

§ 4.11. MERGER AND SALE OF ASSETS. Neither the Company nor any Subsidiary will

A. sell, lease, transfer or otherwise dispose of, its assets and properties except (i) in a transaction with the Company or a Subsidiary, (ii) in the ordinary course of business, (iii) in transactions wherein the Company sells assets or properties and contemporaneously leases back such assets or properties, (iv) in any sale, assignment, transfer, lease or disposition of assets, tangible or intangible, real or personal, made in connection with the Company's Franchising Programs or (v) the Company and its Subsidiaries may sell, lease, transfer or otherwise dispose of assets and properties which, when added to the book value of all other assets and properties disposed of pursuant to this clause (v) during the then current fiscal year, have an aggregate book value of not more than 5% of the book value of the consolidated assets of the Company and its Subsidiaries; or

B. consolidate with or merge into any other person or permit any other person to consolidate with or merge into it;

*provided*, that the foregoing restriction shall not apply to the merger or consolidation of the Company with or into another corporation, if:

(a) the corporation (the "surviving corporation") which results from such merger or consolidation is organized under the laws of the United States or a jurisdiction thereof;

(b) the due and punctual payment of the principal of, and premium, if any, and interest on all the Notes, according to their tenor, and the due and punctual performance and observance of all the covenants in the Notes and the Indenture to be performed or observed by the Company, are expressly assumed in writing by the surviving corporation (if other than the Company) pursuant to a document executed and delivered in recordable form;

(c) the transaction is in substantial economic effect an acquisition of such other corporation by the Company; and

(d) immediately after consummation of the transaction, and after giving effect thereto, no Event of Default, or event which with notice or lapse of time or both would become an Event of Default, would exist; and

*provided, further*, that the foregoing restriction shall not apply to the merger or consolidation of another corporation into or with a Con-