

THIS INSTRUMENT PREPARED BY:

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

By

MJBJ REAL ESTATE, LLC, a Kentucky limited liability company, as Mortgagor

In favor of

GE CAPITAL BANK, as Lender

Made and dated as of July 13, 2012

**NOTE TO CLERK: THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THE MORTGAGE
IS \$3,300,000, with \$456,000 BEING ALLOCATED TO THIS SITE.**

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

**ONE OR MORE OF THE NOTES SECURED BY THIS MORTGAGE BEARS INTEREST AT A
VARIABLE RATE WHICH WILL FLUCTUATE DURING THE LOAN TERM.**

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING (the "*Mortgage*") is made as of July 13, 2012 by **MJBJ REAL ESTATE, LLC**, a Kentucky limited liability company ("*Mortgagor*"), whose mailing address is 2501 Crossings Blvd., Bowling Green, Kentucky 42101, in favor of **GE CAPITAL BANK**, a Utah industrial loan corporation ("*Lender*"), whose mailing address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255, as mortgagee and secured party.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

**ARTICLE 1
MORTGAGE**

1.1 Grant of Mortgage. Mortgagor hereby mortgages, grants, conveys, assigns, and transfers to Lender **WITH POWER OF SALE AND RIGHT OF ENTRY**, for the benefit and security of Lender, all of the Mortgaged Property; **TO HAVE AND TO HOLD** the Mortgaged Property hereby mortgaged and conveyed or so intended, together with all estate, right, title and interest of Mortgagor and anyone claiming by, through or under Mortgagor, in, to, under or derived from the Mortgaged Property and all rights and appurtenances relating thereto, unto Lender, its successors and assigns forever, upon the terms, provisions and conditions set forth in this Mortgage, subject only to the Permitted Exceptions. This Mortgage is being made pursuant to the terms and conditions of the Loan Agreement, of even date herewith, between Mortgagor, as Borrower, and Lender (the "*Loan Agreement*"). Capitalized terms used in this Mortgage and not otherwise defined in this Mortgage have the meanings given to those terms in the Loan Agreement.

1.2 Mortgaged Property. The "*Mortgaged Property*" consists of all of Mortgagor's estate, right, title and interest in and to the following described property and property rights, whether now existing or hereafter acquired, including in any greater estate hereafter acquired, with references in this Mortgage to the Mortgaged Property to mean and include all or any portion of or interest in any of the Mortgaged Property:

(a) The Land and Improvements. The real property described on *Exhibit A*, together with any and all rights and privileges appurtenant thereto (the "*Land*"), and all buildings and other improvements located or erected on the Land, including any and all items of property attached or affixed to such buildings or other improvements (or any portion thereof) (collectively, the "*Improvements*"), which Improvements are intended and agreed to be an integral part of the real property. The Land and the Improvements are referred to in this Mortgage as the "*Premises*." If there is more than one parcel of real property described on *Exhibit A*, references in this Mortgage to "Land" and "Improvements" shall be to the Land and Improvements relating to and encompassing each such parcel, each of which constitutes a "Premises," and references to "Premises" shall include each such Premises.

(b) Leasehold Interests. Any and all leasehold estates covering any portion of the Premises, including sublease estates, and including all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "*Leases*"), together with any and all rents, issues, profits, damages, income and other benefits now or hereafter derived from the Premises (collectively the "*Rents*").

(c) Other Interests. Any and all (i) interest, estate or other claim, in law or in equity, in any of the Premises, including any greater estate in either the Land or the Improvements; (ii) easements, rights-of-way and other rights used in connection with the Premises, including all rights to the nonexclusive use of common drive entries; (iii) water rights, water stock, and claims or title to water; (iv) land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, parkways, driveways,

alleys and strips and gores of land adjacent to or used in connection with the Premises; and (v) awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Premises (including awards for severance damages).

(d) Personal Property. All of the following described property, whether now owned or hereafter acquired and wherever located, together with all replacements and substitutions therefor and all cash and non-cash proceeds, including insurance proceeds and title insurance proceeds, and products thereof, and, in the case of tangible property, together with all additions, attachments, accessions, parts, equipment and repairs now or hereafter attached or affixed thereto or used in connection therewith, ***excluding, however***, any and all “consumer goods,” as defined in the UCC: All of Mortgagor’s right, title, and interest in: (i) all types of property included within the term “equipment” as defined by the UCC (except vehicles, boats and airplanes), including machinery, furniture, appliances, trade fixtures, tools, and office and record keeping equipment; (ii) all inventory, including all goods held for sale, raw materials, work in process and materials or supplies used or consumed in Mortgagor’s business; (iii) all documents; general intangibles; accounts; contract rights; chattel paper and instruments; money; securities; investment properties; deposit accounts; supporting obligations; letters of credit and letter of credit rights; commercial tort claims; and records, software and information contained in computer media (such as databases, source and object codes and information therein), together with any equipment and software to create, utilize, maintain or process any such records or data on electronic media; (iv) any and all plans and specifications, designs, drawings and other matters prepared for any construction on any real property owned by or leased to Mortgagor or regarding any improvements to any of such real property; and (v) goodwill; ***provided, however***, that the security interest in any franchise, license, or distributorship agreement is subject to the provisions of Section 9-408 of the UCC (all of the property described in this ***subsection (d)*** being referred to as the “***Personal Property***”).

(e) Proceeds. All proceeds, both cash and non-cash, and products of any of the foregoing.

1.3 Duration of Mortgage. This Mortgage and all of the terms, conditions, and obligations contained in this Mortgage shall continue in full force and effect until such time as all indebtedness under the Note or Notes executed and delivered pursuant to the Loan Agreement (with references herein to “***Note***” to mean each such Note, if more than one) and all other Obligations have been fully and finally paid and performed, at which time this Mortgage shall be void, and Lender agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage. As a condition to such release, Mortgagor agrees to reimburse Lender for Lender’s reasonable out-of-pocket expenses incurred in connection with the release, and Mortgagor shall also pay Lender a reasonable processing fee in connection with such release.

1.4 Warranty and Covenant of Ownership. As of the date hereof, Mortgagor represents, warrants and covenants that Mortgagor (a) is, and, as to any portion of the Mortgaged Property acquired hereafter, will upon such acquisition be, the owner of the Mortgaged Property and all legal and beneficial interests therein, free and clear of all Liens and Encumbrances, other than the Permitted Exceptions; (b) is the owner of the Premises in fee simple; and (c) shall remain the owner of the entire Mortgaged Property and all legal and beneficial interests therein free and clear of all Liens and Encumbrances, other than the Permitted Exceptions. “***Lien or Encumbrance***” and “***Liens and Encumbrances***” mean, respectively, each and all of the following in respect of the Mortgaged Property, other than Permitted Exceptions and other matters expressly permitted by this Mortgage: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other Liens or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Lender in this Mortgage.

ARTICLE 2 OBLIGATIONS SECURED

2.1 Obligations Secured. This Mortgage is given to secure the following:

(a) Note Indebtedness. Payment of the indebtedness in the original principal balance of \$3,300,000.00, with interest thereon, evidenced by the Loan Agreement and the Note, together with all

extensions, renewals, amendments, and modifications thereof, including increases or decreases in the interest rate, extensions of the maturity date, and payment modifications (including deferrals or accelerations of principal or interest);

(b) Other Loan Obligations. Payment of all other Indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other Obligations contained in or arising under the Loan Agreement, the Note, and any other Loan Document, as any such Loan Document may be amended, supplemented, extended or renewed from time to time, together with any other instrument given to evidence or further secure the payment and performance of any Obligation secured hereby or thereby;

(c) Payment and Performance of Related Agreements. Payment of all Indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other Obligations contained in or arising under any Related Agreement, including the Related Agreements listed on the attached "***Related Agreements Schedule***"; ***provided, however***, that if the rights of the lender under any Related Agreement are transferred and assigned to any Person, other than an Affiliate of Lender, then from and after such transfer and assignment, the Obligations with respect to such Related Agreement shall cease to be secured by any of the Mortgaged Property;

(d) Future Advances. All future advances that may be made to Mortgagor by Lender evidenced by the Note, or any other promissory notes, and all renewals, replacements, modifications, and extensions thereof, including the unpaid balances of all future advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Mortgaged Property or otherwise made by Lender as contemplated by this Mortgage or any other Loan Document, together with interest thereon until paid at the Default Rate, all as contemplated in this Mortgage and the other Loan Documents, all of which shall constitute a part of the Obligations; ***provided, however***, that nothing contained herein shall create an obligation on the part of Lender to make future advances to Mortgagor except to the extent, if any, specifically stated in the Loan Documents; and

(e) Obligations Generally. Payment and performance of all of the other Obligations.

2.2 Certain Obligations Not Secured. Notwithstanding any other provision of this Mortgage or the other Loan Documents, this Mortgage does not secure any of the obligations of Mortgagor under the Environmental Indemnity Agreement, it being the intent and agreement of the parties that the obligations of Mortgagor under the Environmental Indemnity Agreement be and remain unsecured by any interest in the Mortgaged Property.

2.3 Priority. It is the intent and agreement of the parties that the Mortgaged Property shall secure all of the Obligations presently or hereafter owed, and that the priority of the Lien created by this Mortgage for all such Obligations shall be as of the time of recording of this Mortgage. In addition, this Mortgage shall also secure the unpaid balances of all future advances (i) made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Mortgaged Property or (ii) otherwise made by Lender as contemplated by this Mortgage or any of the other Loan Documents, together with interest thereon until paid at the Default Rate, all as contemplated in this Mortgage and the other Loan Documents, all of which shall constitute a part of the Obligations.

2.4 Lender Affiliates. To the extent that any Obligation secured hereby is held by an Affiliate of Lender, rather than directly by Lender, Mortgagor acknowledges and agrees that Lender is acting both for itself, with respect to the Obligations held by Lender, and as agent for and on behalf of such Affiliate with respect to Obligations held by such Affiliate and that Lender shall be entitled, both on its own behalf and as agent for and on behalf of such Affiliate, to exercise all rights and remedies of the mortgagee and secured party under this Mortgage.

IMPORTANT NOTICE

THIS SECTION SHALL SERVE AS NOTICE TO ALL PERSONS WHO MAY SEEK OR OBTAIN A LIEN ON ALL OR ANY PORTION OF THE MORTGAGED PROPERTY AFTER THE DATE OF RECORDING OF THIS MORTGAGE, THAT UNTIL THIS MORTGAGE IS RELEASED, THE

FOLLOWING SHALL BE SECURED WITH THE PRIORITY AFFORDED THIS MORTGAGE AS AND WHEN RECORDED: (A) ANY DEBT OWED LENDER OR ANY AFFILIATE OF LENDER BY MORTGAGOR OR ANY OTHER CREDIT PARTY, INCLUDING ADVANCES MADE SUBSEQUENT TO THE RECORDING OF THIS MORTGAGE; AND (B) ANY MODIFICATION TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR THE OBLIGATIONS MADE SUBSEQUENT TO THE DATE OF RECORDING OF THIS MORTGAGE, INCLUDING, WITHOUT LIMITATION, INCREASES IN THE AMOUNT OF THE OBLIGATIONS SECURED, INCREASES IN INTEREST RATES WITH RESPECT TO ANY OBLIGATION, CHANGES TO THE MATURITY DATE OF ANY OBLIGATION (EACH, A "*MODIFICATION*"), NOTWITHSTANDING THAT SUCH MODIFICATION MAY OCCUR AFTER THE DATE OF RECORDATION OF ANY JUNIOR LIEN. ALL PERSONS WHO MAY SEEK OR OBTAIN A LIEN ON THE MORTGAGED PROPERTY AFTER THE DATE OF RECORDING OF THIS MORTGAGE EXPRESSLY TAKE SUBJECT TO THE TERMS OF THIS MORTGAGE AND ALL SUCH MODIFICATIONS, NOTWITHSTANDING THAT THE MODIFICATIONS MAY ADVERSELY AFFECT OR PREJUDICE THE RIGHTS OF SUCH PERSON. NOTHING IN THIS SECTION OR IN ANY OF THE OTHER PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS SHALL BE DEEMED TO BE AN APPROVAL OF OR CONSENT TO, OR A WAIVER OF ANY RIGHT TO OBJECT TO, ANY LIEN ON ANY OF THE MORTGAGED PROPERTY OTHERWISE PERMITTED BY THE TERMS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

ARTICLE 3 MORTGAGOR COVENANTS

Mortgagor covenants and agrees as follows:

3.1 Use. The Mortgaged Property shall be used solely for the operation of a Permitted Concept in accordance with the Franchise Agreement and for no other purpose. Mortgagor shall not, without Lender's prior written consent, (a) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Mortgaged Property); (b) permit the use of the Mortgaged Property to become a non-conforming use under applicable zoning ordinances; (c) file any subdivision or parcel map affecting the Mortgaged Property; or (d) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Mortgaged Property.

3.2 Impositions; Right to Contest. Prior to delinquency, Mortgagor shall pay the following (collectively, the "*Impositions*"): (a) all Taxes, water and sewer rents and charges, and all charges for utility services, in each case that may be assessed, levied or imposed upon Mortgagor, any of the Mortgaged Property, the Loan Documents, or the Obligations; and (b) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a Lien on any of the Mortgaged Property, unless Mortgagor shall contest the amount or validity thereof as permitted in this Section. If by law any Imposition is payable in installments, Mortgagor may pay the same in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. Upon written request from Lender, Mortgagor shall deliver to Lender official receipts of the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment of particular Impositions. Mortgagor may, at its own expense, contest by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity, or application of any Imposition, *provided* that (x) Mortgagor shall demonstrate to Lender's reasonable satisfaction that the proceedings will conclusively operate to prevent the sale of any of the Mortgaged Property to satisfy such Imposition prior to a final determination; (y) Mortgagor shall have deposited with Lender adequate reserves for the payment of the Imposition, together with all interest and penalties thereon, unless, in connection with such proceedings, Mortgagor shall have paid the Impositions in full under protest or unless Mortgagor shall have furnished such security or other undertaking as may be required or permitted by law to accomplish a stay of any sale of any of the Mortgaged Property; and (z) no Default has occurred and is continuing.

3.3 Maintenance and Repair. Mortgagor shall: (a) maintain the Mortgaged Property and, to the extent allowed by law, abutting grounds, sidewalks, roads, parking, and landscape areas in good condition and repair, subject to reasonable and ordinary wear and tear, and free from actual or constructive waste; (b) operate, remodel, update and modernize the Mortgaged Property as required by the Franchise Agreement or as is otherwise prudent and reasonable; *subject, however,* to the provisions of the Section of this Mortgage entitled "Alterations and Improvements"; (c) pay all operating costs of the Mortgaged Property in the ordinary course of business, including

utility costs; and (d) not do or allow any tenant or other user of the Mortgaged Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Premises), impairs or is reasonably likely to impair in any material respect the value of the Mortgaged Property, is contrary to any Applicable Law, or violates in any material respect any covenant, condition, agreement or easement applicable to the Mortgaged Property.

3.4 Alterations and Improvements. Mortgagor shall not make, nor permit to be made any alterations to the Mortgaged Property without the prior written consent of Lender, which consent shall not be unreasonably withheld or conditioned, except that Mortgagor may make nonstructural alterations to the Mortgaged Property costing less than \$100,000 without Lender's consent. For purposes of this Mortgage, structural alterations include any alterations or additions to the Mortgaged Property that would (a) affect the foundation of the Improvements; (b) involve the structural elements of the Improvements, such as a load-bearing wall, structural beams, columns, supports or roof; or (c) materially affect any of the building systems, including the electrical systems, plumbing, HVAC and fire and safety systems. All alterations and additions shall be undertaken and completed at Mortgagor's sole expense and in accordance with plans and specifications approved by Lender and, except to the extent that Lender's consent to such alteration or addition is not otherwise required, subject to such other reasonable conditions as Lender shall require. All such work shall be undertaken using licensed contractors, shall be prosecuted diligently to completion, shall be of good workmanship and materials, and shall comply fully with all the terms of this Mortgage, the Franchise Agreement, and all Applicable Law. Upon completion of any alterations or additions to the Mortgaged Property, at Lender's request, Mortgagor shall promptly provide Lender with evidence of full payment to all laborers and materialmen contributing to the alterations, an architect's certificate certifying the alterations to have been completed in conformity with the plans and specifications, a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and any other documents or information reasonably requested by Lender.

3.5 Condemnation.

(a) Takings; Continuation of Obligations. If there is a taking of all or any portion of the Mortgaged Property or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful authority by exercise of the right of condemnation or by agreement between Lender, Mortgagor and those authorized to exercise such right in lieu of condemnation (a "**Taking**"), Mortgagor will promptly give Lender written notice of the Taking, generally describing the nature and extent. No Taking shall relieve Mortgagor of any of its Obligations, including its obligations to make regularly scheduled payments of principal and interest under the Note and the other Loan Documents.

(b) Lender's Right to Participate. Mortgagor authorizes and empowers Lender, at Lender's option and in Lender's sole discretion, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name or on behalf of Mortgagor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

(c) Restoration Obligations. Promptly following the occurrence of a Taking, other than a Total Taking (defined below), Mortgagor shall, at Mortgagor's expense, commence and diligently complete the repair, restoration, replacement, and rebuilding of the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to the Taking (a "**Restoration**"). Mortgagor shall not be excused from repairing or maintaining the Mortgaged Property or from the obligation to restore, replace and rebuild the Mortgaged Property, regardless of whether or not there are Condemnation Proceeds available to Mortgagor or whether any such Condemnation Proceeds are sufficient in amount, and the application or release by Lender of any Condemnation Proceeds shall not cure or waive any default or notice of default under this Mortgage or the other Loan Documents or invalidate any act done pursuant to such default or notice of default.

(d) Application of Condemnation Proceeds. All compensation, awards, damages, rights of action and proceeds awarded to Mortgagor by reason of any such Taking or received by Mortgagor as the result of a transfer in lieu of a Taking (the "**Condemnation Proceeds**") are assigned to Lender and shall be paid directly to Lender. Mortgagor agrees to execute such further assignments of the Condemnation Proceeds as Lender



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may require. If Mortgagor receives any Condemnation Proceeds, Mortgagor shall promptly pay over such proceeds to Lender. All Condemnation Proceeds will be applied by Lender to payment of the Obligations in such order as Lender, in its sole discretion, shall determine; **provided, however**, that if no Default has occurred and is continuing and if the Taking is not a Total Taking, the Condemnation Proceeds, less costs, fees and expenses incurred by Lender and Mortgagor in the collection thereof, including reasonable attorneys' fees and expenses (the "**Net Condemnation Proceeds**"), shall be made available to Mortgagor, to be used by Mortgagor to satisfy its Restoration obligations, substantially in the manner and according to the procedures, limitations, and requirements provided in the Loan Agreement for the distribution of Net Insurance Proceeds, as if the Net Condemnation Proceeds were Net Insurance Proceeds. "**Total Taking**" means a Taking of substantially all of the Mortgaged Property or of such a portion of the Mortgaged Property that the remainder cannot reasonably be used for the purposes for which used prior to the Taking. To the extent that any Condemnation Proceeds are applied to pay down principal on any Loan, no prepayment fee shall be charged with respect thereto.

3.6 Waiver. Mortgagor waives any and all right to claim or recover against Lender or any of Lender's Affiliates for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control.

3.7 No Discharge. The obligations and liabilities of Mortgagor under this Mortgage or any of the other Loan Documents shall in no way be released, discharged or otherwise affected (except as otherwise expressly provided in the Loan Documents) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property; (b) any restriction or prevention of or interference by any Person with any use of any of the Mortgaged Property; (c) any title defect or encumbrance or any eviction from the Mortgaged Property by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender, or any action taken with respect to this Mortgage by any trustee or receiver of Lender, or by any court, in any such proceeding; (e) any claim that Mortgagor has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms of the Loan Documents or of any Related Agreement; or (g) any other act or occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

3.8 Actions Affecting Mortgaged Property. Mortgagor shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, Mortgagor shall appear in and contest any action or proceeding purporting to affect the security or priority of this Mortgage or the rights or powers of Lender and shall pay all reasonable costs and expenses (including costs of evidence of title, litigation, and reasonable attorneys' fees) in any such action or proceeding in which Lender may appear.

3.9 Actions by Lender. If Mortgagor fails to make any payment or to do any act as and in the manner required by this Mortgage or any other Loan Documents, Lender may, in its absolute and sole discretion, without obligation so to do, without releasing Mortgagor from any obligation, and with only such notice to or demand upon Mortgagor as may be reasonable under the then existing circumstances, but in no event exceeding five days' prior written notice, make or do the same in such manner and to such extent as Lender may deem necessary or appropriate, including: (a) entering upon and taking possession of the Mortgaged Property and otherwise exercising its rights and remedies under this Mortgage and the other Loan Documents; (b) taking such actions and making such additions, alterations, repairs and improvements to the Mortgaged Property as Lender reasonably may consider necessary or appropriate to keep the Mortgaged Property in good condition and repair or otherwise to protect the value or security of any of the Mortgaged Property, including payment of Impositions and insurance premiums; and (c) taking such actions as Lender reasonably may consider necessary or appropriate to protect the priority, validity and enforceability of the lien of this Mortgage on the Mortgaged Property, such as appearing and participating in any action or proceeding affecting or which may affect the security or priority hereof or the rights or powers of Lender or paying, purchasing, contesting or compromising any Lien or alleged Lien, whether superior or junior to this Mortgage. Mortgagor shall, immediately upon demand therefor by Lender, pay to Lender all amounts expended by Lender, including all costs and expenses reasonably incurred by Lender in connection with the exercise by Lender of the foregoing rights (including costs of evidence of title, court costs, appraisals, surveys, fees of receivers, and reasonable attorneys' fees), **provided** that if in Lender's reasonable discretion, immediate action is necessary in

order to preserve the value of the Mortgaged Property or Lender's Lien thereon or rights thereto, the above described notice shall not be required. All amounts expended by Lender pursuant to this Section or any other provision of this Mortgage or the other Loan Documents, with interest thereon at the Default Rate from the date incurred until paid, constitute part of the Obligations and are secured by the Liens securing the Obligations, including the lien of this Mortgage.

3.10 Prohibited Transactions. In order to induce Lender to make the Loan, Mortgagor agrees that, upon the occurrence of a Prohibited Transaction (as defined in the Loan Agreement), without the prior written consent of Lender, Lender shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one Prohibited Transaction shall not be deemed to be a waiver of the right to require consent to future or successive Prohibited Transactions. Lender may grant or deny such consent in its sole discretion. In no event will Lender's consent to a Prohibited Transaction be deemed to release Mortgagor or any other Credit Party from any liability with respect to the Obligations without the prior written consent of Lender. In connection with any request for consent, Mortgagor agrees to pay Lender such fees and other amounts that are required pursuant to the Loan Agreement. Any breach of any of the provisions of this Section will, at the election of Lender, constitute an immediate Event of Default without the necessity for any further notice.

3.11 No Liens or Encumbrances. Mortgagor covenants not to grant or suffer to exist, and Mortgagor covenants to pay and promptly discharge, at Mortgagor's sole cost and expense, all Liens and Encumbrances upon the Mortgaged Property. Mortgagor covenants to notify Lender immediately in writing of any such Lien or Encumbrance. Except as otherwise provided in this Mortgage with respect to Impositions, Mortgagor may contest in good faith the validity of any involuntary Lien or Encumbrance, *provided* Mortgagor shall first deposit with Lender a bond or other security satisfactory to Lender in such amount as Lender shall reasonably require, but not more than 150% of the amount of the claim, and *provided further* that if Mortgagor loses such contest, Mortgagor will thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged, at Mortgagor's sole cost and expense. If Mortgagor fails to remove or discharge any Lien or Encumbrance, then, in addition to any other right or remedy of Lender, Lender may, after only such notice to Mortgagor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Mortgagor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all amounts expended by Lender, including all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Default Rate. Such costs and expenses shall be secured by the Liens in favor of Lender, including the lien of this Mortgage and are part of the Obligations.

3.12 Periodic Appraisals. Lender may require an appraisal of the Premises, or an update to a previously provided appraisal of the Premises, indicating the present appraised fair market value thereof: (a) if Lender determines in good faith that an appraisal is required as a result of (i) any law, regulation or guideline or any change or interpretation thereof; or (ii) any central bank or other fiscal, monetary or other Government Authority having jurisdiction over Lender or its activities requesting, directing or imposing a condition upon Lender (whether or not such request, direction or condition shall have the force of law); (b) at any time after the occurrence and during the continuance of a Default; or (c) at any other time that Lender, in its reasonable discretion deems it appropriate. Appraisals and updates pursuant to *subsections (a) and (b)* shall be at Mortgagor's sole cost and expense. Appraisals and updates pursuant to *subsection (c)* shall be at Lender's sole cost and ; *provided, however*, that Lender may charge Mortgagor for one such appraisal or update for the Premises in each calendar year during the continuance of the Mortgage. All such appraisals and updates shall comply with Applicable Law, as well as Lender's internal requirements, and shall be conducted by appraisers selected and retained by or on behalf of Lender.

3.13 Flood Insurance. If such insurance coverage was not required as of the date hereof, then, within 45 days after written notice from Lender to Mortgagor that the Premises are located in a Special Flood Hazard Area designated by the Federal Emergency Management Administration, Mortgagor, at Mortgagor's expense, shall provide and maintain flood insurance coverage sufficient to rebuild or replace the building, equipment and improvements in an amount equal to the maximum amount of coverage available under the National Flood

Insurance Program with a deductible not to exceed \$50,000. **WARNING:** Unless Mortgagor provides Lender with evidence of insurance coverage as required by the Loan Documents, Lender may purchase insurance, at Mortgagor's expense, to protect Lender's interest. This insurance may, but need not, also protect Mortgagor's interest. If there is a loss or liability, the coverage Lender purchases may not pay any claim Mortgagor makes or any claim made against Mortgagor. Mortgagor may later cancel this coverage by providing evidence satisfactory to Lender that Mortgagor has obtained the required insurance elsewhere. Mortgagor is responsible for the cost of any insurance purchased by Lender and will reimburse Lender upon demand for all such costs. The effective date of coverage may be the date Mortgagor's prior coverage lapsed or the date Mortgagor failed to provide proof of coverage. The coverage Lender purchases may be considerably more expensive than insurance.

3.14 Granting of Easements, Etc. If no Default shall have occurred and be continuing, Mortgagor may, from time to time with respect to its interest in the Mortgaged Property and with Lender's prior written consent: (a) grant easements and other rights in the nature of easements; (b) release existing easements or other rights in the nature of easements which are for the benefit of the Mortgaged Property; (c) dedicate or transfer unimproved portions of the Mortgaged Property for road, highway or other public purposes; (d) execute petitions to have the Mortgaged Property annexed to any municipal corporation or utility district; and (e) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

3.15 Lender's Power. Without affecting the liability of any Person liable for the payment or performance of any of the Obligations and without affecting the lien of this Mortgage upon the Mortgaged Property not then or theretofore released as security for the Obligations, Lender may, from time to time and without notice: (a) release any Person so liable; (b) extend the Obligations; (c) grant other indulgences; (d) release or reconvey, or cause to be released or reconveyed, at any time at Lender's option any parcel, portion or all of the Mortgaged Property; (e) take or release any other or additional security or any guaranty for any of the Obligations; or (f) make adjustments or other arrangements with debtors in relation thereto.

3.16 Recording; Further Assurances. Mortgagor shall, from time to time, take such actions as Lender may request to cause this Mortgage, each supplement and amendment to the Mortgage, and each instrument of further assurance (collectively, the "**Recordable Documents**") to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien of the Mortgage upon the Mortgaged Property. Mortgagor shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments reasonably requested by Lender for carrying out the intention of, or facilitating the performance of, this Mortgage. Lender is irrevocably appointed the agent and attorney-in-fact of Mortgagor to comply with the requirements of this Section, which appointment is coupled with an interest and is irrevocable; **provided, however**, Lender shall not exercise such power of attorney unless Mortgagor has first failed to comply with this Section, and **provided, further**, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default.

3.17 Subrogation. To the extent that proceeds of any Note are used to pay any outstanding Lien against the Mortgaged Property, such proceeds shall be deemed to have been advanced by Lender at Mortgagor's request, and Lender shall be subrogated to any and all rights and Liens held by any owner or holder of such outstanding Liens, irrespective of whether said Liens are released.

3.18 Certain Representations and Warranties. Mortgagor makes the following representations and warranties with the same force and effect as the representations and warranties contained in the Loan Agreement:

(a) Access, Encroachments; Other Interests. To the best of Mortgagor's knowledge: (i) the legal description attached to this Mortgage accurately and completely describes the Land; (ii) all Improvements are located within the boundary lines of the Land and do not encroach upon the land of any adjacent owner; (iii) no improvements of any third Person encroach upon the Land; and (iv) no Person has any unrecorded right, title or interest in the Premises or any other part of the Mortgaged Property, whether by right of adverse possession, prescriptive easement, right of first refusal, right of first offer, option to purchase, lease, or other Contractual Obligation.

(b) Mechanics' Liens. There are no delinquent accounts payable or mechanics' or materialmen's Liens in favor of any materialman, laborer, or other Person in connection with labor or materials furnished to

or performed on any of the Premises and no work has been performed or is in progress, nor have materials been supplied to any portion of the Mortgaged Property or agreements entered into for work to be performed or materials to be supplied to any portion of the Mortgaged Property prior to the date of this Mortgage.

3.19 Purchase Money Mortgage. This Mortgage is a purchase money mortgage as a portion of the Obligations are being used by Mortgagor to finance the acquisition of the Mortgaged Property.

3.20 Leases. If the Premises are subject to a Lease, Mortgagor shall cause the tenant under each such Lease to comply with Mortgagor's obligations contained in this *Article 3*; ***provided, however***, this requirement shall not relieve or release Mortgagor from any of its obligations under this *Article 3* or elsewhere in any of the Loan Documents.

ARTICLE 4 SECURITY AGREEMENT; FIXTURE FILING

4.1 Grant of Security Interest. As further security for the payment and performance of the Obligations, Mortgagor grants to Lender a lien on and security interest in and to all of the Personal Property (collectively, the "*UCC Collateral*"), and this Mortgage constitutes a security agreement with Mortgagor, as the debtor, and Lender, as the secured party. Lender confirms that, notwithstanding the inclusion of general intangibles as part of the UCC Collateral and the creation, attachment and perfection of Lender's lien on and security interest in general intangibles in accordance with the provision of Section 9-408(a) of the UCC, such creation, attachment and perfection is subject to the limitations imposed by Section 9-408(d) of the UCC which provide that such creation, attachment, and perfection (a) is not enforceable against Franchisor; (b) does not impose a duty or obligation on Franchisor; (c) does not require Franchisor to recognize such lien and security interest, pay or render performance to Lender, or accept payment or performance from Lender; (d) does not entitle Lender to use or assign Mortgagor's rights under the Franchise Agreement; and (e) does not entitle Lender to use, assign, possess, or have access to any trade secrets or confidential information of Franchisor.

4.2 Fixture Filing. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures) is situated. The mailing address of Mortgagor is the address of Mortgagor set forth in the introductory paragraph in this Mortgage, and the address of Lender from which information concerning the Liens may be obtained is the address of Lender as set forth in the introductory paragraph of this Mortgage.

4.3 Covenants Concerning the UCC Collateral. Mortgagor will (a) keep all of the tangible UCC Collateral at the Premises; (b) use the UCC Collateral only in its trade or business; (c) maintain all of the tangible UCC Collateral in good operating order and repair, normal wear and tear excepted; (d) use and maintain the UCC Collateral only in compliance with manufacturers recommendations and all Applicable Law; (e) keep all of the UCC Collateral free and clear of any and all Liens, including purchase money Liens, other than those in favor of Lender; (f) remain the sole owner of the UCC Collateral; and (g) not sell, lease, mortgage, hypothecate, license, grant a Lien in or otherwise transfer or encumber any of the UCC Collateral except for (i) sales of inventory in the ordinary course of business and (ii) so long as no Default has occurred and is continuing, sales or other dispositions of obsolescent items of equipment consistent with past practices, so long as such items of obsolete equipment are replaced by items of equal or greater value and utility. Except as provided in the preceding sentence, Mortgagor will not part with possession of any of the UCC Collateral (except to Lender or for maintenance and repair).

4.4 Financing Statements and Further Assurances; Waivers. Mortgagor agrees, on request of Lender, to furnish to Lender such further information, to execute and deliver to Lender such documents and instruments (including UCC financing statements) and to do such other acts and things as Lender may at any time reasonably request relating to the perfection or protection of the Lien in the UCC Collateral created by this Mortgage or for the purpose of carrying out the intent of this Mortgage. Without limiting the foregoing, Mortgagor shall cooperate and do all acts deemed necessary or advisable by Lender to continue in Lender a perfected first Lien in the UCC Collateral and shall obtain and furnish to Lender any subordinations, releases, landlord, lessor, bailee or mortgagee

waivers, control agreements, and similar documents as may be from time to time requested by, and in form and substance satisfactory to, Lender. Mortgagor will warrant and defend the UCC Collateral and Lender against all claims by all persons in connection with the Obligations. Mortgagor (a) waives any right under the UCC or other Applicable Law to receive notice or copies of any filed or recorded financing statements, amendments thereto, continuations thereof or termination statements; and (b) releases and excuses Lender from any obligation under the UCC or other Applicable Law to provide notice or a copy of any such filed or recorded documents.

4.5 Lender's Authority. Mortgagor authorizes Lender to file financing statements, continuations, and amendments thereto describing the UCC Collateral and containing any other information required by the applicable UCC, in such form and substance as Lender, in its sole discretion, may determine. Mortgagor irrevocably grants to Lender the power to sign Mortgagor's name and generally to act on behalf of Mortgagor to execute and file applications for title, transfers of title, financing statements, notices of Liens, demands for terminations or other Liens in any of the UCC Collateral and other documents pertaining to any or all of the UCC Collateral. This power is coupled with an interest and is irrevocable during such time as any of the Obligations are outstanding. Mortgagor shall, if any certificate of title be required or permitted by law for any of the UCC Collateral, obtain and promptly deliver to Lender such certificate showing the lien of this Mortgage with respect to the UCC Collateral. Mortgagor ratifies its prior authorization for Lender to file financing statements and amendments thereto describing the UCC Collateral and containing any other information required by the UCC, if filed prior to the date hereof.

4.6 Certain Rights and Remedies with Respect to the UCC Collateral. If an Event of Default shall have occurred and be continuing, Lender, without any other notice to or demand upon Mortgagor, shall have in any jurisdiction in which enforcement of this Mortgage is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC and any additional rights and remedies that may be provided to a secured party in any jurisdiction in which any of the UCC Collateral is located, including the right to take possession of the UCC Collateral, and for that purpose Lender may, so far as Mortgagor can give authority therefor, enter upon the Premises and remove the same therefrom. Lender may in its discretion require Mortgagor to assemble all or any part of the UCC Collateral at such location or locations as Lender may reasonably designate. Unless the UCC Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Mortgagor at least 10 calendar days' prior written notice of the time and place of any public sale of UCC Collateral or of the time after which any private sale or any other intended disposition is to be made. Mortgagor acknowledges that 10 calendar days' prior written notice of such sale or sales shall be reasonable notice. In addition, Mortgagor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of Lender's rights and remedies hereunder, including, without limitation, Lender's right following an Event of Default to take immediate possession of the UCC Collateral and to exercise its rights and remedies with respect thereto.

4.7 Proceeds of Dispositions; Expenses. Mortgagor shall pay to Lender on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Lender in protecting, preserving or enforcing Lender's rights and remedies under or in respect of any of the Obligations or any of the UCC Collateral. After deducting all of the foregoing expenses, the residue of any proceeds of collection or sale or other disposition of the UCC Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Lender may determine. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the UCC, any excess shall be returned to Mortgagor. In the absence of final payment and satisfaction in full of all of the Obligations, Mortgagor shall remain liable for any deficiency.

ARTICLE 5 ASSIGNMENT OF LEASES AND RENTS

5.1 Assignment of Leases and Rents. Mortgagor assigns, transfers, and conveys to Lender all of Mortgagor's estate, right, title and interest in and to the Leases and Rents and gives to and confers upon Lender the right, power and authority to collect the Rents; to give receipts, releases and satisfactions; to sue, in the name of Mortgagor or Lender, for all Rents; and to apply the Rents to the payment of the Obligations in such order as Lender shall determine. Mortgagor further irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Lender, for all Rents. Mortgagor authorizes and directs the

lessees, tenants and occupants to make all payments under the Leases directly to Lender upon written demand by Lender, without further consent of Mortgagor; ***provided, however***, that Mortgagor shall have the right to collect such Rents (but not more than one month in advance unless the written approval of Lender is first obtained), and to retain and enjoy same, so long as a Default shall not have occurred. **THE ASSIGNMENT OF THE RENTS MADE IN THIS SECTION IS INTENDED TO BE AN ABSOLUTE, PRESENT ASSIGNMENT FROM MORTGAGOR TO LENDER AND NOT MERELY THE PASSING OF A SECURITY INTEREST.** Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Lender to the costs, if any, of taking possession and control of and managing the Mortgaged Property and collecting such amounts, including to reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Mortgagor with respect to the Leases and to the sums secured by this Mortgage.

5.2 Rights of Lender. Upon the occurrence and during the continuance of an Event of Default, Lender may, at any time without notice (except if required by any Applicable Law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, and at Lender's sole election (without any obligation to do so), enter upon and take possession and control of the Mortgaged Property to perform all acts necessary and appropriate to operate and maintain the Mortgaged Property, including to execute, cancel or modify the Leases, make repairs to the Mortgaged Property, execute or terminate contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed best to protect the security of this assignment. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those Rents actually received. Lender shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Lender hereunder, except to the extent of Lender's gross negligence or willful misconduct. Any entering upon and taking possession and control of the Mortgaged Property by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any Default or invalidate any other right or remedy of Lender.

5.3 Mortgagor's Affirmative Obligations. Mortgagor shall: (a) fulfill, perform and observe in all respects each and every condition and covenant of Mortgagor contained in any Lease; (b) give prompt notice to Lender of any claim or event of default under any Lease given to or by Mortgagor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (c) at the sole cost and expense of Mortgagor, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Lender; and (d) appear in and defend any action challenging the validity, enforceability or priority of the Lien created hereby or the validity or enforceability of any Lease.

5.4 Negative Covenants. Mortgagor shall not, without Lender's consent, in Lender's sole and absolute discretion: (a) enter into any Lease; (b) modify or amend the terms of any Lease; (c) grant any consents under any Lease, including any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the tenant under any Lease; (d) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder; or (e) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Lender. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect.

5.5 No Merger. Unless Lender otherwise consents or elects, Mortgagor's title to the Mortgaged Property and the leasehold interest in the Mortgaged Property created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Lender or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to this Mortgage or otherwise.

ARTICLE 6
EVENTS OF DEFAULT AND REMEDIES

6.1 Events of Default. Each Event of Default constitutes an “*Event of Default*” under this Mortgage.

6.2 Remedies. Mortgagor and each other Credit Party irrevocably agree that, upon the occurrence of an Event of Default, Lender may, at its option:

(a) Acceleration. Declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind.

(b) Right of Entry. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of, to increase the income from, or to protect the security of this Mortgage with respect to, the Mortgaged Property and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including reasonable attorneys’ fees) to the Obligations, all in such order as Lender may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such Rents and the application thereof shall not cure or waive any default or notice of default or invalidate any act done in response to such default or pursuant to such notice of default. Notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of Rents, Lender shall be entitled to exercise every right and remedy provided for in any of the Loan Documents or by law upon occurrence of any Event of Default.

(c) Foreclosure. Commence an action to foreclose the Lien of this Mortgage in a single parcel or in several parcels, appoint a receiver, or specifically enforce any of the covenants of this Mortgage.

(d) Exercise of Power of Sale. Sell Mortgagor’s interest in the Mortgaged Property pursuant to the power of sale conferred in this Mortgage. If Lender elects to sell Mortgagor’s interest in the Mortgaged Property by exercise of such power of sale, Lender shall have all of the rights and powers available pursuant to any Applicable Law in connection therewith, including the right to credit bid at the sale, and Lender shall give such notices and otherwise conduct the sale and apply the proceeds of the sale in the manner required by law or otherwise as Lender may determine.

(e) Receiver. Obtain an order, *ex parte*, from a state or federal court appointing a receiver for (i) the business operations of Mortgagor and/or any of the other Credit Parties; (ii) for the Mortgaged Property (or any part thereof); and/or (iii) for any or all of the assets and property rights of Mortgagor and/or of such other Credit Parties. Lender’s right to obtain an order *ex parte* from a state or federal court appointing a receiver as provided herein shall be as a matter of right and without notice to Mortgagor or any other Credit Party or anyone claiming under Mortgagor or any other Credit Party, and without regard to the then value of the Mortgaged Property or the interest of Mortgagor or any other Credit Party therein. **MORTGAGOR AND EACH OTHER CREDIT PARTY WAIVES ANY RIGHT TO A HEARING OR NOTICE OF HEARING PRIOR TO THE APPOINTMENT OF A RECEIVER AND IRREVOCABLY CONSENTS TO SUCH APPOINTMENT.** Mortgagor and each Credit Party irrevocably agree that any receiver appointed pursuant to this subsection may have all of the powers and duties of receivers in like or similar cases, including the right, with Lender’s express written consent, to operate and sell all property of the receivership estate, and that such powers and duties shall be vested in the receiver until the later of (x) the date of confirmation of sale of the receivership estate, (y) the date of expiration of any redemption period, or (z) the date the receiver is discharged. All expenses incurred by the receiver or its agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys’ fees incurred by the receiver and Lender, together with interest thereon at the Default Rate from the date incurred until paid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct. Each Credit Party expressly waives any and all rights it may have to object to the

appointment of a receiver as provided herein or to the receiver's operation or disposition of the receivership estate.

(f) Other Rights and Remedies. Exercise all other rights and remedies provided in this Mortgage, in any of the other Loan Documents, or by law.

6.3 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9 of the UCC, Lender, upon an Event of Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Mortgage and its rights and remedies in respect to real property, as specifically permitted under Section 9-604 of the UCC.

6.4 Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained in this Mortgage, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy conferred in this Mortgage upon or reserved to Lender is intended to be exclusive of any other remedy in this Mortgage or any of the other Loan Documents or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender, or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender. Lender may pursue alternative or inconsistent remedies.

6.5 Possession of Mortgaged Property. If, following the sale of the Mortgaged Property pursuant to the exercise of remedies under this Mortgage, Mortgagor continues to occupy any of the Mortgaged Property so sold, Mortgagor shall be deemed immediately and automatically to have become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property. Nothing contained in this Mortgage shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking actual possession of the Mortgaged Property pursuant to the powers granted herein.

6.6 Waiver of Rights. To the maximum extent permitted under Applicable Law, Mortgagor knowingly and voluntarily (a) waives the benefit of all laws now or hereafter existing that (i) provide for any appraisal or valuation before sale of any portion of the Mortgaged Property; or (ii) in any way extend the time for the enforcement of the collection of the Obligations or creating or extending a moratorium or period of redemption from any sale made in collecting the Obligations; (b) waives the benefit of or any Applicable Law limiting Lender's right to pursue a deficiency judgment after a judicial or non-judicial foreclosure; and (c) agrees that Mortgagor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, and Mortgagor, for Mortgagor, Mortgagor's representatives, successors and assigns, and for any and all Persons ever claiming any interest in the Mortgaged Property, waives and releases all rights of homestead exemption. In addition, Mortgagor expressly waives and relinquishes any and all rights, remedies and defenses that Mortgagor may have or be able to assert by reason of any Applicable Law pertaining to the rights, remedies and defenses of sureties.

6.7 Marshaling. Lender shall not be required to marshal any present or future collateral security (including the Mortgaged Property) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Mortgagor agrees that it will not invoke any law relating to the marshaling of collateral which might cause a delay in or impede the enforcement of Lender's rights and remedies under this Mortgage or under any of the other Loan Documents, and, to the extent that it lawfully may, Mortgagor irrevocably waives the benefits of all such laws.

6.8 Multiple Security. If (a) the Mortgaged Property shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Mortgage, Lender shall now or hereafter hold or be the beneficiary of one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) for the Obligations upon other property in the state in which the Premises are located (whether or not such property is owned by Mortgagor or by others) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Lender may, at its election, commence or consolidate in a single trustee's sale or foreclosure action all of the trustee's sale or foreclosure proceedings against all such collateral securing the Obligations (including the Mortgaged Property), which action may be brought or consolidated in the courts of, or sale conducted in, any county in which any of such collateral is located. Mortgagor acknowledges that the right to maintain a consolidated trustee's sale or foreclosure action is a specific inducement to Lender to enter into certain agreements with Mortgagor, and for Lender to enter into the Loan Agreement and the other Loan Documents, and Mortgagor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of *forum non conveniens* which it may now or hereafter have. Mortgagor further agrees that if Lender shall be prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any collateral other than the Mortgaged Property, which collateral directly or indirectly secures the Obligations, or if Lender shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral (or, in the case of a trustee's sale, shall have met the statutory requirements therefor with respect to such collateral), then, whether or not such proceedings are being maintained or judgments were obtained in or outside the state in which the Premises are located, Lender may commence or continue any trustee's sale or foreclosure proceedings and exercise its other remedies granted in this Mortgage against all or any part of the Mortgaged Property and Mortgagor waives any objections to the commencement or continuation of a foreclosure of this Mortgage or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay the execution of, remove, transfer or consolidate either any action under this Mortgage or such other proceedings on such basis. Neither the commencement nor continuation of proceedings to sell the Mortgaged Property in a trustee's sale, to foreclose this Mortgage nor the exercise of any other rights hereunder nor the recovery of any judgment by Lender nor the occurrence of any sale by Lender in any such proceedings shall prejudice, limit or preclude Lender's right to commence or continue one or more trustee's sales, foreclosure or other proceedings or obtain a judgment against (or, in the case of a trustee's sale, to meet the statutory requirements for, any such sale of) any other collateral (either in or outside the state in which the Premises are located) which directly or indirectly secures the Obligations, and Mortgagor expressly waives any objections to the commencement of, continuation of, or entry of a judgment in such other sales or proceedings or exercise of any remedies in such sales or proceedings based upon any action or judgment connected to this Mortgage, and Mortgagor also waives any right to seek to dismiss, stay the execution of, remove, transfer or consolidate either such other sales or proceedings or any sale or action under this Mortgage on such basis. It is expressly understood and agreed that to the fullest extent permitted by Applicable Law, Lender may, at its election, cause the sale of all collateral which is the subject of a single trustee's sale or foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Obligations (directly or indirectly) in the most economical and least time-consuming manner.

6.9 Request for Notice. Mortgagor requests a copy of any notice of default and that any notice of sale under this Mortgage be mailed to it in accordance with the provisions below for the giving of notices.

ARTICLE 7 MISCELLANEOUS

7.1 Applicability of General Provisions. All of the provisions of the Article in the Loan Agreement entitled "**General Provisions**" apply to this Mortgage, the same as if the provisions of such Article were set forth in full in this Mortgage.

7.2 Limitation of Rights of Others. Nothing in this Mortgage is intended or shall be construed to give to any person, other than Mortgagor and Lender, any legal or equitable right, remedy or claim under or in respect of this Mortgage or any covenant, condition or provision herein contained.

7.3 Statements by Mortgagor. Mortgagor shall, within 10 days after written request from Lender, deliver to Lender a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Mortgage and stating whether Mortgagor claims any offset or defense against such principal and interest or such other amounts.

7.4 Loan Statement Fees. Mortgagor shall pay the reasonable amount demanded by Lender or its authorized loan servicing agent for any statement regarding the Obligations, *provided, however*, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

7.5 Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Mortgage shall be given in accordance with *Section 8.10* of the Loan Agreement.

7.6 Governing Law. **THE CREATION OF THIS MORTGAGE AND THE RIGHTS AND REMEDIES OF LENDER WITH RESPECT TO THE MORTGAGED PROPERTY, AS PROVIDED IN THIS MORTGAGE AND BY THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES. WITH RESPECT TO OTHER PROVISIONS OF THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ARIZONA, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES; PROVIDED, HOWEVER, THAT, WITH RESPECT TO ANY MARRIED INDIVIDUAL SIGNING THIS MORTGAGE WHO IS NOT A RESIDENT OF THE STATE OF ARIZONA, THIS SECTION SHALL NOT BE A CONTRACTUAL CHOICE OF THE COMMUNITY PROPERTY LAWS OF THE STATE OF ARIZONA. NOTHING IN THIS SECTION SHALL LIMIT OR RESTRICT THE RIGHT OF LENDER TO COMMENCE ANY PROCEEDING IN THE FEDERAL OR STATE COURTS LOCATED IN THE STATE IN WHICH THE PREMISES ARE LOCATED TO THE EXTENT LENDER DEEMS SUCH PROCEEDING NECESSARY OR ADVISABLE TO EXERCISE REMEDIES AVAILABLE UNDER THE MORTGAGE OR THE OTHER LOAN DOCUMENTS.**

7.7 Relation to Other Security Documents. The provisions of this Mortgage supplement the provisions of any security agreement from Mortgagor to Lender which secures the payment or performance of any of the Obligations. Nothing contained in any such agreement shall derogate from any of the rights or remedies of Mortgagor hereunder.

7.8 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or their application, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included.

7.9 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any party, to or of any breach or default by any other party shall be deemed a consent to or waiver of the performance by such defaulting party of any other obligations or the performance by any other party of the same, or of any other, obligations.

7.10 Counterparts. This Mortgage may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one Mortgage.

7.11 Mortgagee in Possession. Nothing contained in this Mortgage shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property.

7.12 Incorporation of Loan Agreement; No Conflicts. The terms of the Loan Agreement are incorporated by reference herein as though set forth in full detail. In the event of a conflict between any other term or provision of this Mortgage and the Loan Agreement, the terms and provisions of the Loan Agreement shall control.

7.13 Modifications. This Mortgage may not be amended, supplemented or otherwise modified except in a writing executed by Mortgagor and Lender. Any agreement made by Mortgagor and Lender after the date of this Mortgage relating to this Mortgage or any of the Obligations shall be superior to the rights of the holder of any intervening or subordinate Lien.

7.14 Last Dollars Secured; Priority. If at any time this Mortgage shall secure less than all of the principal amount of the Obligations, it is expressly agreed that any repayments of the principal amount of the Obligations shall not reduce the amount of the Lien of this Mortgage until the Lien amount shall equal the principal amount of the Obligations outstanding.

7.15 Binding Effect. This Mortgage is be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors and permitted assigns, including, any United States trustee, any debtor in possession or any trustee appointed from a private panel.

ARTICLE 8 STATE LAW RIDER

8.1 State Law Mortgage Rider. The Mortgage Rider (the “*Rider*”) attached hereto is an integral part of the Mortgage. If there are any inconsistencies or conflict between the terms and conditions of the Rider and the foregoing terms and conditions of the Mortgage, the terms and conditions of the Rider shall control.

[SIGNATURE PAGE FOLLOWS]



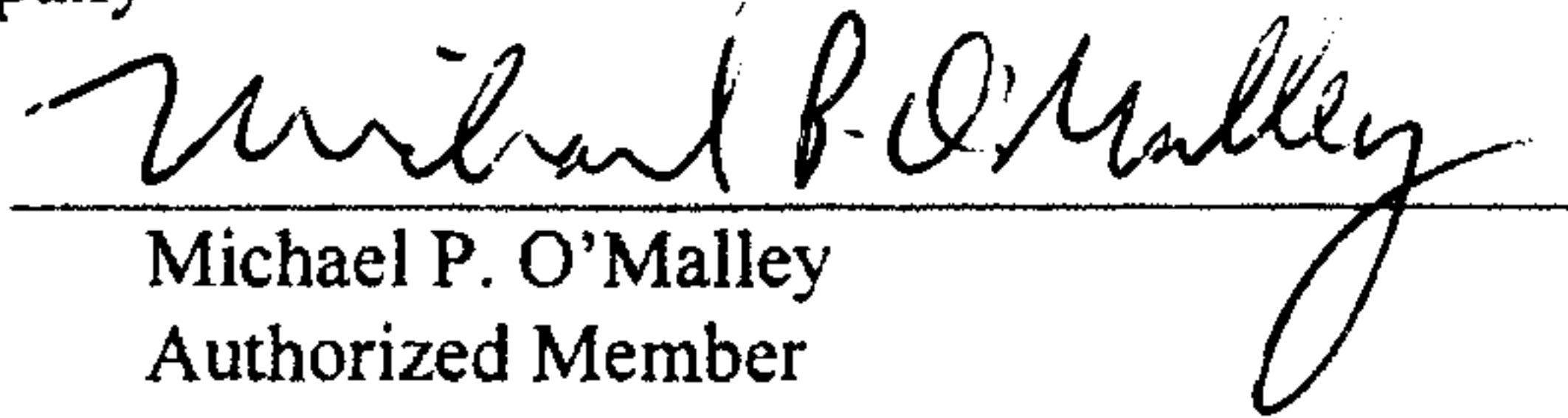
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EXECUTED effective as of the date first set forth above.

MORTGAGOR:

MJBJ REAL ESTATE, LLC, a Kentucky limited liability company

By:


Michael P. O'Malley
Authorized Member

STATE OF Kentucky)
)SS
COUNTY OF WARREN)

I, Judy Ramsey, a Notary Public in and for said County in said State, hereby certify that Michael P. O'Malley of MJBJ Real Estate, LLC, a Kentucky limited liability company, acknowledged before me on this day that, being informed of the contents of such instrument, he or she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 6th day of July, 2012.


NOTARY PUBLIC

[SEAL]

My Commission Expires 1-30-2016

EXHIBIT A

LEGAL DESCRIPTION

The land referred to in this Commitment is situated in the City of Pelham, County of Shelby, State of Alabama, and is described as follows:

A parcel of land situated in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 25, T20S, R3W, being more particularly described as follows:

Commence at the point of intersection of the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ Section and the Westerly right of way of Highway 31; thence run Northeasterly 161.16 feet along said light of way to the Point of Beginning; thence continue along last described course 138.0 feet; thence left 103 degrees 00' 35" and Westerly 171.86 feet; thence right 90 degrees and run Northerly 69.79 feet; thence left 90 degrees and run Westerly 52.14 feet; thence left 90 degrees and run Southerly 203.94 feet; thence left 83 degrees 59' 25" and run Easterly 194.00 feet to the Point of Beginning. Together with access, driveway, parking and drainage easement described in the Easement Agreement between Sherman Holland, Jr. and D & T Associates, comprised of Duane L. Hoover and Patricia Anne Hoover as shown in Real Volume 107, Page 951, Probate Office of Shelby County, Alabama.

FINAL EXECUTION COPY

RELATED AGREEMENTS SCHEDULE

Loan No.	GE ACBS Loan ID	Borrower	Guarantor	Lender
1.	011843837	Wendy's of Bowling Green, Inc.	Michael Patrick O'Malley; John W. Hughes; and MJB Real Estate, LLC	GE Capital Bank
2.	[[011424501 and 011424517]]	Wendy's of Bowling Green, Inc.	Gung Ho Real Estate Partners; Michael Patrick O'Malley; John W. Hughes	GE Capital Bank
3.	011424588	Wendy's of Bowling Green, Inc. and Gung Ho Real Estate Partners	Michael Patrick O'Malley; John W. Hughes	GE Capital Bank
4.	011424572	Gung Ho Real Estate Partners	Wendy's of Bowling Green, Inc.; Michael Patrick O'Malley; John W. Hughes	General Electric Capital Corporation

**MORTGAGE RIDER
ALABAMA STATE LAW PROVISIONS**

This **RIDER** (the “**Rider**”) is attached to and made a part of the Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (as amended and supplemented by this Rider, and as it may be amended, supplemented or renewed from time to time, the “**Mortgage**”) and is made as of July 13, 2012, by **MJBJ REAL ESTATE, LLC**, a Kentucky limited liability company (“**Mortgagor**”), whose mailing address is 2501 Crossings Blvd., Bowling Green, Kentucky 42101 in favor of **GE CAPITAL BANK**, a Utah industrial loan corporation, (“**Lender**”), whose mailing address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255 c/o GE Capital Franchise Finance Corporation, Servicer, Attention: Collateral Management, with a copy to GE Capital Bank, 6510 Milrock Drive, Suite 200, Salt Lake City, UT 84121 Attention: Chief Financial Officer.

This Rider is intended to modify and supplement certain provisions of the Mortgage. In the event of any inconsistencies or conflict between the terms and conditions of this Rider and the terms and conditions of the Mortgage, the terms and conditions of this Rider shall control. The Mortgage is hereby amended and supplemented as follows:

1. **Section 1.1** of the Mortgage is restated in its entirety as follows:

1.1 Grant of Mortgage. Mortgagor hereby mortgages, grants, bargains, sells, conveys, assigns, mortgages and transfers to Lender, its successors and assigns, **WITH POWER OF SALE AND RIGHT OF ENTRY**, all of the Mortgaged Property; **TO HAVE AND TO HOLD** the Mortgaged Property hereby mortgaged and conveyed or so intended, together with all estate, right, title and interest of Mortgagor and anyone claiming by, through or under Mortgagor, in, to, under or derived from the Mortgaged Property and all rights and appurtenances relating thereto, unto Lender, its successors and assigns forever, upon the terms, provisions and conditions set forth in this Mortgage, subject only to the Permitted Exceptions. This Mortgage is being made pursuant to the terms and conditions of Loan Agreement, of even date herewith, between Mortgagor, as Borrower, and Lender (as it as it may be amended, amended, restated, supplemented, extended or renewed from time to time, the “**Loan Agreement**”). Capitalized terms used in this Mortgage and not otherwise defined in this Mortgage have the meanings given to those terms in the Loan Agreement.

2. **Section 6.2(b)** of the Mortgage is restated in its entirety as follows:

(b) Right to Enter and Take Possession.

(i) If an Event of Default shall have occurred and be continuing, Mortgagor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor;

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Property to Lender. Mortgagor will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Obligations and shall be secured by this Mortgage;

(iii) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and,

from time to time (A) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (B) insure or keep the Mortgaged Property insured; (C) manage and operate the Mortgaged Property and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise act with respect to the same; and (D) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the Rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (1) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (2) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (3) the cost of such insurance; (4) such taxes, assessments and other similar charges as Lender may at its option pay; (5) other proper charges upon the Mortgaged Property or any part thereof; and (6) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender. Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of any sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this *Section 5.2(b)* to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the Rents, incomes, issues and profits actually received by Lender;

(iv) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Mortgaged Property to Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

3. *Section 6.2(d)* of the Mortgage is restated in its entirety as follows:

(d) Lender's Power of Enforcement and Power of Sale.

(i) If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (A) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (B) to foreclose this Mortgage and to sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law, and (C) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

(ii) If an Event of Default shall have occurred, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Courthouse door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

4. *Section 6.2(e)* of the Mortgage is restated in its entirety as follows:

(e) Receiver. If an Event of Default shall have occurred, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof. The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section; and all such expenses shall be secured by this Mortgage.

5. The following is added to the Mortgage as *Section 6.2(g)*:

(g) Purchase by Lender. Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price

6. The following is added to the Mortgage as *Section 6.2(h)*:

(h) Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees (attorneys fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender hereunder, and interest thereon; then to payment of the Obligations and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Mortgagor, or to the person or entity lawfully entitled thereto.

7. The following is added to the Mortgage as *Section 6.2(i)*:

(i) Mortgagor as Tenant Holding Over. In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

8. The following is added to the Mortgage as *Section 6.10*:

6.10 Waivers. After consulting with and considering the advice of independent legal counsel selected by Mortgagor, Mortgagor makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan:

(a) No delay or omission by Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note, the Loan Agreement or this Mortgage or any

other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Loan Obligations; (ii) take other or additional security for the payment of any of the Loan Obligations; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Loan Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Loan Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

(c) Mortgagor waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies they may have under the Loan Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction. To the fullest extent that Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, marshalling, stay of execution, and extension. Mortgagor further agrees that if any law referred to in this paragraph and now in force, of which Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Mortgagor expressly waives and relinquishes any and all rights and remedies that Mortgagor may have or be able to assert by reason of the laws of the State of jurisdiction pertaining to the rights and remedies of sureties

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EXECUTED effective as of the date first set forth above.

MORTGAGOR:

MJBJ REAL ESTATE, LLC, a Kentucky limited liability company

By: Michael P. O'Malley
Michael P. O'Malley
Authorized Member

STATE OF Kentucky)
)SS
COUNTY OF Warren)

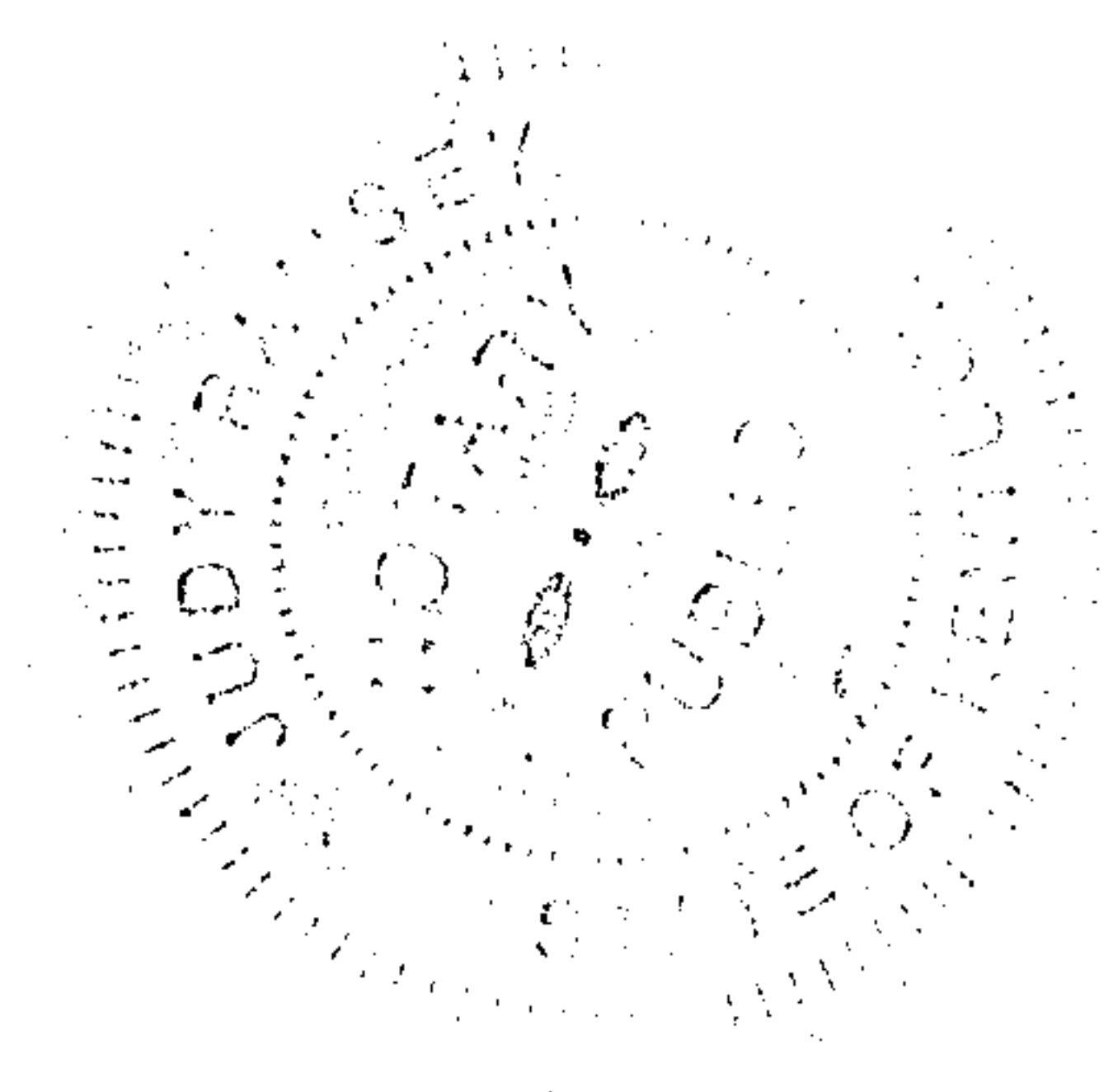
I, Judy Ramsey, a Notary Public in and for said County in said State, hereby certify that Michael P. O'Malley of MJBJ Real Estate, LLC, a Kentucky limited liability company, acknowledged before me on this day that, being informed of the contents of such instrument, he or she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 6th day of July, 2012.

Judy Ramsey
NOTARY PUBLIC

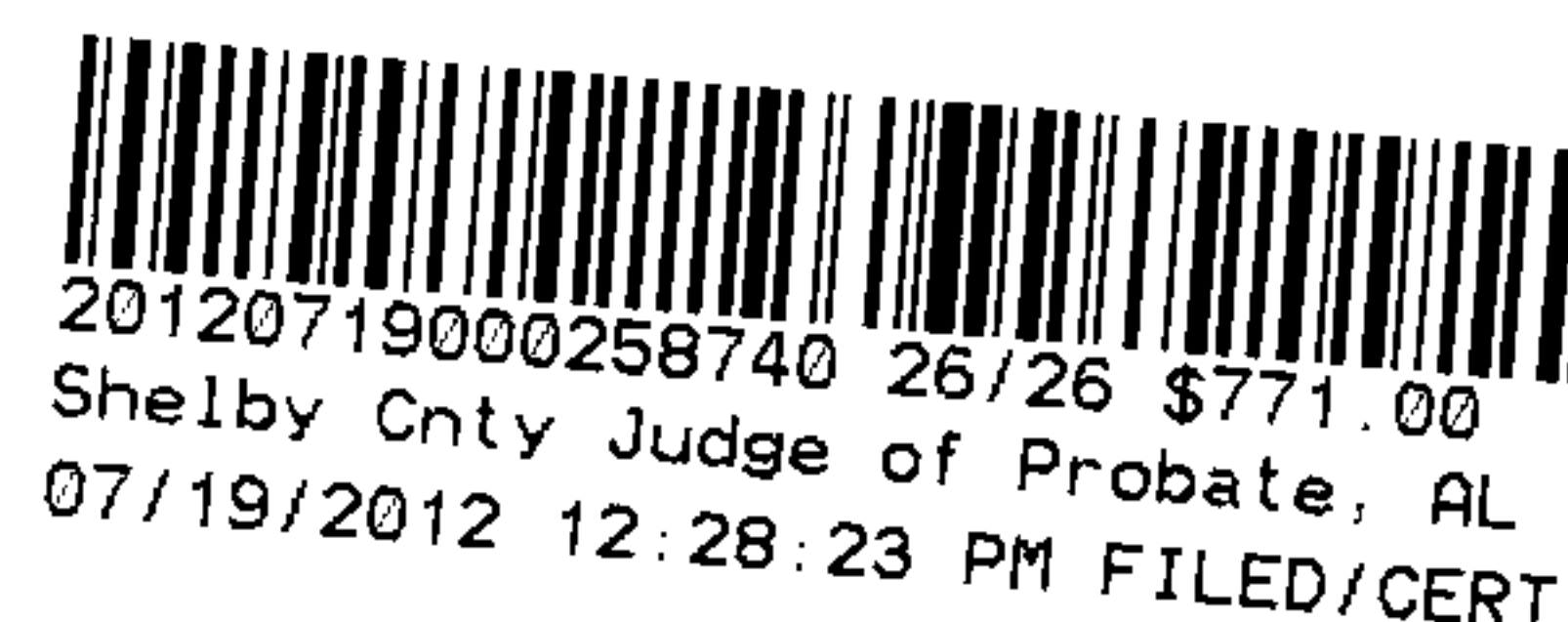
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My Commission Expires 1-30-2016



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EXHIBIT A
LEGAL DESCRIPTION



A parcel of land situated in the SW ¼ of the NW ¼ of Section 25, T20S, R3W, being more particularly described as follows:

Commence at the point of intersection of the South line of said ¼ - ¼ Section and the Westerly right of way of Highway 31; thence run Northeasterly 161.16 feet along said light of way to the Point of Beginning; thence continue along last described course 138.0 feet; thence left 103 degrees 00' 35" and Westerly 171.86 feet; thence right 90 degrees and run Northerly 69.79 feet; thence left 90 degrees and run Westerly 52.14 feet; thence left 90 degrees and run Southerly 203.94 feet; thence left 83 degrees 59' 25" and run Easterly 194.00 feet to the Point of Beginning. Together with access, driveway, parking and drainage easement described in the Easement Agreement between Sherman Holland, Jr. and D & T Associates, comprised of Duane L. Hoover and Patricia Anne Hoover as shown in Real Volume 107, Page 951, Probate Office of Shelby County, Alabama.