditionally assigns, transfers and sets over to Mortgagee all of such Other Party's claims and rights to the payment of damages arising from any rejection by the Reorganized Party of the Operating Lease under the Federal Bankruptcy Code. Mortgagee and the Other Party shall proceed jointly or in the name of the Other Party in respect of any claim, suit, action or proceeding relating to the rejection of the Operating Lease, including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents under the Federal Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Indebtedness shall have been satisfied and discharged in full. Any amounts received by Mortgagee or the Other Party as damages arising out of the rejection of the Operating Lease as aforesaid shall be applied to all costs and expenses of Mortgagee (including, without limitation, attorneys' fees and costs) incurred in connection with the exercise of any of its rights or remedies in accordance with the Loan Documents.

Section 7.12. Exculpation. This Mortgage and the obligations of Mortgagor hereunder are and shall be subject to and limited by the exculpation provisions of Section 17 of the Note.

Section 7.13. Exhibits. The information set forth on the cover, heading and recitals hereof, and the Exhibits attached hereto, are hereby incorporated herein as a part of this Mortgage with the same effect as if set forth in the body hereof.

ARTICLE 8 STATE-SPECIFIC PROVISIONS

Section 8.1. Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 8 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 8 shall control and be binding.

Section 8.2. In addition to the rights and remedies set forth in Article 6 (Remedies), at the option of Mortgagee this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and Mortgagee, or its agent, may sell the Property or any part of the Property at one or more public sales before the door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale, together with a description of the Land, at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper of

general circulation published in said county or counties, as may be required. Any such sale shall be held between the hours of 11 A.M. and 4 P.M. on the day designated for the exercise of the power to sell the Property. At any such sale, Mortgagee may execute and deliver to the purchaser a conveyance of the Property or any part of the Property. At any such sale, Mortgagee may also bid at said sale and in the form of cash, cash equivalents and/or cancellation of all or any part of the secured indebtedness, or any combination thereof, and purchase the Property, or any part or parcel thereof, if the highest bidder therefor. In the event of any sale under this Mortgage by virtue of the exercise of the powers of sale herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee in its sole discretion may elect. If only a portion of the Property is sold pursuant to the power of sale provided herein and if the Loan Obligations remain outstanding, the portion of the Property not sold shall continue as security for the Loan Obligations and Mortgagee may exercise the power of sale granted herein with respect to the remaining portion of the Property.

Any sale may be adjourned by Mortgagee, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

Section 8.3. Suretyship Waivers.

(a) Operating Lessee will benefit, directly and indirectly, from Borrower's obligation to pay the Indebtedness and perform its obligations under the Loan Documents, as applicable.

(b) Operating Lessee waives:

(i) any right to require Mortgagee to proceed against Borrower or any other person or to proceed against or exhaust any security held by Mortgagee at any time or to pursue any other remedy in Mortgagee's power before proceeding against such Operating Lessee;

(ii) any defense or rights based upon or arising out of: (A) any legal disability or other defense of Borrower, any guarantor of any other person or by reason of the cessation or limitation of the liability of Borrower or any guarantor from any cause other than full payment of all sums payable under the Note and the other Loan Documents; (B) any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (C) any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (D) any failure by Mortgagee to obtain collateral for the Indebtedness or failure by Mortgagee to perfect a lien on any portion of or interest in the Property; (E) presentment, demand, protest and notice of any kind; (F) any failure of Mortgagee to give notice of sale or other disposition of any Property (or any portion thereof or interest therein) to Borrower or to any other Person or any defect in any notice that may be given in connection with any such sale or disposition; (G) any failure of Mortgagee to comply with applicable laws in connection

with the sale or other disposition of any Property (or any portion thereof or interest therein), including any failure of Mortgagee to conduct a commercially reasonable sale or other disposition of any Property (or any portion thereof or interest therein); (H) any use of cash collateral under Section 363 of the Federal Bankruptcy Code; (I) any agreement or stipulation entered into by Mortgagee with respect to the provision of adequate protection in any bankruptcy proceeding; (J) any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (K) the avoidance of any security interest in favor of Mortgagee for any reason; (L) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding, including any discharge of, or bar or stay against collecting, all or any of the obligations evidenced by the Note or owing under any of the Loan Documents; (M) Operating Lessee's, or any other party's, resignation of the portion of any obligation secured by the Mortgage to be satisfied by any payment from Borrower or any such party; or (N) an election of remedies by Mortgagee even though the election of remedies, such as non-judicial foreclosure with respect to security for the Loan or any other amounts owing under the Loan Documents, has destroyed Operating Lessee's rights of subrogation and reimbursement against Borrower;

(iii) all rights and defenses that Operating Lessee may have because any of Indebtedness is secured by real property. This means, among other things: (A) Mortgagee may collect from Operating Lessee without first foreclosing on any real or personal property collateral pledged by Borrower; (B) if Mortgagee forecloses on any real property collateral pledged by Borrower, (1) the amount of the Indebtedness may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) Mortgagee may collect from Operating Lessee even if Borrower, by foreclosing on the real property collateral, has destroyed any right Operating Lessee may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Operating Lessee may have because any of the Indebtedness is secured by real property; and

(iv) except as may be expressly and specifically permitted herein, any claim or other right which Operating Lessee might now have or hereafter acquire against Borrower or any other person that arises from the existence or performance of any obligations under the Loan Documents, including any of the following: (A) any right of subrogation, reimbursement, exoneration, contribution, or indemnification; or (B) any right to participate in any claim or remedy of Mortgagee against Borrower or any collateral security therefor, whether or not such claim, remedy or right arises in equity or under contract, statute or common law.

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IN WITNESS WHEREOF, this Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing has been duly executed by Mortgagor as of the day and year first above written.

BORROWER:

APPLE EIGHT SPE BIRMINGHAM, INC.,
a Virginia corporation

By: _____

Name: _____

Title: _____

Justin G. Knight
President

STATE OF Virginia)
City)
COUNTY OF Richmond)

I, Amy Devol Kramer, a Notary Public for Virginia, do hereby certify that Justin Knight, the President of APPLE EIGHT SPE BIRMINGHAM, INC., a Virginia corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

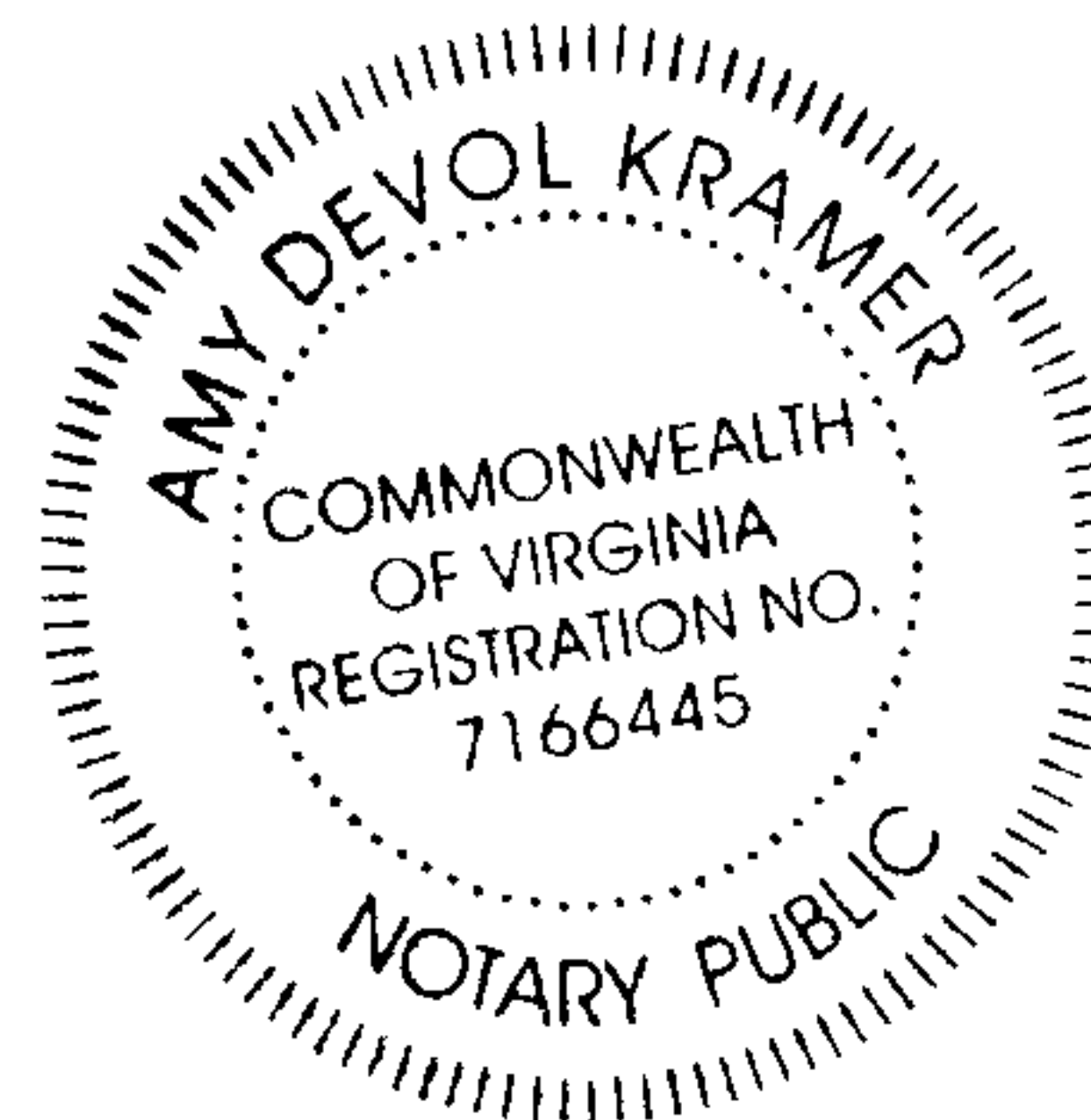
Witness my hand and seal this 21 day of May 2008.

Amy Devol Kramer (SEAL)

Notary Public

My commission expires: 12 31 12

Notary Registration Number: _____



OPERATING LESSEE:

APPLE EIGHT SERVICES BIRMINGHAM,
INC.,
a Virginia corporation

By: _____

Name: _____

Title: _____

Justin G. Knight
President

STATE OF Virginia)
City)
COUNTY OF Richmond)

I, Amy Devol Kramer, a Notary Public for Virginia, do hereby
certify that Justin Knight, the President of APPLE EIGHT SERVICES
BIRMINGHAM, INC., a Virginia corporation, personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 21 day of May 2008.

Amy Devol Kramer (SEAL)

Notary Public

My commission expires: 12-31-12

Notary Registration Number: _____

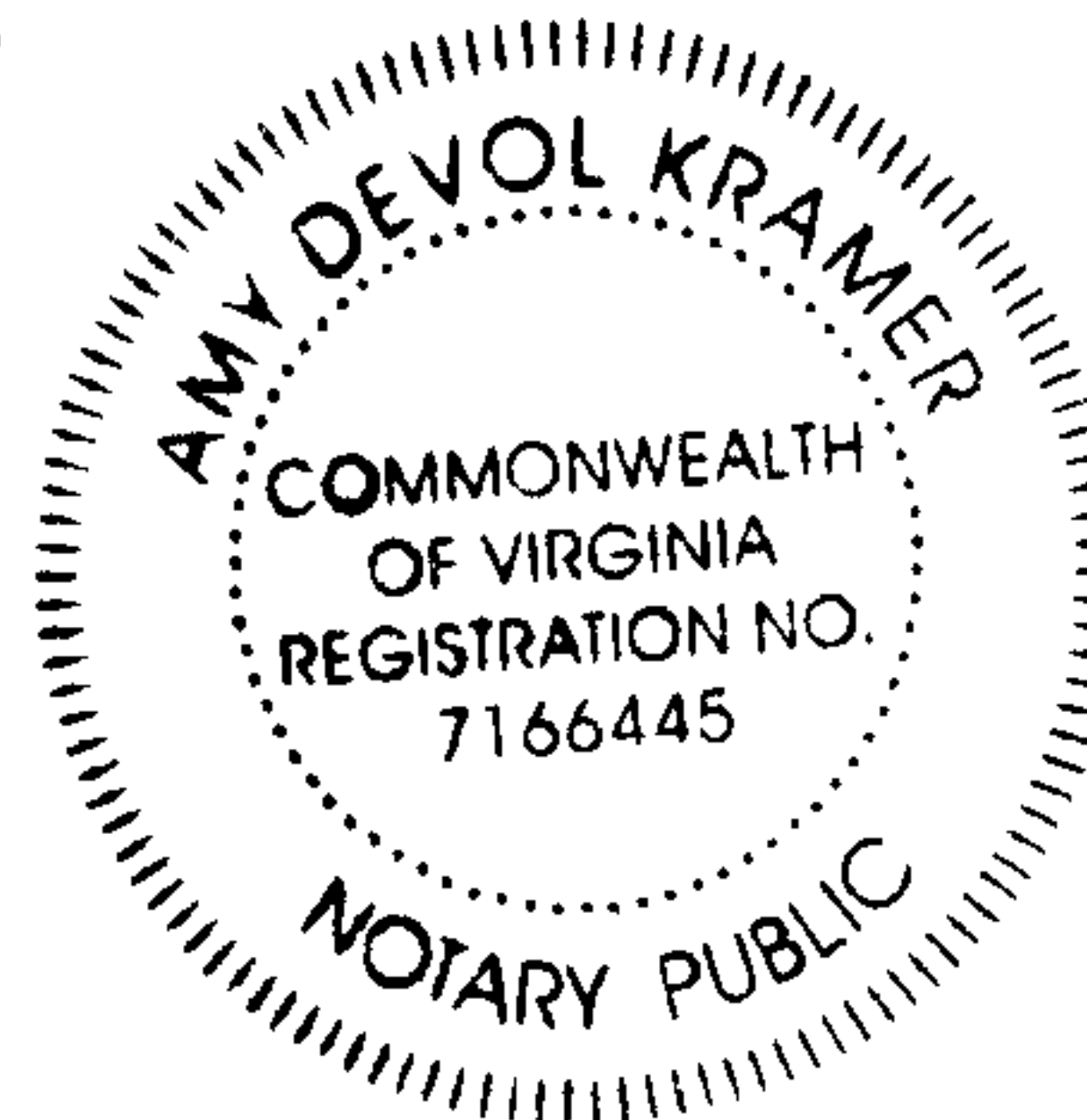



Exhibit A

DESCRIPTION OF PROPERTY


20080528000216100 23/23 \$78.00
Shelby Cnty Judge of Probate, AL
05/28/2008 11:25:10AM FILED/CERT

A parcel of land situated in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, said point also being on the West boundary line of Lot 1, of Dewberry's Subdivision as recorded in Map Book 9, page 11, in the Office of the Judge of Probate, Shelby County, Alabama; thence run North $00^{\circ}01'03''$ West along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ line and said West lot line for a distance of 150.00 feet to the Point of Beginning; thence leaving said $\frac{1}{4}$ - $\frac{1}{4}$ line and said West lot line run South $89^{\circ}58'57''$ West for a distance of 368.00 feet; thence run North $68^{\circ}11'03''$ West for a distance of 175.55 feet to the Southeasterly right of way of Inverness Center Drive (ROW varies); said point also being the point of curvature of a curve to the left, having a radius of 375.00 feet, a central angle of $14^{\circ}31'16''$ a chord length of 94.79 feet and a chord bearing of North $19^{\circ}54'23''$ East; thence continue along the arc of said curve and along said right of way for a distance of 95.04 feet to the Point of Tangency of said curve; thence run North $12^{\circ}38'45''$ East along said right of way for a distance of 78.22 feet; thence run North $03^{\circ}50'26''$ East along said right of way for a distance of 96.13 feet; to the point of curvature of a curve to the right, having a radius of 361.25 feet, a central angle of $24^{\circ}42'04''$ a chord length of 154.54 feet and a chord bearing of North $16^{\circ}11'28''$ East; thence continue along the arc of said curve and along said right of way for a distance of 155.74 feet; thence leaving said right of way run South $73^{\circ}17'13''$ East for a distance of 258.79 feet; thence run South $80^{\circ}00'58''$ East for a distance of 187.24 feet to the West line of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, said point also being on the West line of Lot 1, of Dewberry's Subdivision as recorded in Map Book 9, page 11 in the Office of the Judge of Probate, Shelby County, Alabama; thence run South $00^{\circ}01'03''$ West along said $\frac{1}{4}$ - $\frac{1}{4}$ line and said West lot line for a distance of 368.01 feet to the Point of Beginning.

Together with those rights granted in the Access Road Construction and Easement Agreement and Drainage Easement Agreement recorded in instrument 20030618000380510, in the Probate Office of Shelby County, Alabama.