

DATE: MARCH 10, 2017

Handwritten mark

TO WHOM IT MAY CONCERN:

MORTGAGE TAX AMOUNTING TO \$15081.00 WAS
COLLECTED BY THIS OFFICE ON A (MORTGAGE/DEED)
RECORDED IN RLPY BOOK 2017 PAGE 1640 .

PERCENTAGE PER COUNTY: AUTAUGA	8.93%
SHELBY	6.92%
MARSHALL	36.20%
BUTLER	36.79%
ELMORE	11.16%

alfred Q Booth
JUDGE OF PROBATE

Handwritten signature and stamp

**THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED, RETURN
TO:**

Return to: Kristin Brown
First American Title Insurance Co.
2425 e. Camelback Rd., Ste 300
Phoenix, AZ 85016

833719AL8

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

dated as of March 7, 2017

from

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

to

BANK OF AMERICA, N.A.,
a national banking association, in its capacity as Administrative Agent
as Mortgagee

**THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND
RENTS AND FIXTURE FILING SERVES AS A FINANCING STATEMENT FILED AS
A FIXTURE FILING PURSUANT TO SECTION 7-9A-502, CODE OF ALABAMA, 1975,
AS AMENDED.**

Premises: Store No. 4679 (412) - 3530 Hwy 31 S., Pelham, Shelby County, Alabama 35124

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Mortgage") dated as of March 7, 2017, is executed by **MJBJ REAL ESTATE, LLC**, a Kentucky limited liability company, as mortgagor (the "Mortgagor"), with a mailing address at 2501 Crossings Blvd., Suite 300, Bowling Green, Kentucky 42104, to **BANK OF AMERICA, N.A.**, a national banking association, as Administrative Agent, for the benefit of itself, the Secured Parties (as defined in the Credit Agreement) and any other holder of the Obligations (as defined in the Credit Agreement), with a mailing address at 900 West Trade Street, MC: NC1-026-06-03, Charlotte, North Carolina 28255, Attn: Agency Management (together with its successors and permitted assigns, the "Mortgagee").

RECITALS

WHEREAS, Mortgagor, Wendy's of Bowling Green, Inc., a Kentucky corporation, and Gung Ho Real Estate, LLC, a Kentucky limited liability company (collectively, the "Borrower"), have entered into that certain Credit Agreement dated as of even date herewith between the Borrower, the Mortgagee and the Lenders (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement);

WHEREAS, the Mortgagor is the owner of the fee simple interest in the real property described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Mortgagor is required to execute and deliver this Mortgage pursuant to the Credit Agreement.

W I T N E S S E T H:

The Mortgagor, in consideration of the indebtedness herein recited and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, convey, mortgage, transfer and assign to the Mortgagee, with right of entry and power of sale, and does hereby grant to Mortgagee a continuing security interest in and to, and lien upon, all of the Mortgagor's right, title and interest in and to the following described land, real property interests, buildings, improvements, fixtures and other collateral:

(g) All that tract or parcel of land and other real property interests in Shelby County, Alabama, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and all of the Mortgagor's right, title and interest in and to rights appurtenant thereto, including easement rights (the "Appurtenances"); and

(b) All buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements") and all materials intended for construction, reconstruction, alteration and repair of such Improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures now or hereafter owned by the Mortgagor and located on or attached to and used in connection with the aforesaid Land and Improvements (collectively, the "Fixtures"), and all articles of personal property now or hereafter owned by the Mortgagor and attached to or contained in and used in connection with the aforesaid Land and Improvements (including, but not limited to, all furniture, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto), and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personalty") and all proceeds of the Tangible Personalty, and all proceeds and products of the Land, including casualty and condemnation proceeds (collectively, the "Proceeds") (hereinafter, the Land, the Appurtenances, the Improvements, the Fixtures, the Tangible Personalty and the Proceeds may be collectively referred to as the "Premises").

TO HAVE AND HOLD the same, together with all privileges, hereditaments, easements and appurtenances thereunto belonging, subject to the Permitted Liens (as defined in the Credit Agreement), to the Mortgagee and the Mortgagee's successors and assigns to secure the Indebtedness (hereinafter defined) and other obligations herein recited; provided that, should (a) the Indebtedness secured hereby be paid in full after all Commitments have expired or terminated and should the Borrower fully discharge its obligations secured hereby and satisfy the obligations in full or (b) the conditions set forth in the Credit Agreement for the release of this Mortgage be fully satisfied, the lien and security interest of this Mortgage shall cease, terminate and be void and the Mortgagee shall promptly cause a release and satisfaction of this Mortgage to be filed in the appropriate office; and until such obligations are fully satisfied, it shall remain in full force and effect.

And, as additional security for the Indebtedness, the Mortgagor hereby irrevocably assigns to the Mortgagee a presently effective security interest in and to all the security deposits, rents, issues, profits and revenues of the Premises from time to time accruing (the "Rents and Profits"), including during any period of redemption, which assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Notwithstanding the foregoing, so long as no Event of Default (as defined in the Credit Agreement) shall exist, the Mortgagor shall have a license (which license shall terminate automatically and without notice upon the occurrence and during the continuance of an Event of Default) to collect, but not prior to accrual, all Rents and Profits. In the event, however, that the Mortgagor shall cure any such Event of Default, then the license granted under this paragraph

shall be reinstated unless and until another Event of Default occurs, at which time the license shall again terminate.

As additional collateral and further security for the Indebtedness, the Mortgagor does hereby assign to the Mortgagee and grants to the Mortgagee a security interest in all of the right, title and the interest of the Mortgagor in and to any and all insurance policies and proceeds thereof and any and all leases (including equipment leases), rental agreements, management contracts, construction contracts, architects' contracts, technical services agreements, or other contracts, licenses and permits to the extent now or hereafter relating solely to the Premises (the "Intangible Personalty") or any part thereof, and the Mortgagor agrees to execute and deliver to the Mortgagee such additional instruments, in form and substance reasonably satisfactory to the Mortgagee, as may hereafter be reasonably requested by the Mortgagee to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by the Mortgagee to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Mortgagee any obligation with respect thereto. Notwithstanding the foregoing provisions, such assignment and grant of security interest contained herein shall not extend to, and the Intangible Personalty shall not include, any personalty which is now or hereafter held by the Mortgagor as licensee, lessee or otherwise, to the extent that such personalty is not assignable or capable of being encumbered as a matter of law or under the terms of the license, lease or other agreement applicable thereto (but solely to the extent that any such restriction shall be enforceable under applicable law); provided, however, that the foregoing assignment and grant of security interest shall extend to, and the Intangible Personalty shall include, any and all proceeds of such personalty to the extent that the assignment or encumbering of such proceeds is not so restricted under the terms of the license, lease or other agreement applicable thereto.

All the Tangible Personalty which comprises a part of the Premises shall, as far as permitted by law, be deemed to be affixed to the aforesaid Land and conveyed therewith. The Mortgagor hereby grants a security interest in (a) the balance of the Tangible Personalty, (b) the Fixtures, (c) the Rents and Profits and (d) the Intangible Personalty, and this Mortgage shall be considered to be a security agreement which creates a security interest in such items for the benefit of the Mortgagee. In that regard, the Mortgagor grants to the Mortgagee all of the rights and remedies of a secured party under the laws of the state in which the Premises are located.

The Mortgagor and the Mortgagee covenant, represent and agree as follows:

ARTICLE I

Indebtedness Secured

1.1 Indebtedness. The total amount of indebtedness secured by this Mortgage is FIFTY-FIVE MILLION AND NO/100 DOLLARS (\$55,000,000.00), and Mortgagee and the Lenders have established this amount in senior secured credit facilities in favor of the Borrower pursuant to the terms of the Credit Agreement. This Mortgage is given to secure the payment

and performance by the Mortgagor and the other Loan Parties of (a) all Obligations, (b) all obligations under Related Credit Arrangements, and (c) all obligations and liabilities incurred in connection with the collection and enforcement of the foregoing (all of which whether now existing or hereafter arising, collectively, the "Indebtedness").

1.2 Future Advances. This Mortgage is given to secure the Indebtedness together with each advance of any Loan or any other extension of credit, any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest and also to secure all future advances and readvances or other extensions of credit that may subsequently be made to the Borrower or any other Loan Party by the Lenders, whether or not presently within the contemplation of the parties.

ARTICLE II

Mortgagor's Covenants, Representations and Agreements

2.1 Title to Property. The Mortgagor represents and warrants to the Mortgagee (a) that it is seized of the Land and the Improvements and has indefeasible fee simple title to the Land and the Improvements and has the right to encumber and convey the same, and title to such Land and Improvements is free and clear of all liens and encumbrances except for Permitted Liens, (b) that it is the owner of the Tangible Personalty free and clear of all liens and encumbrances except for the Permitted Liens, and (c) that it will warrant and defend the title to such property except for Permitted Liens against the claims of all Persons. As to the balance of the Premises, the Rents and Profits and the Intangible Personalty, the Mortgagor represents and warrants that it will defend such property against the claims of all Persons subject to the Permitted Liens.

2.2 Additional Documents. The Mortgagor agrees to execute and deliver to the Mortgagee, concurrently with the execution of this Mortgage and upon the reasonable request of the Mortgagee from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. The Mortgagor hereby authorizes the Mortgagee to prepare and file such financing statements, fixture filings, renewals thereof, amendments thereof, supplements thereto and other instruments as the Mortgagee may from time to time deem necessary or appropriate in order to perfect and maintain the security interests granted hereby in accordance with the Uniform Commercial Code as adopted and as in effect in the state in which the Land is located (the "UCC").

2.3 Insurance Proceeds. The Mortgagor assigns to the Mortgagee any proceeds which may become due by reason of any material loss, damage to or destruction of the Premises to which the Mortgagor is entitled. Notwithstanding the foregoing, subject to the provisions of the Credit Agreement, provided no Event of Default has occurred and is continuing, the Mortgagor shall have the right to collect any insurance proceeds and to apply such proceeds to the restoration of the Premises. To the extent such proceeds are applied to the repayment of the balance due under the Loan Documents, if such proceeds exceed the balance due under the Obligations, any such excess shall be repaid to the Mortgagor.

2.4 Eminent Domain. Subject to the provisions of the Credit Agreement, the Mortgagor assigns to the Mortgagee any proceeds or awards which may become due by reason of any condemnation or other taking for public use of the whole or any part of the Premises or any rights appurtenant thereto to which the Mortgagor is entitled, and such proceeds or awards shall be applied in the same manner the insurance proceeds are applied as set forth herein and in the Credit Agreement. If such proceeds exceed the balance due under the Obligations, any such excess shall be repaid to the Mortgagor. The Mortgagor agrees to execute such further assignments and agreements as may be reasonably required by the Mortgagee to assure the effectiveness of this Section 2.4. In the event any Governmental Authority shall require or commence any proceedings for the demolition of any buildings or structures comprising a part of the Premises, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Premises, the Mortgagor shall promptly notify the Mortgagee of such requirements or commencement of proceeding (for demolition, condemnation or other taking). Notwithstanding the foregoing, subject to the provisions of the Credit Agreement, provided no Event of Default has occurred and is continuing, the Mortgagor shall have the right to collect and retain any such proceeds or awards.

2.5 Releases and Waivers. The Mortgagor agrees that no release by the Mortgagee of any portion of the Premises, the Rents and Profits or the Intangible Personalty, no subordination of lien, no forbearance on the part of the Mortgagee to collect on any Loan or other Obligations, or any part thereof, no waiver of any right granted or remedy available to the Mortgagee and no action taken or not taken by the Mortgagee shall, except to the extent expressly released, in any way have the effect of releasing the Mortgagor from full responsibility to the Mortgagee for the complete discharge of each and every of the Mortgagor's obligations hereunder.

2.6 Security Agreement.

(a) This Mortgage is hereby made and declared to be a security agreement, encumbering each and every item of Fixtures, Tangible Personalty and Intangible Personalty. In furtherance thereof, in order to secure the payment of the Indebtedness, the Mortgagor hereby grants to the Mortgagee a security interest in all of the Mortgagor's right, title and interest in all Fixtures, Tangible Personalty and Intangible Personalty in compliance with the provisions of the UCC. The Mortgagor hereby authorizes the Mortgagee to file financing statements in any jurisdiction and with any filing office that the Mortgagee may determine, in its sole discretion, is necessary or advisable to perfect the security interests granted herein. Such financing statements may describe or indicate the collateral to the extent a security interest therein is granted hereby, including without limitation the description "All goods of the Debtor that are or are to become fixtures located on the Land, whether now owned or hereafter acquired by Debtor and whether now or hereafter located on the Land" or words of similar import. To the extent permitted by applicable law, the remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, (ii) as prescribed by general law or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified under the UCC, all at the Mortgagee's sole election. The Mortgagor and the Mortgagee agree that the filing of such financing statement(s) in the records normally having to do with

personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the Mortgagor and the Mortgagee that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (A) any such item is physically attached to the improvements, (B) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (C) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (x) the proceeds of any fire or hazard insurance policy or (y) any award in eminent domain proceedings for a taking or for loss of value or (z) the Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Premises, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of the Mortgagor or the Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of the Mortgagee in the event any court shall at any time hold with respect to the foregoing (x) or (y) or (z), that notice of the Mortgagee's priority of interest to be effective against a particular class of persons, must be filed in the UCC records, provided, if there is a conflict between the terms of this paragraph and the terms of the Credit Agreement, the Credit Agreement shall govern.

(b) The Mortgagor warrants that the name and address of the "Debtor" (which is the Mortgagor), are as set forth in the preamble to this Mortgage; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. The Mortgagor warrants that the Mortgagor's exact legal name is correctly set forth in the preamble of this Mortgage. The name and address of Mortgagee, as "Secured Party," is as set forth in the preamble of this Mortgage.

ARTICLE III

Events of Default

An Event of Default shall exist under the terms of this Mortgage upon the occurrence and during the continuance of an Event of Default under the terms of the Credit Agreement.

ARTICLE IV

Foreclosure

4.1 Acceleration of Secured Indebtedness; Foreclosure. Upon the occurrence and during the continuance of an Event of Default, the Indebtedness and any other obligations due under the Loan Documents, including all accrued interest, may be accelerated by the Mortgagee in accordance with the terms of the Credit Agreement. Upon such acceleration, the Mortgagee may foreclose the lien of this Mortgage by judicial or non-judicial proceeding in a manner

permitted by applicable law. To the maximum extent permitted under law, the Mortgagor hereby waives any statutory right of redemption in connection with such foreclosure proceeding.

4.2 Proceeds of Sale. The proceeds of any foreclosure sale of the Premises, or any part thereof, will be distributed and applied in accordance with the terms and conditions of the Credit Agreement (subject to any applicable provisions of applicable law).

ARTICLE V

Additional Rights and Remedies of the Mortgagee

5.1 Rights Upon an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Mortgagee, immediately and without additional notice and without liability therefor to the Mortgagor, except for gross negligence, willful misconduct or unlawful conduct as determined by a court of competent jurisdiction by final and nonappealable judgment, may do or cause to be done any or all of the following to the extent permitted by applicable law: (a) exercise its right to collect the Rents and Profits; (b) enter into contracts for the completion, repair and maintenance of the Improvements thereon; (c) expend Loan funds and any rents, income and profits derived from the Premises for the payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the Improvements, preservation of the lien of this Mortgage and satisfaction and fulfillment of any liabilities or obligations of the Mortgagor arising out of or in any way connected with the Premises whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Mortgage; (d) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in this Mortgage, the Credit Agreement or the other Loan Documents, or to aid the execution of any power herein granted; and (e) generally, supervise, manage, and contract with reference to the Premises as if the Mortgagee were equitable owner of the Premises. Any amounts expended by the Mortgagee pursuant to this Section 5.1, together with interest thereon at the Default Rate, shall be secured hereby. The Mortgagor also agrees that, to the full extent permitted by applicable law, any of the foregoing rights and remedies of the Mortgagee may be exercised at any time during the continuance of an Event of Default independently of the exercise of any other such rights and remedies, and the Mortgagee may continue to exercise any or all such rights and remedies until the Event(s) of Default are cured, until foreclosure and the conveyance of the Premises to the high bidder or until the Credit Agreement is no longer in effect or the Indebtedness is otherwise satisfied or paid in full, whichever occurs first.

5.2 Appointment of Receiver. Upon the occurrence and during the continuance of an Event of Default, the Mortgagee shall be entitled, without additional notice and without regard to the adequacy of any security for the Indebtedness secured hereby, whether the same shall then be occupied as a homestead or not, or the solvency of any party bound for its payment, to make application for the appointment of a receiver to take possession of and to operate the Premises, and to collect the rents, issues, profits, and income thereof, all expenses of which shall be added to the Indebtedness and secured hereby. The receiver shall have all the rights and powers provided for under the laws of the state in which the Premises are located, including without

limitation, the power to execute leases, and the power to collect the rents, sales proceeds, issues, profits and proceeds of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagor, its successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, sales proceeds, issues, proceeds and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. All costs and expenses (including receiver's fees, reasonable attorneys' fees and costs incurred in connection with the appointment of a receiver) shall be secured by this Mortgage. Notwithstanding the appointment of any receiver, trustee or other custodian, the Mortgagee shall be entitled to retain possession and control of any cash or other instruments at the time held by or payable or deliverable under the terms of this Mortgage to the Mortgagee to the fullest extent permitted by law until the Indebtedness is otherwise satisfied or paid in full.

5.3 Waivers. No waiver of any Event of Default shall at any time thereafter be held to be a waiver of any rights of the Mortgagee stated anywhere in this Mortgage, the Credit Agreement or any of the other Loan Documents, nor shall any waiver of a prior Event of Default operate to waive any subsequent Event(s) of Default. All remedies provided in this Mortgage, the Credit Agreement or any of the other Loan Documents are cumulative and may, at the election of the Mortgagee, be exercised alternatively, successively, or in any manner and are in addition to any other rights provided by law.

5.4 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, the Mortgagor or the Mortgagor's heirs, devisees, representatives, successors or assigns are occupying or using the Premises, or any part thereof, each and all immediately shall 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 landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale, notwithstanding any language herein apparently to the contrary, shall have the sole option to demand possession immediately following the sale or to permit such occupants to remain as tenants at will. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the property (such as an action for forcible detainer) in any court having jurisdiction.

5.5 Marshalling. The Mortgagor hereby waives, in the event of foreclosure of this Mortgage or the enforcement by the Mortgagee of any other rights and remedies hereunder, any right otherwise available in respect to marshalling of assets which secure any Loan and any other indebtedness secured hereby or to require the Mortgagee to pursue its remedies against any other such assets.

5.6 Protection of Premises. If the Mortgagor fails to perform the covenants and agreements contained in this Mortgage, the Credit Agreement or any of the other Loan Documents, and such failure continues beyond any applicable grace, notice and cure periods, except in the case of an emergency in which event the Mortgagee may act immediately, then the Mortgagee may take such actions, including, but not limited to, disbursements of such sums, as

the Mortgagee in its sole reasonable discretion deems necessary to protect the Mortgagee's interest in the Premises.

ARTICLE VI

General Conditions

6.1 Terms. The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, successors and permitted assigns. The term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

6.2 Notices. The method and effectiveness of delivery of all notices, requests and other communications which relate to this Mortgage shall be governed by the terms of the Credit Agreement.

6.3 Severability. If any provision of this Mortgage is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

6.4 Headings. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Mortgage nor the intent of any provision hereof.

6.5 Conflicting Terms. Except in the case of Sections 6.6 and 6.11 hereof, in the event the terms and conditions of this Mortgage conflict with the terms and conditions of the Credit Agreement, the terms and conditions of the Credit Agreement shall control and supersede the provisions of this Mortgage with respect to such conflicts.

6.6 Governing Law. This Mortgage shall be governed by and construed in accordance with the internal law of the state in which the Premises are located.

6.7 Application of the Foreclosure Law. Notwithstanding anything to the contrary contained herein, if any provision in this Mortgage shall be inconsistent with any provision of the foreclosure laws of the state in which the Premises are located, the provisions of such laws shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with such laws.

6.8 WRITTEN AGREEMENT.

(a) THE RIGHTS AND OBLIGATIONS OF THE MORTGAGOR AND THE MORTGAGEE SHALL BE DETERMINED SOLELY FROM THIS WRITTEN MORTGAGE AND THE OTHER LOAN DOCUMENTS, AND ANY PRIOR ORAL OR WRITTEN

AGREEMENTS BETWEEN THE MORTGAGEE AND THE MORTGAGOR CONCERNING THE SUBJECT MATTER HEREOF AND OF THE OTHER LOAN DOCUMENTS ARE SUPERSEDED BY AND MERGED INTO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS.

(b) THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS MAY NOT BE VARIED BY ANY ORAL AGREEMENTS OR DISCUSSIONS THAT OCCUR BEFORE, CONTEMPORANEOUSLY WITH, OR SUBSEQUENT TO THE EXECUTION OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

(c) THIS WRITTEN MORTGAGE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENTS BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6.9 WAIVER OF JURY TRIAL. THE MORTGAGEE AND THE MORTGAGOR HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THE MORTGAGEE AND THE MORTGAGOR MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE MORTGAGEE AND THE MORTGAGOR (a) CERTIFY THAT NO REPRESENTATIVE, THE MORTGAGEE OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGE THAT THEY HAVE BEEN INDUCED TO ENTER INTO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY, WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

6.10 Request for Notice. The Mortgagor requests a copy of any statutory notice of default and a copy of any statutory notice of sale hereunder be mailed to the Mortgagor at the address specified in the introductory paragraph on the first page of this Mortgage.

6.11 State Specific Provisions. In the event of any inconsistencies between this Section 6.11 and any of the other terms and provisions of this Mortgage (other than the provisions of Section 6.7), the terms and provisions of this Section 6.11 shall control and be binding. With respect to the Premises which are located in the State of Alabama, notwithstanding anything contained herein to the contrary:

(a) Mortgagee may, at its option, whether or not possession of the Land has been taken, after giving notice by publication once a week for three (3) successive weeks of the time,

place, and terms of each such sale, together with a description of the Land to be sold, in a newspaper published in the county or counties wherein such Land or any part thereof is located, or as otherwise provided by law, sell the Land (or such part or parts thereof as Mortgagee may from time to time elect to sell) at the front or main door of the courthouse of the county in which such Land or a substantial and material part thereof is located, at public outcry, to the highest bidder for cash. Upon payment of the purchase price, Mortgagee, its agent or attorney, or the auctioneer conducting the sale may execute and deliver to the purchaser for and in the name of Mortgagor a good and sufficient deed to the property sold. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. Mortgagee may bid and become the purchaser of the Land at any foreclosure sale. In that event, Mortgagee may pay the purchase price by crediting the Obligations in the amount of Mortgagee's bid. Mortgagor hereby waives any requirement that the Land be sold in separate parcels or tracts. At any foreclosure sale any part or all of the Land, whether real, personal, or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse may be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Land in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Land not previously sold shall have been sold or all the Obligations shall have been finally and fully paid and satisfied.

(Signature on the following page)

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

MORTGAGOR:

MJBJ REAL ESTATE, LLC,
a Kentucky limited liability company

By: [Signature]
Name: Shawn O'Malley
Title: member

STATE OF Kentucky

COUNTY OF Warren

§
§
§

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Shawn O'Malley, whose name as Member of MJBJ Real Estate, LLC, a Kentucky limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand on February 27, 2017.

[SEAL]

My Commission Expires:

September 2, 2020

Linda C Keene

Notary Public, State of Kentucky Notary ID: 564322

Linda C Keene

Printed Name of Notary Public

Unit:

Store No. 4679 (412)

3530 Hwy 31 S.

Pelham, Alabama 35124

Shelby County

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 20 SOUTH, RANGE 3 WEST, 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 RIGHT OF WAY TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG LAST DESCRIBED COURSE 138.0 FEET; THENCE LEFT 103 DEGREES 00 MINUTES 35 SECONDS AND WESTERLY 171.86 FEET; THENCE RIGHT 90 AND RUN NORTHERLY 89.79 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 MINUTES 25 SECONDS AND RUN EASTERLY 194.00 FEET TO THE PAINT 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.

STATE OF ALABAMA § A proceeding authorized by
 §40-22-2, Code of Alabama 1975
MONTGOMERY COUNTY §

BEFORE THE ALABAMA DEPARTMENT OF REVENUE:

Comes Petitioner, **BANK OF AMERICA, N.A.**, a national banking association, as Administrative Agent and Mortgagee (the "Agent") and asks the Alabama Department of Revenue to fix and determine the amount of mortgage recording tax due, pursuant to §40-22-2, Code of Alabama 1975, upon the recordation of certain Mortgages, Security Agreements, Assignments of Leases and Rents and Fixture Filings (collectively, the "Mortgage"), as security for a loan in the original amount of \$55,000,000.00 (the "Loan"). The Mortgage encompasses property located within and without the State of Alabama.

Upon consideration of the Petition and evidence offered in its support, the Alabama Department of Revenue finds as follows:

1. That the total amount of indebtedness presently secured by the Mortgage is \$55,000,000.00.
2. That the total value of all property both within and without the State of Alabama, is \$68,781,931.00.
3. That the total value of the property located within the State of Alabama, and covered by the Mortgage, is \$12,576,738.00, or 18.28% of all property within and without Alabama.
4. That the amount of indebtedness which is allocable to Alabama, and upon which mortgage recording tax is due, is \$10,054,000.00.

5. That the amount of mortgage recording tax to be paid, at the rate of \$.15 for each \$100 of indebtedness, or fraction thereof, which is attributable to the property located within the State of Alabama, is \$15,081.00.

6. That the Mortgages are to be recorded in Marshall, Butler, Autauga, Elmore and Shelby Counties and the mortgage tax is to be distributed according to the relative collateral values in each Alabama County as follows:

<u>County</u>	<u>Value</u>	<u>Percentage</u>
Marshall	\$4,552,950.00	36.20%
Butler	\$4,626,424.00	36.79%
Autauga	\$1,123,534.00	8.93%
Elmore	\$1,403,874.00	11.16%
<u>Shelby</u>	<u>\$869,956.00</u>	<u>6.92%</u>
Total	\$12,576,738.00	100%

IT IS ORDERED, THEREFORE, that the Probate Judge in the County that the Mortgage will be recorded in first, shall collect mortgage recording tax in the amount of \$15,081.00, and shall accept the Mortgage for recording. The Probate Judges of the remaining Counties also are entitled to collect any applicable recording fees.

DONE this 23rd day of February, 2017

ALABAMA DEPARTMENT OF REVENUE

By: Joe Harrett Jr
Deputy Commissioner of Revenue

ATTEST:

Michael D. Palle
As Secretary

K. Elizabeth Jehle
Legal Division: K. Elizabeth Jehle



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
03/14/2017 12:45:29 PM
\$67.00 CHERRY
20170314000086210

James W. Fuhrmeister