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Shelby Cnty Judge of Probate, AL  
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*Notice to Recorder: This Document To Be Recorded Both as a Mortgage and a Fixture Filing*

Recording Requested By, Document Prepared By, and When Recorded Mail to:

James P. Kousoulas

Bryan Cave LLP

3161 Michelson Drive, Suite 1500

Irvine, CA 92612

(949) 223-7177

**MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
[Shelby County]**

Dated: effective as of June 21, 2012

R&L FOODS, LLC, a Delaware limited liability company  
with a mailing address set forth on page 1 herein, "**Mortgagor**")

CITY NATIONAL BANK,  
with a mailing address set forth on page 1 herein, as "**Mortgagee**"

Legal Description and Parcel Identification Number may be found in Exhibit A attached hereto.

THIS INSTRUMENT IS EFFECTIVE AND SHALL REMAIN EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE HEREIN DESCRIBED PURSUANT TO SECTION 7-9A-502(C), CODE OF ALABAMA 1975 AS AMENDED. THE MAILING ADDRESS OF MORTGAGEE AND THE ADDRESS OF MORTGAGOR ARE SET FORTH WITHIN.

*Mortgage: Store # 1252 (Valley Avenue) AL 3/Store # 1253 (Huffman) AL 4/Store # 1257 (Midfield) AL 7/Store #1258 (Highway 280) AL /8  
Store # 1261 (East South) AL 10/Store # 1264 (West South) AL 13/Store # 1265 (Vaughn Road) AL 14/Store # 1266 (Ann Street) AL 15/  
Store #1308 (Madison Avenue) AL 17/Store # 1658 (Trussville) AL 22/Store # 1736 (Cahaba Valley) AL 36/Store # 1757 (Clanton) AL 24/  
Store # 1981 (Morgan Road) AL 25/Store # 2561 (Edwards Lake) AL 28/Store # 3942 (North Chase) AL 29/Store # 4218 (Taylor Road) AL 30/*

MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), dated effective as of June 21, 2012, by R&L FOODS, LLC, a Delaware limited liability company, "Borrower" hereunder, having a principal business address at 154 Creekside Lane, Winchester, Virginia 22602 ("Mortgagor"), in favor of CITY NATIONAL BANK, having an address at 555 South Flower Street, 24th Floor, Los Angeles, California 90071, Attention: Tammy Welch, as Mortgagee hereunder ("Mortgagee").

MORTGAGOR HEREBY IRREVOCABLY MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, GRANTS A SECURITY INTEREST IN, AND ASSIGNS unto the Mortgagee, all of its present and future estate, right, title and interest in and to that certain real property more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Property") and all rights to the Real Property which may be acquired by the Mortgagor at any time, INCLUDING POWER OF SALE and all rights, privileges, options, elections and other benefits of every name and nature; together with all present and future easements and rights used in connection therewith or as a means of access thereto; together with:

(i) all right, title and interest of the Mortgagor in, to, under or derived from all buildings, structures, facilities and other improvements of every kind and description now or hereafter located on the Real Property, including all parking areas, roads, driveways, walks, fences, walls, drainage facilities and other site improvements, all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment, fixtures and facilities, all plumbing, lighting, heating, ventilating, air-conditioning, refrigerating, incinerating, compacting, fire, protection and sprinkler, surveillance and security, public address and communications equipment, fixtures and systems, all awnings, floor coverings, partitions, elevators, escalators, motors, machinery, pipes, fittings and other items of equipment and personal property of every kind and description now or hereafter located on the Real Property, as defined herein, or attached to the improvements which by the nature of their location thereon or attachment thereto are real property under applicable law; and including all materials intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, structures, facilities and improvements, or of or to any Equipment as defined below therein all of which materials shall be deemed to be part of the Real Property immediately upon delivery thereof on the Real Property and to be part of the improvements immediately upon their incorporation therein (the foregoing being collectively the "Improvements"; and the Real Property with the Improvements thereon and Equipment (as defined below) therein and appurtenant rights thereto being collectively called the "Property");

(ii) all estate, right, title and interest of Mortgagor in, to, under or derived from all machinery, equipment, appliances, fixtures and accessions thereof and renewals and replacements thereof and substitutions therefor (including, but not limited to, chairs, tables, counters, furniture, cookware, drink dispensers, ice makers, electronic equipment, computers, security systems, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air conditioning systems, grills, stoves, ranges, fryers, refrigerators, tools, machinery, engines, motors, boilers, incinerators, conduits, vacuum cleaning systems, electrical signs, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, recreational items, windows, structural cleaning rigs, or advertising signs), other customary franchise equipment and other tangible property of every kind and nature whatsoever owned by the Mortgagor, or in which the Mortgagor has or shall have an interest, now or hereafter located upon the Real Property, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Real Property or the Improvements (hereinafter collectively called the "Equipment");

(iii) all estate, right, title and interest of the Mortgagor in, to, under or derived from all tenements, hereditaments and appurtenances now or hereafter relating to the Real Property; the



streets, roads, sidewalks and alleys abutting the Real Property; all air space and rights to use air space above the Real Property; all development, operating or similar rights appurtenant to the Real Property (including, without limitation, all rights arising from reciprocal access agreements, joint occupancy, use or development agreements, and parking agreements); all water and water rights appurtenant or relating to the Real Property; all rights of ingress and egress now or hereafter appertaining to the Real Property; and all easements, licenses and rights of way now or hereafter appertaining to the Real Property;

(iv) all estate, right, title and interest of the Mortgagor in, to, under or derived from all contract rights, chattel paper, instruments, general intangibles, computer hardware, software and intellectual property, accounts, guaranties and warranties, letters of credit, and documents, in each case relating to the Property or to the present or future operation or occupancy of the Property, and all plans, designs, blueprints, specifications, maps, surveys, studies, books of account, records, files, insurance policies, guarantees and warranties, all relating to the Property or to the present or future operation or occupancy of the Property, all architectural, engineering, construction and management contracts, all supply and service contracts for water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utilities relating to the Property, and all deposits or other security or advance payments made by or on behalf of Mortgagor under any of the foregoing agreements or contracts and all other agreements affecting or relating to the use, enjoyment or occupancy of the Property;

(v) all estate, right, title and interest of the Mortgagor in, to, under and derived from all leases of or relating to the Property (together with all amendments, supplements, consolidations, replacements, restatements, extensions, renewals and other modifications of any thereof), if any, now or hereafter in effect, whether or not of record (the "Leases") including, but not limited to, cash and securities deposited thereunder, advance rentals, deposits or payments or a similar nature and the right to receive and collect the rents, income, proceeds, issues and profits payable thereunder; and the right to bring actions and proceedings under the Leases or for the enforcement thereof and to do anything which the Mortgagor or any lessor is or may become entitled to do under the Leases;

(vi) all estate, right, title and interest of the Mortgagor in, to, under or derived from all rents, royalties, issues, profits, receipts, revenue, income, earnings and other benefits now or hereafter accruing with respect to all or any portion of the Real Property, including all rents and other sums now or hereafter payable pursuant to the Leases all other sums now or hereafter payable with respect to the use, occupancy, management, operation or control of the Property and all other claims, rights and remedies now or hereafter belonging or accruing with respect to the Real Property, including oil, gas and mineral royalties (collectively, "Rents"), all of which the Mortgagor hereby irrevocably directs to be paid to the Mortgagee, subject to the license granted to the Mortgagor pursuant to Section 2.7, to be held, applied and disbursed, as provided in this Mortgage;

(vii) all estate, right, title and interest of the Mortgagor in, to, under or derived from all licenses, authorizations, certificates, variances, consents, approvals and extensions, improvements, betterment, renewals, substitutions and replacements of, and additions and appurtenances to, any of the Property hereafter acquired by or released to the Mortgagor or constructed or located on, or attached to, the Real Property;

(viii) all estate, right, title and interest of the Mortgagor in, to, under or derived from all claims and proceeds of any sale, transfer, taking by condemnation (or any proceeding or purchase in lieu thereof, financing, refinancing or a conversion into cash or liquidated claims, whether voluntary or involuntary, of any of the Property and all judgments, damages, awards, settlements and compensation (including interest thereon) heretofore or hereafter made to the present and all subsequent owners of any of the Property for any injury to or decrease in the value thereof for any reason, and all claims therefor (including but not limited to all claims arising from any defect in or



with respect to the design or construction of all or any part of the Improvements and damage resulting therefrom), including all insurance claims and proceeds and awards and title insurance proceeds under any title insurance policy now or hereafter held by the Mortgagor, and all rights, dividends and other claims and awards of any kind whatsoever (including damage, condemnation secured, unsecured, priority and bankruptcy claims and awards) now or hereafter relating to the Property, all of which the Mortgagor hereby irrevocably directs be paid to the Mortgagee to the extent provided hereunder, to be held, applied and disbursed as provided in the Loan Agreement (as below defined);

(ix) all estate, right, title and interest of the Mortgagor in, to, under or derived from all inventory held or maintained at the Property, or otherwise used in the ownership or operation of the Property (including, without limitation, all food and paper inventory together with all additions and accessions thereto, replacements therefor, products thereof and documents therefor) (collectively, the "Inventory");

(x) to the extent not otherwise included herein, and to the extent related to the Property, all estate, right, title and interest of Mortgagor in all accounts (including health-care insurance receivables), chattel paper (whether tangible or electronic), commercial tort claims, contracts, deposit accounts, documents, general intangibles (including payment intangibles and software), goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities and all other investment properties, supporting obligations and any and all proceeds of any thereof, wherever located, whether now owned and hereafter acquired, as such terms are defined in the Uniform Commercial Code, as it may be in effect, of the State in which the Property is located; and

(xi) all estate, right, title and interest of the Mortgagor in, to, under or derived from all products and proceeds of any and all of the above items (i) through (x) (all such items (i) through (xi) being sometimes referred to as the "Collateral"). Mortgagee acknowledges that the Collateral does not include the Excluded Collateral (as defined in the Loan Agreement) or a security interest in the Franchise Agreements, but does include a security interest in the proceeds of the Franchise Agreements and any claims (including commercial tort claims) arising under the Franchise Agreements.

**TO HAVE AND TO HOLD** the Collateral and all parts thereof unto Mortgagee, its successors and assigns forever, subject however to the terms and conditions herein:

**FOR THE PURPOSE OF SECURING:**

ONE. Payment of the indebtedness evidenced by those certain two (2) Term Notes, dated as of June 21, 2012, executed by the Mortgagor in favor of the Mortgagee, in the original aggregate principal amount of \$26,756,000.00 including all amendments, restatements, renewals, replacements, extensions or modifications thereof (collectively, the "Note"), together with the interest thereon (including post-petition interest after commencement of a case under the U.S. Bankruptcy Code), fees, and all other amounts due under the Note or the Loan Agreement (as defined below) (including, without limitation, all Obligations as such term is defined in the Loan Agreement).

TWO. Performance of all covenants, warranties, and agreements of Mortgagor contained in and payment of the indebtedness evidenced by that certain Loan and Security Agreement dated as of June 21, 2012, between Mortgagor, as borrower, and Mortgagee, as lender (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement").



THREE. Payment of such further sums as Mortgagor or any successor in ownership hereafter may borrow from the Mortgagee when evidenced by another note or notes, reciting it is so secured, payable to Mortgagee or order and made by Mortgagor or any successor in ownership.

FOUR. Payment of all other moneys and performance of all other covenants, warranties and agreements of Mortgagor herein or in the Note, the Loan Agreement or the other Loan Documents (as defined below) agreed or provided to be paid by Mortgagor, including, but not limited to, all "Obligations" as such term is defined in the Loan Agreement (except that (i) the Environmental Indemnity Agreement executed by Mortgagor and WILLIAM R. REYNOLDS, an individual, and ROBERT LEE, an individual, dated as of June 21, 2012, and (ii) the General Continuing Guaranty executed by WILLIAM R. REYNOLDS, an individual, and ROBERT LEE, an individual, dated as of June 21, 2012, shall not in any way be secured by this Mortgage).

FIFTH. The performance of any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of Mortgagor to Mortgagee or to any of Mortgagee's subsidiaries or affiliates or successors arising under or in connection with any " **Interest Hedging Instrument(s)**" (as defined in the Loan Agreement) (collectively "**Hedging Obligations**"). The parties hereto acknowledge and agree that this Mortgage shall have first priority with respect to all of the Obligations secured hereby, including the Hedging Obligations (all such obligations being referred to collectively as the "**Loan Obligations**"). As provided below, in the event of a foreclosure of this Mortgage, in addition, but not by way of limitation to the terms of this Mortgage, the proceeds from any foreclosure sale of the Property shall be first applied to the payment of all of Mortgagor's Loan Obligations in such order as Mortgagee may elect in its sole discretion.

This Mortgage, the Loan Agreement, the Note, the other Loan Documents (as defined in the Loan Agreement), including without limitation, any interest rate risk management agreements relating to the Loan or any Interest Hedging Instrument) and any other agreements given by Mortgagor to Mortgagee to evidence or secure (or otherwise relating to) the indebtedness evidenced by the Note are hereafter sometimes referred to collectively as the "Loan Documents". The indebtedness and other obligations described in the foregoing Clauses ONE, TWO, THREE, FOUR and FIFTH are hereinafter sometimes referred to collectively as the "Secured Obligations."

**PROVIDED, HOWEVER**, that if Mortgagor shall pay, perform and discharge (or cause to be paid, performed and discharged) the Secured Obligations as and when the same shall become due and payable and are to be performed and discharged, then the liens, security interests, estates and rights granted by this Mortgage shall terminate; otherwise same shall remain in full force and effect.

#### MORTGAGOR COVENANTS AND AGREES THAT:

##### ARTICLE I.

##### COVENANTS

1.1 Performance of Note, Loan Documents and Mortgage. Mortgagor will pay the principal and interest, additional interest, fees, and other charges payable under the Loan Agreement, the Note and the other Loan Documents according to their respective terms, and will perform and comply with each and every term, covenant and condition hereof, and of the Loan Agreement, the Note and the other Loan Documents to which it is a party.



1.2 Warranty of Title.

(a) Mortgagor hereby represents and warrants to the Mortgagee and to the purchaser at any foreclosure sale that:

(i) Mortgagor is the owner of a valid fee interest in the Real Property and holds good and marketable title to the Improvements, free from all liens, security interests, leases, charges or other encumbrances subject only to the Permitted Liens, as defined in the Loan Agreement (the "Permitted Liens");

(ii) the Mortgagor is the owner of good and marketable title to the Equipment, the Inventory and all the other personal property encumbered by this Mortgage, free and clear of all liens, security interests, charges or other encumbrances other than Permitted Liens;

(iii) the Mortgagor has good and lawful right to grant a lien on the Real Property to the Mortgagee without the consent of any person other than those consents which have been obtained;

(iv) the lien created by this Mortgage constitutes a valid, binding and enforceable first priority lien on the Property, subject only to the Permitted Liens; and

(v) the Permitted Liens do not materially interfere with or materially adversely affect the use, value or operation of the Property.

(b) The Mortgagor shall (i) cause the representations and warranties in subsection (a) of this Section to continue to be true in each and every respect at all times prior to the reconveyance of this Mortgage, and (ii) preserve, protect, warrant and defend (A) the estate, right, title and interest of the Mortgagor in and to the Property, (B) the validity, enforceability and priority of the lien of this Mortgage, and (C) the right, title and interest of the Mortgagee and any purchaser at any sale of the Property hereunder or relating hereto, in each case against all other liens and claims whatsoever, subject only to the Permitted Liens.

(c) Upon the recording of this Mortgage in the county recording office of the county in which the Real Property is located and the consummation of the other actions contemplated by the Loan Agreement, the lien of this Mortgage shall be a perfected lien and fixture filing on the Property prior to all liens other than the Permitted Liens. Other than the Permitted Liens, there are no liens or encumbrances other than the lien of this Mortgage upon the Property or any portion thereof, and Mortgagor shall not grant or suffer to exist any other lien or encumbrance, except for Permitted Liens, upon the Property without Mortgagee's written approval.

(d) Mortgagor shall perform all acts that may be necessary to continue, maintain, preserve, protect and perfect the Property, the lien granted to the Mortgagee herein and the perfection and priority of such lien. Upon request by the Mortgagee, Mortgagor shall at its sole cost and expense (i) promptly correct any defect or error which may be discovered in this Mortgage or any financing statement or other document relating hereto, and (ii) promptly execute, acknowledge, deliver, record, and re-record, register and re-register, and file and re-file this Mortgage and any fixture filings, financing statements or other documents which Mortgagee may reasonably require from time to time (all in form and substance reasonably satisfactory to Mortgagee) in order (A) to effectuate, complete, perfect, continue or preserve the lien of this Mortgage on the Collateral, whether now owned or hereafter acquired, subject only to the Permitted Liens, (B) to correct or change the name of the Mortgagor following any change in its identity, sale of the Property, or (C) to effectuate, complete, perfect, continue or preserve any right, power or privilege granted or intended to be granted to the Mortgagee hereunder. Mortgagee is hereby irrevocably appointed the true and



lawful attorney of the Mortgagor and any subsequent owner of the Property to take, in its own name or in the name of the Mortgagor or any subsequent owner of the Property, all such actions as the Mortgagee may deem necessary in accordance with the prior sentence. Mortgagee may execute all necessary documents, deeds and instruments to effectuate the provisions of this Section, the Mortgagor or any subsequent owner of the Property hereby ratifying and confirming all that their said attorney or such substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor or any subsequent owner of the Property, if so requested in writing by the Mortgagee, shall ratify and confirm any such sale by executing and delivering to the Mortgagee any document or instrument which, in the judgment of the Mortgagee, is suitable or appropriate therefor.

1.3 Taxes, Liens and Other Charges. Subject to Section 1.16, the Mortgagor shall (i) duly and punctually pay all Impositions (as defined below) and provide evidence of such payment to Mortgagee at least five (5) Business Days (as defined in the Loan Agreement) before any fine, penalty, interest or cost may be added for nonpayment; (ii) duly and punctually file at least five (5) Business Days before delinquent all returns and other statements required to be filed with respect to any Imposition; and (iii) promptly notify the Mortgagee of the receipt by the Mortgagor of any notice of default in the payment of any Imposition or in the filing of any return or other statement relating to any Imposition and simultaneously furnish to Mortgagee a copy of such notice of default. The term "Impositions" means real and personal property taxes, other taxes, assessments and other governmental charges, ground rents, water, sewer and other or other rents, rates and charges, excises, levies, fees and other charges (public or private) which may be assessed, levied, confirmed or imposed on, or in respect of or be a lien upon the Property or other Collateral or any part thereof or any interest therein. Upon the occurrence and during the continuation of an Event of Default and at the request of Mortgagee, Mortgagor will pay to Mortgagee monthly an amount equal to one-twelfth (1/12th) of the annual cost of Impositions on the Property in order to accumulate with Mortgagee sufficient funds to pay such Impositions at least thirty (30) days prior to their respective due dates.

1.4 Insurance, Casualty.

(a) The Mortgagor shall maintain or cause to be maintained the insurance required to be maintained by it pursuant to subsection 7.2 of the Loan Agreement. In the event of any casualty or condemnation (a "Loss") with respect to the Property (or any portion thereof), the Mortgagor shall give prompt written notice thereof to Mortgagee. Any insurance proceeds or awards with respect to such Loss (the "Proceeds") shall be applied as set forth in the Loan Agreement.

(b) In the event of any insured loss or condemnation claim in excess of ten percent (10%) of the fair market value of the Property immediately prior to the loss or claim, Mortgagee shall have the right to participate in any claim or proceeding relating thereto, and payment for any such loss or claim shall be made directly to Mortgagee.

1.5 Care of the Property. The Mortgagor (i) shall not cause or permit the Property or the other Collateral to be misused, wasted or damaged or to deteriorate (except, in the case of deterioration, for reasonable wear and tear); (ii) shall use and operate the Property, or cause the same to be used and operated, for substantially the same uses and purposes, as they are used and operated as of the date hereof and agrees that all activities on the Property shall at all times comply with all laws, including, but not limited to, Environmental Laws (as defined in the Loan Agreement), except for non-compliance which is not reasonably expected to have a Material Adverse Effect (as defined in the Loan Agreement); (iii) shall operate and maintain the Property, or cause the same to be operated and maintained, in good order, repair and condition except (subject to the provisions of this Section) for reasonable wear and tear; (iv) shall maintain the Property according to the standards set forth in the Franchise Documents (as defined in the Loan Agreement) and all other requirements imposed by the Franchisor (as defined in the Loan Agreement); (v) shall promptly make, or cause to be made, all repairs, replacements, renewals, restorations, alterations, additions



and improvements of and to the Property, whether interior or exterior, structural or nonstructural, foreseen or unforeseen, necessary or appropriate to keep the Property in good order, repair and condition, all of which repairs, replacements, renewals and restorations shall be equal in quality to or better than the Property as of the date hereof and in accordance with the Franchise Documents; (vi) shall not initiate or affirmatively support any change in the applicable zoning or seek any variance (or any change in any variance), under the zoning of the Property if such change or variance would adversely affect the Property; and (vii) shall, promptly after receiving notice or obtaining knowledge of any proposed or threatened change in the zoning affecting the Property which would result in the current use of the Property being a non-conforming use, notify Mortgagee thereof and diligently contest the same at Mortgagor's expense by any action or proceeding deemed appropriate by Mortgagor or requested by Mortgagee.

1.6 Zoning and Other Laws. (a) Mortgagor represents and warrants that (i) the Property is served by all necessary water, sanitary and storm sewer, drainage, electric, steam, gas, telephone and other utility facilities which facilities have capacities which are sufficient to serve the current and anticipated future use and occupancy of the Property as presently constructed; (ii) the Property has legal access to public streets or roads sufficient to serve the current and anticipated future use and operation of the Property as presently constructed; (iii) to the extent that the Property is located in an area identified by the Federal Emergency Management Agency or a successor thereto as an area having special flood hazards or as an area designated as "flood prone" or a "flood risk area" pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, and any amendments or supplements thereto or substitutions therefor, the Mortgagor has purchased flood insurance to the maximum extent available; (iv) all activities and conditions on the Property are currently in compliance with all Environmental Laws; (v) none of the Real Property is part of a tax parcel which includes other real property; and (vi) the Property and the use thereof, separate and apart from any other properties, constitute a legal and conforming use under applicable zoning regulations and comply with all applicable legal requirements, except to the extent that failure to comply therewith would not be reasonably expected to have a Material Adverse Effect (as defined in the Loan Agreement). All material inspections, licenses, permits and certificates required, whether by law, ordinance, regulation or insurance standards, to be made or issued with respect to the Property and the uses thereof have been made by or issued by appropriate authorities.

1.7 Alterations.

(a) The Mortgagor may construct any new Improvement or otherwise alter or restore the Property, provided that (i) in the case of any alteration or restoration (subject to the provisions of Section 1.4), no Event of Default exists; (ii) any alteration or restoration when completed shall not result in a reduction of the value of the Property below the value thereof immediately preceding the commencement of such alteration or, in the case of restoration, the value thereof immediately preceding the casualty or condemnation in question; (iii) any alteration or restoration shall be substantially equal in quality to, or better than, the Improvements or Equipment located on the Property as of the date hereof; (iv) prior to commencing any phase of any alteration or restoration, the Mortgagor shall obtain all permits applicable to such phase and all other consents or approvals required therefor; (v) any alteration or restoration shall be effected with due diligence, in a good and workmanlike manner and all applicable legal requirements and insurance requirements; (vi) the Mortgagor shall have the funds to pay, and shall promptly and fully pay, the cost of any alteration or restoration; and (vii) any alteration will not adversely affect the present use of the Property and shall be according to the standards set forth in the Franchise Documents and all other requirements imposed by the Franchisor. Anything hereinabove to the contrary notwithstanding, it is understood and agreed that Mortgagor may make any and all improvements and alterations at its expense which are required to remain in compliance with the Franchise Documents.



(b) Nothing herein shall be construed to be a consent by Mortgagee to any mechanic's, materialman's, supplier's, repairman's or similar lien on the Property or any interest therein or to any indebtedness to finance any such Improvement, alteration or restoration, or any lien servicing such indebtedness.

1.8 Expenses.

(a) Mortgagee may, at its option, engage attorneys, appraisers, agents and/or special servicers with respect to this Mortgage for retaking, holding, preparing for sale, or selling in connection with any action or actions which may be brought for the foreclosure of this Mortgage and/or for possession of the Property and/or for the protection of or the defense of the priority of the lien provided for by this Mortgage and/or for the appointment of a receiver and/or for the enforcement of any and all covenants or rights contained in or secured by this Mortgage and/or for any case or proceeding under Chapters 7, 11 or 13 of the U.S. Bankruptcy Code or any successor thereto.

(b) Mortgagor shall pay or, on demand, reimburse Mortgagee for all appraisal fees, recording and filing fees, taxes, brokerage fees and commissions, escrow fees, trustee's fee, title insurance premiums and fees, attorneys' fees and disbursements and all other costs and expenses of every character reasonably incurred by Mortgagor, Mortgagee in connection with or incidental to the closing of the transactions under any of the terms of this Mortgage, with interest from the date of demand for payment at the Default Rate (as defined in the Loan Agreement). All sums so paid and expended by Mortgagee, and the interest thereon, shall be added to and be secured by the lien of this Mortgage.

(c) Mortgagor will pay the amount demanded by Mortgagee or its authorized loan servicing agent in any statement regarding the obligations secured hereby; provided, however, that such amount may not exceed the maximum amount allowed by law at the time the statement is made.

1.9 Inspection of Property. Upon reasonable prior notice to Mortgagor (unless an Event of Default exists, in which case no such notice shall be required), Mortgagee is authorized by itself, its agents, employees or workers, to enter at any reasonable time upon any part of the Property for the purpose of inspecting the same, performing any environmental site assessment, and/or performing any of the acts it is authorized to perform under the terms of this Mortgage or any other Loan Document. Mortgagor agrees to cooperate with Mortgagee to facilitate such inspections. Mortgagee's inspection rights shall without limitation apply for the purposes set forth in California Civil Code Section 2929.5 (it being agreed by Mortgagor that Mortgagee's good faith belief of the existence of a past or present release or threatened release of any Hazardous Material into, onto, beneath or from the Property shall be conclusively deemed reasonable).

1.10 Performance by Mortgagor. Mortgagor will faithfully perform each and every covenant to be performed by Mortgagor under the Loan Documents and under any lien or encumbrance including, without limiting the generality hereof, deeds of trust, leases, declarations or covenants, conditions and/or restrictions and other agreements which affect the Property (even if not a Permitted Lien), in law or in equity. Mortgagor's failure to perform any such obligation or Mortgagor's breach of or default under any such lien or encumbrance shall constitute an Event of Default under this Mortgage and the Loan Agreement.

1.11 Collateral Security Instruments. Mortgagor covenants and agrees that if Mortgagee at any time holds additional security for any obligations secured hereby, it may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds to the indebtedness secured hereby in



such order as Mortgagee may determine, without affecting the status of or waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or contained herein or in any such other security.

1.12 Reimbursement. In the event any tax, stamp tax, assessment, water rate, sewer rate, insurance premium, repair, rent charge, debt, claim, inspection or lien having priority over this Mortgage, or in the event any other amount required to be paid by Mortgagor hereunder shall remain unpaid and Mortgagor is not contesting such amount pursuant to the terms hereof or of the Loan Documents, in addition and without prejudice to its other rights and remedies hereunder, Mortgagee shall have the right without prior notice to pay such amount and Mortgagor shall be obligated to reimburse Mortgagee for such payment on demand.

1.13 Waiver of Offsets. All sums payable by Mortgagor hereunder or under the other Loan Documents shall be paid without notice, demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (v) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Mortgagor shall have notice or knowledge of any of the foregoing.

1.14 Indemnity. Mortgagor agrees to indemnify and hold harmless Mortgagee and its respective agents from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including attorneys fees and disbursements) which may be imposed on, incurred or paid by or asserted against Mortgagee or any agent by reason or on account of, or in action with, (i) any Default or Event of Default by Mortgagor under the Note, under any Loan Documents or hereunder, (ii) Mortgagee's or any such holder's exercise of any of its rights and remedies, or the performance of any of its duties, under the Note, under any Loan Document or hereunder, (iii) the construction, reconstruction or alteration of the Improvements, (iv) any negligence or willful misconduct of Mortgagor, or any of its respective agents, contractors, subcontractors, servants, employees, (v) any accident, injury, death or damage to any person or property occurring in, on or about the Property or any street, drive, sidewalk, curb or passageway adjacent thereto, (vi) any action or proceeding in which it becomes necessary to defend or uphold the lien of this Mortgage or (vii) any other transaction arising out of or in any way connected with the Property or the other Collateral, the Note, any Loan Document or this Mortgage, except for the willful misconduct or gross negligence of the indemnified person. Any amount payable to Mortgagee or such agent shall be deemed a demand obligation and shall be part of the Secured Obligations. Mortgagor's obligations under this Section shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation on its part under any such policy of insurance.

1.15 Suits to Protect Property. Mortgagor covenants and agrees to appear in and defend any action or proceeding purporting to affect the security of this Mortgage, and/or any additional or other security for the obligations secured hereby, the interest of Mortgagee or the rights, powers and/or duties of Mortgagee hereunder; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees actually expended by Mortgagee, in any action or proceeding in which



Mortgagee may appear or be made a party, including, but not limited to, any foreclosure or other proceeding commenced by those claiming a right to any part of the Property or other Collateral under subordinate liens, in any action to partition or condemn all or part of the Property, whether or not pursued to final judgment, and in any exercise of the power of sale contained herein, whether or not the sale is actually consummated.

1.16 Right of Contest. Mortgagor shall have the right to contest any tax, assessment, governmental charges or levies applicable to the Mortgagor or the Collateral in accordance with, and subject to the provisions of, the Loan Documents.

1.17 Conveyance or Transfer of Property. Mortgagor agrees that if Mortgagor sells, conveys, transfers, disposes of or leases or further encumbers the Property or any portion thereof, whether directly or indirectly (by transfer of voting securities or control of Mortgagor or otherwise), either voluntarily, involuntarily, or otherwise, or enters into an agreement to do so without the prior written consent of Mortgagee, Mortgagee shall have the right to declare the then outstanding principal balance evidenced by the Note immediately due and payable, together with all accrued interest thereon, and all other amounts due thereunder or under the other Loan Documents. The foregoing right to accelerate such indebtedness may be exercised at any time in Mortgagee's sole discretion after the occurrence of any event described above and the acceptance of one or more installments of principal and interest due under the Note from any person thereafter shall not constitute a waiver of Mortgagee's right. Mortgagee may withhold its consent to any proposed transfer for no reason or any reason, including the failure of the prospective transferee of the Property to reach an agreement in writing with Mortgagee increasing the interest payable on the Secured Obligations to such rate as Mortgagee shall request. Mortgagor acknowledges that the continuous ownership of the Property by Mortgagor is of a material nature to the transaction and Mortgagee's agreement to create the indebtedness secured hereby. Mortgagor expressly agrees to the payment of the fees (if any) provided for in the Loan Documents upon acceleration under circumstances described in this Section (as well as any other circumstances provided for under the Loan Agreement).

## ARTICLE II.

### DEFAULTS AND REMEDIES

2.1 Events of Default. The occurrence or existence of an Event of Default under and as defined in the Loan Agreement ("Event of Default") shall be deemed an Event of Default hereunder;

2.2 Remedies Upon Default. Upon an Event of Default, without notice to or demand upon Mortgagor (each of which is waived to the extent permitted by applicable law), and without releasing Mortgagor from any obligation hereunder, Mortgagee may, in addition to any other rights or remedies available:

(a) Mortgagee may without notice declare all sums secured hereby immediately due and payable by delivery to Mortgagee of written declaration of default and demand for sale and written notice of default and of election to cause the Property to be sold, which notice Mortgagee shall cause to be duly filed for record. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Mortgagee, without demand on Mortgagor, shall sell the Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as Mortgagee may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, and any person, including Mortgagor or Mortgagee, may purchase at such sale, and in the event of a sale, by foreclosure or otherwise, of less than all of the



Property or other Collateral, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property or other Collateral.

(b) Mortgagee may, exercise any of its rights herein or to which it is entitled by law or equity.

(c) Mortgagee may (i) institute and maintain a proceeding or proceedings for foreclosure of this Mortgage against any of the Property or other Collateral under any applicable provisions of law; (ii) institute and maintain an action with respect to the Property or other Collateral under any other Loan Documents; or (iii) take such other action as may be allowed at law or in equity for the enforcement of this Mortgage and the other Loan Documents. Mortgagee may, to the extent and in the manner permitted by applicable law, proceed in any such action to final judgment and execution thereon for the whole of the indebtedness, together with all interest, late payment fees and other amounts to which Mortgagee is entitled under the Note and the other Loan Documents, from the date on which the same was due and payable to the date of repayment to Mortgagee, and all costs of any such action, including, but without limiting the generality of the foregoing, reasonable attorneys' fees, costs and disbursements.

(d) Mortgagee may proceed as to the personal property in accordance with Mortgagee's rights and remedies in respect of the Property or sell the personal property separately and without regard to the remainder of the Property in accordance with Mortgagee's rights and remedies provided by the UCC as well as other rights and remedies available at law or in equity or under any of the other Loan Documents.

(e) Mortgagee may act in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon and take possession of the Property for such purposes, and any sums expended for such purposes shall become part of the indebtedness secured hereby.

(f) Mortgagee may commence, appear in and/or defend any action or proceedings purporting to affect the security hereof, and/or any additional or other security for the indebtedness secured hereby, and/or the interests, rights, powers and/or duties of Mortgagee hereunder, whether brought by or against Mortgagor or Mortgagee.

(g) Mortgagee may pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of the Mortgagee may affect or appear to affect the security of this Mortgage, the interests of Mortgagor or the rights, powers and/or duties of Mortgagee hereunder, and any sums expended for such purposes shall become part of the indebtedness secured hereby.

(h) Mortgagee may institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained in the Note, in any Loan Document or herein.

(i) Mortgagee may apply for the appointment of a receiver, custodian, trustee, liquidator or conservator of the Property, including a receiver appointed under Section 564(c) of the California Code of Civil Procedure, to be invested with the fullest powers permitted under applicable law, as a matter of right, without notice to Mortgagor or anyone claiming under Mortgagor; and without regard to or the necessity to disprove the adequacy of the security for the Secured Obligations or the solvency of Mortgagor or any other person liable for the payment of the Secured Obligations, and Mortgagor and each other person so liable waives or shall be deemed to have waived such notice, necessity and consents or shall be deemed to have consented to such appointment, to the extent permitted by applicable law.



(j) Mortgagee is authorized either by itself or by its agent to be appointed by it for that purpose or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take and hold possession of any portion or all of the Property and other Collateral, both real and personal, and all books, records and accounts relating thereto and exclude Mortgagor and all other persons therefrom, without liability for trespass, damages or otherwise, and Mortgagor agrees to surrender possession of the Property, the other Collateral and of such books, records and accounts on demand after the happening of any Event of Default and to operate and manage the Property and other Collateral and rent and lease the same, perform such reasonable acts of repair, protection or improvements as may be reasonably necessary or proper to conserve the value thereof, complete construction of Improvements and, in the course of such completion, make such changes in the contemplated Improvements as it may deem advisable, pay, purchase or compromise any encumbrance, charge or lien that in the judgment of Mortgagee may be prior or superior hereto, advise any and all clean-up, remediation or other response action with respect to the Property (it being conclusively presumed between Mortgagor and Mortgagee that any and all such costs and expenses were incurred by Mortgagee in good faith) and, in every such case in connection with the foregoing have the right to exercise all rights and powers of Mortgagor with respect to the Property either in Mortgagor's name or otherwise.

(k) Subject to the provisions and restrictions of any applicable law, Mortgagee may, directly or indirectly by agent or receiver, with or without the entrance upon or taking possession of the Property or any part thereof and with or without the appointment of a receiver, collect any and all income, rents, issues, profits and proceeds from the Property and other Collateral, the same being hereby assigned and transferred to Mortgagee, for the benefit and protection of Mortgagee, and from time to time apply and/or accumulate such income, rents, issues, profits and proceeds in such order and manner as Mortgagee or such receiver in its sole discretion shall consider advisable, to or upon the following: the expenses of receivership, if any; the proper costs of upkeep, maintenance, repair and/or operation of the Property and other Collateral; the payment of insurance premiums and other charges in connection with the Property and the other Collateral, the payment of reasonable compensation for the services of Mortgagee and its attorneys and agents the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Mortgage; the interest then due or next to become due upon the indebtedness secured hereby; the taxes and assessments upon the Property then due or next to become due; the unpaid principal of such indebtedness; and any other amounts due from Mortgagor to Mortgagee hereunder or under the other Loan Documents. The collection and receipt of income, rents, issues, profits and/or proceeds from the Property and other Collateral by Mortgagee, its agent or receiver, after declaration of default and/or election to cause the Property and other Collateral to be sold under and pursuant to the terms of this Mortgage shall not affect or impair such default or declaration of default and/or election to cause the Property and other Collateral to be sold or any sale proceedings predicated thereon, and such proceedings may be conducted and sale effected notwithstanding the receipt or collection of any such income, rents, issues, profits or proceeds. Any such income, rents, issues, profits or proceeds in the possession of Mortgagee, its agent or receiver, at the time of sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the sale. Mortgagor agrees to pay to Mortgagee, upon demand, all expenses, costs and other amounts incurred by Mortgagee in connection with any appointment of a receiver under the relevant state code statutes.

(l) Mortgagee may release any portion of the Property or other Collateral for such consideration as Mortgagee may require without, as to the remainder of the Property or other Collateral, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Secured Obligations shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienor.



Mortgagee shall have the right to petition the court, on an ex parte basis, for the appointment of a receiver for the Property. Mortgagor acknowledges and agrees that Mortgagee is entitled to the appointment of a receiver for the Property without regard to (a) the adequacy of the collateral or (b) the existence of any waste with respect to the Property. MORTGAGOR HEREBY CONSENTS TO THE APPOINTMENT OF A RECEIVER ON AN EX PARTE BASIS. MORTGAGEE MAY PROVIDE ANY COURT WITH A COPY OF THIS AGREEMENT AS PROOF OF MORTGAGEE'S AUTHORITY, AND MORTGAGOR'S AND GUARANTOR'S CONSENT THERETO, TO OBTAIN A RECEIVER FOR THE PROPERTY. Such right shall be exercised, if at all, by Mortgagee in Mortgagee's sole and absolute discretion at any time on or after the date hereof.

In the event that Mortgagee shall exercise any of the rights or remedies set forth in subsections (i), (j) and (k) of this Section 2.2, neither such party shall be deemed to have entered upon or taken possession of the Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose, nor shall either be deemed a Mortgagee or mortgagee in possession by reason of such entry or taking possession. Mortgagee will not be liable to account for any action taken pursuant to any such exercise other than for rents actually received by such party, nor liable for any loss sustained by Mortgagor resulting from any failure to let the Property, or from any other act or omission of Mortgagee except to the extent such loss is caused by the gross negligence, willful misconduct or bad faith of such party. Mortgagor hereby consents to, ratifies and confirms the exercise by Mortgagee as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and is irrevocable, for such purposes.

Mortgagor shall indemnify and hold Mortgagee harmless and defend it from any loss, liability, cost and expense (including, without limitation, attorneys' fees and disbursements) and all claims, actions, proceedings and suits arising out of, or in connection with, any lawful action by Mortgagee to enforce this Mortgage or any other Loan Document, whether or not any action, proceeding or suit is filed. In any suit to foreclose this Mortgage or enforce any other remedy of Mortgagee under the Note, under any Loan Document or hereunder, there shall be allowed and included as an addition to and a part of the Secured Obligations in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred in connection with the exercise by Mortgagee of any of its rights and remedies provided or referred to in this Section 2.2, and such expenditures and expenses shall be secured by this Mortgage, as permitted by applicable law.

2.3 Waiver of Certain Rights and Defenses. To the full extent Mortgagor may do so under applicable law, Mortgagor agrees with Mortgagee as follows: Each successor and assign of Mortgagor, including, without limitation, a holder of a lien subordinate to the lien created hereby (without implying that Mortgagor has, except as expressly provided herein, a right to grant an interest in, or a subordinate lien on, the Collateral), by acceptance of its interest or lien, agrees that it shall be bound by the following waivers as if it gave the waivers itself.

(i) Mortgagor shall not have or assert any right under any statute or rule of law providing for any appraisal, valuation, stay, extension, moratorium, redemption or statute of limitations, notice of intention to mature or declare due the whole of the obligations, rights to a marshalling of the assets of Mortgagor, rights to a sale in inverse order of alienation, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder, including the rights of Mortgagee hereunder to a sale of the Property or other Collateral for the collection of the Secured Obligations without any prior or different resort for collection, or to the payment of the Secured Obligations out of the proceeds of sale of the Property or other Collateral in preference to any other person (other than the holder of a Permitted Lien);



(A) Mortgagor shall not be relieved of its obligation to pay the Secured Obligations at the time and in the manner provided in the Note, in any Loan Document or herein, nor shall the lien, security interest or priority of this Mortgage or any Loan Document be impaired by any of the following actions, non-actions or indulgences by Mortgagee, each of which actions, non-actions or indulgences Mortgagee may, in its discretion, take or refrain from taking:

(B) any failure or refusal by Mortgagee to comply with any request by Mortgagor (A) to consent to any action by Mortgagor, or (B) to take any action to foreclose this Mortgage or otherwise enforce any of the provisions of the Note or any Loan Document or hereof;

(C) any release, regardless of consideration, of any part of the Property or other Collateral or any other security for the Secured Obligations, or any person liable for payment of any such Secured Obligations; any waiver by Mortgagee of compliance by Mortgagor with any provision of the Note,

(D) any Loan Document or this Mortgage, or consent by Mortgagee to the performance by Mortgagor of any action which would otherwise be prohibited hereunder or thereunder, or to the failure by Mortgagor to take any action which would otherwise be required hereunder or thereunder, and

(ii) any agreement or stipulation between Mortgagee and Mortgagor, or with or without Mortgagor's consent, between Mortgagee and any subsequent owner or owners of the Property or any other Collateral, renewing, extending or modifying the time of payment or their terms of the Note, any Loan Document, or this Mortgage (including a modification of any interest rate), and in any such event Mortgagor shall continue to be obligated to pay and perform the Secured Obligations at the time and in the manner provided in the Note in the Loan Documents and herein, as so renewed, extended or modified, unless expressly released and discharged by Mortgagee.

2.4 Rights Pertaining to Sales. The following provisions shall apply to any sale or sales of all or any portion of the Property or other Collateral under or by virtue of this Article II, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) Mortgagee may conduct any number of sales from time to time. The power of sale granted hereunder shall not be exhausted by any one or more such sales as to any part of the Property or other Collateral which shall not have been sold, nor by any sale which is not completed or is defective in Mortgagee's opinion, until the Secured Obligations shall have been paid in full.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice, as permitted by applicable law.

(c) After each sale, Mortgagee or any officer of any court empowered to do so, shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Mortgagor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Mortgagee is hereby appointed the true and lawful attorney-in-fact of Mortgagor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Mortgagor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyances, assignment, transfer and delivery, or may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof.



Nevertheless, Mortgagor, if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or such purchaser or purchasers all such instruments as may be advisable, in Mortgagee's judgment, for the purposes designated in such request.

(d) The receipt of Mortgagee of the purchase money paid at any such sale, or the receipt of any other person authorized to give same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(e) Any such sale or sales and the expiration of any applicable redemption period shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and inequity against Mortgagor and any and all persons claiming or who may claim the same, or any part thereof, by, through or under Mortgagor to the fullest extent permitted by applicable law.

(f) Upon any such sale or sales, Mortgagee or any holder of the Secured Obligations may bid for and acquire the Property or other Collateral and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Secured Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale.

(g) In the event that Mortgagor, or any person claiming by, through or under Mortgagor, shall transfer or refuse or fail to surrender possession of the Property or other Collateral after any sale thereof, then Mortgagor or such person shall be deemed a tenant at sufferance of the purchaser at such sale subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available hereunder or under applicable law.

(h) Upon any such sale, it shall not be necessary Mortgagee or any public officer acting under execution or order of court to have present or constructively in its possession any or all of the Property or other Collateral.

(i) In the event a sale referred to in this Section shall be commenced by Mortgagee, Mortgagee may, at any time before the sale of the Property or other Collateral, abandon the sale, and may institute suit for the foreclosure of this Mortgage, or in the event that Mortgagee should institute a suit for the foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment in said suit dismiss the same and sell the Property or other Collateral in accordance with the provisions of this Mortgage.

2.5 Application of Proceeds. The purchase money, proceeds or avails of any sale referred to in this Article II, together with any other sums which may be held by Mortgagee hereunder, whether under the provisions of this Article II or otherwise, shall, except as herein expressly provided to the contrary, be applied as follows:

FIRST To the payment of the reasonable costs and expenses of any such sale, including compensation to Mortgagee, its agents and counsel, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee hereunder, together with interest thereon as provided herein, and all taxes, assessments and other charges related to the foregoing.



SECOND To the payment in full of the Secured Obligations (including principal, interest, premium and fees in such order as Mortgagee may elect), in any order selected by Mortgagee.

THIRD To the payment of any other sums secured hereunder or required to be paid by Mortgagor pursuant to any provision of this Mortgage, the Note or any Loan Document, in any order selected by Mortgagee.

FOURTH To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in its judgment for the payment of sums which would have been paid by application under clauses First through Third above to Mortgagee, arising out of an obligation or liability with respect to which Mortgagor has agreed to indemnify it, but which sums are not yet due and payable or liquidated.

FIFTH To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

2.6 Exercise by Mortgagee. Notwithstanding anything herein to the contrary, and subject to the limitations of applicable law, Mortgagee (a) shall not exercise, or waive the exercise of, any of its rights or remedies under this Article (other than its right to reimbursement) except upon the request of Mortgagee, and (b) shall exercise, or waive the exercise of, any or all of such rights or remedies upon the request of Mortgagee and at the direction of Mortgagee as to the manner of such exercise or waiver, provided that Mortgagee shall have the right to decline to follow any such request or direction if Mortgagee shall be required by applicable law or advised by counsel that the action or proceeding; or manner thereof so directed, may not lawfully be taken or waived.

2.7 Assignment of Leases.

(a) Subject to subsection (d) below, the Leases and Rents, if any, are hereby assigned to Mortgagee, which assignment of the Leases and Rents are and shall be present, absolute and irrevocable assignments by the Mortgagor to Mortgagee. Subject to the license to the Mortgagor under subsection (b) hereof, Mortgagee or a receiver appointed pursuant to Section 2.2 (as the case may be, as the person exercising the rights under this Section) shall have the absolute, immediate and continuing right to collect and receive all Rents now or hereafter, including during any period of redemption, occurring with respect to the Property, with or without taking possession of the property. At the request of Mortgagee or such receiver, the Mortgagor shall promptly execute, acknowledge, deliver, record, register and file any additional general assignment of the Leases or specific assignment of any of the Leases which Mortgagee or such receiver may require from time to time (all in form and substance reasonably satisfactory to Mortgagee or such receiver) to effectuate, complete, perfect, continue or preserve the assignments of the Leases and the Rents.

(b) As long as no Event of Default exists, the Mortgagor shall have the right under a license granted hereby, subject to subsection (c) hereof, to collect all Rents, if any, upon, but not prior to fifteen (15) days before, the due date thereof.

(c) If any Event of Default exists, Mortgagee or receiver appointed pursuant to Section 2.2 (as the case may be, as the person exercising the rights under this Section) shall have the right to do any of the following: (i) terminate the license granted under subsection (b) hereof by notice to the Mortgagor, collect the Rents and apply the same to the obligation secure; (ii) exercise the rights and remedies provided to Mortgagor under the Lease; (iii) exercise the rights and remedies provided in this Mortgage or under applicable law; (iv) hold, operate, manage and control the Property, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper and necessary to enforce the



payment of any Rents, the Leases and other Property relating thereto (including actions for the recovery of Rent, actions in forcible detainer and actions in distress of Rent); (v) cancel or terminate any Leases or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (vi) elect to disaffirm any Leases or sublease made subsequent hereto or subordinated to the lien hereof; and (vii) perform such other acts in connection with the management and operation of the Property as the person exercising the rights under this Section in its discretion may deem proper, the Mortgagor hereby granting full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any time and all times while an Event of Default exists without notice to the Mortgagor. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney, at the option of Mortgagee at any time, to exercise the foregoing rights set forth in this Section 2.7(c), including but not limited all rights to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of the Mortgagor or in the name of Mortgagee, for all Rents and apply the same to the Secured Obligations.

(d) Nothing in this Section shall be construed to be an assumption by the person exercising the rights under this Section, or to otherwise make such person liable for performance, of any of the obligations of the Mortgagor under the Leases, or to make such person a "mortgagee in possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

### ARTICLE III.

#### GENERAL COVENANTS

3.1 Waiver of Statute of Limitations. Mortgagor waives to the full extent permitted by law, the right to plead any and all statutes of limitation as a defense to any demand secured by or made pursuant to this Mortgage.

3.2 No Waiver. Mortgagor covenants and agrees that the acceptance by Mortgagee of any sum secured hereby after its due date, or in an amount less than the sum then due, shall not constitute a waiver by Mortgagee of its rights either to require prompt payment when due of all other sums so secured or to declare a default or exercise such other rights as herein provided for failure so to pay. No failure by Mortgagee to insist upon strict performance of any term, covenant or condition hereof or of any other Loan Document, nor failure to exercise any right or remedy hereunder or thereunder shall constitute a waiver of any such breach of such term, covenant or condition or of the later exercise of such right or remedy.

3.3 Remedies Cumulative.

(a) No remedy herein conferred upon or reserved to Mortgagee, is intended to be exclusive of any other remedy herein or in any other Loan Document or provided or permitted by law, but each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under any other Loan Document or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Mortgagee or to which Mortgagee may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee.

(b) No delay or omission by Mortgagee to exercise any right or remedy hereunder upon an Event of Default shall impair any such exercise, or be construed to be a waiver of any such Event of Default or an acquiescence therein.



(c) The failure, refusal or waiver by Mortgagee of its right to assert any right or remedy hereunder upon any Event of Default or other occurrence shall not be construed as waiving such right or remedy upon any other or subsequent Event of Default or other occurrence.

3.4 Notices.

(a) All notices hereunder shall be given as set forth in the Loan Agreement. Mortgagor hereby requests that a copy of any Notice of Default and Notice of Sale be sent to Mortgagor at Mortgagor's address set forth in the Loan Agreement.

3.5 Successors; Terminology; Joint and Several Liability.

(a) This Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagor" shall mean both the original Mortgagor and any subsequent owner or owners of any of the Property. The term "Mortgagee" shall mean the owner and holder, including pledgees, successors and assigns, of the Note, whether or not named as Mortgagee herein. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(b) If more than one person, corporation, partnership or other entity shall execute this Mortgage, then each person and entity shall be fully liable for all obligations of Mortgagor hereunder, and such obligations shall be joint and several.

3.6 Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage, except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare the indebtedness and all other sums secured hereby immediately due and payable.

3.7 Governing Law. Mortgagor agrees as provided below, the Loan Documents shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of California (without regard to conflicts of laws principles) as to interpretation, enforcement, validity, construction, effect and in all other respects (except as provided below). Mortgagor hereby:

(a) consents and submits to the jurisdiction of any local, state or federal court located within the County of Los Angeles, the State of California and/or the following counties in Alabama: CHILTON, JEFFERSON, MONTGOMERY, AND SHELBY, and hereby irrevocably agrees that, subject to Mortgagee's election, all actions or proceedings in any way, manner or respect arising out of, from or relating to the Loan Documents, shall be litigated in such courts;

(b) accepts, generally and unconditionally, the nonexclusive jurisdiction of such courts, waives any defenses of forum non conveniens, and irrevocably agrees to be bound by any final, nonappealable judgment rendered thereby in connection with any of the Loan Documents;

(c) with respect to the foregoing choice of law, agrees that the State of California has a substantial relationship to the parties, to the Loan and to the transactions evidenced by the Loan Documents; and,

(d) in all respects (including without limitation matters of construction, validity and performance), agrees that the Loan Documents and the obligations arising thereunder shall be governed by, and construed in accordance with, the laws of the State of California applicable to



contracts made and performed in such state and any applicable law of the United States of America; except that at all times:

(i) enforcement of the real property liens created pursuant to the Loan Documents on that portion of the collateral at any time securing payment of the loan which is subject to Alabama's real property and foreclosure laws and rules shall be governed by and construed according to the law(s) of the state(s) in which the applicable portion of such collateral is located;

(ii) enforcement of the liens created pursuant to the Loan Documents on that portion of the collateral at any time securing payment of the loan which is not subject to the Uniform Commercial Code shall be governed by and construed according to the law(s) of the state(s) in which the applicable portion of such collateral is located;

(iii) enforcement of the liens and security interests created pursuant to the Loan Documents on that portion of the collateral at any time securing payment of the loan which is subject to the Uniform Commercial Code shall be governed and construed by the laws of the State of California, but the provisions for the perfection of such liens shall be governed by and construed according to the laws of the state whose law is designated as the governing law pursuant to the Uniform Commercial Code of the State of California;

it being understood that, to the fullest extent permitted by the laws of the States of California and Alabama, the laws of the State of California shall govern the validity and the enforceability of the Loan Documents and the indebtedness and obligations arising thereunder. Mortgagor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

### 3.8 Reconveyance.

(a) Upon written request of Mortgagee stating that all sums and obligations secured hereby have been paid or satisfied, as the case may be, Mortgagee shall execute, acknowledge and deliver to Mortgagor proper instruments evidencing the termination, release and reconveyance of this Mortgage. Mortgagor shall pay the fees of Mortgagee and the costs of Mortgagee in connection with such reconveyance and Mortgagee may require payment of the same prior to delivery of such instruments.

(b) Upon surrender to Mortgagee of this Mortgage and the Note for cancellation and retention and upon payment of its fees, Mortgagee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

(c) Upon request of Mortgagee, Mortgagor shall promptly deliver to Mortgagee evidence reasonably satisfactory to Mortgagee of any recordation or filing of such reconveyance. The obligations of Mortgagor and Mortgagee under this paragraph shall survive the termination of this Mortgage.

3.9 Time of the Essence. Time is of the essence of the Note, this Mortgage, the other Loan Documents and the performance of all provisions hereof and thereof.

3.10 Security Agreement and Fixture Filing. Mortgagor, as the "debtor", hereby grants to Mortgagee, as the "secured party", a security interest in and to any fixtures, Equipment (as defined above) or other personal property included in the Collateral (as defined above) to secure all Secured



Obligations. This Mortgage constitutes and shall be deemed to be a "security agreement" between Mortgagor, as the "debtor," and Mortgagee, as the "secured party," for all purposes of the Uniform Commercial Code of the State in which the Property is located (the "UCC"). This Mortgage also constitutes and shall be deemed to be a financing statement filed as a fixture filing in the official Records of the County Recorder of the county in which the Property is located with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any property that may now be or hereafter become fixtures. Mortgagee shall have, in addition to all rights and remedies proved hereunder and in the Loan Documents, all of the rights and remedies of a secured party under the UCC. It is understood and agreed that, except with respect to any Excluded Collateral (as defined in the Loan Agreement), to protect Mortgagee against the effect of UCC Sections 9334 and 9604, in the event that (a) any fixture owned by Mortgagor on the Property, or any part thereof, is replaced or added to, or any new fixture owned by Mortgagor is installed or substituted by Mortgagor, and in each case such fixture (together with all fixtures being replaced, added to, installed or substituted at or about the same time) has a cost or fair market value in excess of \$20,000, and (b) such fixture is or may be subject to a security interest held by a seller or any other party:

(i) Mortgagor shall, before the replacement, addition, installation, or substitution of any such fixture give Mortgagee written notice that a security agreement with respect to such fixture is proposed to be consummated and obtain the prior written approval of Mortgagee thereto, which notice shall contain the following information:

(A) a description of the fixture to be replaced, added to, installed or substituted;

(B) a recital of the address at which the fixture will be replaced, added to, installed or substituted;

(C) a statement of the name and address of the holder and the amount secured by the security interest; and

(D) the date of the purchase of such fixture; and

(ii) In the event Mortgagor shall fail, beyond any applicable notice and grace periods, to make any payment or perform any covenant related to any security interest in favor of any person other than Mortgagee may, at its option, at any time without prior notice to Mortgagor, pay the amount secured by such security interest, and an amount so paid or incurred shall be secured by this Mortgage and payable on demand.

Neither this Section nor a consent by Mortgagee pursuant to this subsection shall constitute an agreement to subordinate any right of Mortgagee in fixtures or other property covered by this Mortgage.

3.11 Brundage Clause. In the event of the enactment after the date hereof of any law in the State in which the Property is located or any other governmental authority deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or changing in any way the laws for the taxation of mortgages, deeds of trust or other liens or debts secured thereby, or the manner of collection of such taxes, so as to affect this Mortgage, the Secured Obligations, Mortgagee or the holders of the Secured Obligations, then, and in such event, Mortgagor shall, on demand, pay to Mortgagee or such holder, or reimburse Mortgagee or such holder for payment of, all taxes, assessments, charges or liens for which Mortgagee or such holder is or may be liable as a result thereof, provided that if any such payment or reimbursement shall be unlawful or would constitute usury or render the Secured Obligations wholly or partially usurious under



applicable law, then Mortgagee may, at its option, declare the Secured Obligations immediately due and payable or require Mortgagor to pay or reimburse Mortgagee for payment of the lawful and non-usurious portion thereof.

3.12 Intentionally Deleted.

3.13 Section 726.5 of the California Code of Civil Procedure. In the event that any portion of the Property is determined to be “environmentally impaired” (as “environmentally impaired” is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an “affected parcel” (as “affected parcel” is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Mortgagee’s rights and remedies under this Mortgage, Mortgagee may elect to exercise its right under California Code of Civil Procedure Section 726.5(a) to:

(a) waive its lien on such environmentally impaired or affected portion of the Property, and

(b) exercise the rights and remedies of an unsecured creditor, including reduction of its claim against Mortgagor to judgment and any other rights and remedies permitted by law. For purposes of determining Mortgagee’s right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Mortgagor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was, knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Property and Mortgagor knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release.

3.14 Residential Dwelling Statutes Inapplicable. No portion of the proceeds of the Loan shall be used by Mortgagor to finance the purchase or construction of real property containing four (4) or fewer residential units or on which four (4) or fewer residential units are to be constructed. No portion of the Property is or will be a “dwelling” within the meaning of Section 10240.1 or Section 10240.2 of the California Business and Professions Code.

3.15 Perfection.

(a) Perfection by Filing. The Mortgagee may at any time and from time to time, pursuant to the provisions of Section 1.2(d), file financing statements, continuation statements and amendments thereto that describe the Collateral as all assets of the Mortgagor or words of similar effect and which contain any other information required by the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether the Mortgagor is an organization, the type of organization and any organization identification number issued to the Mortgagor. The Mortgagor agrees to furnish any such information to the Mortgagee promptly upon request. Any such financing statements, continuation statements or amendments may be signed by the Mortgagee on behalf of the Mortgagor, as provided in Section 1.2(d), if the signature of the Mortgagor is required for such financing statements, continuation statements, or amendments to be effective, and may be filed at any time in any jurisdiction.

(b) Other Perfection. The Mortgagor shall at any time and from time to time take such steps as the Mortgagee may reasonably request for the Mortgagee (i) to obtain an acknowledgement, in form and substance satisfactory to the Mortgagee, of any bailee having possession of any of the Collateral that the bailee holds such Collateral for the Mortgagee, (ii) to obtain “control” of any investment property, deposit accounts, letter-of-credit rights or electronic



chattel paper (as such terms are defined in the UCC with corresponding provisions in Sections 9104, 9105, 9106 and 9107 of the UCC relating to what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance satisfactory to the Mortgagee, and (iii) otherwise to insure the continued perfection and priority of the Mortgagee's secured interest in any of the Collateral and of the preservation of its rights therein.

#### ARTICLE IV.

##### STATE SPECIFIC PROVISIONS

4.1 ALABAMA POWER OF SALE: Mortgagee shall have the right, pursuant to power of sale or otherwise, to sell the Property (or such part or parts thereof or leasehold, subleasehold or other interest therein encumbered hereby as the Mortgagee may from time to time elect to sell) at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse of the county where said Property or portion thereof is located, either in person or by auctioneer, after having first given "Conforming Notice" (as hereinafter defined), and, upon receipt of the consideration bid at said sale, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale in the form of cash, cash equivalents and/or cancellation of all or any part of the Secured Obligations, or any combination thereof, and purchase said Property, or any part or parcel thereof, if the highest bidder therefor. At any sale, including any sale pursuant to power of sale, any part or parcels or all of the Property, real, personal or mixed, may be offered for sale in whole or in part for one total price, the proceeds of any such sale to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. If the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the obligations secured by this Mortgage shall have been paid in full. As used herein, "Conforming Notice" shall mean notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in a newspaper published in said county; provided, however, that (i) if the Property is located in more than one county, publication is to be made in all counties in which such Property is located and (ii) if no newspaper is published in a county where the Property is located, notice shall be in a newspaper in an adjoining county.

THIS MORTGAGE SECURES TWO (2) ADJUSTABLE RATE PROMISSORY NOTES. THIS MORTGAGE IS A FIRST MORTGAGE. NO FURTHER MORTGAGES WILL BE RECORDED AGAINST THE REAL PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF BENEFICIARY. FAILURE TO COMPLY WITH THIS PROVISION SHALL CONSTITUTE AN EVENT OF DEFAULT AND THE LOAN SHALL IMMEDIATELY BECOME DUE AND PAYABLE. CONSENT TO ONE (1) FURTHER ENCUMBRANCE SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO REQUIRE SUCH CONSENT TO FUTURE OR SUCCESSIVE ENCUMBRANCES.

[signatures on following page]



IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first written above.

Mortgagor:

R&L FOODS, LLC, a Delaware limited liability company

By: William R. Reynolds  
William R. Reynolds, its Sole Manager

STATE OF ALABAMA )  
 ):SS  
COUNTY OF JEFFERSON )

I, Madeline Burr Smith, a Notary Public in and for said County in said State, hereby certify that WILLIAM R. REYNOLDS, whose name as Sole Manager of R&L Foods, LLC, a Delaware limited liability company, 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 said instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company effective as of the day the same bears date.

Given under my hand and seal, this 21<sup>st</sup> day of June, 2012.

Madeline Burr Smith  
NOTARY PUBLIC

[SEAL]

My Commission Expires: 8/27/2013



EXHIBIT A  
PROPERTY DESCRIPTION

**Site No. 01**

NBU No. 21201114

Store Info: 1252 (Valley Ave) AL 3

Local No. and Policy No. 2963F-12

Lots 8-D and 8-E, according to a Resurvey, as recorded in Map Book 106, page 83, in the Probate Office of Jefferson County, Alabama, of a Resurvey of Lot 8-C and of a Resurvey of Lot 8-A, Block 1, and the Fourth Sector of Lot 1-A, of a Resurvey of Lot 1, Block 2, Beacon Park.

STORE ADDRESS: 345 Valley Avenue, Birmingham, AL

**Site No. 02**

NBU No. 21201115

Store Info: 1253 (Huffman) AL 4

Local No. and Policy No. 2963F-12A

Lot 2, according to the Survey of Third Addition to East Town, as recorded in Map Book 86, page 57, in the Probate Office of Jefferson County, Alabama.

STORE ADDRESS: 9870 Parkway East, Birmingham, AL 35215

**Site No. 03**

NBU No. 21201115

Store Info: 1257 (Midfield) AL 7

Local No. and Policy No. 2963F-12B

Lots 13, 14, 15, 16 and 17, Block 7, according to the Survey of Midfield Sector A, as recorded in Map Book 16, page 6, in the Probate Office of Jefferson County, Alabama, Bessemer Division.

STORE ADDRESS: 104 Bessemer Super Highway, Midfield, AL 35228

**Site No. 04**

NBU No. 21201117

Store Info: 1258 (Hwy 280) AL 8

Local No. and Policy No. 2963F-12C

Lot 1, according to the Survey of Colonial Properties Subdivision, as recorded in Map Book 8, page 138, in the Probate Office of Shelby County, Alabama.

LESS AND EXCEPT that portion conveyed to the State of Alabama in Book 277, page 930, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH easement rights as defined in Declaration of Restrictions and grant of easements recorded in Volume 53, page 375, in and to Lot 2, according to the Survey of Colonial Properties Subdivision, as recorded in Map Book 8, page 138, in the Probate Office of Shelby County, Alabama.





**Site No. 05**

NBU No. 21201118

Store Info: 1261 (East South) AL 10

Local No. and Policy No. 2963F-12D

Lot A, according to the Survey of B & S Foods Plat 1, as recorded in Map Book 27, page 180, in the Probate Office of Montgomery County, Alabama.

STORE ADDRESS: 2231 E. South Boulevard, Montgomery, AL

**Site No. 06**

NBU No. 21201119

Store Info: 1264 (West South) AL 13

Local No. and Policy No. 2963F-12E

Lot 1, Block A, according to the Survey of Leon Obenhaus Plat No. 1, as recorded in Map Book 31, page 163, in the Probate Office of Montgomery County, Alabama.

STORE ADDRESS: 1195 W. South Boulevard, Montgomery, AL

**Site No. 07**

NBU No. 21201120

Store Info: 1265 (Vaughn Rd) AL 14

Local No. and Policy No. 2963F-12F

Parcel C, according to the Plat of Vaughn Plaza Shopping Center Plat, No. 1, as said Plat appears of record in the Office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 31, at page 244.

TOGETHER WITH all of the benefits and easements set forth and described in that certain Declaration of Restrictions and Grant of Easements dated 4-21-83, and recorded in Real Property Book 606, at page 154, in the Probate Office of Montgomery County, Alabama, as amended by Modification of Declaration of Restrictions and Grant of Easements dated 6-16-83, and recorded in Real Property Book 619, at page 378, in said Office, and as further amended by Second Modification of Declaration of Restrictions and Grant of Easements dated 3-30-84, and recorded in Real Property Book 661, at page 811, in said Office, appertain to the subject property.

STORE ADDRESS: 5010 Vaughn Road, Montgomery, AL

**Site No. 8**

NBU No. 21201121

Store Info: 1266 (Ann Street) AL 15

Local No. and Policy No. 2963F-12G

Lot 1, according to the Survey of Taylor Plat No. 1-A, as recorded in Map Book 32, Page 241, in the Probate Office of Montgomery County, Alabama.

STORE ADDRESS: 1414 Ann Street, Montgomery, AL



**Site No. 9**

NBU No. 21201122

Store Info: 1308 (Madison Ave) AL 17

Local No. and Policy No. 2963F-12H

Lot 1, according to Wendy's Plat No. 1, more particularly described as follows:

Starting at the intersection on the North right of way of Madison Avenue and the West right of way of Union Street located in the City of Montgomery, Alabama, go Westerly along the North right of way of said Madison Avenue 50.00 feet to the Southwest corner of an existing brick building and being also the point of beginning; thence continue along the North right of way of Madison Avenue North 89°55'52" West, 151.44 feet; thence North 00°22'19" East, 161.85 feet; thence North 00°11'34" West, 161.94 feet to the South right of way of Jefferson Street; thence along the South right of way of Jefferson Street North 89°55'10" East, 101.51 feet; thence South 00°18'09" East, 160.63 feet; thence North 89°50'51" East, 100.10 feet to the West right of way of Union Street; thence along the West right of way of Union Street South 00°25'55" West, 50.45 feet to the Northeast corner of an existing brick building; thence along the North wall of said building North 89°43'07" West, 50.06 feet to the Northwest corner of said building; thence along the West wall of said building South 00°32'41" West, 113.55 feet to the Southwest corner of said building and the point of beginning.

Said parcel of land lying in the City of Montgomery, Alabama.

ALSO being known as Madison Avenue & Union Street, Montgomery, Alabama.

**Site No. 10**

NBU No. 21201123

Store Info: 1658 (Trussville) AL 22

Local No. and Policy No. 2963F-12I

**PARCEL I:**

Commence at the SW corner of the NE 1/4 of the SW 1/4 of Section 14, Township 16 South, Range 1 West in Jefferson County, Alabama; thence East along the South line of said 1/4 - 1/4 a distance of 378.89 feet; thence left 90°00" and run 576.79 feet; thence right 95°55'30" and run 262.74 feet; thence right 90°00' and run 25.00 feet; thence left 90°00' and run 307.00 feet; thence left 90°00'00" and run 16.51 feet to the point of beginning; thence right 89°04'34" and run along the Northerly right of way line of Chalkville-Trussville Road as described in Volume Book 4064, page 155-156, in the Probate Office of Jefferson County, Alabama a distance of 202.81 feet; thence left 48°07'48" and run a distance of 10.82 feet to the intersection of the West line of Green Drive, said point being on a curve to the right and having the following described characteristics: a delta of 10°48'58", a radius of 1178.06 feet; thence with a deflection left 40°31'17" from last mentioned line to chord of said curve and run along arc of said curve and along said Westerly right of way a distance of 222.39 feet said arc being subtended by a chord distance of 222.06 feet; thence deflect left 90°25'29" (measured from chord from last described curve); thence leaving said Westerly right of way and running along the Southerly line of Parcel II as described in Book 3371, page 441, in the Probate Office of Jefferson County, Alabama a distance of 211.52 feet; thence left 90°00'00" and run a distance of 233.49 feet to the point of beginning.

**PARCEL II:**



Non-exclusive ingress/egress, temporary construction and permanent storm sewer easement, being part of the Northeast 1/4 of the Southwest 1/4 of Section 14, Township 16 South, Range 1 West, Jefferson County, Alabama and being more particularly described as follows:

From the Southwest corner of the Northeast 1/4 of the Southwest 1/4 of said Section 14, run East along the South line of said 1/4 - 1/4 section for a distance of 378.89 feet; thence turn an angle to the left of 90° and run Northerly for a distance of 576.79 feet to a point on the Northerly right of way line of the Chalkville-Trussville Road; thence turn an angle to the right of 95°55'30" and run Southeasterly along said right of way line for a distance of 262.74 feet; thence turn an angle to the right of 90° and run Southwesterly a distance of 25.00 feet; thence turn an angle to the left of 90° and run Southeasterly a distance of 107.00 feet; thence turn an angle to the left of 90° and run Northeasterly 250 feet; thence turn an angle to the right of 90° and run Southeasterly 150 feet to the point of beginning; thence turn an angle to the left of 90° and run Northeasterly 50 feet; thence turn an angle to the right of 90° and run 267.05 feet more or less to the Westerly right of way of Green Drive; thence turn an angle to the right of 96°22'30" and run 41.58 feet along said right of way to the point of tangent of a curve to the left, said curve having a radius of 1178.06 feet and central angle of 0°25'20" and a chord length of 8.68 feet; thence run along the arc of said curve 8.68 feet; thence turn an angle of 81°57'26" to the right from the chord of said arc and run 261.52 feet Northwesterly to the point of beginning.

PARCEL III:

Easement for lateral line and septic tank field lines across a part of the NE 1/4 of the SW 1/4, Section 14, Township 16 South, Range 1 West, Jefferson County, Alabama, said parcel being more particularly described as follows:

Commencing at the SE corner of the NE 1/4 of the SW 1/4 of Section 14, Township 16 South, Range 1 West, Jefferson County, Alabama; thence run North along the East line of said section a distance of 460.24 feet to the point of beginning; thence continue along the last described course a distance of 291.04 feet to the Southeast corner of the new Booster Station as recorded in Book 2998, page 439; thence left 76°50'22" and run a distance of 67.95 feet to the Southwest corner of said Booster Station, said point also being on the Easterly right of way of Green Drive (60 foot ROW); thence left 89°48'25" and run Southerly along said right of way a distance of 55.01 feet to a point of a curve to the left and having the following described characteristics: a delta of 10°37'37", a radius of 1118.06 feet; thence left 05°18'47" (measured from last described line to chord of said curve) and run along the arc of said curve and along said right of way a distance of 207.37 feet to a point on the Northerly right of way line being Parcel I as described in Book 4064, page 155, in the Probate Office of Jefferson County, Alabama; thence left 50°54'23" (measured from chord of last described curve) and run Southeasterly along said right of way a distance of 64.80 feet to a point on the Northerly right of way line of Chalkville-Trussville Road (50 foot ROW), said point also being on a curve to the left having the following described characteristics: a delta of 03°34'24", a radius of 1022.47 feet; thence deflect left from last described course 46°43'39" to chord of said curve and run along the arc of said curve a distance of 63.77 feet to the point of beginning.

All situated in Jefferson County, Alabama.

STORE ADDRESS: 1101 North Chalkville Road, Trussville, AL 35173



**Site No. 11**

NBU No. 21201124

Store Info: 1736 (Cahaba Valley) AL 23

Local No. and Policy No. 2963F-12J

**PARCEL I:**

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the Southeast 1/4 for a distance of 329.53 feet, thence turn an angle to the right of 60°17'38" and run in a Southeasterly direction for a distance of 1009.25 feet to the point of beginning, from the point of beginning thus obtained continue along the last described course for a distance of 250.00 feet to a point on the Northwest right of way of Alabama Highway No. 119, thence turn an angle to the right of 88°6'12" and run in a Southwesterly direction along the Northwest right of way for a distance of 160.00 feet, thence turn an angle to the right of 91°53'48" and run in a Northwesterly direction for a distance of 250.00 feet, thence turn an angle to the right of 88°6'12" and run in a Northeasterly direction for a distance of 160.00 feet to the point of beginning.

**PARCEL II:**

**A SLOPE EASEMENT OVER THE FOLLOWING DESCRIBED PARCEL:**

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the Southeast 1/4 for a distance of 329.53 feet; thence turn an angle to the right of 60°17'38" and run in a Southeasterly direction for a distance of 979.25 feet to the point of beginning; thence 88°06'12" right in a Southwesterly direction for a distance of 220 feet; thence 88°06'12" left in a Southeasterly direction for a distance of 280 feet to a point on the Northwesterly right of way line of Alabama Hwy. #119; thence 91°53'48" left in a Northeasterly direction and along said right of way line for a distance of 50 feet; thence 88°06'12" left in a Northwesterly direction for a distance of 250 feet; thence 88°06'12" right in a Northeasterly direction for a distance of 160 feet; thence 88°06'12" left in a Northwesterly direction for a distance of 30 feet to the point of beginning.

**PARCEL III:**

**A PERPETUAL NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PARCEL:**

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the southeast 1/4 for a distance of 329.53 feet; thence turn an angle to the right of 60°17'38" and run in a Southeasterly direction for a distance of 979.25 feet; thence 88°06'12" right in a Southwesterly direction for a distance of 220 feet; thence 88°06'12" left in a Southeasterly direction for a distance of 215 feet to the point of beginning; thence continue along last described course a distance of 65 feet to a point on the Northwesterly right of way line of Alabama Hwy #119; thence 91°53'48" left in a Northeasterly direction and along said right of way line for a distance of 60 feet; thence 88°06'12" left in a Northwesterly direction for a distance of 65 feet; thence 91°53'48" left in a Southwesterly direction for a distance of 60 feet to the point of beginning.

STORE ADDRESS: 579 Cahaba Valley Road, Pelham, AL



**Site No. 12**

NBU No. 21201125

Store Info: 1757 (Clanton) AL 24

Local No. and Policy No. 2963F-12K

A parcel of land located in the Northwest 1/4 of Section 7, Township 21 North, Range 15 East in Chilton County, Alabama, being more particularly described as follows:

As a starting point, start at the Southeast corner of the Southwest 1/4 of the Northwest 1/4 of said Section 7; thence run North 00°34'00" West a distance of 838.85 feet (North 00°34'00" West a distance of 841.30 feet, deed) to a point on the North right of way of Woodfin Lane, a 40 foot right of way; thence run North 37°22'05" West for a distance of 58.94 feet (North 36°30' West a distance of 68.2 feet, deed) and along said right of way to the point of beginning of the parcel herein described; thence run North 37°22'05" West a distance of 236.14 feet (North 36°30' West, deed) and along said right of way to a point; thence run North 41°49'27" East a distance of 184.81 feet to a point on the South right of way of U.S. Highway No. 31, a 120 foot right of way; thence run South 60°09'23" East and along said right of way for a distance of 71.14 feet to a point, said point being T.S. Station 1200+44.7, said point being the beginning of a spiral curve having a center line delta of 20°10' to the right, degree of curve of 02°30', spiral length of 400.0 feet; thence run South 59°42'23" East and along said right of way a chord distance of 87.00 feet to a point; thence run South 25°22'48" West a distance of 272.40 feet (South 26°13'52" West, deed) to the point of beginning of the parcel herein described.

STORE ADDRESS: 1305 7th Street, South, Clanton, AL

**Site No. 13**

NBU No. 21201126

Store Info: 1981 (Morgan Road) AL 25

Local No. and Policy No. 2963F-12J

A parcel of land located in the Southwest ¼ of Section 36, Township 19 South, Range 4 West, In Jefferson County, Alabama, and being more particularly described as follows:

As a starting point start at the Northwest corner of the Southwest ¼ of the Southwest ¼ of said Section 36; thence run South 01°38'41" East and along the West boundary of said Section 36 for a distance of 360.00 feet to a point; thence North 69°39'09" East for a distance of 38.55 feet to a point on the East right of way of Morgan Road, a 60 foot right of way; thence run South 03°46'19" East and along the East right of way of Morgan Road for a distance of 139.71 feet to a point; thence continue South 08°08'04" East and along the curving right of way of said Morgan Road for a chord distance of 157.10 feet to the point of beginning of the parcel herein described; thence run North 86°30'39" East for a distance of 182.36 feet to a point; thence run South 11°29'33" East for a distance of 210.11 feet to a point; thence run South 80°00'15" West for a distance of 150.18 feet to a point on the East right of way of said Morgan Road, said point being on a curve to the right having a delta of 12°59' and a radius of 1,033.08 feet; thence run North 18°59'10" West to the chord and along said curving right of way for a chord distance of 233.57 feet (arc distance 234.07 feet) to the point of beginning of the parcel herein described.

TOGETHER WITH rights acquired under Declaration of Easements dated 10-5-1995, and recorded in Bessemer Real 1111, page 969, In the Probate Office of Jefferson County, Alabama.

LESS AND EXCEPT that portion of the above property conveyed to Jefferson County for public road and other public utilities by Right of Way Deed recorded in Bessemer Book LR201162, page 29501,



In the Probate Office of Jefferson County, Alabama.

STORE ADDRESS: 2931 Morgan Road, Bessemer, AL

**Site No. 14**

NBU No. 21201127

Store Info: 2516 (Edwards Lake) AL 28

Local No. and Policy No. 2963F-12L

Lot 4, according to the Survey of Cole Commercial Subdivision, as recorded in Map Book 172, page 11, in the Probate Office of Jefferson County, Alabama, less and except any portion conveyed to the State of Alabama by instrument recorded under Instrument 9406/4132, being more particularly described as follows:

Begin at the Northernmost corner of Lot 4 as shown on the map of Cole Commercial Subdivision; thence run Southeasterly along the Northeast lot line of said Lot 4 for a distance of 370.31 feet to a point on the Northwestern right of way line of U.S. Highway No. 11, said point being 50.00 feet, measured at right angle, from the centerline of said highway, said point being on a curve to the left having a central angle of  $0^{\circ}55'57''$ , a radius of 6268.41 feet, and a chord of 102.02 feet which forms an interior angle to the left of  $93^{\circ}11'28''$  with the last described course; thence run Southwesterly along said curve for an arc distance of 102.02 feet to the point of tangency; thence run Northwesterly and radial to said curve for a distance of 10.00 feet to a point on said Northwesterly right of way line which is 60.00 feet, measured at right angle, from the centerline of said highway, said point being on a curve to the left, concentric with the previous curve, and have a central angle of  $0^{\circ}56'36''$ , a radius of 6278.41 feet, and a chord of 103.35 feet; thence run Southwesterly along said right of way line and along said curve for an arc distance of 103.35 feet to the point of curvature of a nontangent curve to the right having a central angle of  $10^{\circ}38'19''$ , a radius of 25.00 feet, and a chord of 4.64 feet which forms an interior angle to the left of  $96^{\circ}02'36''$  with the chord of the previous curve; thence run Northwesterly along said curve and along the Northeasterly right of way line of Edwards Lake Parkway for an arc distance of 4.64 feet to the point of tangency; thence run Northwesterly and tangent to said curve for a distance of 320.19 feet to the point of curvature of a tangent curve to the right having a central angle of  $77^{\circ}37'14''$  and a radius of 25.00 feet; thence run Northerly along said curve for an arc distance of 33.87 feet to the point of tangency, said point being on the Southeasterly right of way line of Morrow Road and being the point of compound curvature of a tangent curve to the right have a central angle of  $21^{\circ}34'43''$  and a radius of 573.29 feet; thence run Northeasterly along said curve and along said right of way line for an arc distance of 215.91 feet to the point of tangency; thence run Northeasterly along said right of way line and tangent to said curve for a distance of 2.69 feet to the point of beginning.

All situated in Jefferson County, Alabama.

STORE ADDRESS: 3211 Edwards Lake Parkway, Birmingham, AL 35253



**Site No. 15**

NBU No. 21201128

Store Info: 3942 (North Chase) AL 29

Local No. and Policy No. 2963F-12N

Lot B, according to the Survey of Northchase, Plat No. 4, as recorded in Map Book 47, page 181, in the Probate Office of Montgomery County, Alabama.

STREET ADDRESS: 2545 Congressman Wm. Wickinson Drive, Montgomery, AL

**Site No. 16**

NBU No. 21201129

Store Info: 4218 (Taylor Road) AL 30

Local No. and Policy No. 2963F-12O

STORE #4218 AL 30

Lot A, according to the Survey of Wendy's at Eastchase Plat No. 1, as recorded in Map Book 48, page 90, in the Probate Office of Montgomery County, Alabama.

STREET ADDRESS: Taylor Road, Montgomery, AL