

**1.03 Further Assurances; Filing; Refiling; Etc.**

(a) Further Instruments. Borrower shall execute, acknowledge and deliver, from time to time, such further instruments as the Agent may reasonably require to accomplish the purposes of this Security Instrument.

(b) Filing and Refiling. Borrower, immediately upon the execution and delivery of this Security Instrument, and thereafter from time to time, shall cause this Security Instrument, any security agreement or deed to secure debt supplemental hereto and each instrument of further assurance to be filed, registered or recorded and refiled, re registered or re recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and perfect the lien, security title and security interest of this Security Instrument upon the Secured Estate.

(c) Fees and Expenses. Borrower shall pay all filing, registration and recording fees, all refiling, re registration and re recording fees, and all expenses incident to the execution, filing, recording and acknowledgment of this Security Instrument, any security agreement or deed to secure debt supplemental hereto and any instrument of further assurance, and all Federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing and recording of this Security Instrument or any of the other Loan Instruments, any security agreement or deed to secure debt supplemental hereto or any instruments of further assurance.

**1.04 Liens.** Except as otherwise provided in Section 7.2 of the Loan and Security Agreement, but without limiting the obligations of Borrower under Section 1.07 of this Security Instrument, Borrower shall not create or suffer to be created any mortgage, deed of trust, deed to secure debt, lien, security interest, charge or encumbrance upon the Secured Estate prior to, on a parity with, or subordinate to the priority of this Security Instrument. Borrower shall pay and promptly discharge at Borrower's cost and expense, any such mortgages, deeds of trust, deeds to secure debt, liens, security interests, charges or encumbrances upon the Secured Estate or any portion thereof or interest therein.

**1.05 Insurance.** Borrower will maintain insurance in accordance with Section 6.8 of the Loan and Security Agreement. In the event Borrower shall fail to maintain in full force and effect insurance as required by Section 6.8 of the Loan and Security Agreement, then the Agent may, but without obligation so to do, procure insurance with respect to the Properties covering the interest of Agent on behalf of the Lenders in such amounts and against such risks as the Agent shall deem appropriate and Borrower shall reimburse the Agent in respect of any premiums paid by the Agent in respect thereof.

**1.06 Casualty and Condemnation Events.**

(a) Casualty and Condemnation. Should the Secured Estate or any part thereof be taken or damaged by reason of any fire or other casualty (collectively, a "Casualty"), or by reason of any public improvement or condemnation proceeding (collectively, a "Condemnation") or should Borrower receive any notice or other information regarding any such proceeding, Borrower shall give prompt notice thereof to the Agent subject to and in

accordance with (as to a Casualty) Section 6.8(b) of the Loan and Security Agreement. All insurance or other amounts payable as a result of any such Casualty (collectively, the "Casualty Proceeds"), and all compensation, awards, damages and other payments or relief arising out of any such condemnation or any part thereof (collectively, "Condemnation Proceeds"; and together with the Casualty Proceeds, the "Proceeds"), shall be subject to, and applied in accordance with, Section 6.8(b) of the Loan and Security Agreement and, until so applied, shall constitute part of the Secured Estate hereunder and shall not constitute payment of the Obligations unless and until so applied.

(b) Foreclosure, Etc. In the event of foreclosure of this Security Instrument or other transfer of title or assignment of the Secured Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Borrower in and to all policies of casualty insurance covering all or any part of the Secured Estate shall inure to the benefit of and pass to the successors in interest to Borrower or the purchaser or grantee of the Secured Estate or any part thereof.

(c) Not Trust Funds. Notwithstanding anything herein, at law or in equity to the contrary, none of the Casualty Proceeds or Condemnation Proceeds paid to the Agent as provided in Section 6.8 of the Loan and Security Agreement shall be deemed trust funds, and the Agent shall be entitled to advance amounts from time to time held by it to Borrower, or to apply the same to the prepayment of the loans or other indebtedness constituting the Obligations hereunder, as provided in the Loan and Security Agreement.

#### 1.07 Impositions.

(a) Payment of Impositions. Except as otherwise permitted under the terms of the Loan and Security Agreement governing a Permitted Protest (as defined therein), Borrower shall pay or cause to be paid, before any fine, penalty, interest or cost attaches thereto, all taxes, assessments, water and sewer rates, utility charges and all other governmental or nongovernmental charges or levies now or hereafter assessed or levied against any part of the Secured Estate (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Secured Estate) or upon the lien, security title or security interest of the Agent therein (collectively, "Impositions"), as well as all claims for labor, materials or supplies that, if unpaid, might by law become a prior lien thereon, and within fifteen (15) Business Days after written request by the Agent will exhibit receipts showing payment of any of the foregoing; provided, however, that if by law any such Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Borrower may pay the same in installments (together with accrued interest on the unpaid balance thereof) as the same respectively become due, before any fine, penalty or cost attaches thereto.

(b) Right to Contest Impositions. Except as otherwise permitted under the terms of the Loan and Security Agreement governing Permitted Protests (as defined therein), Borrower at its expense may, after prior notice to the Agent, contest by appropriate legal, administrative or other proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien therefor or any claims of mechanics, materialmen, suppliers or vendors or lien thereof, and may withhold payment of the

same pending such proceedings if permitted by law, so long as (i) in the case of any Impositions or lien therefor or any claims of mechanics, materialmen, suppliers or vendors or lien thereof, such proceedings shall suspend the collection thereof from the Secured Estate, (ii) neither the Secured Estate nor any part thereof or interest therein will be sold, forfeited or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so, in the event of Borrower's failure to prevail in the contest, (iii) neither the Agent nor any of the Lenders would, by virtue of such permitted contest, be exposed to any risk of any civil liability for which Borrower has not furnished additional security as provided in clause (iv) below, or to any risk of criminal liability, and neither the Secured Estate nor any interest therein would be subject to the imposition of any lien for which Borrower has not furnished additional security as provided in clause (iv) below, as a result of the failure to comply with such law or of such proceeding, and (iv) Borrower shall have furnished to the Agent additional security (including a reserve as described in the Loan and Security Agreement under the definition therein of Permitted Protest) in respect of the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in such amount as may be reasonably requested by the Agent.

**1.08 Maintenance of the Improvements and Fixtures.** Borrower shall not permit the Improvements or Fixtures to be removed or demolished (provided, however, that, subject to the provisions of Sections 6.6 and 7.4 of the Loan and Security Agreement, Borrower may remove or alter such Improvements and Fixtures that become worn, damaged, obsolete or surplus in the usual conduct of Borrower's business and the removal or alteration of which do not materially detract from the operation of Borrower's business); and shall maintain the Secured Estate in good repair, working order and condition, except for reasonable wear and use.

**1.09 Compliance With Laws.**

(a) Representation. Borrower represents and warrants that, except as otherwise previously disclosed in writing to the Agent (and except for the matters described in paragraph (b) of this Section 1.09, as to which the provisions of said paragraph (b) shall apply) Borrower and its operations at the Properties currently comply with all laws, ordinances, orders, rules and regulations of all Federal, state, and local governments and of the appropriate departments, commissions, boards and offices thereof, and the orders, rules and regulations of the American Insurance Association or any other body now or hereafter constituted exercising similar functions, that at any time are applicable to the Secured Estate, except where failure to comply would not have a Material Adverse Effect.

(b) Borrower hereby confirms the representations and warranties set forth in Section 5.14 of the Loan and Security Agreement insofar as such representations and warranties apply to the Properties.

(c) Environmental Indemnity. Without limiting the provisions of Section 11.3 of the Loan and Security Agreement, Borrower shall indemnify and hold the Agent and the Lenders harmless from and against any and all losses, liabilities, claims, damages or expenses (including any reasonable attorneys' fees and costs in enforcing this indemnity and any lien filed against the Properties or any part of the Secured Estate in favor of any governmental entity, but excluding any loss, liability, claim, damage or expense incurred by reason of the gross

negligence or willful misconduct of the person to be indemnified, or such person's employees, licensees, agents or directors) arising under any Environmental Law as a result of the past, present or future operations of Borrower, or the past or present condition of any of the Properties, or any Release (as hereinafter defined) or threatened Release of any Hazardous Materials from any of the Properties, excluding any such Release or threatened Release that shall occur during any period when the Agent or any of the Lenders shall be in possession of any of the Properties following the exercise by the Agent of any of its rights and remedies hereunder, but including any such Release or threatened Release occurring during such period that is a continuation of conditions previously in existence at any of the Properties. As used herein, the term "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

**1.10 Limitations of Use.** Borrower shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of any of the Properties and the Improvements or any part thereof and which could reasonably be expected to materially adversely affect the value of the Properties or Borrower's operations at the Properties, or which would result in such use becoming a nonconforming use under applicable zoning ordinances, in either case without the prior written consent of the Agent. Borrower shall comply with the provisions of all leases, licenses, agreements and private covenants, conditions and restrictions that at any time are applicable to the Secured Estate, except where Borrower's failure to comply would not have a Material Adverse Effect.

**1.11 Actions to Protect Secured Estate.** If Borrower shall fail to (a) perform and observe any of the terms, covenants or conditions required to be performed or observed by it under any of the Leases, the failure of which could reasonably be expected to materially adversely affect the Secured Estate but subject to Sections 6.6 and 6.11 of the Loan and Security Agreement, (b) effect the insurance required by the Loan and Security Agreement, (c) make the payments required by Section 1.07 or (d) perform or observe any of its other covenants or agreements hereunder, then, after the passage of the applicable notice and/ or cure period, if any, set forth in Section 8 of the Loan and Security Agreement, or in any other applicable Loan Instrument, the Agent may, without obligation to do so, and upon written notice to Borrower (except in an emergency) effect or pay the same, subject to Section 10 of the Loan and Security Agreement. To the maximum extent permitted by law, all sums, including reasonable attorneys' fees and disbursements, so expended or expended to sustain the lien, security title and security interest of this Security Instrument or its priority, or to protect or enforce any of the rights hereunder, or to recover any of the Obligations, shall be a lien on the Secured Estate, shall be deemed to be added to the Obligations secured hereby, and shall be paid by Borrower within ten (10) days after written demand therefor, together with interest thereon at the Post-Default Rate.

#### **1.12 Leases.**

(a) Leases Generally. Borrower, without the prior written consent of the Agent, shall not execute any Lease of all or a substantial portion of any of the Properties except for actual occupancy by the lessee thereunder, except to the extent permitted, if at all, in

the Loan and Security Agreement. Borrower may enter into Leases providing for actual occupancy by the lessee thereunder, in the ordinary course of Borrower's business, with third parties who are not Affiliates of Borrower, and on terms which are not materially less favorable to the landlord than those generally available in the applicable leasing market. Consistent therewith, except to the extent prohibited or restricted under the Loan and Security Agreement, Borrower may cancel or terminate, or agree to cancel or terminate, any Leases (1) that are to be replaced with Leases meeting the requirements of the preceding sentence, or (2) in accordance with the terms of such Leases.

(b) Performance by Borrower. Borrower will perform promptly and in all material respects all covenants, conditions and agreements contained in all Leases and will take such steps as are commercially reasonable to compel performance by each lessee under its lease.

(c) Agent Not Bound. The Agent shall not be bound by any payment of rent or additional rent for more than one (1) month in advance of the date payment is required under such Lease or by any amendment or modification of any Lease made without its consent to the extent such consent is required under Section 1.12(a) above.

(d) Requests for Information. Borrower shall furnish to the Agent, within ten (10) days after a written request by the Agent, a written statement setting forth the names of all lessees of any portion of the Properties, the space occupied and the rental payable thereunder together with, if requested by the Agent, copies of such leases.

(e) Subordination of Leases. Agent, at its option, is authorized, in accordance with Article 4 below, to foreclose this Security Instrument subject to the rights of any tenants of the Properties. The failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be asserted by Borrower to be a defense to any proceedings instituted by Agent to collect the sums secured hereby or to collect any deficiency remaining unpaid after a foreclosure sale of the Properties. Unless otherwise agreed by Agent in writing, all Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien and security title of this Security Instrument, except that from time to time Agent may execute and record among the land records of the jurisdiction where this Security Instrument is recorded subordination statements with respect to such Leases as Agent may designate in its discretion, whereby the Leases so designated by Agent will be made superior to the lien and security title of this Security Instrument. From and after the recordation of such subordination statements, the Leases therein referred to shall be superior to the lien and security title of this Security Instrument and shall not be affected by any foreclosure hereof. All such Leases shall contain a provision to the effect that the tenant recognizes the right of Agent to effect such subordination of this Security Instrument and consents thereto.

**1.13 Notice Regarding Special Flood Hazards.** Borrower hereby acknowledges that it realizes that the Properties described on Exhibit B attached hereto are in zones identified by the Director of the Federal Emergency Management Agency as special flood hazard zones described in 12 C.F.R. § 22.2 and that it has received, prior to the making of the extension of credit under the Loan and Security Agreement and the incurrence of any other

indebtedness constituting part of the Obligations secured by this Security Instrument, the notice regarding Federal disaster relief assistance referred to in the Appendix to 12 C.F.R. Part 22.

## ARTICLE 2

### Assignment of Leases, Rents, Issues and Profits

2.01 **Assignment of Leases, Rents, Issues and Profits.** Borrower hereby assigns and transfers to the Agent, FOR THE PURPOSE OF SECURING the Obligations, all Leases and all Rents, and hereby gives to and confers upon the Agent the right, power and authority to collect the same. Borrower irrevocably appoints the Agent its true and lawful attorney in fact, at its option at any time and from time to time following the occurrence and during the continuance of any Default (as defined in Section 4.01 below), to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Borrower or otherwise, for Rents and apply the same to the Obligations as provided in paragraph (a) of Section 4.03; provided, however, that Borrower shall have the revocable license to collect Rents at any time prior to the occurrence and during the continuance of any Default (but not more than one month in advance, except in the case of security deposits).

2.02 **Collection Upon Default.** To the extent permitted by law, upon the occurrence and during the continuance of any Default, the Agent may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations or the solvency of Borrower, enter upon and take possession of the Properties, the Improvements and the Fixtures or any part thereof, in its own name, sue for or otherwise collect Rents including those past due and unpaid, and, apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and disbursements, to the payment of the Obligations as provided in paragraph (a) of Section 4.03, and in such order as the Agent may determine so long as such application is not inconsistent with the terms of the Loan and Security Agreement. The collection of Rents or the entering upon and taking possession of the Properties, the Improvements or the Fixtures or any part thereof, or the application thereof as aforesaid, shall not cure or waive any Default or notice thereof or invalidate any act done in response to such Default or pursuant to notice thereof.

## ARTICLE 3

### Security Agreement

3.01 **Creation of Security Interest.** Borrower hereby grants to the Agent a security interest in the Ancillary Rights and Properties and all other Secured Estate for the purpose of securing the Obligations. The Agent shall have, in addition to all rights and remedies provided herein and in the other Loan Instruments, all the rights and remedies of a secured party under the Uniform Commercial Code of the state in which the applicable portion of the Ancillary Rights and Properties and all other Secured Estate is located.

3.02 **Warranties, Representations and Covenants.** Borrower hereby warrants, represents and covenants that: (a) the Fixtures will be kept on or at the related Properties and Borrower will not remove any Fixtures from the related Properties, except such portions or items of the Fixtures that are consumed or worn out in ordinary usage and as permitted under the Loan and Security Agreement, and (b) this Security Instrument constitutes a

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security agreement as that term is used in the applicable Uniform Commercial Code. Information relative to the security interest created hereby may be obtained by application to the Agent (secured party) at the mailing address of the Security Instrument set forth on Page 1 hereof. The mailing address of Borrower is set forth on Page 1 hereof. The organization identification number of Borrower is DE3771044.

3.03 **Financing Statements.** Borrower hereby irrevocably authorizes the Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction one or more financing or continuation statements and amendments thereto, covering all or any part of the Secured Estate without the signature of Borrower where permitted by law. Borrower agrees to furnish the Agent, promptly upon written request, with any information that is reasonably required by the Agent in order to complete such financing or continuation statements. Borrower also ratifies its authorization for the Agent to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Borrower acknowledges that, unless and until the Obligations have been repaid in full, it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement relating to the Obligations without the prior written consent of the Agent and agrees that it will not do so without the prior written consent of the Agent.

#### **ARTICLE 4** **Defaults; Remedies**

4.01 **Defaults.** If any Event of Default under the Loan and Security Agreement (herein, a "Default") shall occur and be continuing, then:

As more particularly provided in the Loan and Security Agreement, the principal of and accrued interest on the extensions of credit and all the other Obligations under the Loan and Security Agreement may be declared, or may become due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which have been waived by Borrower pursuant to the Loan and Security Agreement.

#### 4.02 **Default Remedies.**

(a) **Remedies Generally.** If a Default shall have occurred and be continuing, this Security Instrument may, to the maximum extent permitted by law, be enforced, and the Agent may exercise any right, power or remedy permitted to it hereunder, under the Loan and Security Agreement or under any of the other Loan Instruments or by law, and, without limiting the generality of the foregoing, the Agent may, personally or by its agents, to the maximum extent permitted by law:

(i) enter into and take possession of the Secured Estate or any part thereof, exclude Borrower and all persons claiming under Borrower whose claims are junior to this Security Instrument, wholly or partly therefrom, and use, operate, manage and control the same either in the name of Borrower or otherwise as the Agent shall deem best, and upon such entry, from time to time at the expense of Borrower and the Secured Estate, make all such

repairs, replacements, alterations, additions or improvements to the Secured Estate or any part thereof as the Agent may deem proper and, whether or not the Agent has so entered and taken possession of the Secured Estate or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that the Agent may be authorized to make under this Security Instrument, the remainder to be applied to the payment of the Obligations until the same shall have been repaid in full; if the Agent demands or attempts to take possession of the Secured Estate or any portion thereof in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to the Agent; and

(ii) personally, or through agents, with or without entry, if the Agent shall deem it advisable:

(x) upon acceleration of the Obligations, sell the Secured Estate at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or, in the absence of any such requirement, as the Agent may deem appropriate, and to the fullest extent permitted by applicable law from time to time adjourn any such sale by announcement at the time and place specified for such sale or for such adjourned sale without further notice, except such as may be required by law;

(y) proceed to protect and enforce its rights under this Security Instrument, by suit for specific performance of any covenant contained herein or in the Loan Instruments or in aid of the execution of any power granted herein or in the Loan Instruments, or for the foreclosure of this Security Instrument (as a security deed or otherwise) and the sale of the Secured Estate under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as the Agent shall deem most effectual for such purpose, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Secured Estate, this Security Instrument shall continue as a lien on, conveyance of and security interest in, the remaining portion of the Secured Estate; and

(z) exercise any or all of the remedies available to a secured party under the applicable Uniform Commercial Code, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Fixtures and exclude therefrom Borrower and all persons claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Fixtures or any part thereof; if the Agent demands or attempts to take possession of the Fixtures in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to the Agent;

(2) without notice to or demand upon Borrower, make such payments and do such acts as the Agent may deem necessary to protect its security interest in the Fixtures, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority, paying all expenses incurred in connection therewith;



(3) require Borrower to assemble the Fixtures or any portion thereof, at a place designated by the Agent and reasonably convenient to both parties, and promptly to deliver the Fixtures to the Agent, or an agent or representative designated by it; the Agent, and its agents and representatives, shall have the right to enter upon the Properties to exercise the Agent's rights hereunder; and

(4) sell, lease or otherwise dispose of the Fixtures, with or without having the Fixtures at the place of sale, and upon such terms and in such manner as the Agent may determine (and the Agent or any Lender may be a purchaser at any such sale).

(b) Appointment of Receiver. If a Default shall have occurred and be continuing, the Agent, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Secured Estate, without notice or demand, and without regard to the adequacy of the security for the Obligations or the solvency of Borrower. Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of the Agent in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Secured Estate, unless such receivership is sooner terminated.

(c) Rents. If a Default shall have occurred and be continuing, Borrower shall, to the maximum extent permitted by law, pay monthly in advance to the Agent, or to any receiver appointed at the request of the Agent to collect Rents, the fair and reasonable rental value for the use and occupancy of the Properties, the Improvements and the Fixtures or of such part thereof as may be in the possession of Borrower. Upon default in the payment thereof, Borrower shall vacate and surrender possession of the Properties, the Improvements and the Fixtures to the Agent or such receiver, and upon a failure so to do may be evicted by summary proceedings.

(d) Sale. Upon acceleration of the Obligations, at Agent's option and subject to any mandatory requirements of applicable law, institute a non judicial foreclosure proceeding in compliance with applicable law in effect on the date foreclosure is commenced for the Agent to sell the Properties and the Improvements either as a whole or in separate parcels as Agent may determine at public sale or sales to the highest bidder for cash, in order to pay the Obligations. If the Properties and the Improvements are sold as separate parcels, Agent may direct the order in which the parcels are sold. Agent may postpone the sale of all or any portion of the Properties and the Improvements by public announcement at the time and place of sale, and from time to time may further postpone the sale by public announcement in accordance with applicable law. In furtherance thereof, Agent may sell the Properties and the Improvements or any part thereof at public sale or sales, as an entirety or in parcels, before the door of the courthouse of the county in which the Properties and Improvements or any part thereof are situated, to the highest bidder for cash, in order to pay the Obligations which are then due and payable and insurance premiums, liens, assessments, taxes and charges, including utility charges, if any, with accrued interest thereon, and all expenses of the sale and of all proceedings in connection therewith, including reasonable attorneys' fees, if and to the extent actually incurred, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which Sheriff's

sales are advertised in said county. The foregoing notwithstanding, the Agent may sell, or cause to be sold, any tangible or intangible Ancillary Rights and Properties, or any part thereof, and which constitutes a part of the security hereunder, in the foregoing manner, or as may otherwise be provided herein or by law. Agent may bid at any such sale and if Agent is the successful bidder, Agent may credit the Obligations in satisfaction of the amount of such bid. Upon the completion of any such sale by virtue of this Section 4.02 the Agent shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of Borrower's estate, right, title, interest, property, claim and demand in and to the Secured Estate or portion thereof so sold, but without any covenant or warranty, express or implied. The Agent is hereby irrevocably appointed, upon the occurrence and during the continuance of a Default, as the attorney in fact of Borrower in its name and stead to make all appropriate transfers and deliveries of the Secured Estate or any portions thereof so sold and, for that purpose, upon the occurrence and during the continuance of a Default, the Agent may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that said attorneys or such substitute or substitutes shall lawfully do by virtue hereof, and any recitals in such instruments of transfer as to facts essential to a valid sale shall be presumed correct and binding on Borrower. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to the Agent or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Agent, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Security Instrument, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Borrower in, to and under the Secured Estate, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under Borrower. After completion of any foreclosure sale, Borrower shall forthwith deliver possession to the purchaser or purchasers at such sale, and failing to make such delivery of possession, the Borrower may be summarily dispossessed of the foreclosed property according to the provisions of law. The powers and agency herein granted are coupled with an interest and are irrevocable, are granted as cumulative of the other remedies provided by law or in equity for collection of the Obligations and shall not be exhausted by one exercise thereof but may be exercised until full payment of all Obligations.

(e) Possession of Loan Instruments Not Necessary. All rights of action under the Loan Instruments and this Security Instrument may, to the extent not prohibited by law, be enforced by the Agent without the possession of the Loan Instruments and without the production thereof at any trial or other proceeding relative thereto.

#### 4.03 Application of Proceeds.

(a) Application of Proceeds Generally. The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Security Instrument, or of any monies held by the Agent hereunder shall, to the maximum extent permitted by law, be applied:

(i) first to the payment of all costs and expenses of such sale, including the Agent's attorneys' fees and disbursements;

(ii) then to the payment of all charges, expenses and advances incurred or made by the Agent in order to protect the lien, security title and security interest of this Security Instrument or the security afforded hereby;

(iii) then to the payment in full of the Obligations in the manner contemplated by the Loan and Security Agreement and after payment in full of all Obligations any surplus remaining shall be paid to Borrower or to whomsoever may be lawfully entitled to receive the same.

(b) Liability for Deficiencies. No sale or other disposition of all or any part of the Secured Estate pursuant to Section 4.02 shall be deemed to relieve Borrower of any of the Obligations except to the extent the proceeds thereof are applied to the payment of such Obligations. If the proceeds of sale, collection or other realization of or upon the Secured Estate are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, Borrower shall remain liable for any deficiency to the extent permitted by applicable law.

**4.04 Right to Sue.** To the extent permitted by applicable law, the Agent shall have the right from time to time to sue for any sums required to be paid by Borrower under the terms of this Security Instrument as the same become due, without regard to whether or not the Obligations shall be, or have become, due and without prejudice to the right of the Agent thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence and during the continuance of any Default.

**4.05 Powers of the Agent.** The Agent may at any time or from time to time renew or extend this Security Instrument or (with the agreement of Borrower in writing) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release any portion of the Secured Estate or any other security, and grant such extensions and indulgences in relation to the Obligations, or release any person liable therefor as the Agent may determine without the consent of any junior lienor or encumbrancer, without in any manner affecting the priority of the lien, security title and security interest of this Security Instrument on or in any part of the Secured Estate, and without affecting the liability of any other person liable for any of the Obligations, and shall provide notice of any such action to Borrower (either before or after taking any such action).

**4.06 Remedies Cumulative.**

(a) Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Agent is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Security Instrument, or under applicable law, whether now or hereafter existing; the failure of the Agent to insist at any time upon the strict observance or performance of any of the provisions of this Security Instrument or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) Other Security. The Agent shall be entitled to enforce payment and performance of any of the Obligations of Borrower under the Loan Instruments and to exercise all rights and powers under this Security Instrument or under any Loan Instrument or any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, deed to secure debt, pledge, lien, assignment or otherwise; neither the acceptance of this Security Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Agent's right to realize upon or enforce any other security now or hereafter held by the Agent, it being stipulated that the Agent shall be entitled to enforce this Security Instrument and any other security now or hereafter held by the Agent in such order and manner as the Agent, in its sole discretion, may determine; every power or remedy given by the Loan and Security Agreement, this Security Instrument or any of the other Loan Instruments to the Agent, or to which the Agent is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Agent, and the Agent may pursue inconsistent remedies.

**4.07 Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption.** To the maximum extent permitted by law, Borrower shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Security Instrument; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Secured Estate or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 4.02; and Borrower, to the extent that it lawfully may, hereby waives all benefit or advantage of any such law or laws. Borrower for itself and all who may claim under it, hereby waives, to the maximum extent permitted by applicable law, any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any order or decree of foreclosure of this Security Instrument and (if a Default shall have occurred and be continuing) all notice or notices of seizure, and all right to have the Secured Estate marshalled upon any foreclosure hereof. The Agent shall not be obligated to pursue or exhaust its rights or remedies as against any other part of the Secured Estate and Borrower hereby waives any right or claim of right to have the Agent proceed in any particular order.

## **ARTICLE 5**

### **Miscellaneous**

**5.01 GOVERNING LAW.** THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA.

**5.02 Release by Agent.** Upon the termination of the Loan and Security Agreement and the payment in full of the Obligations, the Agent shall release the lien, security title and security interest of this Security Instrument, or upon the request of Borrower, and at Borrower's expense, assign this Security Instrument without recourse to Borrower's designee, or to the person or persons legally entitled thereto, by an instrument duly acknowledged in form for recording.

**5.03 Notices.** All notices, demands, consents, requests or other communications (collectively, "notices") that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in the Loan and Security Agreement.

**5.04 Amendments; Waivers; Etc.** This Security Instrument cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by Borrower and the Agent.

**5.05 Successors and Assigns.** This Security Instrument applies to, inures to the benefit of and binds Borrower and the Agent and their respective successors and assigns and shall run with the Properties.

**5.06 Captions.** The captions or headings at the beginning of Articles, Sections and paragraphs hereof are for convenience of reference and are not a part of this Security Instrument.

**5.07 Severability.** If any term or provision of this Security Instrument or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Security Instrument, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Security Instrument shall be valid and enforceable to the maximum extent permitted by law. Subject to the terms of the Loan and Security Agreement, if any portion of the Obligations shall for any reason not be secured by a valid and enforceable lien, security title or security interest upon any part of the Secured Estate, then any payments made in respect of the Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Security Instrument (except to the extent otherwise required by applicable law) be deemed to be made (i) first, in respect of the portion of the Obligations not secured by the lien, security title and security interest of this Security Instrument, (ii) second, in respect of the portion of the Obligations secured by the lien, security title and security interest of this Security Instrument, but which lien, security title and security interest is on less than all of the Secured Estate, and (iii) last, to the portion of the Obligations secured by the lien, security title and security interest of this Security Instrument, and which lien, security title and security interest is on all of the Secured Estate.

**5.08 Interpretation.** As used in this Security Instrument, (i) "hereof," "herein," "hereunder" and comparable terms refer to this entire Security Instrument and not to any particular article, section or other subdivision hereof or attachment hereto; (ii) references to any gender include, unless the context otherwise requires, references to all genders, and references to the singular include, unless the context otherwise requires, references to the plural, and vice versa; (iii) "shall" and "will" have equal force and effect; (iv) references to "Article," "Section," "Paragraph" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, paragraph or subdivision of or an attachment to this Security Instrument; (v) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and (vi) "include," "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. In the event there shall be only a single property described

on Exhibit A hereto, then the term "Properties" as used in this Security Instrument shall mean such individual property.

**5.09 Counterparts.** This Security Instrument may be executed and recorded in any number of counterparts all of which taken together shall constitute one and the same instrument.

**5.10 Conflict.** To the extent there is any conflict between the provisions in this Security Instrument and in the Loan and Security Agreement, the provisions of the Loan and Security Agreement shall govern and control.

**5.11 Subordination and Intercreditor Agreement.** Notwithstanding anything herein to the contrary, the lien and security interest granted to Agent pursuant to this Security Instrument and the exercise of any right or remedy by Agent hereunder are subject to the provisions of that certain Subordination and Intercreditor Agreement (the "Subordination Agreement") dated of even date herewith among Wells Fargo Foothill, Inc., as Term Agent (as that term is defined in the Subordination Agreement), and Wells Fargo Foothill, Inc., as Loan Agreement Agent (as that term is defined in the Subordination Agreement), as consented to by Lenders and Borrower Parties (as defined in the Subordination Agreement), as amended, restated, supplemented or otherwise modified from time to time. In the event of any conflict between the terms of the Subordination Agreement and this Security Instrument, the terms of the Subordination Agreement shall govern and control. In addition, to the extent any obligation of Borrower hereunder, including, without limitation, any obligation to grant sole control or deliver property for the purposes of perfecting security interests to Agent or any other Person, conflicts with the obligations or requirements under a substantially similar provision of any First Lien Loan Document (as that term is defined in the Subordination Agreement), Borrower shall not be deemed to be in violation of this Security Instrument as a result of its performance of the obligations or requirements of such First Lien Loan Document.

## **ARTICLE 6**

### **State Specific Provisions**

**6.01 Time of the Essence.** Time is of the essence with respect to all of Borrower's Obligations under this Security Instrument and the other Loan Instruments.

**6.02 No Merger.** In the event that Lenders should become the owner of the Properties, there shall be no merger of the estate created by this Security Instrument with the fee estate in the Properties.

**6.03 WAIVER.** BY EXECUTION OF THIS SECURITY INSTRUMENT AND INITIALING THIS SECTION 6.03, BORROWER EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE OBLIGATIONS AND THE POWER OF SALE AND POWER OF ATTORNEY GIVEN HEREIN TO AGENT TO SELL THE SECURED ESTATE BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY BORROWER WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT; (B) WAIVES

ANY AND ALL RIGHTS WHICH BORROWER MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS OF THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BORROWER OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BORROWER, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE PROVIDED IN THIS SECURITY INSTRUMENT, AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (C) ACKNOWLEDGES THAT BORROWER HAS READ THIS SECURITY INSTRUMENT AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS SECURITY INSTRUMENT AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO BORROWER AND BORROWER HAS CONSULTED WITH COUNSEL OF BORROWER'S CHOICE PRIOR TO EXECUTING THIS SECURITY INSTRUMENT; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF BORROWER HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY BORROWER AS PART OF A BARGAINED-FOR LOAN TRANSACTION AND THAT THIS SECURITY INSTRUMENT IS VALID AND ENFORCEABLE BY AGENT AGAINST BORROWER IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

INITIALED BY BORROWER:

      Juk      

6.04 **Future Advances.** This Security Instrument secures future advances pursuant to revolving credit agreement provisions in the Loan and Security Agreement.

6.05 **Reasonable Attorneys' Fees.** Whenever in this Security Instrument Borrower is required to pay "reasonable" attorneys' fees, Borrower shall be required to pay the reasonable and actual attorneys' fees, and the term "reasonable" shall not be interpreted to mean a percentage of principal and interest as provided in Official Code of Georgia § 13 1 11.

[Signature page follows.]




IN WITNESS WHEREOF, this Security Instrument has been duly executed under seal by Borrower as of the day and year first above written.

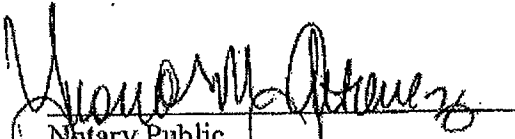
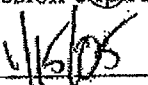
Signed, sealed and delivered in  
the presence of the following witnesses:

PICCADILLY RESTAURANTS, LLC, a  
Delaware limited liability company

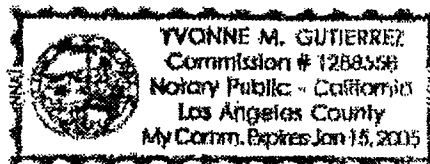
  
Unofficial Witness

By: Piccadilly Investments, LLC, a  
Delaware limited liability company,  
Managing Member

By:   
Name: Richard d'Abo  
Title: Vice Chairman and  
Manager

  
Notary Public  
My commission expires:  


[SEAL]



[NOTARY SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTIES

A-1

GEORGIA (SECOND)  
ATL/1031536.4

Houston County, GA

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF WARNER ROBINS, COUNTY OF HOUSTON, STATE OF GEORGIA, AND IS DESCRIBED AS FOLLOWS:

All that tract or parcel of land lying and being in Land Lot 121 of the 5th Land District, of Houston County, Georgia which is described as follows:

Beginning at a point marked by an iron pin located at the intersection of the southern margin of the right-of-way of Watson Boulevard (also known as Georgia Highway 247 Connector) (having a 100-foot right-of-way) with the eastern margin of the right-of-way of Robins West Drive (having an 80-foot right-of-way); THENCE South 89 degrees 47 minutes 00 seconds East along the southern margin of the right-of-way of Watson Boulevard a distance of 300.00 feet to a point marked by an iron pin; THENCE South 00 degrees 15 minutes 00 seconds West a distance of 321.97 feet to a point marked by an iron pin located on the northeastern margin of the right-of-way of Robins West Parkway (having a 100-foot right-of-way); thence northwesterly and westerly along the northeastern and northern margin of the right-of-way of Robins West Parkway along an arc of a curve a distance of 262.51 feet to a point (said point being subtended by a chord having a bearing of North 71 degrees 26 minutes 27 seconds West, a chord distance of 258.05 feet and a radius of 409.98 feet); THENCE North 89 degrees 47 minutes 00 seconds West along the northern margin of the right-of-way of Robins West Parkway a distance of 55.02 feet to a point marked by an iron pin located on the eastern margin of the right-of-way of Robins West Drive; THENCE North 00 degrees 15 minutes 00 seconds East along the eastern margin of the right-of-way of Robins West Drive a distance of 240.77 feet to the POINT OF BEGINNING, said tract containing 1.803 acres, more or less, and being shown and delineated on that certain Boundary Survey for Morrison Restaurants Inc. and Lawyers Title Insurance Corporation dated January 20, 1994, last revised January 27, 1994, prepared by H. Lanier Dunn, Georgia Registered Land Surveyor No. 2243 of Lanier Dunn & Associates, Ltd., which survey is incorporated herein by reference thereto.

TOGETHER WITH all rights, covenants and privileges benefiting the foregoing property as set forth in Restrictive Covenant Agreement dated as of January 28, 1994 by and among Morrison Restaurants Inc., Watson Boulevard Associates, and McKibben Brothers, Inc., recorded in Deed Book 1077, Page 362-371 of the Office of the Superior Court of Houston County, Georgia.

L&W No. 8  
Site No. 1096  
Site Name: WARNR

LA\1220283.11

BOOK 3036 PAGE 130

**EXHIBIT B**

**DESCRIPTION OF  
PROPERTIES IN FLOOD ZONE**

None.

B-1

GEORGIA (SECOND)  
ATL/1031536.4

**AFFIDAVIT OF APPORTIONMENT  
(GEORGIA: MULTI-STATE, MULTI-COUNTY)**

Personally appeared before me, the undersigned deponent, who first being duly sworn, deposes and says on oath the following:

THAT deponent is the of Vice President of Wells Fargo Foothill, Inc. (the "Lender"), and in such capacity is authorized to make this Affidavit; and

THAT Lender has made a loan (the "Loan") to Piccadilly Restaurants, LLC ("Borrower"), evidenced by that certain Amended and Restated Term Loan and Security Agreement dated May 10, 2004 (the "Loan Agreement") evidencing a debt from Borrower to Lender, as agent, in the original principal amount of \$29,000,000.00; and

THAT the Loan is secured by real and personal properties located within the State of Georgia (the "State") and outside the State, and a deed to secure debt with respect to the real property located in the State securing the Loan (the "Security Deed") shall so recite; and

THAT Lender is the holder of the Security Deed and the Loan Agreement; and

THAT Lender is not a resident of Georgia for purposes of the Georgia Intangible Recording Tax since Lender is incorporated in the State of California and Lender's principal place of business is in the State of California; and

THAT the values of the properties located within and outside Georgia securing the Loan (based upon information made available to Lender by Borrower at this time) are:

<u>Location of Property</u>	<u>Valuation</u>
Real Properties Located In Georgia	\$ 2,476,964
Real Properties Located Outside Georgia	<u>\$11,315,776</u>
TOTAL	\$13,792,740

THAT, based on the foregoing, the Georgia Intangible Recording Tax (the "Tax") due in Georgia with respect to the Security Deed is calculated as follows:

Total Principal Debt Secured times (Value of Property in Georgia divided by Value of All Property In and Outside of Georgia) times Applicable Tax Rate equals Tax Due and yields a Tax due of:

$$\begin{array}{r} \$29,000,000 \times \frac{\$2,476,964}{\$13,792,740} \times \$3.00 = \$15,624 \end{array}$$


THAT the properties securing the Loan located in Georgia are situated in more than one county; and

THAT the values of the properties within Georgia securing the Loan (based upon information made available to Lender by Borrower at this time) are:

<u>County of Property</u>	<u>Valuation</u>	<u>Percentage</u>	<u>Tax Due</u>
Houston County	\$ 913,747	37%	\$5,781.00
Fulton County	\$1,563,217	63%	\$9,843.00
TOTAL	\$2,476,964	100.00 %	\$15,624.00

THAT this Affidavit is given pursuant to Rules 560-111-8-.07 and 560-11-8-.08 of the Rules and Regulations of the Georgia Department of Revenue with the knowledge that the appropriate governmental officials of the State of Georgia charged with the collection of the Tax will rely on the contents of this Affidavit in calculating the Tax due on the Security Deed;

FURTHER, affiant sayeth not.

  
 Print Name: Katy J. Brooks  
 Vice President of Wells Fargo  
 Foothill, Inc.

Sworn to and subscribed  
 before me this 18th day of  
 May, 2004.

  
 Notary Public

Commission Expiration Date

December 13, 2007

[AFFIX NOTARIAL SEAL]



This Document prepared by and  
upon recording should be returned to:

Patton Boggs LLP *Ch# 9138*  
2000 McKinney Avenue, Suite 1700 *enw*  
Dallas, Texas 75201  
Attention: Ryan Magee, Esq.



Doc ID: 012563530004 Type: GLR  
Filed: 08/20/2012 at 01:11:14 PM  
Fee Amt: \$13.00 Page 1 of 4  
Houston, Ga. Clerk Superior Court  
Carolyn V. Sullivan Clerk

BK **5940** PG **228-231**

**ASSIGNMENT OF SECOND DEED TO SECURE DEBT,  
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the undersigned, Wells Fargo Capital Finance, Inc., a California corporation (formerly known as Wells Fargo Foothill, Inc.) (the "Assignor"), having an office at 2450 Colorado Avenue, Suite 3000 West, Santa Monica, California 90404, Attn: Specialty Finance Manager, is the "Agent" and beneficiary under that certain Second Deed to Secure Debt, Assignment of Rents and Security Agreement dated as of May 10, 2004, executed by Piccadilly Restaurants, LLC, as Borrower thereunder, which was recorded in the Office of the Recorder of Houston County, Georgia on June 7, 2004 as Document No. 006037290027 in Book 3036, Pages 106-132 (the "Deed to Secure Debt"), which Deed to Secure Debt encumbers the real estate and the improvements thereon legally described on Exhibit A attached hereto.

NOW, THEREFORE, for and in consideration of the sum of \$1.00 and other good and valuable consideration, receipt whereof is hereby acknowledged, the Assignor does hereby assign all of its right, title and interest in and to, and delegates all of its duties under, the Deed to Secure Debt, in each case, without representation and warranty of any kind or nature except as specifically provided in that certain Purchase and Sale Agreement for Distressed Trades, dated as of April 9, 2012, by and among Assignor, Wells Fargo Capital Finance, LLC, Atalaya Special Opportunities Fund IV LP (Tranche B) and Atalaya Special Opportunities Fund (Cayman) IV LP (Tranche B), including without limitation any rights as "Agent" and beneficiary, to Atalaya Administrative LLC, a New York limited liability company ("Assignee"), having an office at 1350 Avenue of the Americas, Suite 905, New York, New York 10019, Attn: General Counsel.

*[remainder of this page intentionally left blank; signature page follows]*

Assignment of 2<sup>nd</sup> Deed to Secure Debt (Houston County, Georgia)  
027549.0100\658052

IN WITNESS WHEREOF, Assignor has executed this Assignment of Deed to Secure Debt as of the 16<sup>th</sup> day of August, 2012.

Signed, sealed and delivered in the presence of

WELLS FARGO CAPITAL FINANCE, INC.  
(formerly known as Wells Fargo Foothill, Inc.)

Name: Scott Sanders

By: [Signature]  
Name: Shirley  
Title: SVP

Name: Erin D. Russell

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of August, 2012, before me, the undersigned, a notary public in and for said State, personally appeared see Attached, as \_\_\_\_\_ of Wells Fargo Capital Finance, Inc. (formerly known as Wells Fargo Foothill, Inc.), personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public, State of \_\_\_\_\_  
Printed Name of Notary: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

[NOTARY STAMP]



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of CALIFORNIA  
County of Los Angeles

On August 16, 2012 before me, Hannah Lee Tye, Notary Public, personally appeared Steve Scott, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Hannah Lee Tye (Seal)



**OPTIONAL SECTION**

**CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document

**INDIVIDUALS**

☒ CORPORATE OFFICER:

☐ PARTNERS ( ) LIMITED ( ) GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING  
WELLS FARGO CAPITAL  
FINANCE**

NAME OF PERSON(S) OR ENTITY(IES):  
\_\_\_\_\_  
\_\_\_\_\_

**THIS  
CERTIFICATE  
MUST BE  
ATTACHED TO  
THE  
DOCUMENT  
DESCRIBED AT  
RIGHT:**

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form

**TITLE OR TYPE OF DOCUMENT:**

**SIGNER(S) OTHER THAN NAMED ABOVE:** \_\_\_\_\_

EXHIBIT A

## LEGAL DESCRIPTION

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This Document prepared by and  
upon recording should be returned to:

Patton Boggs LLP *Ch# 9138*  
2000 McKinney Avenue, Suite 1700 *enw*,  
Dallas, Texas 75201  
Attention: Ryan Magee, Esq.



Doc ID: 012563530004 Type: GLR  
Filed: 08/20/2012 at 01:11:14 PM  
Fee Amt: \$13.00 Page 1 of 4  
Houston, Ga. Clerk Superior Court  
Carolyn V. Sullivan Clerk

BK **5940** PG **228-231**

**ASSIGNMENT OF SECOND DEED TO SECURE DEBT,  
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS:

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NOW, THEREFORE, for and in consideration of the sum of \$1.00 and other good and valuable consideration, receipt whereof is hereby acknowledged, the Assignor does hereby assign all of its right, title and interest in and to, and delegates all of its duties under, the Deed to Secure Debt, in each case, without representation and warranty of any kind or nature except as specifically provided in that certain Purchase and Sale Agreement for Distressed Trades, dated as of April 9, 2012, by and among Assignor, Wells Fargo Capital Finance, LLC, Atalaya Special Opportunities Fund IV LP (Tranche B) and Atalaya Special Opportunities Fund (Cayman) IV LP (Tranche B), including without limitation any rights as "Agent" and beneficiary, to Atalaya Administrative LLC, a New York limited liability company ("Assignee"), having an office at 1350 Avenue of the Americas, Suite 905, New York, New York 10019, Attn: General Counsel.

*[remainder of this page intentionally left blank; signature page follows]*

Assignment of 2<sup>nd</sup> Deed to Secure Debt (Houston County, Georgia)  
027549.0100\658052

IN WITNESS WHEREOF, Assignor has executed this Assignment of Deed to Secure Debt as of the 16<sup>th</sup> day of August, 2012.

Signed, sealed and delivered in the presence of:

Name: [Signature]

Name: Erin D. Russell

WELLS FARGO CAPITAL FINANCE, INC.  
(formerly known as Wells Fargo Foothill, Inc.)

By: [Signature]  
Name: Shirley  
Title: SVP

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of August, 2012, before me, the undersigned, a notary public in and for said State, personally appeared see Attached, as \_\_\_\_\_ of Wells Fargo Capital Finance, Inc. (formerly known as Wells Fargo Foothill, Inc.), personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public, State of \_\_\_\_\_  
Printed Name of Notary: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

[NOTARY STAMP]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of CALIFORNIA  
County of Los Angeles

On August 16, 2012 before me, Hannah Lee Tye, Notary Public, personally appeared Steve Scott, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Hannah Lee Tye (Seal)



**OPTIONAL SECTION**

**CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document

**INDIVIDUALS**

☒ CORPORATE OFFICER:

☐ PARTNERS ( ) LIMITED ( ) GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING  
WELLS FARGO CAPITAL  
FINANCE**

NAME OF PERSON(S) OR ENTITY(IES):  
\_\_\_\_\_  
\_\_\_\_\_

**THIS  
CERTIFICATE  
MUST BE  
ATTACHED TO  
THE  
DOCUMENT  
DESCRIBED AT  
RIGHT:**

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form

**TITLE OR TYPE OF DOCUMENT:**

**SIGNER(S) OTHER THAN NAMED ABOVE:** \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF WARNER ROBINS, COUNTY OF HOUSTON, STATE OF GEORGIA, AND IS DESCRIBED AS FOLLOWS:

All that tract or parcel of land lying and being in Land Lot 121 of the 5th Land District, of Houston County, Georgia which is described as follows:

Beginning at a point marked by an iron pin located at the intersection of the southern margin of the right-of-way of Watson Boulevard (also known as Georgia Highway 247 Connector) (having a 100-foot right-of-way) with the eastern margin of the right-of-way of Robins West Drive (having an 80-foot right-of-way); THENCE South 89 degrees 47 minutes 00 seconds East along the southern margin of the right-of-way of Watson Boulevard a distance of 300.00 feet to a point marked by an iron pin; THENCE South 00 degrees 15 minutes 00 seconds West a distance of 321.97 feet to a point marked by an iron pin located on the northeastern margin of the right-of-way of Robins West Parkway (having a 100-foot right-of-way); thence northwesterly and westerly along the northeastern and northern margin of the right-of-way of Robins West Parkway along an arc of a curve a distance of 262.51 feet to a point (said point being subtended by a chord having a bearing of North 71 degrees 26 minutes 27 seconds West, a chord distance of 258.05 feet and a radius of 409.98 feet); THENCE North 89 degrees 47 minutes 00 seconds West along the northern margin of the right-of-way of Robins West Parkway a distance of 55.02 feet to a point marked by an iron pin located on the eastern margin of the right-of-way of Robins West Drive; THENCE North 00 degrees 15 minutes 00 seconds East along the eastern margin of the right-of-way of Robins West Drive a distance of 240.77 feet to the POINT OF BEGINNING, said tract containing 1.803 acres, more or less, and being shown and delineated on that certain Boundary Survey for Morrison Restaurants Inc. and Lawyers Title Insurance Corporation dated January 20, 1994, last revised January 27, 1994, prepared by H. Lanier Dunn, Georgia Registered Land Surveyor No. 2243 of Lanier Dunn & Associates, Ltd., which survey is incorporated herein by reference thereto.

TOGETHER WITH all rights, covenants and privileges benefiting the foregoing property as set forth in Restrictive Covenant Agreement dated as of January 28, 1994 by and among Morrison Restaurants Inc., Watson Boulevard Associates, and McKibbin Brothers, Inc., recorded in Deed Book 1077, Page 362-371 of the Office of the Superior Court of Houston County, Georgia.

Assignment of 2<sup>nd</sup> Deed to Secure Debt (Houston County, Georgia)  
027549.0100\658052