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When recorded, return to:

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**FUTURE ADVANCE AMENDED AND RESTATED 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

**GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation, as administrative agent for the
Lenders and each other Secured Party, as Agent**

Made and dated as of December 26, 2014

**ONE OR MORE OF THE NOTES SECURED BY THIS MORTGAGE BEARS INTEREST AT A
VARIABLE RATE WHICH WILL FLUCTUATE DURING THE LOAN TERM. UPON THE
OCCURRENCE OF CERTAIN EVENTS, THE INTEREST RATE APPLICABLE TO ONE OR MORE OF
THE NOTES MAY SWITCH FROM A VARIABLE RATE TO A FIXED RATE OR TO A NEW
VARIABLE RATE OR FROM A VARIABLE RATE TO A FIXED RATE.**

**THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE
WITH THE PROVISIONS OF SECTION 7 9A 502(c) OF THE CODE OF ALABAMA.**

THIS INSTRUMENT PREPARED BY:

Kate A. McCoy Jones, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102

**NOTE TO RECORDING OFFICE: THE LIABILITY UNDER THIS MORTGAGE FOR THIS PROPERTY
LOCATED IN SHELBY COUNTY, ALABAMBA IS HEREBY LIMITED TO \$456,000.**

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

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THE NOTES MAY SWITCH FROM A VARIABLE RATE TO A FIXED RATE OR TO A NEW
VARIABLE RATE OR FROM A VARIABLE RATE TO A FIXED RATE.**

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT, AND FIXTURE FILING (the "*Mortgage*") is made as of December 26, 2014 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 **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation, as administrative agent (in such capacity, together with its successors and permitted assigns, "*Agent*") for the Lenders and each other Secured Party (each as defined in the hereafter described Loan Agreement), whose mailing address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255, as mortgagee and secured party. General Electric Capital Corporation, a Delaware corporation, in its individual capacity is hereinafter referred to as "*GE Capital*".

RECITALS

A. GE Capital Bank ("*GECB*") and Mortgagor entered into that Loan Agreement, dated July 13, 2012 (as amended, the "*Existing Loan Agreement*"), pursuant to which GECB made certain loans to Mortgagor ("*GECB Loans*"). GECB and GE Capital made certain other loans (the "*Other Loans*") to Mortgagor, Gung Ho Real Estate Partners, a Kentucky general partnership and/or Wendy's of Bowling Green, Inc., a Kentucky corporation, pursuant to certain loan agreements between the applicable Credit Parties and GECB or GE Capital (as applicable, the "*Other Loan Agreements*").

B. The GECB Loans and the Other Loans, and all other obligations under the Existing Loan Agreement and the Other Loan Agreements, are secured by the Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing, dated July 13, 2012, and recorded on July 19, 2012, at Instrument No. 20120719000258740, in the Official Records of Shelby County, Alabama (as amended prior to the date of this Mortgage, the "*Original Mortgage*").

C. Concurrent with this Mortgage, Mortgagor, the other Credit Parties a party thereto, Agent and the Lenders a party thereto have entered into the Amended and Restated Loan Agreement, dated as of the date hereof (the "*Loan Agreement*"), pursuant to which, among other things (i) the Existing Credit Agreement and the Other Loan Agreements are being amended and restated in their entirety and replaced with the Loan Agreement, (ii) GE Capital has been appointed by the Lenders a party thereto as the administrative agent on behalf of the Secured Parties, (iii) the GECB Loans and the Other Loans are being amended and/or consolidated, as applicable, into Term Loan 1 and Term Loan 2, as more particularly described in the Loan Agreement, and (iv) certain of the Lenders have agreed to make additional Loans to the Borrowers. Capitalized terms used in this Mortgage and not otherwise defined in this Mortgage have the meanings given to those terms in the Loan Agreement.

D. As an inducement to the Agent and the Lenders to enter into the transactions contemplated by the Loan Agreement, Mortgagor has agreed to amend and restate the Original Mortgage to secure the Loans and all other Obligations under the Loan Agreement and the Loan Documents.

E. **THIS MORTGAGE AMENDS AND RESTATES IN ITS ENTIRETY THE ORIGINAL MORTGAGE.**

FOR VALUABLE CONSIDERATION, it is agreed as follows:

ARTICLE 1 MORTGAGE

1.1 Grant of Mortgage. Mortgagor mortgages, grants, bargains, sells, aliens, conveys, assigns, and transfers to Agent, its successors and assigns, **WITH POWER OF SALE AND RIGHT OF ENTRY**, for the benefit and security of Agent, on behalf of the Secured Parties, and grants to Agent, for the benefit of the Secured Parties, a security interest in, all of the Mortgaged Property; **TO HAVE AND TO HOLD** the Mortgaged Property hereby mortgaged, granted, conveyed, assigned and transferred, 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 Agent, for the benefit of the Secured Parties, 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.

IMPORTANT NOTICE TO LIEN CLAIMANTS:

Any lien attaching to the Mortgaged Property after the date hereof (each, a "Junior Lien") shall be subject and subordinate to all of the Secured Obligations, including: (a) any debt now or hereafter owed Secured Parties by Mortgagor or any other Credit Party, including advances (whether or not obligatory) made subsequent to the recording of this Mortgage; and (b) any modification to this Mortgage, any other Loan Document, or the Secured Obligations after the date of recording of this Mortgage, including, without limitation, increases in the amount of the Secured Obligations, increases in interest rates with respect to any Secured Obligation, and changes to the maturity date of any secured modification, notwithstanding that such modification may occur after the date such Junior Lien attaches or may adversely affect or prejudice the rights of any Junior Lien claimant. Nothing herein shall be deemed an approval or consent by Agent to, or waiver of Agent's right to object to, any such Junior Lien.

1.2 The 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 1.2**, 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 1.2**, 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) Leases and Rents. 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) UCC Collateral. The "**UCC Collateral**" described on **Exhibit 1.2(d)**.

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

1.3 Duration of Mortgage. This Mortgage shall continue in full force and effect until such time as all indebtedness under the Loan Agreement and any 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 Secured Obligations (defined below) have been fully, finally, and irrevocably paid and performed, at which time this Mortgage shall be void, and Agent 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 Agent for Agent's reasonable out-of-pocket expenses incurred in connection with the release, and Mortgagor shall also pay Agent a reasonable processing fee in connection with such release.

1.4 Warranty. 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, including a fee simple ownership interest in the Premises, free and clear of all Liens, other than the Permitted Liens; and (b) shall remain the owner of the entire Mortgaged Property and all legal and beneficial interests therein free and clear of all Liens, other than the Permitted Liens.

ARTICLE 2 OBLIGATIONS SECURED

2.1 The Secured Obligations. This Mortgage is given to secure the following obligations (collectively, the "**Secured Obligations**"):

(a) Note Indebtedness. Payment of the Loans in the stated principal balance of \$36,500,000, with interest thereon, all as provided under and evidenced by the Loan Agreement, any Note or Notes executed and delivered pursuant to the Loan Agreement, and the other Loan Documents, **INCLUDING INTEREST RATE INCREASES OR DECREASES, MATURITY DATE EXTENSIONS, AND PAYMENT MODIFICATIONS (INCLUDING DEFERRALS OR ACCELERATIONS OF PRINCIPAL OR INTEREST)**.

(b) Loan Obligations. Payment of all other Indebtedness and other sums, with interest thereon, that may be owed or arise under, and performance of all other Obligations contained in or arising under, this Mortgage, the other Loan Documents, and in any other instrument now or hereafter given to evidence or further secure payment or performance of any Obligation.

(c) Future Advances. All future principal advances, with all interest thereon, to or for the benefit of Mortgagor, made pursuant to the terms of the Loan Agreement, this Mortgage or any of the other Loan Documents.

(d) Other Disbursements and Protective Advances. All disbursements and other advances made by Agent for (i) the payment of Taxes, maintenance, care, protection or insurance on or with respect to the Mortgaged Property; (ii) the discharge of Liens having priority over the lien of this Mortgage; (iii) the curing of waste of the Mortgaged Property; (iv) indemnification obligations regarding environmental liabilities associated with the Mortgaged Property; (v) service charges and expenses incurred by reason of a default hereunder, including late charges, attorneys' fees and court costs; and (vi) all other charges, disbursements, advances, costs and expenses now or hereafter incurred by Agent or any other Secured Party pursuant to any of the Loan Documents or as permitted by any Requirement of Law, in all cases with interest thereon until paid at the default rate calculated pursuant to the Loan Agreement. Notwithstanding the foregoing, Agent shall have no obligation to make any disbursements or advance any sums as a result of this subsection.

(e) Obligations Generally. Payment and performance of all other Obligations, including any other obligations that are stated in this Mortgage to be included as Secured Obligations.

2.2 Priority. The Mortgaged Property shall secure all of the Secured Obligations presently or hereafter owed, and the priority of the Lien created hereby for all such Secured Obligations shall be as of the time this Mortgage is recorded. Without limiting the foregoing, all advances and disbursements pursuant to **Sections 2.1(c) and 2.1(d)**, whether such advances are obligatory, optional or both and whether made before or after default or maturity or other similar event, shall be secured hereby to the same extent as if such advance or disbursement has been made contemporaneously with the execution hereof, even though no advance may have been made at the time of execution hereof and even though no indebtedness is outstanding at the time any advance is made.

2.3 Certain Obligations Not Secured. Notwithstanding any other provision hereof or the other Loan Documents, this Mortgage does not secure any obligations of Mortgagor or any other Credit Party in any Loan Document with respect to state and federal environmental laws, rules, regulations and permits; hazardous materials and other environmental conditions; environmental investigations; the release or threatened release of any hazardous materials; and all environmental remediation requirements.

2.4 Agency. To the extent that any Secured Obligation is held by any other Secured Party, rather than directly by Agent, Agent is acting both for itself, with respect to the Secured Obligations held by Agent, and as the representative and collateral agent for and on behalf of such Secured Parties with respect to Secured Obligations held by such Secured Parties and Agent is entitled, both on its own behalf and as the representative and collateral agent for and on behalf of such Secured Parties, to exercise all rights and remedies of the secured party under this Mortgage.

ARTICLE 3 MORTGAGOR COVENANTS

3.1 Use. Mortgagor shall use the Mortgaged Property solely for the operation of a Permitted Concept in accordance with the Franchise Agreement and for no other purpose. Mortgagor shall not, without Agent's prior written consent, (a) initiate or acquiesce in a change in the zoning classification; or (b) grant, 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 charges for utility services that may be assessed, levied or imposed upon Mortgagor, the Mortgaged Property, the Loan Documents, or the Secured Obligations; and (b) all claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a Lien on 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. So long as no Default has occurred that is continuing, Mortgagor may, at its own expense, contest by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of any Imposition: **provided** that Mortgagor (y) shall have first demonstrated to Agent's reasonable satisfaction that such proceedings operate to prevent the sale of the Mortgaged Property to satisfy such Imposition prior to a final determination; and (z) shall have either (i) deposited with Agent adequate security for the payment of the Imposition (including any interest and penalties); or (ii) paid the Imposition in full under protest or furnished such other security or undertaking as may be permitted by Requirement of Law to accomplish a stay of any sale of the Mortgaged Property.

3.3 Maintenance and Repair. Mortgagor shall: (a) maintain the Mortgaged Property 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 and as is otherwise prudent and reasonable; and (c) pay all operating costs of the Mortgaged Property in the ordinary course of business, including utility costs. Mortgagor shall not do, nor 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 Requirement of Law, or violates in any material respect any applicable covenant, condition, restriction, agreement or easement.

3.4 Alterations. Except as may be required or permitted by the Loan Agreement, Mortgagor shall not make, nor permit to be made, any alterations (including additions) to the Improvements without Agent's prior written consent, not to be unreasonably withheld or conditioned, except that Mortgagor may make nonstructural alterations costing less than \$100,000 in the aggregate at any one time without Agent's consent. Structural alterations include any alterations that would affect the foundation of the Improvements; involve the structural elements of the Improvements, such as a load-bearing wall, structural beams, columns, supports or roof; or materially affect any building systems, including electrical systems, plumbing, HVAC, and fire and safety systems. All such work shall: (a) be at the sole cost of Mortgagor; (b) be undertaken using licensed contractors; (c) be prosecuted diligently to completion; (d) be of good workmanship and materials; (e) be free of all mechanics' and materialmen's liens; and (f) comply fully with the terms of this Mortgage, the Loan Agreement, the Franchise Agreement, and all Requirement of Law.

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 by any lawful authority by exercise of the right of condemnation or by agreement in lieu of condemnation (a "**Taking**"), Mortgagor shall promptly give Agent written notice of the Taking. No Taking shall relieve Mortgagor of any Secured Obligations, including its obligations to make regularly scheduled payments of principal and interest pursuant to the Loan Agreement and the other Loan Documents. Mortgagor authorizes and empowers Agent, at Agent's option and in Agent's sole discretion, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and 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.

(b) Restoration Obligations. Promptly following the occurrence of a Taking, other than a Total Taking (defined below), Mortgagor shall, at its 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 Mortgagor's Restoration obligation, 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 Agent of any Condemnation Proceeds shall not cure or waive any Default under this Mortgage or the other Loan Documents or invalidate any act done pursuant thereto.

(c) 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 hereby assigned to Agent, for the benefit of the Secured Parties, and shall be paid, directly to Agent for the account of the Lenders and the other Secured Parties, to be held, applied and disbursed, as applicable, in accordance with the Loan Agreement. Mortgagor agrees to execute such further assignments of the Condemnation Proceeds as Agent may require. If Mortgagor receives any Condemnation Proceeds, Mortgagor shall promptly pay over such proceeds to Agent, for the account of the Lenders and the other Secured Parties, to be held, applied and disbursed, as applicable, in accordance with the Loan Agreement. All Condemnation Proceeds will be applied by Agent to payment of the Secured Obligations in such order as Agent, in its sole discretion, shall determine and otherwise in accordance with the Loan Agreement. To the extent that Condemnation Proceeds are applied to prepay principal on any Loan, no prepayment fee will be charged in connection with such prepayment. Notwithstanding the foregoing, 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 Agent 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.

3.6 No Discharge. Mortgagor's obligations and liabilities hereunder or under any other Loan Document shall not be released, discharged or otherwise affected by reason of: (a) any damage to, destruction of, or condemnation or similar taking of the Mortgaged Property; (b) any restriction on, or interference by any Person with, any use of any of the Mortgaged Property; (c) any title defect or encumbrance affecting the Mortgaged Property; (d) any claim that Mortgagor has or might have against Agent or any Secured Party; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Agent or any Secured Party, or any action taken with respect to this Mortgage by any trustee or receiver of Agent or any Secured Party, or by any court, in any such proceeding; (e) any default or failure on the part of Agent or any Secured Party to perform or comply with any of the terms of the Loan Documents; or (f) any other act or occurrence whatsoever, whether similar or dissimilar to the foregoing.

3.7 Actions Affecting Mortgaged Property. Mortgagor shall give Agent written notice of and, unless otherwise directed in writing by Agent, 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 Agent 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 Agent may appear.

3.8 Actions by Agent. If Mortgagor fails to make any payment or to do any act required hereby, Agent may, in its sole discretion, but without obligation so to do, without releasing Mortgagor from any obligation, and with only such notice to or demand upon Mortgagor as is reasonable under the circumstances, but in no event exceeding five days' prior written notice, make or do the same in such manner and to such extent as Agent may deem necessary or appropriate, including: (a) entering upon and taking possession of the Mortgaged Property and otherwise exercising its rights and remedies hereunder and under the other Loan Documents; (b) taking such actions and making such additions, alterations, repairs and improvements to the Mortgaged Property as Agent 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 Agent reasonably may consider necessary or appropriate to protect the priority, validity and enforceability of the lien of this Mortgage on the Mortgaged Property. Mortgagor shall, immediately upon demand by Agent, pay to Agent all amounts expended by Agent, including all costs and expenses reasonably incurred by Agent in connection with the exercise by Agent of the foregoing rights (including costs of evidence of title, court costs, appraisals, surveys, fees of receivers, and reasonable attorneys' fees), together with interest at the default rate calculated pursuant to the Loan Agreement from the date incurred until paid.

3.9 Prohibited Transactions. In order to induce Agent and the Secured Parties to enter into the transactions contemplated under the Loan Agreement, Mortgagor agrees that, upon the occurrence of an Event of Default resulting from the failure of any Credit Party to perform or observe any term, covenant or agreement contained in Article 5 of the Loan Agreement, Agent shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable.

3.10 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 upon the Mortgaged Property, other than Permitted Liens. Mortgagor covenants to notify Agent immediately in writing of any such Lien. Except as otherwise provided in this Mortgage with respect to Impositions, Mortgagor may contest in good faith the validity of any involuntary Lien, provided Mortgagor shall first deposit with Agent a bond or other security satisfactory to Agent in such amount as Agent 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 to be removed and discharged, at Mortgagor's sole cost and expense. If Mortgagor fails to remove or discharge any Lien, then, in addition to any other right or remedy of Agent, Agent 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 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 Agent, pay to Agent, for the account of the Secured Parties, an amount equal to all amounts expended by Agent or Secured Parties, including all costs and expenses incurred by Agent or Secured Parties in connection with the exercise by Agent or Secured Parties of the foregoing rights, together with interest thereon from the date of each such



expenditure at the default rate calculated pursuant to the Loan Agreement. Such costs and expenses shall be secured by the Liens in favor of Agent, including the lien of this Mortgage, and are part of the Secured Obligations.

3.11 Periodic Appraisals. Agent 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 Agent 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 Agent or any Secured Party or its activities requesting, directing or imposing a condition upon Agent or such Secured Party (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 Agent, 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 the sole cost and expense of the Secured Parties. All such appraisals and updates shall comply with Requirement of Law, as well as Agent's internal requirements, and shall be conducted by appraisers selected and retained by or on behalf of Agent.

3.12 Flood Insurance. If Mortgagor owns the Improvements and if the Premises are located in a Special Flood Hazard Area ("**SFHA**") designated by the Federal Emergency Management Administration, Mortgagor shall, at its expense, obtain and maintain flood insurance under the National Flood Insurance Program ("**NFIP**") for the Premises meeting the Insurance Requirements in the Loan Agreement and providing insurance coverage sufficient to rebuild or replace the Improvements in an amount not less than the lesser of: (a) the outstanding principal balance of each Loan secured hereby, including any prior liens on the Premises; (b) the maximum amount of coverage allowed for the type of property under the NFIP; or (c) the value of the Improvements and equipment located on the Land, but not the value of the Land itself. The policy must state the proper SFHA zone for the Premises (*i.e.*, SFHA zones beginning with "A" or "V"). Deductibles must be stated and may not exceed \$50,000. **SPECIAL NOTICE: Notice is hereby given to Mortgagor that, if Mortgagor fails to renew or keep in effect adequate flood insurance on the Premises during the time that the NFIP mandates flood insurance coverage, federal law requires Agent to purchase the flood insurance for the Premises and authorizes Agent to charge Mortgagor the cost of premiums and fees incurred in purchasing the insurance. Any flood insurance that Agent purchases may not fully protect Mortgagor's interest and equity in the Premises and will be substantially more expensive than the insurance Mortgagor may obtain.**

3.13 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 Agent'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.

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

3.15 Recording; Further Assurances. 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 (in recordable form) as Agent may reasonably request for carrying out the intention of, or facilitating the performance of, this Mortgage, including to maintain the priority of the Mortgage at the date of initial recording.

3.16 Representations and Warranties. Mortgagor represents and warrants to Agent that: (a) to the best of Mortgagor's knowledge: (i) all Improvements are, or upon completion will be, located within the boundary lines of the Land and do not and will not, upon completion, encroach upon the land of any adjacent owner; (ii) no

improvements of any third Person encroach upon the Land; and (iii) 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; and (b) 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.

3.17 Grant of Security Interest. As further security for payment and performance of the Secured Obligations, Mortgagor grants to Agent, for the benefit of the Secured Parties, a lien on and security interest in and to all of the UCC Collateral, and this Mortgage constitutes a security agreement with Mortgagor, as debtor, and Agent, for the benefit of the Secured Parties, as secured party. Agent confirms that, notwithstanding the inclusion of general intangibles as part of the UCC Collateral and the creation, attachment and perfection of Agent's lien on and security interest in general intangibles in accordance with the provision of UCC Section 9-408(a), such creation, attachment and perfection is subject to the limitations imposed by UCC Section 9-408(d) 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 Agent or any Secured Party, or accept payment or performance from Agent or any Secured Party; (d) does not entitle Agent to use or assign Mortgagor's rights under the Franchise Agreement; and (e) does not entitle Agent to use, assign, possess, or have access to any trade secrets or confidential information of Franchisor.

3.18 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 Agent from which information concerning the Liens may be obtained is the address of Agent as set forth in the introductory paragraph of this Mortgage.

ARTICLE 4 ASSIGNMENT OF LEASES AND RENTS

4.1 Assignment of Leases and Rents. Mortgagor assigns, transfers, and conveys to Agent, for the benefit of the Secured Parties, all of Mortgagor's estate, right, title and interest in and to the Leases and Rents and gives to and confers upon Agent, on behalf of the Secured Parties, the right, power and authority to collect the Rents; to give receipts, releases and satisfactions; to sue, in the name of Mortgagor or Agent, for all Rents; and to apply the Rents to the payment of the Secured Obligations in the manner provided in the Loan Agreement. Mortgagor further irrevocably appoints Agent its true and lawful attorney-in-fact, at the option of Agent 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 Agent, for all Rents. Mortgagor authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Agent upon written demand by Agent, 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 Agent 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 AGENT, FOR THE BENEFIT OF THE SECURED PARTIES, AND NOT MERELY THE PASSING OF A SECURITY INTEREST.** Rents collected subsequent to any Event of Default shall be applied to the costs, if any, of taking possession and control of and managing the Mortgaged Property and collecting such amounts, including to pay 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, all in such order as Agent may, in its sole discretion, determine.

4.2 Rights of Agent. Upon the occurrence and during the continuance of an Event of Default, Agent may, at any time without notice (except if required by any Requirement of Law), either in person, by agent or by a court-appointed receiver (with such receiver to have all powers and duties set forth for receivers in this Mortgage



and as prescribed by Requirement of Law), regardless of the adequacy of Agent's security, and at Agent's sole election (without any obligation to do so), to the extent permitted by Requirement of Law, 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. Agent or the receiver, to the extent permitted by Requirement of Law, 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. Agent 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 Agent hereunder, except to the extent of Agent's gross negligence or willful misconduct. Any entering upon and taking possession and control of the Mortgaged Property by Agent 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 Agent.

4.3 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 Agent 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 Agent; 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. Mortgagor shall cause the tenant under each Lease to comply with Mortgagor's obligations contained in *Article 3: provided, however*, this requirement shall not relieve or release Mortgagor from any of its obligations under *Article 3* or elsewhere in any of the Loan Documents.

4.4 Negative Covenants. Mortgagor shall not, without Agent's consent, in Agent's sole 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 pursuant to any Lease or from 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 Agent. Any lease, modification, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provisions shall be null and void and of no force and effect.

4.5 No Merger. Unless Agent 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, Agent or any other person by purchase, operation of law, or by foreclosure or sale of the Mortgaged Property pursuant hereto or otherwise.

ARTICLE 5 EVENTS OF DEFAULT AND REMEDIES

5.1 Events of Default. Each Event of Default constitutes an "*Event of Default*" under this Mortgage.

5.2 Remedies. Mortgagor irrevocably agrees that, upon the occurrence of an Event of Default, in addition to all other rights and remedies provided in this Mortgage, in any of the other Loan Documents, or by Requirement of Law, Agent may take all or any of the following actions:

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

(b) Right to Enter and Take Possession.

(i) Demand that Mortgagor shall forthwith surrender to Agent the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Agent 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 Agent, Agent may obtain a judgment or decree conferring upon Agent the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Property to Agent. Mortgagor will pay to Agent, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Agent, 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, Agent 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 Agent, all as Agent from time to time may determine to be in its best interest. Agent 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 Agent 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 Agent, Agent shall apply the remainder of the monies and proceeds so received by Agent in accordance with the terms of the Loan Agreement. Anything in this **Section 5.2(b)** to the contrary notwithstanding, Agent 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 Agent of its rights under this Mortgage, and Agent shall be liable to account only for the Rents, incomes, issues and profits actually received by Agent;

(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, Agent 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.

(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) Agent's Power of Enforcement and Power of Sale.

(i) 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 Loans under the Loan Agreement and any Note(s) 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 Agent shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Agent may determine.

(ii) 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, Agent or any person conducting the sale for Agent is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Agent 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 Agent may elect.

(e) Receiver. Obtain an order, *ex parte*, from a state or federal court appointing a receiver for (i) the business operations of Mortgagor; (ii) the Mortgaged Property; and/or (iii) any or all of the assets and property rights of Mortgagor. Agent's right to obtain such an order *ex parte* from such court shall be as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Property or the interest of Mortgagor therein. **MORTGAGOR WAIVES ANY RIGHT TO A HEARING OR NOTICE OF HEARING PRIOR TO THE APPOINTMENT OF A RECEIVER AND IRREVOCABLY CONSENTS TO SUCH APPOINTMENT.** Mortgagor irrevocably agrees 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 Agent'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. Mortgagor 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) Purchase by Agent. Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Agent 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.

(g) 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 (attorney's 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 Agent or any Secured Parties hereunder, and interest thereon; then to payment of the Obligations and accrued interest thereon, in such order of priority as Agent shall determine, in its sole discretion, and otherwise in accordance with the terms and conditions of the Loan Agreement; and finally the remainder, if any, shall be paid to Mortgagor, or to the person or entity lawfully entitled thereto.

(h) 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.

5.3 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, Agent, 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.

5.4 Agent's Exercise of Remedies. Agent shall be entitled to enforce payment and performance of any Secured 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 Secured 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 Agent's right to realize upon or enforce any other security now or hereafter held by Agent, it being agreed that Agent shall be entitled to enforce this Mortgage and any other security now or hereafter held by Agent in such order and manner as it may in its absolute discretion determine.

5.5 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.

5.6 Waiver of Rights. To the maximum extent permitted under Requirement of Law, Mortgagor knowingly, voluntarily, and unconditionally: (a) waives the benefit of any Requirement of Law now or hereafter existing that (i) provides for any appraisal or valuation before sale of any portion of the Mortgaged Property; (ii) in any way extends the time for the enforcement of the collection of the Secured Obligations or creates or extends a moratorium or period of redemption from any sale made in furtherance of collecting the Secured Obligations; (iii) limits Agent's right to pursue a deficiency judgment after a judicial or non-judicial foreclosure or limits the amount of any deficiency judgment; or (iv) requires or permits Mortgagor or the court to determine or otherwise consider the fair market value of any of the Mortgaged Property in connection with such judicial or non-judicial foreclosure and as a potential limitation on the amount of any deficiency judgment; and (b) 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 Requirement of Law pertaining to the rights, remedies and defenses of sureties. The rights, benefits and defenses hereby waived in this Section include any and all rights, benefits and defenses which might otherwise be available to Mortgagor under the provisions of any Requirement of Law that might otherwise operate to limit the liability of Mortgagor under, or the enforcement of, this Mortgage, the other Loan Documents, or the Secured Obligations.

5.7 Marshaling. Agent shall not be required to marshal any present or future collateral security (including the Mortgaged Property) for, or other assurances of payment of, the Secured Obligations 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 Agent'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.

5.8 Multiple Security. If (a) the Mortgaged Property consists of one or more parcels, whether or not contiguous and whether or not located in the same county, and/or (b) if, in addition to this Mortgage, Agent, for the benefit of the Secured Parties, shall now or hereafter holds or is the beneficiary of one or more additional mortgages, liens, deeds of trust or other security for the Secured Obligations upon other property in the state where the Premises are located (whether such property is owned by Mortgagor or others), Agent 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 Secured Obligations (including the Mortgaged Property), which action or sale may be brought, consolidated, or conducted in the courts of any county in which any of such collateral is located. Mortgagor 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 agrees that if Agent is prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any other collateral directly or indirectly securing the Secured Obligations, or if Agent obtains 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, Agent 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. It is expressly understood and agreed that to the fullest extent permitted by Requirement of Law, Agent 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 Secured Obligations (directly or indirectly) in the most economical and least time-consuming manner.

5.9 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.

5.10 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 Agent or any Secured Party or by any holder of a 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 Agent. No consent or waiver expressed or implied by Agent 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 Agent 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 Agent of its rights hereunder or impair any rights, powers or remedies of Agent hereunder.

(b) No act or omission by Agent or any Secured Party shall release, discharge, modify, change or otherwise affect the original liability under the Loan Agreement, any Note(s) 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 Agent 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 Agent. Without limiting the generality of the foregoing, Agent may (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Obligations; (ii) take other or additional security for the payment of any of the Secured Obligations; (iii) waive or fail to exercise any right granted herein or in the Loan Agreement or any Note(s); (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 Loan Agreement, any Note(s) 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 Loan Agreement, any Note(s), this Mortgage, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Secured Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Agent 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, Agent,

without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured 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 Agent 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, appraisalment, 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, appraisalment, 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.

ARTICLE 6 MISCELLANEOUS

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

6.2 Notices. Notices pursuant to this Mortgage shall be given as provided in the Loan Agreement.

6.3 Governing Law. **THE CREATION OF THIS MORTGAGE AND THE RIGHTS AND REMEDIES OF AGENT WITH RESPECT TO THE MORTGAGED PROPERTY, AS PROVIDED HEREIN AND BY THE LAWS OF THE STATE WHERE THE PREMISES ARE LOCATED, AS WELL AS LIEN PRIORITIES, INCLUDING WITH RESPECT TO MECHANICS' AND MATERIALMEN'S LIENS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF SUCH STATE, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES. WITH RESPECT TO ALL OTHER PROVISIONS OF THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK.**

6.4 Other Security Documents. The provisions hereof supplement the provisions of any other Loan Document that grants a Lien to Agent or that otherwise secures payment or performance of any of the Secured Obligations, and nothing contained therein shall derogate from any of the rights or remedies of Agent hereunder.

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


6.6 Modifications. This Mortgage may not be modified except in a writing executed by Mortgagor and Agent. Any agreement made by Mortgagor and Agent after the date hereof relating hereto, to the Mortgaged Property, or to any Secured Obligation shall be superior to any intervening or subordinate Lien.

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

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

6.9 Amendment and Restatement: No Novation. Effective as of the Effective Date under the Loan Agreement, this Mortgage shall amend and restate in its entirety the Original Mortgage. This Mortgage is not intended to constitute, and does not constitute, a novation of the obligations and liabilities under the Original Mortgage or the Existing Loan Agreement or Other Loan Agreements.

[SIGNATURE PAGE FOLLOWS]


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Shelby Cnty Judge of Probate, AL
01/16/2015 02:21:33 PM FILED/CERT

EXECUTED effective as of the date first set forth above.

MORTGAGOR:

MJBJ REAL ESTATE, LLC, a Kentucky limited liability company

By: _____

John W. Hughes
Authorized Member

STATE OF Kentucky

COUNTY OF WARREN

I, Judy Ramsey, a Notary Public in and for said County in said State, hereby certify that John W. Hughes whose name as the Authorized Member of MJBJ Real Estate, LLC, a Kentucky limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the 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 this the 19th day of December, 2014.

Judy Ramsey
Notary Public

My commission expires: JANUARY 30, 2016

NOTARIAL SEAL

20150116000017650 17/21 \$758.00
Shelby Cnty Judge of Probate, AL
01/16/2015 02:21:33 PM FILED/CERT

Asset No. 069381
Pelham, AL

FINAL EXECUTION COPY

**EXHIBIT 1.2
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.



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EXHIBIT 1.2(d)
THE UCC COLLATERAL

The “*UCC Collateral*” consists of 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 any title or UCC 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: (a) 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; (b) all inventory, including all goods held for sale, raw materials, work in process and materials or supplies used or consumed in Mortgagor’s business; (c) 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; (d) any and all plans and specifications, designs, drawings and other matters prepared for any construction on any of the Premises or regarding any improvements to any of the Premises and any and all construction contracts, design agreements, engineering agreements and other agreements related to the construction of any such improvements; and (e) goodwill.



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**JOINDER TO AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT
OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING**

The undersigned, GE CAPITAL BANK, a Utah industrial loan corporation (the "*Original Mortgagee*"), as the mortgagee under the Original Mortgage, has joined in this Mortgage and: (i) acknowledges and agrees that (a) the GECB Loans have been amended and/or consolidated pursuant to the Loan Agreement; (b) the Mortgage amends and restates in its entirety the Original Mortgage; and (ii) to the extent necessary to vest with and in GE Capital all right, title and interest as the Lender and mortgagee and secured party under the Original Mortgage, as amended and restated pursuant to this Mortgage, hereby sells, assigns, sets over, conveys and delivers to GE Capital all of Original Mortgagee's right, title and interest as mortgagee, lender and secured party in and to the Original Mortgage, as amended and restated pursuant to this Mortgage.

GE CAPITAL BANK, a Utah industrial loan corporation

By: [Signature]
Name: STUART ADAMS
Title: AUTHORIZED SIGNATORY

STATE OF _____)

COUNTY OF _____)

I, _____, a Notary Public in and for said County in said State, hereby certify that _____ whose name as the _____ of GE Capital Bank, a Utah industrial loan corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he or she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the _____ day of _____, 2014.

Notary Public
My commission expires: _____

NOTARIAL SEAL



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Asset No. 069381
Pelham, AL

FINAL EXECUTION COPY

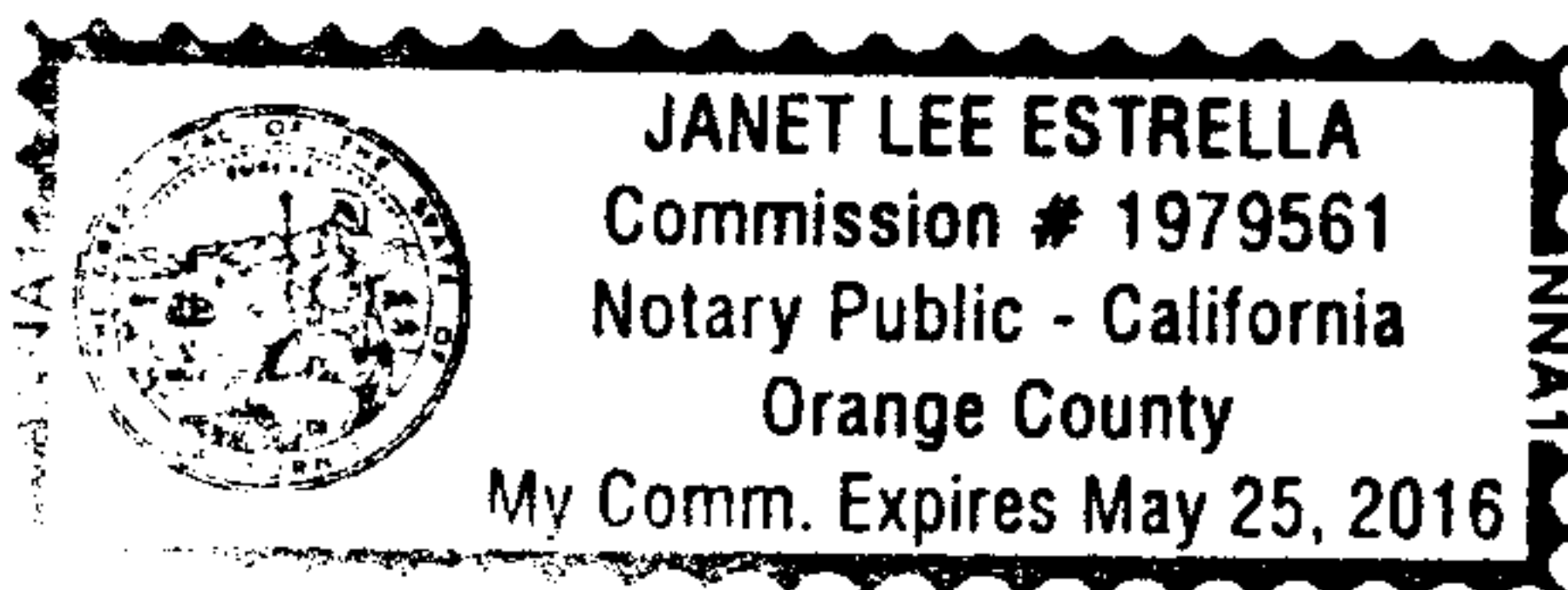
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California

County of Orange, Ca

On December 19, 2014 before me, Janet Lee Estrella, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Stuart Adair
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Janet Lee Estrella
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

