

EX-10.20 2 dex1020.htm CREDIT AGREEMENT

Exhibit 10.20

EXECUTION COPY

\$1,350,000,000

CREDIT AGREEMENT

Dated as of November 23, 2010

among

DUNKIN' FINANCE CORP.

as the Initial Borrower

DUNKIN' BRANDS HOLDINGS, INC.

as Holdings upon the effectiveness of its joinder to this Agreement

DUNKIN' BRANDS, INC.

as the Borrower upon the Assumption

BARCLAYS BANK PLC

as Administrative Agent, Swing Line Lender and L/C Issuer

THE OTHER LENDERS PARTY HERETO

BARCLAYS CAPITAL

J.P. MORGAN SECURITIES LLC

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

GOLDMAN SACHS LENDING PARTNERS LLC

as Lead Arrangers and Joint Bookrunners

J.P. Morgan Securities LLC

as Syndication Agent

and

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Goldman Sachs Lending Partners LLC

Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York

Branch

as Co-Documentation Agents

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- D Form of Compliance Certificate
- E Form of Assignment and Assumption
- F Form of Guaranty
- G Form of Security Agreement
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- I Form of L/C Issuer Agreement
- J Form of Administrative Questionnaire
- K Form of Specified Discount Prepayment Notice
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- N Form of Discount Range Prepayment Offer
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-V-

CREDIT AGREEMENT

This CREDIT AGREEMENT (this “**Agreement**”) is entered into as of November 23, 2010, among Dunkin’ Finance Corp., a Delaware corporation (the “**Initial Borrower**”), and, upon the effectiveness of its joinder to this Agreement, Dunkin’ Brands Holdings, Inc., a Delaware corporation (“**Holdings**”), and, upon the Assumption, Dunkin’ Brands, Inc., a Delaware corporation (“**DBI**”), each lender from time to time party hereto (collectively, the “**Lenders**” and individually, each a “**Lender**”), and Barclays Bank PLC, as Administrative Agent, Swing Line Lender and L/C Issuer.

PRELIMINARY STATEMENTS

The Initial Borrower has requested that (a) the Term B Lenders make Term B Loans to the Initial Borrower in an aggregate principal amount of \$1,250,000,000, and (b) from time to time, the Revolving Credit Lenders lend to the Initial Borrower and the Borrower and the L/C Issuer issue Letters of Credit for the account of the Borrower and its Restricted Subsidiaries under a \$100,000,000 Revolving Credit Facility.

Concurrently with the initial funding under this Agreement on the Closing Date, the Initial Borrower will enter into the Senior Secured Credit Facilities Escrow and Security Agreement with the Administrative Agent and the Escrow Agent, pursuant to which (i) the Lenders will deposit with the Escrow Agent into the Escrow Account the proceeds of the Term Loans made on the Closing Date and (ii) the Initial Borrower will deposit with the Escrow Agent into the Escrow Account certain additional amounts necessary to pay accrued and unpaid interest to, but excluding, the Special Mandatory Prepayment Date.

The funds in the Escrow Account will be released in accordance with the terms of the Senior Secured Credit Facilities Escrow and Security Agreement, and together with (i) a portion of DBI’s cash on hand, (ii) the proceeds of the issuance of the Senior Notes and (iii) the proceeds of Revolving Credit Loans made on the Escrow Release Date, will be used by the Borrower to finance the repayment of all amounts outstanding under the Securitization Notes, to pay a special dividend to Holdings (the proceeds of which will then be used by Holdings to pay a subsequent special dividend to Parent) and pay the Transaction Expenses. The proceeds of Revolving Credit Loans made after the Closing Date will be used for working capital and other general corporate purposes of the Borrower and its Subsidiaries, including the financing of Permitted Acquisitions. Swing Line Loans and Letters of Credit will be used for general corporate purposes of the Borrower and its Subsidiaries.

Concurrently with the release of funds from the Escrow Account on the Escrow Release Date, the Initial Borrower and the Borrower shall execute and deliver the Borrower Assignment and Assumption Agreement pursuant to which, among other things, the Initial Borrower shall assign and transfer to DBI all of its rights and obligations as the Borrower under the Loan Documents (such assignment, the “**Assumption**”). Immediately following the Assumption and upon the redemption of the Existing Securitization Notes and discharge of the Existing Securitization Indenture on the Escrow Release Date, the Initial Borrower will be merged with and into DBI, with DBI being the surviving entity.

The applicable Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to so issue Letters of Credit, in each case, on the terms and subject to the conditions set forth in this Agreement.

In consideration of the mutual covenants and agreements contained in this Agreement, the parties hereto covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 *Defined Terms*. As used in this Agreement, the following terms shall have the meanings set forth below:

“**Acceptable Discount**” has the meaning specified in Section 10.07(l)(iv)(B).

“**Acceptable Prepayment Amount**” has the meaning specified in Section 10.07(l)(iv)(C).

“**Acceptance and Prepayment Notice**” means an irrevocable written notice from a Company Party accepting Solicited Discounted Prepayment Offers to make a Discounted Term Loan Prepayment at the Acceptable Discount specified therein pursuant to Section 10.07(l)(iv) substantially in the form of Exhibit Q.

“**Acceptance Date**” has the meaning specified in Section 10.07(l)(iv)(B).

“**Accepting Lender**” has the meaning specified in Section 2.05(b)(vii).

“**Ad Fund Cash**” means all amounts held in segregated accounts established solely for advertising activities pursuant to agreements with franchisees, including by Ad Fund Special Subsidiaries.

“**Ad Fund Special Subsidiary**” means any Subsidiary that (a) is an administrator or holder of cash held in segregated accounts established solely for advertising activities pursuant to agreements with franchisees and (b) holds no assets other than the accounts described in clause (a) and conducts no activities other than administering and holding such accounts and activities reasonably related to the foregoing, including DB AdFund Administrator LLC.

“**Administrative Agent**” means the United States branch of Barclays Bank PLC in its capacity as administrative agent under any of the Loan Documents, or any permitted successor administrative agent, provided that, in all events, any payments from the Loan Parties to the Administrative Agent shall be made to a “U.S. branch” of the Administrative Agent that is treated as a “U.S. person” for purposes of Treasury Regulations 1.1441-1.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify in writing to the Borrower, the Lenders and the L/C Issuers.

“Administrative Questionnaire” means an Administrative Questionnaire substantially in the form of Exhibit J.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. **“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Affiliated Lender” shall mean a Lender that is (a) a Sponsor or Affiliate of a Sponsor or (b) an Affiliate of any Loan Party (excluding, in each case (i) any Investment Fund, (ii) any Affiliate of any Sponsor that would not constitute a Sponsor pursuant to the definition thereof and (iii) Holdings, the Borrower or any of its respective Subsidiaries).

“Affiliated Organization” means (i) The Dunkin’ Donuts & Baskin-Robbins Community Foundation, Inc., Dunkin Brands Disaster Relief Fund, Inc., Dunkin Donuts Charitable Trust and any charitable organization that is an Affiliate of the Borrower or any Subsidiary that meets the requirements of Section 501(c)(3) of the Code to the extent, and only for so long as, such organization is eligible to receive tax-deductible contributions in accordance with Section 170 of the Code and (ii) Dunkin’ Brands, Inc. Political Action Committee and any non-profit political association qualifying as a separate, segregated fund, as that term is used in the Federal Election Campaign Act whose connected organization is DBI and that is independent of, and not affiliated with, any political party, candidate for elective office, or other political organization.

“Agent-Related Person” means the Administrative Agent, together with its Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Agents” means, collectively, the Administrative Agent, the Syndication Agent, each Co-Documentation Agent, and the Supplemental Administrative Agents (if any).

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Applicable Discount” has the meaning specified in Section 10.07(l)(iii)(B).

“Applicable Rate” with respect to the Term B Loans and the Revolving Credit Loans, unused Revolving Credit Commitments, Letter of Credit fees and Revolving Credit Commitment Fees, the following percentages per annum, based upon the Total Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02 means a percentage per annum equal to:

Pricing Level	Total Leverage Ratio	Applicable Rate		Revolving Credit Commitment Fee Rate
		Eurocurrency Rate and Letter of Credit Fees	Base Rate	
1	>6.00:1	4.25%	3.25%	0.500%
2	≤ 6.00:1 but > 5.00:1	4.00%	3.00%	0.500%
3	≤ 5.00:1	3.75%	2.75%	0.500%

Any increase or decrease in the Applicable Rate resulting from a change in the Total Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02; provided that Pricing Level 1 shall apply (x) as of the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply) and (y) at the option of the Administrative Agent or the Required Revolving Lenders, as of the first Business Day after an Event of Default shall have occurred and be continuing, and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply); provided, further, that prior to delivery of the Compliance Certificate with respect to the first fiscal quarter beginning after the Closing Date, Pricing Level 1 shall apply.

“Appropriate Lender” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders and (c) with respect to the Swing Line Facility, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“Approved Domestic Bank” has the meaning specified in clause (b) of the definition of “Cash Equivalents.”

“Approved Foreign Bank” has the meaning specified in clause (f) of the definition of “Cash Equivalents.”

“Approved Fund” means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“Arrangers” means Barclays Capital, the investment banking division of Barclays Bank PLC, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Goldman Sachs Lending Partners LLC, each in its capacity as an arranger and joint bookrunner for the Facilities.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit E or in another form reasonably acceptable to the Administrative Agent.

“Assumption” has the meanings specified in the introductory paragraph to this Agreement.

“Attorney Costs” means and includes all reasonable fees, expenses and disbursements of any law firm or other external counsel.

“Attributable Indebtedness” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Auction Agent” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Borrower reasonably acceptable to the Administrative Agent (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 10.07(l); provided that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent).

“Auto-Renewal Letter of Credit” has the meaning specified in Section 2.03(b)(iii).

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest per annum determined from time to time by the Administrative Agent as its “prime rate” in effect at its principal office in New York City and (c) the Eurodollar Rate applicable for an Interest Period of one month beginning on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; provided that in no event shall the Base Rate be less than 2.50%. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such determined rate. Any change in the Base Rate due to a change in the Federal Funds Rate or such “prime rate” shall be effective as of the opening of business on the effective day of such change in the Federal Funds Rate or “prime rate”, as the case may be.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Borrower” shall mean (a) prior to the execution and delivery to the Administrative Agent of the Borrower Assignment and Assumption Agreement, the Initial Borrower and (b) following the execution and delivery to the Administrative Agent of the Borrower Assignment and Assumption Agreement, DBI.

“Borrower Assignment and Assumption Agreement” shall mean the Assignment and Assumption Agreement executed by the Initial Borrower and DBI, providing for the Assignment and Assumption of the Loans and Commitments, along with all other rights and duties as a “Borrower” hereunder by the Initial Borrower to DBI, substantially in the form of Exhibit T or as otherwise mutually acceptable to the Borrower and the Administrative Agent.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrower Merger” means the consummation of the merger of the Initial Borrower with and into DBI, with DBI being the surviving entity, immediately following the Assumption.

“Borrower Offer of Specified Discount Prepayment” means the offer by a Company Party to make a voluntary prepayment of Term Loans at a specified discount to par pursuant to Section 10.07(l)(ii).

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by a Company Party of offers for, and the corresponding acceptance by a Company Party to make, a voluntary prepayment of Term Loans at a specified range at a discount to par pursuant to Section 10.07(l)(iii).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by a Company Party of offers for, and the subsequent acceptance, if any, by the Company Party to make, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 10.07(l)(iv).

“Borrowing” means a Revolving Credit Borrowing, a New Revolving Credit Borrowing, a Swing Line Borrowing, a Term Borrowing, or a New Term Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in when used in relation to the Borrower, the state where the Administrative Agent’s Office is located, and if such day relates to any interest rate settings as to a Eurodollar Rate Loan, any fundings, disbursements, settlements and payments in respect of any such Eurodollar Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases on a balance sheet of the lessee.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) during such period in respect of licensed or purchased software or internally developed software and software enhancements that are or are required to be reflected as capitalized costs on the consolidated balance sheet in accordance with GAAP.

“Cash Collateral” has the meaning specified in Section 2.03(g).

“Cash Collateral Account” means a deposit account at a commercial bank selected by the Administrative Agent in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent.

“Cash Collateralize” has the meaning specified in Section 2.03(g).

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Restricted Subsidiaries free and clear of all Liens (other than Liens permitted pursuant to any Loan Document):

- (a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States, any state, commonwealth or territory of the United States or any agency or instrumentality thereof, having maturities of not more than one year from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;
- (b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof, the District of Columbia or the Commonwealth of Puerto Rico and is a member of the Federal Reserve System and (ii) has combined capital and surplus of at least \$250,000,000 (any such bank being an “**Approved Domestic Bank**”), in each case with maturities of not more than one year from the date of acquisition thereof;
- (c) commercial paper and variable or fixed rate notes issued by an Approved Domestic Bank (or by the parent company thereof) or any variable rate note issued by, or guaranteed by a domestic corporation rated “A-1” (or the equivalent thereof) or better by S&P or “P-1” (or the equivalent thereof) or better by Moody’s, in each case with maturities of not more than one year from the date of acquisition thereof;
- (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) having capital and surplus in excess of \$250,000,000 for direct obligations issued by or fully guaranteed by the United States;
- (e) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Restricted Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions having capital of at least \$250,000,000, and the portfolios of which are limited such that 95% of such investments are of the character, quality and maturity described in clauses (a), (b), (c), and (d) of this definition;
- (f) solely with respect to any Foreign Subsidiary, non-Dollar denominated (i) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business (provided such country is a member of the Organization for Economic Cooperation and Development), and whose short-term commercial paper rating from S&P is at least “A-1” or the equivalent thereof or from Moody’s is at least “P-1” or the equivalent thereof (any such bank being an “**Approved Foreign Bank**”) and maturing within one year of the date of

acquisition and (ii) equivalents of demand deposit accounts which are maintained with an Approved Foreign Bank; and

(g) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United Kingdom or any member nation of the European Union whose legal tender is the euro and which are denominated in pounds sterling or euro or any other foreign currency comparable in tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction, having (i) one of the two highest ratings from either Moody's or S&P and (ii) maturities of not more than one year from the date of acquisition thereof; provided that the full faith and credit of the United Kingdom or any such member nation of the European Union is pledged in support thereof.

"Cash Management Obligations" means obligations owed by any Loan Party or Restricted Subsidiary to any Lender or any Affiliate of a Lender in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds or in respect of any credit card or similar services.

"Casualty Event" means any event that gives rise to the receipt by the Borrower and its Restricted Subsidiaries of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the US Environmental Protection Agency.

"Change of Control" means the earliest to occur of

(a) at any time prior to a Qualifying IPO, the Permitted Holders directly or indirectly cease to beneficially own (within the meaning of Rule 13d-3 and Rule 13d-5 under the Securities Exchange Act of 1934, or any successor provision) Equity Interests representing more than 50% of the total voting power of all of the outstanding Voting Stock of Holdings;

(b) at any time on or after a Qualifying IPO, (i) Holdings becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than one or more Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, amalgamation, consolidation or other business combination

or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of Equity Interests representing more than the greater of (x) thirty-five percent (35%) of the total voting power of all of the outstanding Voting Stock of Holdings and (y) the percentage of the total voting power of all of the outstanding Voting Stock of Holdings owned, directly or indirectly, beneficially by the Permitted Holders, or (ii) during any period of twelve (12) consecutive months, the board of directors of Holdings shall cease to consist of a majority of the Continuing Directors;

(c) DBI ceasing to be a directly or indirectly wholly owned Subsidiary of Holdings; or

(d) any “Change of Control” (or any comparable term) in any document pertaining to the Senior Notes or any Permitted Refinancing thereof with an aggregate outstanding principal amount in excess of the Threshold Amount.

“**Class**” (a) when used with respect to Lenders, refers to whether such Lenders are Revolving Credit Lenders, New Revolving Credit Lenders, Term B Lenders, New Term Lenders, Extended Term Lender or Extending Revolving Credit Lenders (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Credit Commitments, New Revolving Credit Commitments, Extended Revolving Credit Commitments, Term B Commitments, New Term Commitments and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Credit Loans or Term B Loans, in each case, under this Agreement as originally in effect or pursuant to Section 2.14, 2.15 or 2.16, of which such Loan, Borrowing or Commitment shall be a part.

“**Closing Date**” means November 23, 2010 or, if later, the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01.

“**Closing Date Funding Fees**” has the meaning specified in Section 2.09(c).

“**Co-Documentation Agents**” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman Sachs Lending Partners LLC and Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., “Rabobank Nederland”, New York Branch, each in its capacity as a co-documentation agent for the Facilities.

“**Code**” means the US Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means all of the “Collateral” referred to in the Collateral Documents and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to Liens in favor of the Administrative Agent, for the benefit of the Secured Parties pursuant to the Collateral Documents in order to secure the Secured Obligations.

“**Collateral Documents**” means, collectively, the Senior Secured Credit Facilities Escrow and Security Agreement, the Security Agreement, the Pari Passu Intercreditor Agreement, the Second Lien Intercreditor Agreement, each Intellectual Property Security Agreement, the Mortgages, if any, and each of the other agreements, instruments or documents that creates or