

20220331000131670  
03/31/2022 12:36:18 PM  
MORT 1/20

**This instrument was prepared by,  
and after recording return to:**

Hayden Hilliard, Esq.  
SNELL & WILMER L.L.P.  
400 E. Van Buren Street, Suite 1900  
Phoenix, Arizona 85004-2202

**NOTE TO PROBATE JUDGE:  
THE MAXIMUM PRINCIPAL  
BALANCE SECURED BY THIS  
MORTGAGE SHALL NOT  
EXCEED \$1,562,000.00.**

**PURCHASE MONEY MORTGAGE,  
SECURITY AGREEMENT, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,  
FINANCING STATEMENT, AND FIXTURE FILING  
By**

**SOUTHEAST RESTAURANT DEVELOPMENT - WEN, LLC, a Louisiana limited liability company, as  
Mortgagor**

**In favor of**

**FIFTH THIRD BANK, NATIONAL ASSOCIATION, as Lender**

**Made and dated as of March 14, 2022**

**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.**

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

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT, AND FIXTURE FILING (the "Mortgage") is made as of March 14, 2022 by **SOUTHEAST RESTAURANT DEVELOPMENT - WEN, LLC**, a Louisiana limited liability company ("Mortgagor") whose mailing address is 1201 Canal Street, Unit C-2, New Orleans, LA 70112, in favor of **FIFTH THIRD BANK, NATIONAL ASSOCIATION** ("Lender"), whose mailing address is 38 Fountain Square Plaza, MD #10908F, Cincinnati, Ohio 45263, as mortgagee and secured party.

**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 Lender, its successors and assigns, **WITH POWER OF SALE AND RIGHT OF ENTRY**, for the benefit and security of Lender, and grants to Lender 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 Lender, its successors and assigns forever, upon the terms, provisions and conditions set forth in this Mortgage, subject only to the Permitted Exceptions. This Mortgage is being made pursuant to the terms and conditions of the Credit Agreement, of even date herewith, between Mortgagor, as Borrower, and Lender (as it may be amended, restated, supplemented, extended or renewed from time to time, the "**Credit Agreement**"). Capitalized terms used in this Mortgage and not otherwise defined in this Mortgage have the meanings given to those terms in the Credit 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 Lender or any affiliate of Lender by Mortgagor or any other Loan 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 Obligation, 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 Lender to, or waiver of Lender'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 Note(s) executed and delivered pursuant to the Credit Agreement 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 Lender agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage.

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 Exceptions; 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 Exceptions.

## 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 indebtedness evidenced by the Credit Agreement in the original aggregate maximum principal amount of up to \$15,650,000.00, and evidenced by the Note(s) more particularly described on the “Secured Note Schedule” attached as Exhibit 2.1(a) (each, a “Note”, with each such Note being incorporated herein by reference), with interest thereon, all as provided in the Notes and other Loan Documents, **INCLUDING INTEREST RATE INCREASES OR DECREASES, MATURITY DATE EXTENSIONS, AND PAYMENT MODIFICATIONS (INCLUDING DEFERRALS OR ACCELERATIONS OF PRINCIPAL OR INTEREST)**. References herein to “Note” and “Loan” are to each such Note and related Loan. Notwithstanding the foregoing, the amount of indebtedness secured by this Mortgage is limited to \$1,562,000.00.



(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, including without limitation in any promissory note, agreement, document, or instrument now or hereafter executed by Mortgagor reciting that the obligations thereunder are secured by this Mortgage.

(c) [Reserved].

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

(e) Other Disbursements and Protective Advances. All disbursements and other advances made by Lender 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 Lender pursuant to any of the Loan Documents or as permitted by applicable Law, in all cases with interest thereon until paid at the rate of 10% per annum. Notwithstanding the foregoing, Lender shall have no obligation to make any disbursements or advance any sums as a result of this subsection.

(f) 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(d) and 2.1(e), 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 Loan 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 an Affiliate of Lender, rather than directly by Lender, Lender is acting both for itself, with respect to the Secured Obligations held by Lender, and as the representative and collateral agent for and on behalf of such Affiliate with respect to Secured Obligations held by such Affiliate, and Lender is entitled, both on its own behalf and as the representative and collateral agent for and on behalf of such Affiliate, to exercise all rights and remedies of the secured party under this Mortgage.

### ARTICLE 3 MORTGAGOR COVENANTS

3.1 Use. Mortgagor shall permit the Mortgaged Property to be used solely for the operation of a Permitted Concept in accordance with the Credit Agreement and for no other purpose. Mortgagor shall not, without Lender's prior written consent, (a) initiate or acquiesce in a change in the zoning classification; 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 (or cause to be paid) 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 Lender'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 Lender 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 applicable 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 applicable 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 Credit Agreement, Mortgagor shall not make, nor permit to be made, any alterations (including additions) to the Improvements without Lender's prior written consent, not to be unreasonably withheld or conditioned, except that Mortgagor may make or permit nonstructural alterations to the Premises costing less than \$100,000 in the aggregate at any one time without Lender'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 (or the Tenant under the Lease); (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 Credit Agreement, the Loan Documents, the Franchise Agreement, and all applicable Law.

3.5 Casualty and 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 Lender written notice of the Taking. No Taking shall relieve Mortgagor of any Secured Obligation, including its obligations to make regularly scheduled payments of principal and interest pursuant to the Note and the other Loan Documents. Mortgagor authorizes and empowers Lender, at Lender's option and in Lender's sole discretion, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and 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) Casualty; Restoration Obligations. Mortgagor shall at all times bear the entire risk of any loss, theft, damage to, or destruction of, the Mortgaged Property from any cause whatsoever, including without limitation as a result of a Taking (a "Casualty"). If a Casualty occurs, whether or not covered by



insurance, Mortgagor will promptly give Lender written notice thereof, describing the nature and extent thereof. No Casualty shall relieve Mortgagor of any of its Secured Obligations, including its obligation to make regularly scheduled payments of principal and interest pursuant to the Note and the other Loan Documents. Promptly following the occurrence of a Casualty, other than a Total Taking (defined below), Mortgagor shall, at its expense, commence and diligently complete (or cause Tenant to 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 Casualty (a "Restoration"). Mortgagor shall not be excused from Mortgagor's Restoration obligation, regardless of whether there are Proceeds (defined below) available to Mortgagor or whether any such Proceeds are sufficient in amount, and the application or release by Lender of any Proceeds shall not cure or waive any Event of Default under this Mortgage or the other Loan Documents or invalidate any act done pursuant thereto. "Total Taking" means a Taking of substantially all of the Mortgaged Property or such a portion of the Mortgaged Property that the remainder cannot reasonably be used for the purposes for which it was used prior to the Taking.

(c) Proceeds. All compensation, awards, damages, rights of action, and proceeds awarded to Mortgagor by reason of any such, or received by Mortgagor as the result of a transfer in lieu of a Taking, or with respect to any Casualty (the "Proceeds") shall be payable to Lender, and Mortgagor authorizes and directs that they be paid directly to Lender. If Mortgagor receives any Proceeds, Mortgagor shall promptly pay such proceeds to Lender. All Proceeds will be applied by Lender to payment of the Obligations in such order as may be required in the Credit Agreement, or if not so specified, as Lender, in its sole discretion, shall determine. Notwithstanding the foregoing, if no Default has occurred, and if the Taking, if any, is not a Total Taking, the Proceeds, less costs, fees and expenses incurred by Lender and Borrower in the collection thereof, including adjuster's fees and expenses and reasonable attorneys' fees and expenses (the "Net Proceeds"), shall be made available to Mortgagor as follows: (i) if the Net Proceeds are less than \$25,000, the Net Proceeds shall be paid to Mortgagor and applied by Mortgagor to the cost of the Restoration; and (ii) if the Net Proceeds are \$25,000 or greater, the Net Proceeds shall be held and disbursed by Lender, or as Lender may from time to time direct, as the Restoration progresses, to pay or reimburse Mortgagor for Restoration costs, upon Mortgagor's written request accompanied by evidence, reasonably satisfactory to Lender, that: (A) the Restoration is in compliance with applicable laws and all private restrictions and requirements; (B) the amount requested has been paid or is then due and payable and is properly a part of such cost; (C) there are no Liens for labor or materials previously supplied in connection with the Restoration; (D) if the estimated cost of the Restoration exceeds the Net Proceeds (exclusive of proceeds received from Mortgagor's business income insurance), Mortgagor has deposited into an escrow reasonably satisfactory to Mortgagor such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Lender; and (E) the balance of such Net Proceeds, together with the funds deposited into escrow, if any, will, after making the payment requested, be sufficient to pay the balance of the Restoration costs. Upon receipt by Lender of evidence reasonably satisfactory to it that the Restoration has been completed, the cost thereof has been paid in full, and that there are no Liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Proceeds shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of the Proceeds as Lender may require. To the extent that Proceeds are applied to prepay principal on Note, no prepayment fee will be charged in connection with such prepayment.

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 Lender; (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender, or any action taken with respect to this Mortgage by any trustee or receiver of Lender, or by any court, in any such proceeding; (f) any default or failure on Lender's part to perform or comply with any of the terms of the Loan Documents or of any Related Agreement; or (g) any other act or occurrence whatsoever, whether similar or dissimilar to the foregoing.

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

3.8 Actions by Lender. If Mortgagor fails to make any payment or to do any act required hereby, Lender 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 Lender 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 Lender reasonably may consider necessary or appropriate to keep the Mortgaged Property in good condition and repair or otherwise to protect the value or security of any of the Mortgaged Property, including payment of Impositions and insurance premiums; and (c) taking such actions as Lender reasonably may consider necessary or appropriate to protect the priority, validity and enforceability of the lien of this Mortgage on the Mortgaged Property. Mortgagor shall, immediately upon demand by Lender, pay to Lender all amounts expended by Lender, including all costs and expenses reasonably incurred by Lender in connection with the exercise by Lender of the foregoing rights (including costs of evidence of title, court costs, appraisals, surveys, fees of receivers, and reasonable attorneys' fees), together with interest at the rate of 10% on such amounts from the date incurred until paid.

3.9 Prohibited Transactions. In order to induce Lender to make the Loan, Mortgagor agrees that, upon the occurrence of a Prohibited Transaction (as defined in the Credit Agreement) without the prior written consent of Lender, in Lender's sole discretion, Lender shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. In connection with any request for consent to a Prohibited Transaction, Mortgagor agrees to pay Lender such fees and other amounts as Lender may require, as consideration to Lender in connection with, and as a condition precedent to, any such matter. As used herein, "Prohibited Transactions" means any transaction to (a) sell, lease, mortgage, pledge, license, assign, transfer, or otherwise encumber or dispose of any Collateral to any Person, except for (i) sales of inventory in the ordinary course of business; and (ii) so long as no Event of Default has occurred and is continuing, sales or other dispositions of obsolete equipment consistent with past practices, so long as such items are replaced by items of equal or greater value and utility; (b) sell, mortgage, pledge, assign, transfer, or otherwise encumber or dispose of its interest in the Credit Agreement or the other Loan Documents; (c) engage in or allow a Change of Control of any Loan Party or Tenant to occur, including a change resulting from (i) direct or indirect transfers of beneficial ownership of, or the right and power to vote, stock or partnership, membership or other ownership interests, whether in one or a series of transactions; or (ii) creation or issuance of new or additional equity interests; (d) pledge, assign, or otherwise encumber or dispose of any interest in any Loan Party as collateral for any obligation of a Loan Party or any other Person; or (e) enter into any agreement to do, or which would or could result in, any of the foregoing.

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 Exceptions. Mortgagor covenants to notify Lender 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 Lender a bond or other security satisfactory to Lender in such amount as Lender shall reasonably require, but not more than 150% of the amount of the claim, and provided further that if Mortgagor loses such contest, Mortgagor will thereafter diligently proceed to cause such Lien 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 Lender, Lender may, after only such notice to Mortgagor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Mortgagor shall, immediately upon demand therefor by Lender, pay



to Lender an amount equal to all amounts expended by Lender, including all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing rights, together with interest thereon from the date of each such expenditure at the rate of 10% per annum. Such costs and expenses shall be secured by the Liens in favor of Lender, including the lien of this Mortgage, and are part of the Secured Obligations.

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

3.12 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 Credit 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 Note 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 Lender to purchase the flood insurance for the Premises and authorizes Lender to charge Mortgagor the cost of premiums and fees incurred in purchasing the insurance. Any flood insurance that Lender 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 Lender's prior written consent: (a) grant easements and other rights in the nature of easements; (b) release existing easements or other rights in the nature of easements which are for the benefit of the Mortgaged Property; (c) dedicate or transfer unimproved portions of the Mortgaged Property for road, highway or other public purposes; (d) execute petitions to have the Mortgaged Property annexed to any municipal corporation or utility district; and (e) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

3.14 Lender'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, Lender may, from time to time and without notice: (a) release any Person so liable; (b) extend the Secured Obligations; (c) grant other indulgences; (d) release or reconvey, or cause to be released or reconveyed, at any time at Lender's option any parcel, portion or all of the Mortgaged Property; (e) take or release any other or additional security or any guaranty for any of the 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 Lender 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 Lender 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 Purchase Money Mortgage. This Mortgage is a purchase money mortgage as a portion of the Secured Obligations are being used by Mortgagor to finance the acquisition of the Mortgaged Property.

3.18 Grant of Security Interest. As further security for payment and performance of the Secured Obligations, Mortgagor grants to Lender 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 Lender, as secured party, with such security interest to immediately attach upon execution hereof, without regard to recordation.

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

#### ARTICLE 4 ASSIGNMENT OF LEASES AND RENTS

4.1 Assignment of Leases and Rents. Mortgagor assigns, transfers, and conveys to Lender all of Mortgagor's estate, right, title and interest in and to the Leases and Rents and gives to and confers upon Lender the right, power and authority to collect the Rents; to give receipts, releases and satisfactions; to sue, in the name of Mortgagor or Lender, for all Rents; and to apply the Rents to the payment of the Secured Obligations in such order as Lender shall determine. Mortgagor further irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Lender, for all Rents. Mortgagor authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Lender upon written demand by Lender, without further consent of Mortgagor; provided, however, that Mortgagor shall have the right to collect such Rents (but not more than one month in advance unless the written approval of Lender is first obtained), and to retain and enjoy same, so long as a Default shall not have occurred. **THE ASSIGNMENT OF THE RENTS MADE IN THIS SECTION IS INTENDED TO BE AN ABSOLUTE, PRESENT ASSIGNMENT FROM MORTGAGOR TO LENDER AND NOT MERELY THE PASSING OF A SECURITY INTEREST.** Rents collected subsequent to any Event of Default shall be applied 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 Lender may, in its sole discretion, determine.

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

prescribed by applicable Law), regardless of the adequacy of Lender's security, and at Lender's sole election (without any obligation to do so), to the extent permitted by applicable 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. Lender or the receiver, to the extent permitted by applicable 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. Lender shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Lender hereunder, except to the extent of Lender's gross negligence or willful misconduct. Any entering upon and taking possession and control of the Mortgaged Property by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any Default or invalidate any other right or remedy of Lender.

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 Lender of any claim or event of default under any Lease given to or by Mortgagor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (c) at the sole cost and expense of Mortgagor, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Lender; and (d) appear in and defend any action challenging the validity, enforceability or priority of the Lien created hereby or the validity or enforceability of any Lease. 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 Lender's consent, in Lender'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 Lender. 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 Lender otherwise consents or elects, Mortgagor's title to the Mortgaged Property and the leasehold interest in the Mortgaged Property created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Lender or any other person by purchase, operation of law, 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 applicable Law, Lender 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 Lender the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor;

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

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

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

(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) Lender'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 Note or the performance of any term thereof or any other right, power or remedy hereunder, (B) to foreclose this Mortgage and to sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable Law, and (C) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

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

(e) Receiver. Obtain an order, *ex parte* or otherwise, but to the fullest extent permitted by applicable Law, 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. Lender'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 Lender's express written consent, to operate and sell all property of the receivership estate, and that such powers and duties shall be vested in the receiver until the later of (x) the date of confirmation of sale of the receivership estate, (y) the date of expiration of any redemption period, or (z) the date the receiver is discharged. 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 Lender. Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

(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 Lender hereunder, and interest thereon; then to payment of the Obligations and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Mortgagor, or to the person or entity lawfully entitled thereto.

(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 Code, Lender, upon an Event of Default, may proceed under the Code 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 Code.

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

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 applicable Law, Mortgagor knowingly, voluntarily, and unconditionally: (a) waives the benefit of any applicable 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 Lender'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 applicable 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 applicable Law similar to the foregoing or 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. Lender shall not be required to marshal any present or future collateral security (including the Mortgaged Property) for, or other assurances of payment of, the 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 Lender's rights and remedies under this Mortgage or under any of the other Loan Documents, and, to the extent that it lawfully may, Mortgagor irrevocably waives the benefits of all such laws.

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, Lender 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), Lender may, at its election, and to the extent permitted by applicable Law, 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 Lender 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 Lender 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, Lender may commence or continue any trustee's sale or foreclosure proceedings and exercise its other remedies granted in this Mortgage against all or any part of the Mortgaged Property, and Mortgagor waives any objections to the commencement or continuation of a foreclosure of this Mortgage or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay the execution of, remove, transfer or consolidate either any action under this Mortgage or such other proceedings on such basis. It is expressly understood and agreed that to the fullest extent permitted by applicable Law, Lender may, at its election, cause the sale of all collateral which is the subject of a single trustee's sale or foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the 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 Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note, the Credit Agreement or this Mortgage or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Loan Obligations; (ii) take other or additional security for the payment of any of the Loan Obligations; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any



map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Loan Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Loan Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

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

#### ARTICLE 6 MISCELLANEOUS

6.1 Applicability of General Provisions. All provisions of the Credit 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 Credit Agreement.

6.3 Governing Law. **THE CREATION OF THIS MORTGAGE AND THE RIGHTS AND REMEDIES OF LENDER 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, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES.**

6.4 Other Security Documents. The provisions hereof supplement the provisions of any other Loan Document that grants a Lien to Lender 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 Lender hereunder.

6.5 Mortgagee in Possession. Nothing contained in this Mortgage shall be construed as constituting Lender as 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 Lender. Any agreement made by Mortgagor and Lender 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 Lender and their respective successors and permitted assigns, including, any United States trustee, any debtor in possession or any trustee appointed from a private panel.

[SIGNATURE PAGE FOLLOWS]



EXECUTED effective as of the date first set forth above.

MORTGAGOR:

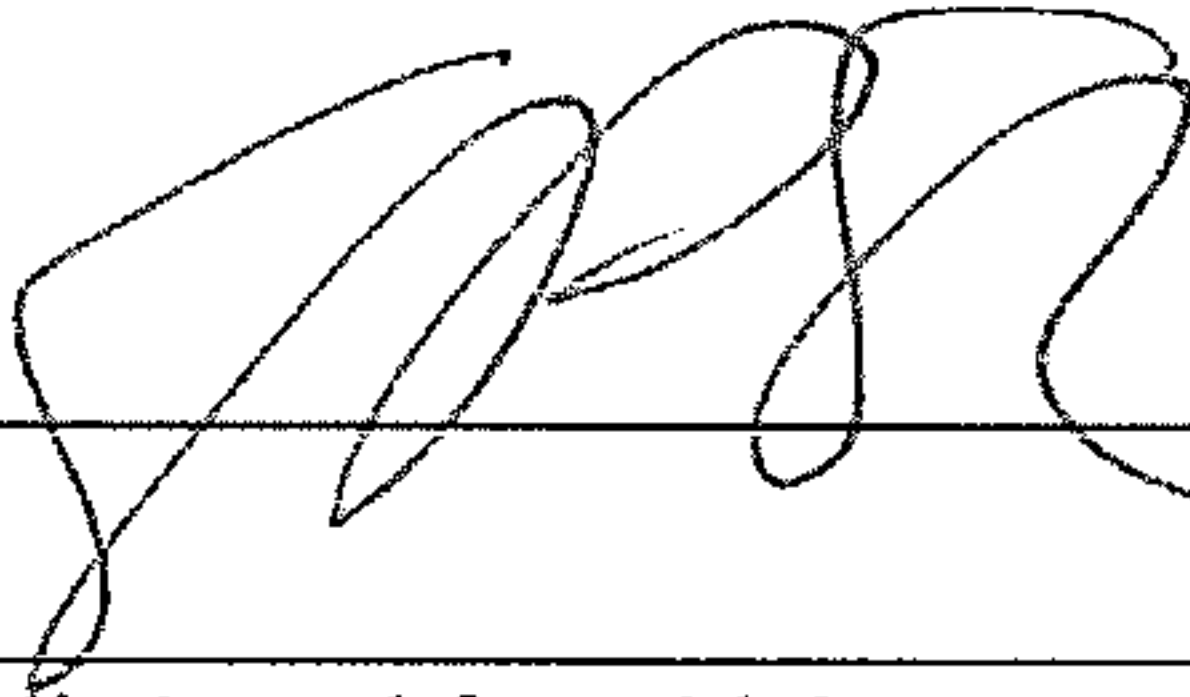
SOUTHEAST RESTAURANT DEVELOPMENT - WEN,  
LLC, a Louisiana limited liability company

By:   
Elie Khoury, Sole Member and Manager

STATE OF Louisiana )  
Parish ) SS  
COUNTY OF Orleans )

On March 10, 2022, before me, the undersigned, a Notary Public in and for said State personally appeared Elie Khoury known to me to be the Manager of Southeast Restaurant Development - Wen, LLC, a Louisiana limited liability company and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

  
Notary Public in and for said County and State

[SEAL]

**Stephen P. Scullin**  
**Notary Public**  
**Bar # 30717**  
**State of Louisiana**  
**My commission is for life.**

EXHIBIT 1.2  
LEGAL DESCRIPTION

PARCEL I:

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

PARCEL II:

A SLOPE EASEMENT OVER THE FOLLOWING DESCRIBED PARCEL:

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

PARCEL III:

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

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

Together with rights acquired under document entitled Declaration of Easements, Covenants and Restrictions recorded under Instrument #1994-08120, and refiled under Instrument #1994-10053.



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.

EXHIBIT 2.1(a)  
SECURED NOTE SCHEDULE

Borrower	Lender	Note Description	Note Date	Original Principal Amount
Southeast Restaurant Development - Wen, LLC	Fifth Third Bank, National Association	Term Loan	March 14, 2022	\$15,650,000.00



4887-5262-5684

Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
03/31/2022 12:36:18 PM  
\$2422.00 BRITTANI  
20220331000131670

*Allen S. Bayl*