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Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption



Doc#: 0915331069 Fee: \$90.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 06/02/2009 02:45 PM Pg: 1 of 28

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 14-31-201-080-0000

Address:

Street: 2312 North Ashland

Street line 2:

City: Chicago

State: IL

ZIP Code: 60614

Lender: Citicorp North America

Borrower: Wendy's International Inc

Loan / Mortgage Amount: \$1,283,363,698.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: D842F1D3-B5A1-4CBB-9C6A-21C1A15EC25F

Execution date: 05/28/2009

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This instrument prepared in consultation with counsel in the state in which the ~~Trust~~ Property is located by the attorney named below: [←] MORTGAGED

Athy Mobilia, Esq. @ Cahill Gordon & Reindel LLP
80 Pine Street, New York, NY 10005; (212) 701-3000

After recording please return to:
Suzanne Ng/N09-3261 (13) @ Title Associates
825 Third Avenue, 30th Floor, NY, NY 10022; (212) 758-0050

Address of property: See attached Schedule A

PIN: See attached Schedule A

(Space Above This Line For Recording Data)

MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, AND FINANCING
STATEMENT (SECURES FUTURE ADVANCES)

made by

WENDY'S INTERNATIONAL, INC.,

Mortgagor,

to

CITICORP NORTH AMERICA, INC.,
as Collateral Agent, Mortgagee

Dated as of May 28 2009

Relating to Premises in:
Cook County, Illinois

This document serves as a Fixture Filing under the Illinois Uniform Commercial Code,
Chapter 810 ILCS 5/1-101, et seq.

Mortgagor's Organizational Identification Number is 391560.

IL - Cook County - Site No. 1168

STEWART TITLE COMPANY
Commercial Division
2 N. LaSalle St., Suite 1400
Chicago, IL 60602
312-849-4400
580489

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MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, AND FINANCING STATEMENT (SECURES FUTURE ADVANCES)

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND FINANCING STATEMENT (SECURES FUTURE ADVANCES), dated as of May 28, 2009 is made by WENDY'S INTERNATIONAL, INC., an Ohio corporation ("Mortgagor"), whose address is 4288 West Dublin-Granville Road, P.O. Box 256, Dublin, Ohio 43017-0256, to CITICORP NORTH AMERICA, INC., as Collateral Agent (in such capacity, "Mortgagee"), whose address is 390 Greenwich Street, New York New York 10013. References to this "Mortgage" shall mean this instrument and any and all renewals, modifications, amendments, supplements, extensions, consolidations, substitutions, spreaders and replacements of this instrument.

Background

A. ARBY'S RESTAURANT GROUP, INC., a Delaware corporation ("Arby's Opco Borrower"), WENDY'S INTERNATIONAL HOLDINGS, LLC, a Delaware limited liability company ("Ultimate Parent Co-Borrower"), ARBY'S RESTAURANT HOLDINGS, LLC, a Delaware limited liability company ("Holdco Co-Borrower") and together with Arby's Opco Borrower, ("Term Borrowers"), Mortgagor (together with Arby's Opco Borrower and Ultimate Parent Co-Borrower, "Revolving Borrowers" and together with Ultimate Parent Co-Borrower and Holdco Co-Borrower, "Co-Borrowers" and together with Arby's Opco Borrower, Ultimate Parent Co-Borrower and Holdco Co-Borrower, "Borrowers"), TRIARC RESTAURANT HOLDINGS, LLC, a Delaware limited liability company ("Parent"), the Lenders (as defined therein), the Issuers (as defined therein), CITICORP NORTH AMERICA, INC. ("Citicorp"), as administrative agent for the Lenders and the Issuers (in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (as defined therein) (in such capacity, the "Collateral Agent"), BANK OF AMERICA, N.A. ("BofA") and CREDIT SUISSE, CAYMAN ISLANDS BRANCH ("CS"), as co-syndication agents for the Lenders and the Issuers (in such capacities, the "Syndication Agents"), and WACHOVIA BANK, NATIONAL ASSOCIATION, SUNTRUST BANK AND GE CAPITAL FRANCHISE FINANCE CORPORATION, as co-documentation agents for the Lenders and the Issuers (in such capacities, the "Documentation Agents") are party to that certain Amended and Restated Credit Agreement, dated as of July 25, 2005 and amended and restated as of March 11, 2009 (as further amended, supplemented, restated, substituted, replaced or otherwise modified from time to time, the "Credit Agreement"; which term shall also include and refer to any increase in the amount of indebtedness under the Credit Agreement and any refinancing or replacement of the Credit Agreement (whether under a bank facility, securities offering or otherwise) or one or more successor or replacement facilities whether or not with a different group of agents or lenders (whether under a bank facility, securities offering or otherwise) and whether or not with different obligors upon the Administrative Agent's acknowledgment of the termination of the predecessor Credit Agreement)).

B. Pursuant to the Credit Agreement, the Lenders and the Issuers have severally agreed to make extensions of credit to the Borrowers upon the terms and subject to the conditions set forth therein.

C. In addition to being directly obligated on certain of the Secured Obligations, Mortgagor is a party to the Guaranty pursuant to which it has guaranteed the Secured Obligations.

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D. It is a condition precedent to extensions of credit under the Credit Agreement that Mortgagor shall have agreed to execute and deliver to the Mortgagee this Mortgage for the ratable benefit of the Secured Parties.

E. The Borrowers are members of an affiliated group of companies that includes Mortgagor.

F. The proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrowers to make valuable transfers to one or more of the Loan Parties (including Mortgagor) in connection with the operation of its businesses.

G. The Borrowers and the Mortgagor are engaged in related businesses, and Mortgagor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement.

H. Mortgagor is the owner of the fee simple estate in the parcel(s) of real property described on Schedule B attached hereto (the "Land"), and owns all of the buildings, improvements, structures and fixtures now or subsequently located on the Land (the "Improvements"; the Land and the Improvements being collectively referred to as the "Real Estate").

Granting Clauses

In order to secure the due and punctual payment and performance of all of the Secured Obligations for the benefit of the Secured Parties, the Mortgagor hereby grants, mortgages, bargains, sells, assigns, transfers and conveys to the Mortgagee, and hereby grants to the Mortgagee a security interest in and lien upon, all of the Mortgagor's estate, right, title and interest in, to and under all of the following described property, whether now owned or held or hereafter acquired from time to time:

- (a) the Land;
- (b) all right, title and interest Mortgagor now has or may hereafter acquire in and to the Improvements or any part thereof, and all the estate, right, title, claim or demand whatsoever of Mortgagor, in possession or expectancy, in and to the Real Estate or any part thereof;
- (c) all right, title and interest of Mortgagor in, to and under all easements, rights of way, licenses, operating agreements, abutting strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water and flowage rights, development rights, air rights, mineral and soil rights, plants, standing and fallen timber, and all estates, rights, titles, interests, privileges, licenses, tenements, hereditaments and appurtenances belonging, relating or appertaining to the Real Estate, and any reversions, remainders, rents, issues, profits and revenue thereof and, to the extent Mortgagor has any right, title or interest therein, all land lying in the bed of any street, road or avenue, in front of or adjoining the Real Estate to the center line thereof;
- (d) all of the fixtures, chattels, business machines, machinery, apparatus, equipment, furnishings, fittings, appliances and articles of personal property of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts and accessories) currently owned or subsequently acquired by Mortgagor and now or subsequently attached to, or contained in or used or usable in any way in connection with any operation or letting of the Real Estate, including but

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without limiting the generality of the foregoing, all screens, awnings, shades, blinds, curtains, draperies, artwork, carpets, rugs, storm doors and windows, furniture and furnishings, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilating, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description (all of the foregoing in this paragraph (d) being referred to as the "Equipment");

(e) all right, title and interest of Mortgagor in and to all substitutes and replacements of, and all additions and improvements to, the Real Estate and the Equipment, subsequently acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor on the Real Estate, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Real Estate or offsite, and, in each such case, without any further deed, conveyance, assignment or other act by Mortgagor;

(f) (i) all right, title and interest of Mortgagor in, to and under all leases (including mining leases), subleases, underlettings, railroad siding agreements, mining coordination agreements, concession agreements, royalty leases, management agreements, licenses and other agreements relating to the use or occupancy of the Real Estate or the Equipment or any part thereof, now existing or subsequently entered into by Mortgagor and whether written or oral and all guarantees of any of the foregoing, *provided however*, that any lease or other agreement referenced in this clause (f)(i) shall not constitute Mortgaged Property hereunder to the extent that such lease or other agreement prohibits or requires the consent of any Person other than Borrowers and their Affiliates as a condition to the assignment thereof or the creation by such Mortgagor of a Lien thereon, or any such lease or other agreement referenced in this clause (f)(i) held by the Mortgagor to the extent that any Requirement of Law applicable thereto prohibits the creation of a Lien thereon or the assignment thereof, but only, in each case, to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Requirement of Law, *provided, further*, that the immediately preceding proviso shall in no event exclude any Proceeds (as defined in the Pledge and Security Agreement), substitutions or replacements of collateral of the type described in this clause (f)(i), unless such Proceeds, substitutions or replacements would prohibit or require the consent of any Person other than Borrowers and their Affiliates as a condition to the assignment thereof or the creation by such Mortgagor of a Lien thereon, or any such Proceeds, substitutions or replacements held by the Mortgagor to the extent that any Requirement of Law applicable thereto prohibits the creation of a Lien thereon or the assignment thereof, but only, in each case, to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Requirement of Law (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, the "Leases"), and all rights of Mortgagor in respect of cash and securities deposited thereunder and the right to receive and collect the revenues, income, rents, issues and profits thereof, together with all other rents, royalties, issues, profits, revenue, income and other benefits arising from the use and enjoyment of the Mortgaged Property (as defined below) (collectively, the "Rents");

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(g) all unearned premiums under insurance policies now or subsequently obtained by Mortgagor relating to the Real Estate or Equipment and Mortgagor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds, subject to the provisions relating to insurance generally set forth below; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Real Estate or Equipment for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Estate or any easement or other right therein;

(h) all right, title and interest of Mortgagor in and to (i) all contracts from time to time executed by Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, or sale of the Real Estate or Equipment or any part thereof and all agreements and options relating to the purchase or lease of any portion of the Real Estate or any property which is adjacent or peripheral to the Real Estate, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Real Estate or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Real Estate; *provided, however*, that any collateral of the type referenced in clauses (i), (ii) or (iii) above shall not constitute Mortgaged Property hereunder to the extent that the contract or other document governing such collateral prohibits or requires the consent of any Person other than Borrowers and their Affiliates as a condition to the assignment thereof or the creation by such Mortgagor of a Lien thereon, or any such contract or other document governing such collateral held by the Mortgagor to the extent that any Requirement of Law applicable thereto prohibits the creation of a Lien thereon or the assignment thereof, but only, in each case, to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Requirement of Law, *provided, further*, that the immediately preceding proviso shall in no event exclude any Proceeds, substitutions or replacements of any collateral of the type referenced in clauses (i), (ii) or (iii) above, unless the contract or other document governing such Proceeds, substitutions or replacements would prohibit or require the consent of any Person other than Borrowers and their Affiliates as a condition to the assignment thereof or the creation by such Mortgagor of a Lien thereon, or any contract or other document governing such Proceeds, substitutions or replacements held by the Mortgagor to the extent that any Requirement of Law applicable thereto prohibits the creation of a Lien thereon or the assignment thereof, but only, in each case, to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Requirement of Law.

(i) all proceeds, both cash and noncash, of the foregoing.

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by Mortgagor and described in the foregoing clauses (a) through (c) are collectively referred to as the "Premises", and those described in the foregoing clauses (a) through (i) are collectively referred to as the "Mortgaged Property"; *provided, however*, that (i) notwithstanding any of the other provisions set forth in this Mortgage, the Mortgaged Property shall not include and this Mortgage shall not constitute a grant of a lien or a security interest in any Excluded Property (as defined in the Pledge and Security Agreement) and (ii) that if and when any property that would have constituted Mortgaged Property shall cease to be Excluded Property, such

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property shall be deemed at all times from and after the date hereof to constitute Mortgaged Property).

TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby mortgaged unto Mortgagee, its successors and assigns for the uses and purposes set forth, until the Secured Obligations are fully paid and performed.

This Mortgage covers present and future advances and readvances, in the aggregate amount of the obligations secured hereby, made by the Secured Parties for the benefit of Mortgagor, and the lien of such future advances and readvances shall relate back to the date of this Mortgage.

Notwithstanding any of the other provisions set forth in this Granting Clause section or anything else contained in this Mortgage or any other Loan Document, the aggregate amount of all Secured Obligations secured under the Collateral Documents by Principal Property (as defined in each Senior Note Indenture) or any shares of capital stock or evidences of Indebtedness (as defined in each Senior Note Indenture) issued by any Domestic Subsidiary (as defined in each Senior Note Indenture) and owned by Mortgagor or any Domestic Subsidiary (as defined in each Senior Note Indenture) (collectively, the “Restricted Property”) shall not, at any time, exceed the aggregate amount (such amount, the “Indenture Threshold Amount”) of Indebtedness (as defined in each Senior Note Indenture) that may be secured by Restricted Property under each Senior Note Indenture, determined in accordance with the terms of each Senior Note Indenture, without requiring holders of the applicable Senior Notes to be equally and ratably secured in accordance with the terms of such Senior Note Indenture. It is understood and acknowledged by the parties hereto (including, by its acceptance of the benefit of this Mortgage, each Secured Party) that (v) as of the Restatement Effective Date, the total amount of Secured Obligations is in excess of the Indenture Threshold Amount as of the Restatement Effective Date, (w) from time to time after the Restatement Effective Date, the total amount of the Secured Obligations may be in excess of the Indenture Threshold Amount then in effect, (x) as of the Restatement Effective Date, the Secured Obligations in excess of the Indenture Threshold Amount are not secured by any Restricted Property hereunder or under any other Collateral Document, (y) at any time after the Restatement Effective Date, any Secured Obligations in excess of the Indenture Threshold Amount in effect at such time shall not be secured by any Restricted Property hereunder or under any other Collateral Document and (z) in no event shall any Lien (as defined in each Senior Note Indenture) on any Restricted Property in favor of Mortgagee or any other Secured Party created hereunder or under any other Collateral Document at any time secure any Secured Obligations in excess of the Indenture Threshold Amount then in effect. For the avoidance of doubt, the calculation of the Indenture Threshold Amount at any date of determination shall take into account all outstanding Attributable Value (as defined in each Senior Note Indenture) of all Sale and Lease-Back Transactions (as defined in each Senior Note Indenture) permitted pursuant to the last paragraph of Section 1009 of each Senior Note Indenture as of such date and all Indebtedness (as defined in each Senior Note Indenture) of Mortgagor and its Domestic Subsidiaries (as defined in each Senior Note Indenture) secured by Liens (as defined in each Senior Note Indenture) permitted pursuant to the last paragraph of Section 1008 of each Senior Note Indenture as of such date.

Terms and Conditions

Mortgagor further represents, warrants, covenants and agrees with Mortgagee and the Secured Parties as follows:

1. Defined Terms. Capitalized terms used herein (including in the “Background” and “Granting Clauses” sections above) and not otherwise defined herein shall have the meanings

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ascribed thereto in the Credit Agreement, and the terms of usage set forth in Article I of the Credit Agreement shall apply hereto. References in this Mortgage to the “Default Rate” shall mean the interest rate applicable pursuant to Section 2.10(c) of the Credit Agreement.

2. Warranty of Title. Mortgagor warrants that it has good, record title in fee simple to the Real Estate, and good title to the rest of the Mortgaged Property, subject only to Customary Permitted Liens of the type set forth in clauses (a), (b), (d), (e), (f) and (l) of the definition of Customary Permitted Liens in the Credit Agreement (collectively the “Permitted Exceptions”). Mortgagor shall warrant, defend and preserve such title and the lien of this Mortgage against all claims of all persons and entities (not including the holders of the Permitted Exceptions). The lien granted pursuant to this Mortgage constitutes a valid perfected lien in all of the Real Estate in favor of the Mortgagee, for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations, enforceable in accordance with the terms hereof against all creditors of Mortgagor and any Persons purporting to purchase any of the Real Estate from the Mortgagor.

3. Payment of Secured Obligations. Mortgagor shall pay and perform the Secured Obligations at the times and places and in the manner specified in the Loan Documents.

4. Payment of Taxes and Other Impositions.

(a) Prior to the date on which any fine, penalty, interest or cost may be added thereto or imposed, Mortgagor shall pay and discharge all taxes, charges and assessments of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, vault taxes and all other public charges even if unforeseen or extraordinary, imposed upon or assessed against or which may become a lien on any of the Mortgaged Property, or arising in respect of the occupancy, use or possession thereof, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Mortgaged Property, together with any penalties or interest on any of the foregoing (all of the foregoing are collectively referred to herein as the “Charges”), except that no such Charges need be paid if (i) the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of Mortgagor or (ii) where the failure to make such payments could not reasonably be expected to have a Material Adverse Effect. Upon request by Mortgagee, Mortgagor shall deliver to Mortgagee evidence reasonably acceptable to Mortgagee showing the payment of any such Charges. If by law any Charge, at Mortgagor’s option, may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Charge), Mortgagor may elect to pay such Charge in such installments and shall be responsible for the payment of such installments with interest, if any, as such installments become due.

(b) Nothing herein shall affect any right or remedy of Mortgagee under this Mortgage or otherwise, without notice or demand to Mortgagor, to pay any Charge if the same is not paid or contested in accordance with Section 4(a) above, and add to the Secured Obligations the amount so paid, together with interest from the time of payment at the Default Rate. Any sums paid by Mortgagee in discharge of any Charge shall be (i) a lien on the Premises secured hereby prior to any right or title to, interest in, or claim upon the Premises subordinate to the lien of this Mortgage, and (ii) payable within 30 days following demand by Mortgagor to Mortgagee together with interest at the Default Rate as set forth above.

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5. Insurance.

(a) Mortgagor shall maintain, or cause to be maintained, with financially sound and reputable companies, such insurance policies as are required by the Credit Agreement (as if the Mortgaged Property were the "Collateral" thereunder).

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Mortgagee of written notice thereof, except in the case of nonpayment of premium in which case notice shall be ten (10) days, (ii) name the Mortgagee as insured party or loss payee and (iii) be reasonably satisfactory in all other respects to the Mortgagee.

(c) If Mortgagor is in default of its obligations to insure or deliver any such policy or policies, then Mortgagee, at its option upon 30 days' notice to Mortgagor, may effect such insurance from year to year at rates substantially similar to the rate at which Mortgagor had insured the Premises, and pay the premium or premiums therefor, and Mortgagor shall pay to Mortgagee within 30 days following demand such premium or premiums so paid by Mortgagee with interest from the time of payment at the Default Rate.

(d) In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee.

(e) If any portion of the Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Mortgagor shall (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in amounts and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to (A) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (B) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (C) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (D) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (ii) deliver to the Mortgagee evidence of such compliance in form and substance reasonably acceptable to the Mortgagee.

6. Restrictions on Liens and Encumbrances. Except for the lien of this Mortgage and the Permitted Exceptions or as otherwise may be permitted under the Credit Agreement, Mortgagor shall not further mortgage, nor otherwise encumber the Mortgaged Property nor create or suffer to exist any lien, charge or encumbrance on the Mortgaged Property, or any part thereof, whether superior or subordinate to the lien of this Mortgage and whether recourse or non-recourse. Mortgagee agrees that it will, upon at least thirty (30) days prior notice and request, subordinate the Lien of this Mortgage to any easement or similar agreement permitted by clause (d) of the definition of Customary Permitted Liens in the Credit Agreement (including customary utility easements that service the applicable Mortgaged Property), provided, that (i) such easement or similar agreement permitted by clause (d) of the definition of Customary Permitted Liens in the Credit Agreement either (A) relates to the operation of the Mortgaged Property and does not materially or adversely affect the use and operation of the Mortgaged Property, or (B) benefits the operation of the Mortgaged Property, (ii) is entered into in the ordinary

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course of business of the Mortgagor and is within reasonable commercial standards, and (iii) is consented to by the Mortgagee (which consent shall not be unreasonably withheld or delayed).

7. Due on Sale and Other Transfer Restrictions. Except as expressly permitted under the Credit Agreement, Mortgagor shall not sell, transfer, convey or assign all or any portion of, or any interest in, the Mortgaged Property.

8. Leases. Except as expressly permitted under the Credit Agreement, Mortgagor shall not (a) execute an assignment or pledge of any Lease relating to all or any portion of the Mortgaged Property other than in favor of Mortgagee, or (b) execute or permit to exist any Lease of any of the Mortgaged Property.

9. Further Assurances. To further assure Mortgagee's rights under this Mortgage, Mortgagor agrees promptly upon demand of Mortgagee to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty included or to be included in the Mortgaged Property and a separate assignment of each Lease in recordable form) as may be reasonably required by Mortgagee to confirm the lien of this Mortgage and all other rights or benefits conferred on Mortgagee by this Mortgage.

10. Mortgagee's Right to Perform. Mortgagor fails to perform any of the covenants or agreements of Mortgagor, within the applicable grace period, if any, provided for in the Loan Documents, Mortgagee, without waiving or releasing Mortgagor from any obligation or default under this Mortgage, may, at any time upon 30 days' notice to Mortgagor (but shall be under no obligation to) pay or perform the same, and the amount or cost thereof, with interest at the Default Rate, shall be due from Mortgagor to Mortgagee within 30 days following demand and the same shall be secured by this Mortgage and shall be a lien on the Mortgaged Property prior to any right, title to, interest in, or claim upon the Mortgaged Property attaching subsequent to the lien of this Mortgage. No payment or advance of money by Mortgagee under this Section shall be deemed or construed to cure Mortgagor's default or waive any right or remedy of Mortgagee.

11. Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default, Mortgagee may immediately take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) Mortgagee may, to the extent permitted by applicable law, (A) institute and maintain an action of mortgage foreclosure against all or any part of the Mortgaged Property, (B) institute and maintain an action on the Credit Agreement, the Pledge and Security Agreement or any other Loan Document, (C) sell all or part of the Mortgaged Property (Mortgagor expressly granting to Mortgagee the power of sale), or (D) take such other action at law or in equity for the enforcement of this Mortgage or any of the Loan Documents as the law may allow. Mortgagee may proceed in any such action to final judgment and execution thereon for all sums due hereunder, together with interest thereon at the Default Rate and all costs of suit, including, without limitation, reasonable attorneys' fees and disbursements. Interest at the Default Rate

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shall be due on any judgment obtained by Mortgagee from the date of judgment until actual payment is made of the full amount of the judgment; and

(ii) Mortgagee may, to the extent permitted by applicable law, personally, or by its agents, attorneys and employees and without regard to the adequacy or inadequacy of the Mortgaged Property or any other collateral as security for the Secured Obligations, enter into and upon the Mortgaged Property and each and every part thereof and exclude Mortgagor and its agents and employees therefrom without liability for trespass, damage or otherwise (Mortgagor hereby agreeing to surrender possession of the Mortgaged Property to Mortgagee upon demand at any such time) and use, operate, manage, maintain and control the Mortgaged Property and every part thereof. Following such entry and taking of possession, Mortgagee shall be entitled, without limitation, (x) to lease all or any part or parts of the Mortgaged Property for such periods of time and upon such conditions as Mortgagee may, in its reasonable discretion, deem proper, (y) to enforce, cancel or modify any Lease (subject to the terms of any such Lease) and (z) generally to execute, do and perform any other act, deed, matter or thing concerning the Mortgaged Property as Mortgagee shall deem appropriate as fully as Mortgagor might do.

(b) In case of a foreclosure sale, the Mortgaged Property may be sold, at Mortgagee's election, in one parcel or in more than one parcel and Mortgagee is specifically empowered (without being required to do so, and in its sole and absolute discretion) to cause successive sales of portions of the Mortgaged Property to be held.

(c) It is agreed that if an event of Default shall occur and be continuing, any and all proceeds of the Mortgaged Property received by Mortgagee shall be held by Mortgagee for the benefit of the Secured Parties as collateral security for the Secured Obligations (whether matured or unmatured), and shall be applied to payment of the Secured Obligations in the manner set forth in Section 5.4 of the Pledge and Security Agreement.

12. Right of Mortgagee to Credit Sale. Upon the occurrence of any sale made under this Mortgage, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof. In lieu of paying cash therefor, to the extent permitted by applicable law, Mortgagee may make settlement for the purchase price by crediting upon the Secured Obligations or other sums secured by this Mortgage, the net sales price after deducting therefrom the expenses of sale and the cost of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. In such event, this Mortgage, the Credit Agreement, the Pledge and Security Agreement and documents evidencing expenditures secured hereby may be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon the Secured Obligations as having been paid.

13. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Mortgagee as a matter of right and without notice to Mortgagor, unless otherwise required by applicable law, and without regard to the adequacy or inadequacy of the Mortgaged Property or any other collateral or the interest of Mortgagor therein as security for the Secured Obligations, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers or other manager of the Mortgaged Property, without requiring the posting of a surety bond, and without reference to the adequacy or inadequacy of the value of the Mortgaged Property or the solvency or insolvency of Mortgagor or any other party obligated for payment of all or any part of the Secured Obligations, and whether or not waste has occurred with respect to the Mortgaged Property, and Mortgagor hereby

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irrevocably consents to such appointment and waives notice of any application therefor (except as may be required by law). Any such receiver or receivers or manager shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in this Mortgage, including, without limitation and to the extent permitted by law, the right to enter into leases of all or any part of the Mortgaged Property, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated.

14. Extension, Release, etc.

(a) Without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of the Secured Obligations, Mortgagee may, from time to time and without notice except as specifically set forth in the Credit Agreement, agree to (i) release any person liable for the indebtedness borrowed or guaranteed under the Loan Documents or any other obligation secured by this Mortgage, (ii) extend the maturity or alter any of the terms of the indebtedness borrowed or guaranteed under the Loan Documents or any other obligation secured by this Mortgage or any other guaranty thereof, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

(b) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect the lien of this Mortgage or any liens, rights, powers or remedies of Mortgagee hereunder, and such liens, rights, powers and remedies shall continue unimpaired.

(c) If Mortgagee shall have the right to foreclose this Mortgage or to direct a power of sale, to the extent permitted by applicable law, Mortgagor authorizes Mortgagee at its option to foreclose the lien of this Mortgage (or direct the sale of the Mortgaged Property, as the case may be) subject to the rights of any tenants of the Mortgaged Property. The failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights, or to provide notice to such tenants as required in any statutory procedure governing a sale of the Mortgaged Property, or to terminate such tenant's rights in such sale will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the Secured Obligations or to foreclose the lien of this Mortgage.

(d) Unless expressly provided otherwise, in the event that ownership of the Mortgaged Property and title to the Mortgaged Property or any estate therein shall become vested in the same person or entity, this Mortgage shall not merge in such title but shall continue as a valid lien on the Mortgaged Property for the amount secured hereby.

15. Security Agreement under Uniform Commercial Code; Fixture Filing.

(a) It is the intention of the parties hereto that this Mortgage shall constitute a "security agreement" within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Mortgaged Property is located. If an Event of Default shall occur and be continuing, then in addition to having any other right or remedy available at law or in equity, Mortgagee shall have the option, subject to the terms of applicable law, of either (i) proceeding under the Code and exercising such

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rights and remedies as may be provided to a secured party by the Code with respect to all or any portion of the Mortgaged Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Mortgaged Property in accordance with Mortgagee's rights, powers and remedies with respect to the real property (in which event the default provisions of the Code shall not apply). If Mortgagee shall elect to proceed under the Code, then ten (10) days' notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses. At Mortgagee's request, Mortgagor shall assemble the personal property and make it available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties.

(b) Certain portions of the Mortgaged Property are or will become "fixtures" (as that term is defined in the Code) on the Land, and this Mortgage, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the Code upon such portions of the Mortgaged Property that are or become fixtures. The record owner of the real property described in Schedule B hereto is Mortgagor. As of the date hereof, the name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Mortgagee set forth in the first paragraph of this Mortgage, and the name of the secured party for purposes of this financing statement is the name of the Mortgagee set forth in the first paragraph of this Mortgage. As of the date hereof, the mailing address of the Mortgagee/debtor is the address of the Mortgagee set forth in the first paragraph of this Mortgage. As of the date hereof, the mailing address of the Mortgagee/secured party from which information concerning the security interest hereunder may be obtained is the address of the Mortgagee set forth in the first paragraph of this Mortgage. As of the date hereof, Mortgagor's state organizational identification number is 391560.

16. Assignment of Rents.

(a) Mortgagor hereby assigns to Mortgagee the Rents as further security for the payment of and performance of the Secured Obligations (other than contingent obligations), and, Mortgagor grants to Mortgagee the right to enter the Mortgaged Property for the purpose of collecting the same, and to apply the Rents on account of the Secured Obligations. The foregoing assignment and grant is present and absolute and shall continue in effect until the Secured Obligations are fully paid and performed, but Mortgagee hereby waives the right to enter the Mortgaged Property for the purpose of collecting the Rents and Mortgagor shall be entitled to collect, receive, use and retain the Rents and have all rights to take all actions upon the happening of an event of default under the Leases (including without limitation the commencement, conduct and consummation of proceedings at law or in equity and all other actions whatsoever which the Mortgagor, as landlord, is or may be entitled to take under the Leases) until the occurrence and during the continuance of a Event of Default; such right of Mortgagor to collect, receive, use and retain the Rents or to take action under the Leases may be revoked by Mortgagee upon the occurrence and during the continuance of any Event of Default by giving not less than ten (10) days' written notice of such revocation to Mortgagor; in the event such notice is given, Mortgagor shall pay over to Mortgagee, or to any receiver appointed to collect the Rents, any lease security deposits. Except to the extent provided for in any of the Leases, Mortgagor shall not accept prepayments or installments of Rent to become due for a period of more than one month in advance (except for security deposits and estimated payments of percentage rent, if any).

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(b) Mortgagor has not affirmatively done any act which would prevent Mortgagee from, or limit Mortgagee in, acting under any of the provisions of the foregoing assignment.

17. Additional Rights. The holder of any subordinate lien or subordinate deed of trust on the Mortgaged Property shall have no right to terminate any Lease whether or not such Lease is subordinate to this Mortgage nor shall Mortgagor consent to any holder of any subordinate lien or subordinate deed of trust joining any tenant under any Lease in any action to foreclose the lien or modify, interfere with, disturb or terminate the rights of any tenant under any Lease. By recordation of this Mortgage all subordinate lienholders and the mortgagees and beneficiaries under subordinate mortgages are subject to and notified of this provision, and any action taken by any such lienholder or beneficiary contrary to this provision shall be null and void. Any such application shall not be construed to cure or waive any Default or Event of Default or invalidate any act taken by Mortgagee on account of such Default or Event of Default.

18. Notices. All notices, requests and demands to or upon the Mortgagee or the Mortgagor hereunder shall be effected in the manner provided for in Section 11.8 of the Credit Agreement; provided that any such notice, request or demand to or upon Mortgagor shall be addressed both to a Borrower as provided for in the Credit Agreement and to Mortgagor at its address set forth above.

19. No Oral Modification. This Mortgage may not be amended, supplemented or otherwise modified except in accordance with the provisions of Section 11.1 of the Credit Agreement. Any agreement made by Mortgagor and Mortgagee after the date of this Mortgage relating to this Mortgage shall be superior to the rights of the holder of any intervening or subordinate lien or encumbrance, to the extent permitted by applicable law.

20. Partial Invalidity. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.

21. Mortgagor's Waiver of Rights.

(a) Mortgagor hereby voluntarily and knowingly releases and waives any and all rights to retain possession of the Mortgaged Property after the occurrence and during the continuance of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure (whether full or partial), pursuant to rights, if any, therein granted, in each case to the extent permitted under any applicable law, on its own behalf, on behalf of all persons claiming or having an interest (directly or indirectly) by, through or under each constituent of Mortgagor and on behalf of each and every person acquiring any interest in the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of each constituent of Mortgagor and all such other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law or replacement statute. Each constituent of Mortgagor shall not invoke or utilize any such law or laws or otherwise hinder, delay, or impede the execution of any right, power, or remedy herein or otherwise granted or delegated to Mortgagee, but shall permit the execution of every such right, power, and remedy as though no such law or laws had been made or enacted.

(b) To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that may subsequently be enacted providing for (i) any appraisal before sale of any

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portion of the Mortgaged Property, (ii) any extension of the time for the enforcement of the collection of the Secured Obligations or the creation or extension of a period of redemption from any sale made in collecting such debt and (iii) exemption of the Mortgaged Property from attachment, levy or sale under execution or exemption from civil process. To the full extent 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 appraisal, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Mortgage before exercising any other remedy granted hereunder and Mortgagor, for Mortgagor and its 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 redemption, valuation, appraisal, stay of execution, notice of election to mature (except as expressly provided in the Credit Agreement) or declare due the whole of the secured indebtedness and marshalling in the event of exercise by Mortgagee of the foreclosure rights, power of sale, or other rights hereby created.

22. Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of the Secured Obligations and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or other agreement 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 deed of trust, mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, shall prejudice or in any manner affect Mortgagee's rights to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may determine in its absolute discretion. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee or to which either may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, as the case may be. Except as otherwise provided by applicable law, in no event shall Mortgagee, in the exercise of the remedies provided in this Mortgage (including, without limitation, in connection with the assignment of Rents to Mortgagee, or the appointment of a receiver and the entry of such receiver on to all or any part of the Mortgaged Property), be deemed a "mortgagee in possession," and Mortgagee shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

23. Multiple Security. If (a) the Premises shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Mortgage, Mortgagee shall now or hereafter hold or be the beneficiary of one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) securing the Secured Obligations upon other property in the State in which the Premises are located (whether or not such property is owned by Mortgagor or by others) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Mortgagee may, at its election, commence or consolidate in a single foreclosure action all foreclosure proceedings against all such collateral securing the Secured Obligations (including the Mortgaged Property), which action may be brought or consolidated in the courts of, or sale conducted in, any county in which any of such collateral is located. Mortgagor acknowledges that the right to maintain a consolidated foreclosure action is a specific inducement to Mortgagee to extend the indebtedness borrowed pursuant to or guaranteed by the Loan Documents, and Mortgagor expressly and irrevocably waives any objections to the commencement or consolidation of the

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foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. Mortgagor further agrees that if Mortgagee shall be prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any collateral other than the Mortgaged Property, which collateral directly or indirectly secures the Secured Obligations, or if Mortgagee shall have obtained a judgment of foreclosure and sale or similar judgment against 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, Mortgagee may commence or continue any 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, remove, transfer or consolidate either any action under this Mortgage or such other proceedings on such basis. Neither the commencement nor continuation of proceedings to foreclose this Mortgage, nor the exercise of any other rights hereunder nor the recovery of any judgment by Mortgagee in any such proceedings or the occurrence of any sale in any such proceedings shall prejudice, limit or preclude Mortgagee's right to commence or continue one or more foreclosure or other proceedings or obtain a judgment against any other collateral (either in or outside the State in which the Premises are located) which directly or indirectly secures the Secured Obligations, and Mortgagor expressly waives any objections to the commencement of, continuation of, or entry of a judgment in such other sales or proceedings or exercise of any remedies in such sales or proceedings based upon any action or judgment connected to this Mortgage, and Mortgagor also waives any right to seek to dismiss, stay, remove, transfer or consolidate either such other sales or proceedings or any sale or action under this Mortgage on such basis. It is expressly understood and agreed that to the fullest extent permitted by law, Mortgagee may, at its election, cause the sale of all collateral which is the subject of a single 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.

24. Successors and Assigns. All covenants of Mortgagor contained in this Mortgage are imposed solely and exclusively for the benefit of Mortgagee, and its successors and permitted assigns, and no other person or entity shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Mortgagee at any time if in the sole discretion of either of them such a waiver is deemed advisable. All such covenants of Mortgagor shall run with the land and bind Mortgagor, the successors and assigns of Mortgagor (and each of them) and all subsequent owners of the Mortgaged Property, and shall inure to the benefit of Mortgagee and its successors and assigns. The word "Mortgagor" shall be construed as if it read "Mortgagors" whenever the sense of this Mortgage so requires and if there shall be more than one Mortgagor, the obligations of the Mortgagors shall be joint and several.

25. No Waivers, etc. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the security held for the obligations secured by this Mortgage

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without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien or deed of trust.

26. Governing Law, etc. This Mortgage shall be governed by and construed and interpreted in accordance with the laws of the State in which the Mortgaged Property is located, except that Mortgagor expressly acknowledges that by their respective terms the Credit Agreement and the Pledge and Security Agreement shall be governed and construed in accordance with the laws of the State of New York, and for purposes of consistency, Mortgagor agrees, to the extent permitted under applicable law, that in any in personam proceeding related to this Mortgage, the rights of the parties to this Mortgage shall also be governed by and construed in accordance with the laws of the State of New York governing contracts made and to be performed in that State.

27. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor or any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein," the word "Mortgagee" shall mean "Mortgagee or any successor collateral agent for the Lenders," the word "person" shall include any individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, or other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property or interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The captions in this Mortgage are for convenience of reference only and in no way limit or amplify the provisions hereof.

28. Duty of Mortgagee; Authority of Mortgagee.

(a) By acceptance of the benefits hereof, each Secured Party, as between Mortgagee and such Secured Party, acknowledges and consents to the provisions of the Credit Agreement and the Pledge and Security Agreement, and agrees that the Mortgagee, in its capacity as Collateral Agent, shall not incur any liability whatsoever to any such holder of any Secured Obligations for any release directed or consented to by it in accordance with the Credit Agreement. Furthermore, by acceptance of the benefits hereof, each Secured Party, as between Mortgagee and such Secured Party, acknowledges and consents to the provisions of the Credit Agreement, the Pledge and Security Agreement, this Mortgage and the other Loan Documents, and that it shall not be entitled to the benefits of this Mortgage or the other Loan Documents except pursuant to the terms and conditions of the Credit Agreement, the Pledge and Security Agreement, this Mortgage and the other Loan Documents.

(b) It is expressly understood and agreed by Mortgagor that any authority conferred upon Mortgagee hereunder is subject to the terms of the delegation of authority made by the Lenders to the Mortgagee pursuant to the other Loan Documents, and that the Mortgagee has agreed to act (and any successor Collateral Agent shall act) as such hereunder only on the express conditions contained in the Loan Documents. Any successor Collateral Agent appointed pursuant to the Loan Documents shall be entitled to all the rights, interests and benefits of the Mortgagee hereunder. Mortgagor acknowledges that the rights and responsibilities of the Mortgagee under this Mortgage with respect to any action taken by the Mortgagee hereunder and the exercise or nonexercise by the Mortgagee of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Mortgage shall, as between the Mortgagee and the Secured Parties, be governed by the other Loan Documents and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Mortgagee and Mortgagor, the Mortgagee shall be conclusively presumed to be acting as

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agent for the Secured Parties with full and valid authority so to act or refrain from acting, and Mortgagor shall not be under any obligation, or entitlement, to make any inquiry respecting such authority.

29. Last Dollars Secured; Priority. To the extent that this Mortgage secures only a portion of the indebtedness owing or which may become owing by Mortgagor to the Secured Parties, the parties agree that any payments or repayments of such indebtedness shall be and be deemed to be applied first to the portion of the indebtedness that is not secured hereby, it being the parties' intent that the portion of the indebtedness last remaining unpaid shall be secured hereby. 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.

30. Enforcement Expenses; Indemnification.

(a) Mortgagor agrees to pay or reimburse each Lender and the Mortgagee for all its costs and expenses incurred in collecting against Mortgagor hereunder or otherwise enforcing or preserving any rights under this Mortgage and the other Loan Documents to which Mortgagor is a party, including, without limitation, the fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to each Lender and of counsel to the Mortgagee.

(b) Mortgagor agrees to pay, and to save the Mortgagee and the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Mortgaged Property or in connection with any of the transactions contemplated by this Mortgage.

(c) Mortgagor agrees to pay, and to save the Mortgagee and the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Mortgage to the extent any Borrower would be required to do so pursuant to Section 10.6 of the Credit Agreement.

(d) The agreements in this Section 30 shall survive repayment of the Secured Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

31. Releases.

(a) If any of the Mortgaged Property shall be sold, exchanged, transferred or otherwise disposed of (other than any such sale, exchange, transfer or disposition to another Grantor under the Pledge and Security Agreement) by any Mortgagor in a transaction permitted by, and in accordance with, the Credit Agreement (or such sale or other disposition or liquidation has been approved in writing by those Secured Parties whose approval is required by the applicable Loan Documents), then the Mortgagee, at the request and sole expense of Mortgagor, shall execute and deliver to Mortgagor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Mortgaged Property.

(b) At such time as the Loans, the Reimbursement Obligations and the other Obligations (other than contingent obligations) shall have been paid in full, the Commitments have been terminated and no Letters of Credit shall be outstanding (unless cash collateralized on terms reasonably

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acceptable to the Administrative Agent), the Mortgaged Property shall be released from the Liens created hereby, and this Mortgage and all obligations (other than those expressly stated to survive such termination) of the Mortgagee and Mortgagor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Mortgaged Property shall revert to the Mortgagor. At the request and sole expense of Mortgagor following any such termination, the Mortgagee shall execute and deliver to Mortgagee such documents as Mortgagor shall reasonably request to evidence such termination.

(c) At the request and sole expense of Mortgagor, the Mortgagor shall be released from its obligations hereunder in the event that all the capital stock of Mortgagor shall be sold or disposed or Mortgagor is designated as an Unrestricted Subsidiary in accordance with the Credit Agreement; *provided, however*, that Mortgagor shall have delivered to the Collateral Agent, at least five Business Days prior to the date of the proposed release, a written request for release identifying the terms of the sale, other disposition or designation in reasonable detail, together with a certification by Mortgagor in form and substance satisfactory to the Collateral Agent stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents.

32. Future Advances. This Mortgage shall secure all of the Secured Obligations including, without limitation, future advances whenever hereafter made with respect to or under the Credit Agreement or the other Loan Documents and shall secure not only Secured Obligations with respect to presently existing indebtedness under the Credit Agreement and the other Loan Documents, but also any and all other indebtedness which may hereafter be owing by the Mortgagor to the Secured Parties under the Credit Agreement and the other Loan Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, pursuant to the Credit Agreement or the other Loan Documents, whether such advances are obligatory or to be made at the option of the Secured Parties, or otherwise, and any extensions, refinancings, modifications or renewals of all such Secured Obligations whether or not the Mortgagor executes any extension agreement or renewal instrument and, in each case, to the same extent as if such future advances were made on the date of the execution of this Mortgage.

33. Maximum Amount of Indebtedness. The maximum aggregate amount of all indebtedness that is, or under any contingency may be secured at the date hereof or at any time hereafter by this Mortgage is \$1,283,363,698.00 (the "Secured Amount"), plus, to the extent permitted by applicable law, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by the Mortgagee by reason of any default by the Mortgagor under the terms hereof, together with interest thereon, all of which amount shall be secured hereby, subject to the last paragraph of the Granting Clause.

34. Last Dollar Secured. So long as the aggregate amount of the Secured Obligations exceeds the Secured Amount, any payments and repayments of the Secured Obligations shall not be deemed to be applied against or to reduce the Secured Amount.

35. Proceeds of Indebtedness. The proceeds of the indebtedness secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4 (1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

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36. Insurance. Subject to the terms of the Credit Agreement, pursuant to the terms of the Collateral Protection Act (815 ILCS 180/1 et seq.), Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagee's expense to protect Mortgagor's interests in the Premises, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance, the Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total obligation secured hereby and shall be secured by the lien of this Mortgage. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

37. Illinois Mortgage Foreclosure Law. Notwithstanding anything to the contrary contained herein, it is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1401 et seq., and with respect to such Act, Mortgagor agrees and covenants that:

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(b) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(c) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions set forth in Sections 15-1701 and 15-1703 of the Act;

(d) Mortgagor acknowledges that the Mortgaged Property does not constitute "agricultural real estate", as said term is defined in Section 15-1201 of the Act or "residential real estate" as defined in Section 15-1219 of the Act;

(e) Mortgagor hereby voluntarily and knowingly waives its statutory rights to reinstatement and redemption pursuant to 735 ILCS Section 5/15-1601(b);

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(f) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage, or the Credit Agreement or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act herein below referred to:

(i) all advances by Mortgagee in accordance with the terms of the Mortgage or the Credit Agreement to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;

(ii) payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances; (ii) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Mortgaged Property;

(v) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508 (b) (1) of the Act;

(vi) expenses deductible from proceeds of sale as referred to in Section 5/15-1512 (a) and (b) of the Act; and

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to

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the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by Section 5/15-1704 (c) (1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Mortgaged Property; and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force;

(g) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provision of the Act shall take precedence over the provision 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 the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default by Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

38. Protective Advances. All Protective Advances shall be additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate; and this Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b) (5) of Section 5/15-1302 of the Act.

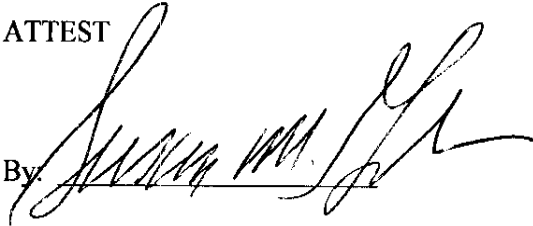
39. Counterparts. This Mortgage may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

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This Mortgage has been duly executed by Mortgagor as of the date first above written and is intended to be effective as of such date.

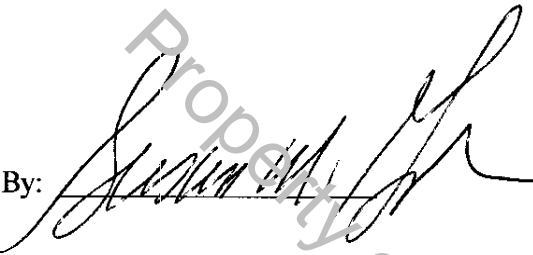
ATTEST

By: 

WENDY'S INTERNATIONAL, INC., an Ohio corporation

By: 

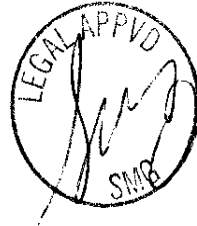
Name: Daniel T. Collins
Title: Senior Vice President, Treasurer and Assistant Secretary

By: 

By: 

Name: Nils H. Okeson
Title: General Counsel and Secretary

Property of Cook County Clerk's Office

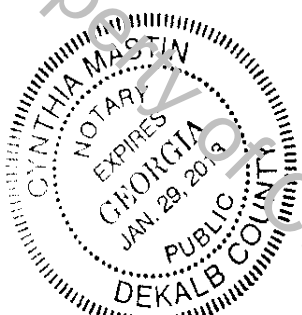


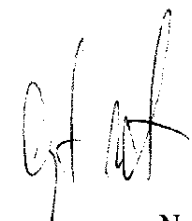
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ACKNOWLEDGMENT

STATE OF Georgia)
)
 COUNTY OF Fulton) SS:

On this 23rd day of April 2009, before me, a Notary Public, personally appeared Daniel T. Collins to me personally known, who being by me duly sworn, says that s/he (specify) is the Senior Vice President, Treasurer and Assistant Secretary of WENDY'S INTERNATIONAL, INC., an Ohio corporation, that said instrument was signed on April 2009, on behalf of WENDY'S INTERNATIONAL, INC., an Ohio corporation; and s/he (specify) acknowledged that the execution of the foregoing instrument was the free act and deed of WENDY'S INTERNATIONAL, INC., an Ohio corporation.



By 
 Notary Public

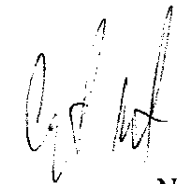
(SEAL)

My Commission Expires: _____

STATE OF Georgia)
)
 COUNTY OF Fulton) SS:

On this 23rd day of April 2009, before me, a Notary Public, personally appeared Nils H. Okeson to me personally known, who being by me duly sworn, says that s/he (specify) is the General Counsel and Secretary of WENDY'S INTERNATIONAL, INC., an Ohio corporation, that said instrument was signed on April 23 2009, on behalf of WENDY'S INTERNATIONAL, INC., an Ohio corporation; and s/he (specify) acknowledged that the execution of the foregoing instrument was the free act and deed of WENDY'S INTERNATIONAL, INC., an Ohio corporation.



By 
 Notary Public

(SEAL)

My Commission Expires: _____

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Schedule A

Address of Property and PIN

Address	PIN
2312 NORTH ASHLAND, CHICAGO, Cook County, Illinois.	14-31-201-080-000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Schedule B

Description of the Land

Those parts of Lot 3 in Block 4 in Fullerton's 3rd Addition to Chicago, according to the plat thereof recorded March 13, 1882 per Document No. 380754 and of Lots 1 and 2 in Omar Subdivision, being a part of Lots 1,2,3,4,5 and 9 in Ralston's Addition to Nickersonville in Section 31 and 32, Township 40 North, Range 14, East of the Third Principal Meridian as per plat recorded February 10, 1928 as Document No. 9924048 described as follows:

Beginning at a point on the North line of said Lot 3 in said Block 4 at a point 110.98 feet East from the Northwest corner of said Lot 3 and running thence North 90°00'00" East along said North line of said Lot 3, said North line of Lot 3 being also the South line of W. Medill Avenue (formerly known as Chester St.) a distance of 104.34 feet to a deflection point in the Northerly line of said Lot 3 and the South line of Medill Avenue; thence North 44°44'00" East along the Northwesterly line of said Lot 3 and the Northwesterly line of Lot 1 in Omar Subdivision, a distance of 135.19 feet to the most Northerly corner of said Lot 1; thence South 45°15'00" East along the Northeasterly line of said Lot 1 and the Southwesterly line of N. Clybourn Avenue, a distance of 15.28 feet to the Easterly line of said Lot 1; thence South 3°31'20" West along said Easterly line of Lot 1 and the Westerly line of N. Ashland Avenue, a distance of 148.92 feet (148.88 feet recorded) to a deflection point in said Easterly line of Lot 1 and said Westerly line of N. Ashland Avenue; thence South 9°58'06" West along the Easterly line of Lots 1 and 2 in Omar Subdivision and along the Westerly line of N. Ashland Avenue, a distance of 123.50 feet to a line 185 feet South of and parallel with the North line of Lot 3 in Block 4 in Fullerton's 3rd Addition to Chicago, thence North 90°00'00" West along said parallel line, a distance of 179.83 feet; thence North 0°00'00" West and at right angles to the last described line, a distance of 185.00 feet to the point of beginning, all in Cook County, Illinois.

Permanent Index Number: 14-31-201-080-0000 (includes a portion of the property)

Permanent Index Number: 14-31-201-082-0000 (includes a portion of the property)