



This document was prepared by:

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Asst to:  
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Winston-Salem, NC  
27102

NORTH CAROLINA DEED OF TRUST AND SECURITY AGREEMENT

**FIXTURES**

THIS INSTRUMENT CONSTITUTES A SECURITY AGREEMENT; COLLAT-  
ERAL IS OR INCLUDES FIXTURES.

THE NAMES OF THE DEBTOR AND THE SECURED PARTY, THE MAILING  
ADDRESS OF THE SECURED PARTY FROM WHICH INFORMATION CONCERNING  
THE SECURITY INTEREST MAY BE OBTAINED, THE MAILING ADDRESS OF  
THE DEBTOR AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING  
THE ITEMS, OF COLLATERAL ARE AS DESCRIBED IN PARAGRAPH 3.01  
BELOW, IN COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE 9, SECTION  
402 OF THE UNIFORM COMMERCIAL CODE, AS ENACTED IN THE STATE OF  
NORTH CAROLINA.

THIS NORTH CAROLINA DEED OF TRUST AND SECURITY AGREEMENT  
(this "Deed"), made and entered into this 3<sup>rd</sup> day of March, 1988, by and  
among FOX CREEK LIMITED PARTNERSHIP, a limited partnership created  
pursuant to the laws of the state of Illinois having two general partners who  
are O&R Carolina, Inc., a corporation created pursuant to the laws of the  
state of Illinois, and Jerry Oakley, an individual resident of the state of North  
Carolina, whose mailing address is 1100 Barbara Anne Circle, Winston-Salem,  
North Carolina 27103 (hereinafter called "Borrower"); THE FIDELITY COM-  
PANY, a corporation created pursuant to the laws of the state of North  
Carolina (hereinafter called "Trustee"), whose address is 2400 Wachovia  
Building, Winston-Salem, North Carolina 27101; and METROPOLITAN LIFE  
INSURANCE COMPANY, a New York corporation whose address is One Madison  
Avenue, New York, New York 10010 (hereinafter called "Lender"),

W I T N E S S E T H :

That for and in consideration of the sum of ONE HUNDRED AND NO/100  
(\$100.00) DOLLARS in hand paid and other considerations, the receipt and  
sufficiency of which are hereby acknowledged, and in order to secure the  
indebtedness and other obligations of Borrower hereinafter set forth, Borrower  
does hereby bargain, sell, transfer, assign, grant and convey to Trustee, and  
his successors in trust, all of the following described property (hereinafter  
collectively referred to as the "Property"):

(a) All that certain tract or parcel of land located in the County of  
Forsyth, State of North Carolina, more particularly described in Exhibit "A"  
attached hereto and by this reference made a part hereof (hereinafter called  
the "Land"); and

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(b) All right, title and interest of Borrower, including any after-acquired title or reversion, in and to the rights of ways, streets, avenues and alleys adjoining the Land; and

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewers, sewer rights, waters, water courses, water rights and sewers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating to or appertaining to the Land, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower and the reversion and reversions, remainder and remainders, rents, issues, profits, revenues thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same; and

(d) All buildings, parking areas, landscaping, and improvements of every kind and description now or hereafter erected or placed on the Land (hereinafter called the "Improvements"), and all materials intended for construction, reconstruction, alteration and repairs of the Improvements now or hereafter erected, all of which materials shall be deemed to be included within the Improvements immediately upon the delivery thereof to the Land, and all fixtures and articles of personal property now or hereafter owned by Borrower and attached to or contained in and used in connection with the Land (hereinafter collectively called the "Personal Property"), including, but not limited to all gas and electric fixtures, radiators, heaters, furnaces, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, commodes, basins, pipes, faucets and other plumbing, heating and air conditioning equipment, mirrors, refrigerating plant, refrigerators, iceboxes, dishwashers, carpeting, floor coverings, furniture, light fixtures, signs, lawn equipment, water heaters, and cooking apparatus and appurtenances, which are or shall be attached, installed or affixed to the Land or the Improvements and all other fixtures, equipment, and general intangibles, as defined in the Uniform Commercial Code as enacted in the State of North Carolina, now or hereafter owned by Borrower and/or located in, on or about, or used or intended to be used with or in connection with the use, operation, or enjoyment of the Land or the Improvements, whether installed in such a way as to become a part thereof or not, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing and all the right, title and interest of Borrower in any such fixtures, equipment, and general intangibles now owned or hereafter acquired by Borrower or on its behalf, all of which are hereby declared and shall be deemed to be fixtures and accessions to the freehold and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Secured Obligations (as hereinafter defined) and to be covered by this Deed which shall be considered a security agreement creating a security interest in such fixtures and articles of personal property for the benefit of Lender.

(e) All leases, policies of insurance, licenses, franchises, permits, service contracts, tradenames, trademarks, servicemarks, logos and goodwill which in any way now or hereafter belong, relate or appertain to the Land or the Improvements or any part thereof or are now or hereafter acquired by Borrower (including, without limitation, all condemnation payments, insurance proceeds, security deposits and escrow funds); provided, however, that Borrower may not, without the prior written consent of Lender, operate the Land and the Improvements under any tradename, trademark, servicemark or logo not in use as of the date hereof.

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Trustee and his successors in trust, in fee simple forever. Borrower covenants that it is lawfully seized and possessed of the Property and holds marketable fee simple absolute title to the same and has good right to convey the same subject only to those matters expressly set forth in Exhibit "B" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Permitted Encumbrances"); and Borrower does warrant and will forever defend the title to the Property against the claims of all persons whomsoever subject to the Permitted Encumbrances.

This conveyance is made in trust, however, to secure the full and punctual payment of the debt evidenced by that certain Note (hereinafter referred to as the "Note") of even date with this Deed, made by Borrower to the order of Lender in the principal face amount of FOUR MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,300,000.00), with interest thereon at the rates therein provided and final maturity being on or before March 1, 1993, subject to extension to March 1, 1998 as set forth in the Note, together with any and all renewals, modifications, consolidations and extensions of the indebtedness evidenced by the Note, any and all additional advances made by Lender to protect or preserve the Property or the security interest hereby created in the Property, and for the full performance of all of the provisions, agreements, covenants and obligations herein contained and the payment of all other sums herein covenanted to be paid (hereinafter collectively called the "Secured Obligations").

Should the Secured Obligations be paid according to the tenor and effect thereof when the same shall become due and payable, and should Borrower perform all covenants herein contained in a timely manner, then this Deed shall be cancelled and surrendered pursuant to the Laws of the State of North Carolina.

Borrower hereby covenants with Lender as follows:

ARTICLE I  
BORROWER'S COVENANTS

1.01 Payment of Note and Other Sums. Borrower will pay the sum of money expressed in the Note and the interest thereon promptly as each payment becomes due, and will pay all other sums required to be paid by Borrower under this Deed, at the times and in accordance with the provisions of said Note and this Deed.

1.02 Payment of Taxes, Liens and Utility Charges.

(a) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages, deeds of trust or deeds to secure debt or the manner of collecting taxes so as to affect Lender adversely, Borrower will promptly pay any such tax; if Borrower fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment, then the entire balance of the Secured Obligations, together with all interest accrued thereon and any and all other sums secured by this Deed, shall, without notice, immediately become due and payable at the option of Lender.

(b) Borrower will pay or cause to be paid all taxes, liens, assessments, dues, fines, fees, impositions and public charges, general and special, already levied or assessed against the Property or that may hereafter be levied or assessed upon or against the Property, and shall provide Lender receipts evidencing such payments. Borrower will pay all taxes upon earnings, income, profits and excess profits and other governmental charges levied, assessed or imposed by the United States of America or any state, county, municipality or other taxing authority upon Borrower or in respect to any of the Property which, if unpaid, would become a lien or charge upon the Property or any part thereof, and Borrower will promptly pay or cause to be paid all charges made by utility companies, whether public or private, for services furnished or used in connection with the Property.

(c) Borrower agrees to keep the Property free from all lien claims of every kind, and to protect the title and possession of the same so that this Deed shall be a first lien thereon until the Secured Obligations are paid, or if a foreclosure sale shall occur hereunder, so that the purchaser at said sale shall acquire good title in fee simple to the Property free and clear of all encumbrances except those set forth on Exhibit "B". Borrower shall have the right, after prior notice to Lender, to contest by appropriate legal proceedings diligently conducted in good faith by Borrower, without cost or expense to Lender, the validity of any lien or charge against the Property provided that Borrower (i) furnishes to Lender security, satisfactory to Lender, against any loss or injury by reason of such contest or delay, and (ii) prosecutes such

contest with due diligence, and (iii) such contest enjoins a foreclosure against the Property and entry of a judgment against Borrower and Lender.

1.03 Insurance.

(a) Borrower, at its expense, shall procure and maintain for the benefit of Lender, insurance policies issued by such insurance companies, in such amounts, in such form and substance, and with such expiration dates as are acceptable to Lender, providing the following types of insurance covering the Property:

(i) "All Risks" property insurance on the Improvements in an amount not less than one hundred percent (100%) of the full replacement cost of the Improvements, with a Replacement Cost Endorsement and an Agreed Amount Endorsement. Full replacement cost as used herein means the cost of replacing the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and the Personal Property without deduction for physical depreciation thereof.

(ii) Flood insurance, provided that the location is designated a flood prone area participating in the National Flood Insurance Program, in an amount equal to the full replacement cost or the maximum amount then available, or evidence supplied by Borrower satisfactory to Lender, that the Improvements are not within a one hundred year flood plain as determined by the Federal Insurance Administration.

(iii) Business income insurance in an amount sufficient to prevent Borrower from becoming a co-insurer within the terms of the applicable policies, and sufficient to recover one (1) year's gross receipts (from all sources of income for the Property, including, without limitation, rental income).

(iv) Comprehensive general liability insurance against claims for personal injury (to include, without limitation, bodily injury or death), and property damage liability, all on an occurrence basis, if available.

(v) Such other insurance in such form and in such amounts as may from time to time be required by Lender against other insurable hazards and casualties which at the time are commonly insured against in the case of properties of similar character and location to the Land and the Improvements.

All insurance policies referenced in this Section 1.03(a) which protect against physical damage to the Improvements and Personal Property (including but not limited to those policies referenced in Paragraphs 1.03(a)(i) and (ii), shall contain a standard mortgagee clause (without contribution) in favor of Lender.

shall not be terminable without thirty (30) days' prior written notice to Lender, and shall be evidenced by original policies or certified copies of policies deposited with Lender, to be held by Lender until the Secured Obligations have been fully paid and discharged. All other insurance policies, such as general liability policies, required by the terms of this Deed shall be evidenced by certificates delivered to Lender and shall not be terminable without ten (10) days' prior written notice to Lender.

(b) Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 1.03, and to collect and receive the proceeds from any such policy or policies; provided, however, that so long as there exists no Default or Event of Default on the part of the Borrower hereunder or under any of the Loan Documents (as hereinafter defined), Borrower shall have a right of reasonable approval with respect to such adjustment or compromise. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of the expenses incurred by Lender in the collection and administration of such sums, including attorneys' fees (together with appellate counsel fees, if any), the net proceeds shall be applied either to the payment of the Secured Obligations, without imposition of any prepayment fee, or to the repair and/or restoration of the Improvements, without affecting the security interest created hereby, subject to the provisions of Paragraph 5.04 hereinbelow. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.03, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security for the Secured Obligations. In the event of a public sale pursuant to the power of sale and agency hereinafter described or any other transfer or assignment of title to the Property in extinguishment or partial extinguishment of the Secured Obligations, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or to Lender, as the case may be, and Lender is hereby irrevocably appointed by Borrower as its attorney-in-fact to effect such transfer by assigning any such policy to said purchaser or to Lender, as the case may be, without accounting to Borrower for any unearned premiums thereon.

1.04 Monthly Deposits. To further secure the payment of the taxes, assessments, insurance premiums, and other similar charges, Borrower will deposit with Lender, on the due date of each monthly installment under the Note, a sum which, in the estimation of Lender, shall be necessary to pay such charges at least thirty (30) days before they become due; said deposits to be held by Lender, free of interest to Borrower, and free of any liens or claims on the part of Borrower or the creditors of Borrower and as part of the security of Lender, and to be used by Lender to pay current taxes, assessments, insurance premiums and other similar charges on the Property as the same accrue and are payable. Said deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Lender. If said deposits are insufficient to pay the taxes, assessments, insurance premiums and other similar charges in full, Borrower will deposit with the Lender such additional sum or sums as may be required in order for the Lender to pay such taxes, assessments, insurance premiums and other similar charges in full. Upon any default in the provisions of this Deed or the Note, or any instrument evidencing, securing or in any way relating to the Secured Obligations, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Secured Obligations in such manner as it may elect and if Lender elects to apply such money to the principal payment due under the Note at maturity or to monthly payments thereunder, regular monthly payments thereunder shall continue to be due without reduction or interruption.

1.05 Care of Improvements and Personal Property. Borrower will keep all of the Improvements and Personal Property in good order, repair and condition, including, without limitation, continuing maintenance of the parking lots and facilities and all access easements to the Land with paving kept in an unbroken condition and parking lots clearly striped, and will comply with all provisions pertaining to, and do all things necessary (including payment of ad valorem taxes, if any, thereon) to preserve all easements serving, used in connection with, or affecting the Property, will comply with all covenants and restrictions (public or private) affecting same, will not commit or permit any waste thereof, and will not demolish, tear down, remove or alter the design or structural character of any portion thereof, without the prior written consent of Lender. Borrower warrants and represents to Lender that the Land and the Improvements are free of hazardous or toxic waste, contaminants, oil, radioactive or other materials the removal of which is required or the maintenance of which is prohibited, regulated or penalized by any local, state or federal agency, authority or governmental unit, and Borrower shall not permit any such materials to be brought onto the Land or the Improvements, or if so brought or found located thereon, shall cause the same to be immediately removed, and Borrower's obligation to so remove shall survive any exercise of the power of sale contained herein. Borrower shall promptly replace all worn-out or obsolete fixtures or Personal Property used in connection with the operation of the Property in accordance with Paragraph 3.02(d) hereinbelow, and shall repaint the buildings and their interiors and replace the carpet therein when needed, or when required under the terms of any lease for all or any portion of the Improvements. Borrower shall promptly notify Lender of

any damage to the Property resulting from fire or other casualty or of any pending or threatened condemnation proceedings; Borrower shall repair, restore, replace and rebuild any part of the Improvements or Personal Property that may be affected or damaged as a result of fire or other casualty or by condemnation and, should Lender make available to Borrower any funds received from casualty insurance or as condemnation proceeds, Borrower shall use such funds strictly in accordance with the provisions of Paragraph 5.04 hereof.

**1.06 Further Assurances; After-Acquired Property.** At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed, and from time to time thereafter to be re-recorded and/or refiled, at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, enlarge or perfect, or to continue and preserve (i) the obligation of Borrower under the Note and under this Deed and (ii) the security interest created by this Deed as a first and prior security interest upon and security title in and to all of the Property. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and other documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender its agent and attorney-in-fact so to do. The lien hereof will automatically attach, without further act except as otherwise required by North Carolina General Statutes Section 47-20.5, to all after-acquired property attached to and/or used in connection with or in the operation of the Property or any part thereof.

**1.07 Expenses.** Borrower will, to the extent allowed by applicable law, pay or reimburse Lender for all reasonable attorneys' fees actually incurred (together with reasonable appellate counsel fees actually incurred, if any), costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Secured Obligations, this Deed or the security interest created hereby, or the Property, including, but not limited to, the exercise of the power of sale contained in this Deed, any condemnation action involving the Property or any action to protect the security hereof; and any such amounts paid by Lender shall become a portion of the Secured Obligations and shall be secured by this Deed.

**1.08 Condemnation.** If any one or more of the portions of the Property described in Subparagraphs (a), (b) and (c) hereinbelow shall be damaged or taken through condemnation (which term, when used in this Deed, shall include any damage or taking by any governmental authority, quasi-governmental authority, any party having the power of condemnation, or any



transfer by private sale in lieu thereof), either temporarily or permanently, then the entire Secured Obligations shall, at the option of Lender, become immediately due and payable:

(a) any portion or portions of the buildings or other structures located on the Land or the support or foundation of any portion or portions of the buildings or structures located on the Land;

(b) ten percent (10%) or more of the parking area; or

(c) any portion or portions of the Land which, when so damaged or taken, would result either in (i) a lack of access to the Improvements from the publicly dedicated rights-of-way now adjoining the Land, or (ii) failure of the Improvements to comply with any building code, zoning or other governmental laws or regulations.

Borrower, immediately upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution, of any action or proceeding for the taking through condemnation of the Property or any part thereof, will notify Lender. Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith; provided, however, that so long as there exists no default or Event of Default on the part of Borrower hereunder or under any of the Loan Documents (as hereinafter defined), Borrower shall have a right of reasonable approval with respect to such settlement or compromise. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are, to the extent allowed by applicable law, hereby assigned by Borrower to Lender; and Lender is authorized, at its option but only to the extent allowed by applicable law, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages, unless Borrower shall have reasonably disapproved same pursuant to its rights so to do as set forth in this Paragraph 1.08. To the extent allowed by applicable law, after deducting from said condemnation proceeds all of its reasonable expenses incurred in the collection and administration of such sums, including attorneys' fees (together with appellate counsel fees, if any), Lender may, subject to Borrower's rights under Paragraph 5.04, apply the net proceeds or any part thereof, either (i) to the payment of the Secured Obligations whether or not due and in whatever order Lender elects (without imposition of any prepayment fee), or (ii) to the repair and/or restoration of the Improvements in accordance with Paragraph 5.04 hereof, or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Deed, all without affecting the lien of this Deed; and any balance of such moneys then remaining shall be paid to Borrower or any other person or entity lawfully entitled thereto. Subject to applicable law, Borrower agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may reasonably require. If, prior to the

receipt by Lender of such award or proceeds, the Property or any part hereof shall have been sold under the power of sale herein granted, Lender shall, to the extent allowed by applicable law, have the right to receive such award or proceeds to the extent of any unpaid amount of the Secured Obligations following such sale, with legal interest thereon, and to the extent of reasonable attorneys' fees actually incurred (together with appellate counsel fees actually incurred, if any), costs and disbursements incurred by Lender in connection with the collection of such award or proceeds.

1.09 Leases Affecting the Improvements. Borrower shall perform all covenants to be performed by the landlord under any and all leases of the Improvements or any part thereof. The form and content of all leases of the Improvements shall be subject to the prior written approval of Lender and, all leases of the Improvements entered into from and after the date hereof shall be subordinate to the lien of this Deed. To the extent that Borrower enters into any agreement to pay leasing commissions on leases of the Improvements, such agreement: (i) must contain a provision whereby Borrower indemnifies and holds harmless Lender from and against claims for such leasing commissions; and (ii) must be expressly subordinate to this Deed.

1.10 Estoppel Affidavits. Borrower, upon ten (10) days' prior written notice from Lender, shall furnish Lender a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness evidenced by the Note and whether or not any offsets or defenses exist against said indebtedness, or any portion thereof, and, if such offsets or defenses exist, stating in detail the specific facts relating to each such offset or defense.

1.11 Books, Records, Accounts and Annual Reports. Borrower shall keep and maintain or shall cause to be kept and maintained, at Borrower's cost and expense and in accordance with generally accepted accounting principles consistently applied, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Property or in connection with any services, equipment or furnishings provided in connection with the operation thereof. Lender, by Lender's agents, accountants and attorneys, employed at Lender's expense, shall have the right from time to time to examine such books, records and accounts at the office either of Borrower or of such other person or entity maintaining said books, records and accounts and to make copies or extracts thereof as Lender shall desire and to discuss Borrower's affairs, finances and accounts with Borrower and with the officers and principals of Borrower, at such reasonable times as may be requested by Lender. Borrower will furnish to Lender on or before April 1 of each year, for the preceding calendar year, a balance sheet, profit and loss statement and all supporting schedules covering the operation of the Property, all in reasonable detail, prepared in accordance with generally accepted accounting procedures consistently applied and certified by the general partner or principal financial or accounting officer of Borrower; and Borrower will furnish to Lender, at any time within thirty (30) days after demand by Lender, statements, certified by Borrower's principal financial or

accounting officer, covering such additional financial matters respecting the Property as Lender may reasonably request, including, without limitation, quarterly operating statements with respect to the Property. In addition, Lender may, at Lender's option, require that Borrower provide Lender, at Borrower's sole expense, a certified audit of the operation of the Property, prepared by an independent certified public accountant satisfactory to Lender.

1.12 Limit of Validity. If from any circumstances whatsoever fulfillment of any provision of this Deed or of the Note, at the time performance of such provision shall be due, shall involve transcending the limits of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section 1.12 shall control every other provision of this Deed and of the Note.

1.13 Use of the Property and Compliance with Applicable Laws. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the nature of the occupancy or use for which the Improvements were intended at the time this Deed was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Land or subject the Land to restrictive covenants without Lender's written consent. Borrower will at all times comply with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities now or hereafter affecting or pertaining in any way to the Property or any part thereof or the use and operation thereof. Borrower further will keep in full force and effect at all times such Federal, State, municipal and other governmental approvals, licenses and certificates as may be necessary from time to time to comply with all zoning, subdivision, environmental, air quality, flood hazard, fire safety, handicapped facilities and other governmental requirements (whether now existing or hereinafter enacted or adopted) relating to the Property or Borrower's use and occupancy thereof, and shall furnish Lender on request proof of such compliance. Borrower represents and warrants that the Property and its use fully comply with all applicable zoning, subdivision, environmental, air quality, flood hazard, fire safety, planning, handicapped facilities, building and other governmental laws, ordinances, codes, regulations, orders and requirements. Borrower further represents and warrants that neither the Property nor any portion thereof has been or will be used for the disposal or storage of hazardous or toxic wastes or materials. Borrower represents and warrants that neither it nor any tenant of space in the Property shall generate, store, handle or otherwise deal with any hazardous or toxic waste, substance or material, or any oil or pesticides on the Property.

1.14 Indemnification; Subrogation; Waiver of Offset.

(a) Borrower indemnifies, defends and holds Lender harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Property or the Secured Obligations and (ii) against any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including its reasonable attorneys' fees actually incurred, together with reasonable appellate counsel fees actually incurred, if any) of whatever kind or nature which may be imposed on or incurred by Lender at any time pursuant either to a judgment or decree or other order entered into by a court or administrative agency or to a settlement reasonably approved by Borrower, which judgment, decree, order or settlement relates in any way to or arises out of the offer, sale or lease of the Property and/or the ownership, use, occupation or operation of any portion of the Property; provided that such indemnity shall not apply to Lender's own acts or omissions or those of its agents or employees acting in the scope of their agency or employment.

(b) If Lender is made a party defendant to any litigation concerning this Deed or the Property, any part thereof, any interest therein, or the occupancy thereof by Borrower (provided, however, that the subject of such litigation is not a claim based on Lender's own acts or omissions or those of its agents or employees acting within the scope of their agency or employment), then Borrower shall indemnify, defend and hold Lender harmless from all liability by reason of said litigation, including reasonable attorneys' fees actually incurred (together with reasonable appellate counsel fees actually incurred, if any) and expenses incurred by Lender in any such litigation, whether or not any such litigation is prosecuted to judgment. If Lender commences an action against Borrower to enforce any of the terms hereof or to prosecute any breach by Borrower of any of the terms hereof or to recover any sum secured hereby, except in cases where the court finds that Lender has been guilty of wrongful, tortious conduct or has acted in bad faith, Borrower shall pay to Lender reasonable attorneys' fees (together with reasonable appellate counsel fees actually incurred, if any) and expenses. The right to such attorneys' fees actually incurred (together with reasonable appellate counsel fees actually incurred, if any) and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Borrower breaches any term of this Deed, Lender may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Borrower, Borrower shall pay Lender reasonable attorneys' fees actually incurred (together with reasonable appellate counsel fees actually incurred, if any) and expenses incurred by Lender, whether or not an action is actually commenced against Borrower by reason of such breach.

(c) Provided that a waiver of subrogation can be obtained by Borrower from its insurance carrier at commercially reasonable rates after Borrower's best efforts, Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of

or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Deed.

(d) All sums payable by Borrower hereunder shall be paid without notice (except as provided in Paragraph 1.15 hereinbelow), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Land or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Lender, or any action taken with respect to this Deed by any trustee or receiver of Lender, or by any court, in such proceeding; (v) any claim which Borrower has, or might have, against Lender; (vi) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Borrower.

1.15 Actions By Lender to Preserve Property. Should Borrower fail to make any payment or to do any act as and in the manner provided in the Note or this Deed or any other instrument evidencing, securing or otherwise relating to the Secured Obligations (such other instruments being hereinafter collectively called the "Loan Documents"), subject to any applicable notice and cure periods set forth in this Deed, Lender in its own discretion, without obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation, may make or do the same in such manner and to such extent Lender may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Lender shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property or any portion thereof which it may consider necessary or proper to keep same in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Lender or Trustee, including, but not limited to, eminent domain, insolvency, code enforcement or arrangements or proceedings involving a bankrupt or decedent; (iv) to pay, purchase, contest, or compromise any encumbrance, claim, charge, lien or debt which in its judgment may affect or appears to affect the security of this Deed or to be prior or superior hereto; and (v) to pay any consultant necessary or desirable in exercising the above powers. Any amounts disbursed by Lender pursuant to this Section 1.15, with interest thereon, shall become a

portion of the Secured Obligations. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the interest rate set forth in the Note as applicable after a default thereunder. Borrower shall have the right to repay such amounts in whole or in part at any time. Nothing contained in this Section 1.15 shall require Lender to do any act or incur any expense.

1.16 Inspections. Lender, and its agents, representatives or workmen are authorized to enter at any reasonable time upon or in any part of the Land or the Improvements for the purpose of inspecting same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed or any of the Loan Documents.

1.17 Liens. Borrower will pay and promptly discharge, at Borrower's cost and expense, all liens, encumbrances and charges upon the Property or any part thereof or interest therein; provided, however, that the existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right thereto shall not constitute a violation of this Section 1.17 if payment is not yet due under the contract which is the foundation thereof and if such contract does not postpone payment for more than thirty (30) days after the performance thereof. Borrower shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Borrower shall first either deposit with Lender a bond or other security satisfactory to Lender in such amounts as Lender shall require or cause said lien, encumbrance or charge to be discharged of record by posting an appropriate bond or by such other means as are available to Borrower to discharge such lien of record. If Borrower shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Lender hereunder or at law or in equity, Lender may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.18 Relationship. Neither this Note, this Deed, the Loan Documents, nor any agreements, instruments, documents or transactions contemplated hereby or thereby, nor any statements or representations made by Lender pursuant to any of the foregoing or otherwise, will be interpreted, deemed or construed in any respect as making Borrower and Lender partners or joint venturers with one another, or as creating or constituting any partnership, joint venture, association or other such relationship between Borrower and Lender, and Borrower will not make any contrary assertion, contention, claim or counterclaim in any action, suit or other legal proceeding involving either Borrower or Lender or the Property or otherwise, nor will Borrower make any such contrary representation to any person whomsoever.

1.19 Changes in Ownership and Subordinate Financing. Borrower hereby acknowledges to Lender that (i) the identity and expertise of Borrower were and continue to be material circumstances upon which Lender has relied in connection with, and which constitute valuable consideration to Lender for, the extending to Borrower of the Secured Obligations and (ii) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Note granted by Borrower to Lender by this Deed. Borrower therefore covenants and agrees with Lender, as part of the consideration for the extending to Borrower of the Secured Obligations, that upon sale, transfer or encumbrance of (i) all or any part of the Property or any interest therein, or (ii) all or any general partnership interest in Borrower without Lender's prior written consent, Lender may, at Lender's option, declare the entire principal amount of the Secured Obligations, or any unpaid part thereof, together with any and all interest accrued thereon, any other sums advanced under this Deed, and the applicable prepayment fee as described in the Note, at once due and payable without notice to Borrower and regardless of the stipulated date of maturity. The prohibitions against transfer or conveyance contained in this Paragraph 1.19 shall be enforceable only to the extent allowed by applicable law and shall apply to each and every sale, transfer, conveyance or encumbrance, regardless of whether or not Lender has consented or waived its rights (which it shall not be deemed to have done unless in writing), whether by action or non-action, in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more.

Notwithstanding any other provisions of the Note or this Deed, Borrower shall have the right, on one occasion only on or after March 1, 1989, to transfer or convey the Property or to change or modify the identity or composition of Borrower subject to the lien of this Deed, provided that: (i) Lender, in its sole and absolute discretion, approves the proposed transferee or the entities involved in the change in composition of Borrower; and (ii) Borrower pays to Lender a transfer fee equal to one percent (1%) of the then outstanding balance of the indebtedness evidenced by the Note, unless such payment would constitute a violation of any applicable law; and (iii) an agreement is entered into among Borrower, Lender and the proposed transferee or the Borrower as newly composed, which agreement will be prepared at Borrower's expense by counsel selected by Lender, pursuant to which the proposed transferee agrees that, in the event of (a) any further sale, transfer or encumbrance of all or any part of the Property, or (b) any further change or modification in the identity or composition of Borrower without Lender's prior written consent, Lender may, at Lender's option, declare the entire unpaid principal amount of the Note, together with accrued but unpaid interest, any other sums advanced pursuant to this Deed or any of the Loan Documents, and the applicable prepayment fee as described in the Note, at once due and payable without notice and regardless of the stipulated date of maturity; and (iv) the financial condition of the proposed transferee or the entities involved in the change in composition of Borrower are satisfactory to Lender and such transferee or entity has demonstrated the ability and has had previous experience of professional management for properties similar to the Property. Nothing contained herein shall prohibit transfers of ownership in the Property or

in Borrower as a result of death or transfers by a natural person to a member or members of his immediate family or transfers by any natural person in connection with bona fide estate planning.

ARTICLE II  
ASSIGNMENT OF RENTS, ISSUES AND  
PROFITS AND SECURITY DEPOSITS

2.01 Assignment of Rents. Borrower hereby assigns and transfers to Lender all the rents, issues and profits of the Property, and hereby gives to and confers upon Lender the right, power and authority to collect such rents, issues and profits. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Borrower or Lender, for all such rents, issues and profits, and apply the same to the Secured Obligations; provided, however, that Borrower shall have the right to collect such rents, issues and profits (but not more than two [2] months in advance) prior to or at any time there is not an Event of Default hereunder or under the Note or under any of the Loan Documents. The assignment of the rents, issues and profits of the Property in this Article II is intended to be an absolute, present assignment from Borrower to Lender and not merely the passing of a security interest. The rents, issues and profits are hereby assigned absolutely by Borrower to Lender contingent only upon the occurrence of an Event of Default hereunder or under the Note or any of the Loan Documents.

2.02 Assignment of Security Deposits. Borrower hereby assigns to Lender its rights in all security deposits received by Borrower or any agent of Borrower. Prior to Default hereunder and demand by Lender for delivery of such security deposits to it or its designee, Borrower shall maintain the security deposits in a separate, identifiable account in a North Carolina bank acceptable to Lender. Upon delivery of such security deposits to Lender, Lender shall hold such deposits pursuant to the terms of the leases in respect of which such deposits were obtained by Borrower and in accordance with applicable law; provided, however, in no event shall Lender be liable to any lessee of any part of the Improvements for the return of any security deposit in any amount in excess of the amount delivered to Lender by Borrower. Any security deposits held by Lender shall not bear interest unless required by applicable law.

2.03 Collection Upon Default. Upon any Event of Default hereunder or under the Note or under any of the Loan Documents, 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 Secured Obligations, Lender may enter upon and take possession of the Property, or any part thereof or, in its own name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of the operation of the Property, of the performance of



Borrower's obligations under any leases thereof, and of collection, including reasonable attorneys' fees actually incurred (together with reasonable appellate counsel fees actually incurred, if any), to the payment of any of the Secured Obligations, in such order as Lender may determine. If Lender elects to apply such rents, issues and profits to the principal payment due under the Note at maturity or to monthly payments thereunder, regular monthly payments thereunder shall continue to be due without reduction or interruption. The collection of such rents, issues and profits or the application thereof as aforesaid, or the entering upon and taking possession of the Property, shall not cure or waive any Default or notice of Default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

### ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Insofar as the Personal Property is concerned, this Deed is hereby made and declared to be a security agreement, encumbering each and every item of Personal Property included herein, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of North Carolina. A financing statement or statements reciting this Deed to be a security agreement, affecting all of said Personal Property, shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the Borrower and the Lender that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Deed, is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to the proceeds of any fire and/or hazard insurance policy, or any award in eminent domain proceedings for a taking or for loss of value, or Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Lender as determined by this instrument or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of Lender in the event any court shall at any

time hold, with respect to any such matter, that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. Borrower warrants that (i) Borrower's (that is, "Debtor's") name, identity or corporate structure and residence or principal place of business are as set forth in the last sentence of this Paragraph 3.01; (ii) Borrower (that is, "Debtor") has been using or operating under said name, identity or corporate structure without change for the time period set forth in the last sentence of this Paragraph 3.01; and (iii) the location of the collateral is upon the Land. Borrower covenants and agrees that Borrower will furnish Lender with notice of any change in name, identity, corporate structure, residence or principal place of business within thirty (30) days of the effective date of any such change and the Borrower will promptly execute any financing statements or other instruments deemed necessary by Lender to prevent any filed financing statement from becoming misleading or losing its perfected status. The information contained in this Paragraph 3.01 is provided in order that this Deed shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of North Carolina, for instruments to be filed as financing statements. The names of "Debtor" and "Secured Party", the identity or corporate structure and residence or principal place of business of "Debtor", and the time period for which "Debtor" has been using or operating under said name and identity or corporate structure without change, are as set forth in Schedule 1 of Exhibit "C" attached hereto and by this reference made a part hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor", are as set forth in Schedule 2 of said Exhibit "C" hereto; and a statement indicating the types, or describing the items, of collateral is set forth in Paragraphs (d) and (e) on Page 2 hereinabove.

3.02 Warranties, Representations and Covenants of Borrower Respecting the Personal Property. Borrower hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Borrower is, and as to portions of Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever except as specifically permitted in Exhibit "B" hereto. Borrower will notify Lender of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Borrower will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Lender, except where replaced with Personal Property of equal or greater value.

(c) The Personal Property is not used or bought for Borrower's personal, family or household purposes, but shall be bought and used solely for the purpose of carrying on Borrower's business.

(d) The Personal Property will be kept on or at the Land or in or about the Improvements and Borrower will not remove the Personal Property therefrom without the prior written consent of Lender, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Borrower with other Personal Property of value equal to or greater than the value of the replaced property when new, and except such portions or items of Personal Property temporarily stored elsewhere to facilitate refurbishing or repair thereof or of the Improvements.

(e) Borrower maintains places of business in the States of Illinois and North Carolina and Borrower will immediately notify Lender in writing of any change in its place of business as set forth in the beginning of this Deed and in Exhibit "C" hereto.

(f) At the request of Lender, Borrower will execute one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of North Carolina in form satisfactory to Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by Lender to be necessary or desirable.

(g) All covenants and obligations of Borrower contained herein relating to the Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

(h) This Deed constitutes a Security Agreement as that term is used in the Uniform Commercial Code of North Carolina.

#### ARTICLE IV DEFAULT

4.01 Defaults. The terms "Default", "Defaults", or "Event of Default", wherever used in this Deed, shall mean any one or more of the following events:

(a) Failure by Borrower to pay as and when due and payable any portion of the Secured Obligations pursuant to the terms hereof or of the Note; or

(b) Failure by Borrower to duly observe or perform any of the provisions of Paragraph 1.19 hereof; or

(c) Failure by Borrower to duly observe or perform any other term, covenant, condition or agreement of this Deed; or

(d) Failure by Borrower to duly observe or perform any term, covenant, condition, or agreement in any of the Loan Documents; or

(e) Any warranty of Borrower contained in this Deed or in any of the Loan Documents proves to be untrue or misleading in any material respect; or

(f) The filing by Borrower of a voluntary petition in bankruptcy or the filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Borrower's seeking or consenting to or acquiescing in the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, or of all or any substantial part of the Property or of any other property or assets of Borrower, or of any or all of the income, rents, issues, earnings, profits or revenues thereof, or the making by Borrower of any general assignment for the benefit of creditors, or the failure of Borrower to pay its debts generally as they become due, or the giving of notice by Borrower to any governmental body of insolvency or pending insolvency or suspension of operations; or

(g) The filing of a petition against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, of all or any substantial part of the Property or of any other property or assets of Borrower, or of any or all of the income, rents, issues, profits or revenues of the Property unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition.

(h) The Property or any portion thereof is subjected to actual or threatened waste or is removed, demolished or altered (except for replaceable portions of the Personal Property which are promptly replaced in the ordinary course of business) without the prior written consent of Lender.

Notwithstanding the foregoing, Borrower shall not be deemed to be in Default nor shall an Event of Default be deemed to have occurred under the foregoing subparagraphs (c) or (d) unless and until Borrower shall have failed to cure such Default within thirty (30) days after receipt by Borrower of written notice from Lender of such Default.

#### 4.02 Acceleration, Lender's Rights, and Appointment of Receiver.

(a) If an Event of Default shall have occurred, then the whole of the Secured Obligations shall, at the option of Lender, without further notice or demand, become immediately due and payable for all purposes, time being of the essence of this Deed (and no omission on the part of Lender to exercise such option when entitled so to do shall be considered as a waiver of such

right), and thereafter, Lender or any other person entitled to money due hereunder or under the Note or to performance hereunder, may proceed to:

(i) demand that Borrower forthwith surrender to Lender the actual possession of the Property and, to the extent permitted by law, enter and take possession of the Property and exclude Borrower and Borrower's agents and employees wholly therefrom and have joint access with Borrower to the books, papers and accounts of Borrower. In the event Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring Borrower to deliver immediate possession of all or part of such Property to Lender, to the entry of which judgment or decree Borrower hereby specifically consents, and Lender may receive from Borrower, upon demand, payment of all expenses of obtaining such judgment or decree including compensation to Lender, its attorneys and agents, whereupon all such expenses and compensation shall, until paid, be added to and constitute a portion of the Secured Obligations and shall be secured by the security title of this Deed.

(ii) upon every such entering and taking of possession, hold, store, use, operate, manage, control, and maintain the Property and conduct the business thereof, and, from time to time, (i) make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Property insured; (iii) manage and operate the Property and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender may from time to time determine to be its best advantage; and Lender may collect and receive all of the income, rents, profits, issues and revenues of the Property, including those past due as well as those accruing thereafter and, after deducting (aa) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments, and other charges prior to the lien of this Deed as Lender at its option may determine to pay; (ee) other proper charges upon the Property or any part thereof; and (ff) the compensation and expenses of attorneys and agents of Lender, shall apply the remainder of the money so received by Lender in such order and in such manner as Lender shall deem appropriate.

(iii) apply to a court of competent jurisdiction and be entitled, without notice and without regard to the adequacy or value of any security for the Secured Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect the rents, profits, issues, and revenues thereof.

(b) For the purpose of carrying out the provisions of this Paragraph 4.02, Borrower hereby constitutes and irrevocably appoints Lender the true and lawful attorney-in-fact (said appointment being coupled with an interest) of Borrower to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney-in-fact in the Property.

(c) In the event all Events of Default under this paragraph 4.02 have been cured and satisfied, Lender shall surrender possession of the Property to Borrower; provided, however, that the rights of Lender pursuant to this Paragraph 4.02 shall continue to exist in the event any subsequent event of default shall occur.

(d) Upon demand Borrower will pay to Lender all reasonable expenses including receivers' fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Paragraph 4.02, and all such expenses shall be added to and constitute a portion of the Secured Obligations and shall be secured by the security title of this Deed.

4.03 Power of Sale. When the Secured Obligations shall become due, whether by acceleration or otherwise, Trustee is hereby authorized and empowered, upon request by Lender and in compliance with applicable law, to sell the Property or any part of the Property at public sale or sales before the door of the courthouse of the County in which the Property or any part of the Property is situated, to the highest bidder for cash, in order to pay the Secured Obligations and accrued interest thereon, in compliance with the requirements of the general statutes of North Carolina relating to nonjudicial foreclosure sales in effect on the date foreclosure is commenced. The parties in interest hereby waive the necessity of the Trustee's making oath, filing inventory, or giving bond, as security for the execution of this trust, as required by the laws of the state of North Carolina. Lender may bid and purchase at such sale.

4.04 Authority to Convey. At any such public sale, Trustee may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple with full warranties of title and, to this end, Borrower hereby constitutes and appoints Trustee the agent and attorney-in-fact of Borrower to make such sale and conveyance, and thereby to divest Borrower of all right, title or equity that Borrower may have in and to the Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or convey-

ances as to facts essential to a valid sale shall be binding upon Borrower. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, are granted as cumulative of the other remedies provided by law for collection of the Secured Obligations and shall not be exhausted by one exercise thereof but may be exercised until Lender has received full payment of the Secured Obligations.

4.05 Application of the Proceeds of Sale. Upon any public sale pursuant to the aforementioned power of sale and agency, the proceeds of said sale shall be applied by the Trustee, first, to the expenses of such sale and of all proceedings in connection therewith, including a reasonable Trustee's fee and reasonable attorneys' fees actually incurred (including reasonable appellate counsel fees actually incurred, if any), then to the payment of all sums expended by Lender and Trustee under the terms of this Deed, then to payment of accrued but unpaid interest under the Note and the outstanding principal balance of the indebtedness evidenced by the Note, and, the balance, if any, shall be paid to Borrower.

4.06 Borrower as Tenant Holding Over. In the event of any such public sale pursuant to the aforesaid power of sale and agency, Borrower shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of the law of the State of North Carolina applicable to tenants holding over.

4.07 Waiver of Appraisement, Valuation, Etc. Borrower agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower shall or will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed, or the absolute sale of the Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Deed marshalled upon any foreclosure or sale under the power herein granted.

4.08 Waiver of Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, including North Carolina, in and to the Property as against the collection of the Secured Obligations, or any part thereof.

4.09 Leases. Lender is authorized, at its option, to instruct Trustee to foreclose this Deed subject to the rights of any tenants of the Improvements, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by

Borrower, a defense to any proceedings instituted by Lender or Trustee to collect the Secured Obligations.

4.10 Discontinuance of Proceedings. In case Lender or Trustee shall have proceeded to enforce any right, power or remedy under this Deed by receiver, entry or otherwise or in the event Trustee, at Lender's request, commences advertising of the intended exercise of power of sale, entry or otherwise, and such proceeding or advertisement shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case (i) Borrower, Trustee and Lender shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Lender and Trustee shall continue as if no such proceeding had been taken, (iii) each and every Event of Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall and shall be deemed to be a continuing Event of Default, (iv) neither the Note, this Deed nor the Loan Documents shall be affected by such withdrawal, discontinuance or abandonment, and (v) Borrower shall pay all expenses incurred by the Lender and Trustee, including a reasonable Trustee's fee and reasonable attorneys' fees actually incurred (together with reasonable appellate counsel fees actually incurred, if any); and Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

4.11 Remedies Cumulative. Subject to Paragraph 5.03 hereof, no right, power or remedy conferred upon or reserved to Lender or Trustee by this Deed is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

4.12 Waiver.

(a) No delay or omission of Lender, Trustee or of any holder of the Note to exercise any right, power or remedy accruing upon any breach or Default or Event of Default hereunder or under the Note or any of the Loan Documents shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of or acquiescence in any such breach or default or Event of Default; and every right, power and remedy given by this Deed to Lender or Trustee may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, expressed or implied, by Lender or Trustee to or of any Event of Default by Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other Event of Default by Borrower hereunder. Failure on the part of Lender or Trustee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such action or failure to act continues, shall not constitute a waiver by Lender or Trustee of its rights hereunder or impair any rights, powers or remedies of Lender or Trustee hereunder.



(b) No act or omission by Lender or Trustee shall release, discharge, modify, change or affect the original liability under the Note, this Deed or any other obligation of any maker or of Borrower or any subsequent purchaser of the Property or any part thereof, or preclude Lender or Trustee from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence of an Event of Default then made or of any subsequent Default, or alter the security title, security interest or lien of this Deed except as expressly provided in an instrument or instruments executed by Lender or Trustee. Without limiting the generality of the foregoing, Lender (or Trustee, upon Lender's instruction) may (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Obligations; (ii) take other or additional security for the payment of the Secured Obligations; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Property from the security title, security interest or lien of this Deed; (v) consent to the filing of any map, plat or replat affecting the Property; (vi) consent to the granting of any easement or other right affecting the Property; (vii) make or consent to any agreement subordinating the security title, security interest or lien hereof; or (viii) take or omit to take any action whatsoever with respect to the Note, this Deed, the Property or any other Loan Document; all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender or Trustee from exercising any such right, power or privilege or affecting the security title, security interest or lien of this Deed. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Lender or Trustee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Secured Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing and/or discharging any liabilities, obligations or undertakings.

4.13 Suits to Protect the Property. Lender (or Trustee, upon Lender's instruction) shall have power to institute and maintain such suits and proceedings as it may deem expedient (i) to prevent any impairment of the Property by any acts which may be unlawful or constitute an Event of Default under this Deed; (ii) to preserve or protect its interest in the Property and in the income, rents, issues, profits and revenues arising therefrom; and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

4.14 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender (or Trustee, upon Lender's instruction), to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings

for the outstanding amount of the Secured Obligations at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

#### ARTICLE V MISCELLANEOUS

5.01 Lender's Powers. Without affecting the lien or security title of this Deed upon any portion of the Property not then or theretofore released as security for the full amount of all of the Secured Obligations, Lender (or Trustee, upon Lender's instruction) may, at its option, at any time and from time to time and without notice (i) release any person liable hereunder, (ii) extend the maturity or alter any of the terms of any of the Secured Obligations, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed, any parcel, portion or all of the Property, (v) take or release any other or additional security for any of the Secured Obligations, or (vi) make accommodations or other arrangements with debtors in relation thereto.

5.02 Assignment of Lender. This Deed is assignable by Lender, and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

5.03 Liability of Borrower. Lender agrees that (i) it will not seek any judgment for a deficiency against Borrower in any action to foreclose on the Property either pursuant to the remedy of foreclosure contained in this Deed or as otherwise provided by law, and (ii) except in the event of an action by Lender against Borrower for waste, conversion, breach of trust, misrepresentation or fraud, if any suit is brought on this Deed, on the Note, or under any of the Loan Documents, then any judgment, decree or other judicial or administrative order obtained in such a suit, which judgment, decree or order requires, either directly or indirectly, the payment of money, will be enforced only against the Property, the rents, issues and profits derived therefrom after the default on which such suit is based, any insurance proceeds or condemnation awards payable in respect of the Property, and any other funds held by or delivered to Lender pursuant to this Deed, including security deposits and escrow funds. Nothing herein contained shall (a) be deemed to be a release or impairment of the existence of the indebtedness evidenced by the Note or the enforceability of the lien and security interest created by this Deed or by any of the Loan Documents, nor (b) preclude Lender from exercising any of Lender's rights and remedies hereunder or under the Note or any of the Loan Documents (including, without limitation, the remedy of foreclosure), or under the terms, covenants and conditions of any lease, guaranty, bond, policy of insurance or other agreement or any other loan documents relating to any other indebtedness to which Borrower is a party, nor (c) preclude Lender from seeking, commencing or enforcing any action against Borrower personally for damages or injunctive relief if, and to the extent that: (i) Borrower collects rentals in advance in violation of the

provisions of any of the Loan Documents, or, after Borrower's default hereunder or under the Note or any of the Loan Documents, Borrower collects rentals which are not properly applied to the indebtedness evidenced hereby; (ii) Borrower holds security deposits and does not promptly deliver same to Lender if required to do so under this Deed, the Note or any of the Loan Documents; (iii) Borrower comes into possession of any funds constituting (1) income from the Property, accruing after the date of any default under the Note, this Deed or any of the Loan Documents, (2) insurance proceeds payable in respect of the Property, or (3) awards resulting from any condemnation (or settlement in lieu of condemnation) of the Property or any part thereof, and fails to promptly deliver all such sums to Lender; or (iv) Borrower fails to indemnify Lender in accordance with Paragraph 1.14 of this Deed.

#### 5.04 Repairs and Reconstruction.

(a) In the event that any portion or portions of the Improvements are damaged or destroyed or are the subject of a partial condemnation involving Property other than as described in Subparagraphs 1.08(a), (b) or (c), and such damage, destruction or condemnation results in the need for repair, rebuilding or restoration work to be performed on the Improvements (such repair, rebuilding or restoration being herein referred to as the "Work"), Lender shall allow Borrower to use the amount by which the proceeds of all insurance policies, judgments, settlements or awards exceed the cost, if any, to Lender for the recovery thereof (said net amount being hereinafter referred to as the "Proceeds") for the Work, so long as the following conditions have been met:

(i) No Default or Event of Default exists hereunder or under any of the Loan Documents;

(ii) Borrower shall have delivered evidence satisfactory to Lender that the Improvements may be reconstructed in accordance with all applicable zoning, building code and other governmental requirements and that, upon completion of the Work, the condition of the Improvements will be at least equal in value and general utility to that which existed on the date of this Deed;

(iii) Borrower shall have delivered evidence satisfactory to Lender that sufficient funds, including the Proceeds, are available to perform the Work and that the Work is capable of completion prior to the maturity of the Note; and

(iv) In the event of a casualty loss, Borrower has delivered evidence satisfactory to Lender that business income insurance proceeds payable to Borrower as a result of the damage or destruction are sufficient to cover debt service on the Note during the period the Work is being performed. In the event of a condemnation loss, Borrower has delivered evidence satisfactory to Lender

that income from the Property is sufficient to cover debt service on the Note during the period the Work is being performed.

(b) In the event that the conditions set forth in Subparagraph 5.04(a) are satisfied, Lender shall make the Proceeds available to Borrower for the Work only upon the following terms and conditions:

(i) Borrower shall execute and deliver to Lender a copy of a contract with a contractor acceptable to Lender setting forth a fixed price for the Work and a completion date acceptable to Lender;

(ii) Borrower shall demonstrate to Lender that the Proceeds are at least equal to the fixed price of the Work as set forth in said contract or shall deposit with Lender funds in the amount by which such fixed price exceeds the Proceeds;

(iii) The Proceeds, plus any additional funds deposited by Borrower, shall be received and held by Lender and disbursed in accordance with safeguards used by Lender in connection with its construction loans, including, without limitation, the following, and Borrower shall reimburse Lender for costs and expenses incurred in connection with such disbursements:

- (A) Requests for disbursements will be accompanied by lien waivers satisfactory to Lender covering that portion of the Work for which payment or reimbursement is being requested, and by evidence that no mechanics' or other liens have been filed of record since the date of the previous disbursement;
- (B) No uncured default on the part of Borrower shall exist hereunder or under any of the Loan Documents;
- (C) The Work shall be supervised by an architect or engineer and performed in accordance with plans and specifications prepared by such architect or engineer and reasonably acceptable to Lender;
- (D) The final request for disbursement shall be accompanied by a copy of such certificate or certificates as are required by law to render the occupancy of the Improvements legal; and
- (E) Upon completion of and final payment for the Work, any remaining Proceeds shall be, at the option of Lender, either applied to the Secured Obligations in such order as Lender shall elect or paid over to Borrower; provided, however, that in either event, all remaining funds

deposited by Borrower for excess costs shall be refunded to Borrower.

(iv) Borrower shall otherwise comply with the terms and conditions of this Deed and the Loan Documents during the performance of the Work.

(c) In the event any one (1) or more of the conditions set forth in Subparagraph 5.04(a) is not satisfied, Lender may elect, at its sole option and in its sole discretion, to apply the Proceeds against the balance of the Secured Obligations, whether or not due and in whatever order Lender elects, and if Lender elects to apply such proceeds to the principal payment due under the Note at maturity or to monthly payments thereunder, regular monthly payments thereunder shall continue to be due without reduction or interruption.

(d) If an Event of Default shall occur hereunder and, to the extent permitted hereby, not be cured, or if Borrower shall fail diligently to pursue and complete the Work, Lender may, at its sole option and its sole discretion, apply any undisbursed Proceeds and any of Borrower's deposits against the balance of the Secured Obligations, and if Lender elects to apply such Proceeds to the principal payment due under the Note at maturity or to monthly payments thereunder, regular monthly payments thereunder shall continue to be due without reduction or interruption. Lender shall have no obligation to pay interest to Borrower on any amounts held by Lender pursuant to this Paragraph 5.04.

**5.05 Notices, Demands and Requests.** Any and all notices, elections, demands or requests permitted or required to be made under this Deed shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally or sent by registered, certified or Express United States mail, postage prepaid, to the other party at the address set forth below, or to such other party and at such other address within the continental United States of America as may have theretofore been designated in writing. The date of receipt of such notice, election or demand shall be the earlier of (i) the date of actual receipt of such notice, election or demand, (ii) five (5) days after the date of mailing thereof by registered or certified mail, (iii) two (2) days after the date of mailing thereof by Express mail, or (iv) the date of personal delivery thereof, if applicable. For the purposes of this Deed:

The address of Borrower is:

Fox Creek Limited Partnership  
1100 Barbara Anne Circle  
Winston-Salem, North Carolina 27103

or at such other address in the United States as Borrower may, from time to time, by notice in writing designate for notice, request or demand.

The address of Lender is:

Metropolitan Life Insurance Company  
One Madison Avenue  
New York, New York 10010  
Attn: Executive Vice President  
Real Estate Investments

and

Metropolitan Life Insurance Company  
Suite 900  
400 Perimeter Center Terrace  
Atlanta, Georgia 30346  
Attn: Vice President

or at such other address in the United States as Lender may, from time to time, by notice in writing designate for notice, request or demand.

The address of Trustee is:

The Fidelity Company  
2400 Wachovia Building  
Winston-Salem, North Carolina 27101

**5.06 Attorneys' Fees.** If Lender or Trustee shall become party to or shall intervene in any action or proceeding affecting the Note, this Deed, Borrower, the Property or the title thereto, or the interest of Lender or Trustee under this Deed, or if Lender (or Trustee, at Lender's request) employs an attorney to collect any or all of the Secured Obligations or to foreclose this Deed pursuant to the power of sale herein contained or as otherwise provided by law, Lender (or Trustee, as appropriate), to the extent allowed by applicable law, shall be reimbursed by Borrower, immediately and without demand, for all reasonable costs, expenses and attorneys' fees (together with appellate counsel fees, if any) actually incurred by Lender or Trustee in any such case whether or not suit be commenced, by Lender or Trustee and the same shall be secured hereby as a further charge and lien upon the Property. For purposes of this Deed, the phrases "attorneys' fees," "reasonable attorneys' fees," and "appellate counsel fees" shall be deemed to refer to such fees as are reasonable, actually incurred and allowed by applicable law.

**5.07 Additional Security.** If the Secured Obligations are now or hereafter further secured by security agreements, chattel mortgages or other security deeds, mortgages, deeds of trust, pledges, contracts of guaranty, assignments of leases, assignments of life insurance policies, or other securities, Lender may at its option exhaust any one or more of said securities and the Property either concurrently or independently, and in such order as it may determine.

5.08 Superiority of Lien. Any agreement hereafter made by Borrower and Lender pursuant to this Deed shall to the extent permitted by law be superior to the rights of the holder of any intervening lien or encumbrance.

5.09 Successors and Assigns. This Deed shall inure to the benefit of and be binding upon Borrower, Trustee and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, successors in trust and permitted assigns. Whenever a reference is made in this Deed to Borrower, Trustee or Lender, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title, successors in trust and permitted assigns of Borrower, Trustee or Lender, as the case may be.

5.10 Terminology; Captions. All personal pronouns used in this Deed whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of articles and sections are for convenience only and neither limit nor amplify the provisions of this Deed, and all references herein to articles, sections, subsections, paragraphs or subparagraphs thereof, shall refer to the corresponding articles, sections, subsections, paragraphs or subparagraphs of this Deed unless specific reference is made to articles, sections, subsections, paragraphs or subparagraphs of another document or instrument.

5.11 Severability. If any provision of this Deed, the Note or any of the other Loan Documents, or the application thereof to any person or circumstance, shall be held to be invalid or unenforceable to any extent under applicable law, the remainder of this Deed, the Note and the other Loan Documents and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

5.12 Applicable Law. This Deed shall be interpreted, construed and enforced according to the laws of the State of North Carolina, and no provision hereof shall be construed strictly against any party by reason of such party's being deemed to have drafted or structured such provision.

5.13 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement, reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender of the Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Deed to the Note shall be deemed to refer to such replacement Note.

5.14 Assignment of Lessor's Interest in Leases. Borrower has on even date herewith executed and delivered to Lender that certain Assignment of Lessor's Interest in Leases, to which reference is made for all purposes, assigning to Lender certain tenant leases and the rents, income and profits therefrom as additional security for the Secured Obligations. Borrower covenants and agrees to comply with each and every provision of said Assignment of Lessor's Interest in Leases and agrees that the occurrence of any default or event of default thereunder shall, at the option of Lender, likewise constitute an Event of Default under this Deed.

5.15 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Deed, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Obligations.

5.16 Changes. Neither this Deed nor any term hereof may be waived, changed, modified, discharged or terminated except by an instrument in writing signed by the party against which enforcement of the waiver, change, modification, discharge or termination is sought.

5.17 Substitution of Trustee. Lender has the power and shall be entitled, at any time and from time to time, in its sole discretion and without cause, to remove Trustee or any successor trustee and to substitute and appoint another trustee or trustees (either corporate or individual) in the place and stead of Trustee or any successor trustee, by written instrument duly executed and recorded in the Office of the Register of the county or counties where the Property is situated, which instrument shall be conclusive proof of the proper substitution and appointment of such successor trustee or trustees, who shall have all the rights, title, estate, powers, duties and privileges of the predecessor trustee, without the necessity of any conveyance from such predecessor.

BY EXECUTION OF THIS DEED, BORROWER EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND THE POWER OF ATTORNEY GIVEN HEREIN TO TRUSTEE TO SELL THE PROPERTY 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 DEED; (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 LENDER OR TRUSTEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO LENDER OR TRUSTEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE PROVIDED IN THIS DEED, 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 THE BORROWER HAS READ THIS DEED AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS DEED AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO BORROWER AND BORROWER HAS CONSULTED WITH COUNSEL OF THE BORROWER'S CHOICE PRIOR TO EXECUTING THIS DEED; 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 DEED IS VALID AND ENFORCEABLE BY LENDER OR TRUSTEE AGAINST BORROWER IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

IN WITNESS WHEREOF, Borrower, acting by and through its general partners, has caused this Deed to be duly executed, sealed and delivered, as of the day and year first above written.

BORROWER:

✓ FOX CREEK LIMITED PARTNERSHIP,  
a limited partnership created  
pursuant to the laws of the  
state of Illinois (SEAL)

✓ By: O&R Carolina, Inc., a  
corporation created pursuant  
to the laws of the State of  
Illinois, General Partner

By: William Han  
Title: PRESIDENT

Attest: Maryann Olmstead  
Title: Secretary

[CORPORATE SEAL]

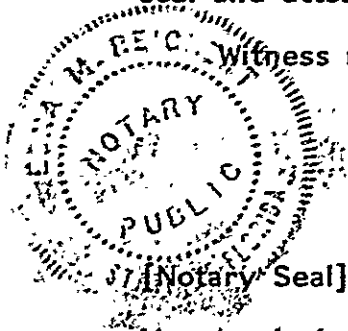
By: Jerry Oakley (SEAL)  
Jerry Oakley General Partner

Q25ML65  
29010.174

STATE OF FLORIDA

COUNTY OF Hillsborough

I, Edward M. Reichert, a Notary Public, hereby certify that C. Warren Olanow personally came before me this day and acknowledged that he is the President of O&R Carolina, Inc., an Illinois corporation, and that by authority duly given and as the act of said corporation and as the act of Fox Creek Limited Partnership, an Illinois limited partnership in which the corporation is a general partner, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its President.



Witness my hand and notarial seal, this 27 day of February, 1988.

Edward M. Reichert  
Notary Public

My commission expires:

Notary Public, State of Florida  
My Commission Expires May 27, 1991  
Renewed from FIVE (5) Year Insurance Term

STATE OF NORTH CAROLINA

COUNTY OF Forsyth

I, Barbara R. Gibson, a Notary Public, hereby certify that Jerry Oakley personally came before me this day and acknowledged that he is a General Partner of FOX CREEK LIMITED PARTNERSHIP, an Illinois limited partnership and that by authority duly given and as the act of FOX CREEK LIMITED PARTNERSHIP, the foregoing instrument was signed with its name and attested by himself as its General Partner.

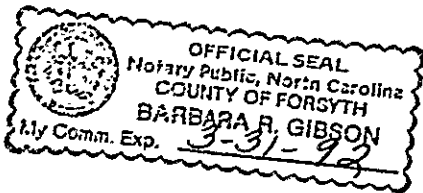
Witness my hand and notarial seal, this 2nd day of March, 1988.

Barbara R. Gibson  
Notary Public

[Notary Seal]

My commission expires:

3-31-92



STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate 5 of Edna M. Reichert, D. O. (here give name and official title of the officer signing the certificate, passed upon)  
Hillsborough Co. Fla. & Barbara R. Gibson, N.C.  
Forsyth Co. PRESENTED FOR  
REGISTRATION  
is (are) certified to be correct. This the 2nd day of March 19 88  
AND RECORDED

MAR 3 9 42 AM '88

L. E. Speas, Register of Deeds

By Janet Bottoms Deputy Assistant

Probate and Filing Fee \$ 80.00 REGISTER OF DEEDS  
FORSYTH CTY. N.C.

BOOK 1635 P 0415

## EXHIBIT A

ALL THAT TRACT OR PARCEL OF LAND lying and being in Forsyth County, North Carolina and being more particularly described as follows:

BEGINNING at an iron stake in the Western right-of-way line of Jonestown Road, said iron stake being in the Southern line of Mildred T. Sapp property as shown on map entitled "As Built" Fox Creek, recorded in Plat Book 32, Page 139; Thence; with the Western right-of-way of Jonestown Road, the two following courses, S 19° 04' 17" W 66.26 ft. chord and S 16° 39' 49" W 57.12 ft. chord to an iron stake in the Western right-of-way of Jonestown Road and being in the Northern line of Betty T. Myers; thence; with Myers line S 71° 38' 23" W 386.25 ft. to a concrete monument, the Northwest corner of Betty T. Myers; thence; S 8° 54' 27" E 155.85 ft. to a monument, the Southwestern corner of Myers in the Northern line of Gladys R. Jones; thence; North 85° 27' 59" W 1149.10 ft. to a rock, corner with Thomas E. Shutt; thence; N 4° 42' 33" E 473.97 ft. to an existing iron stake; thence S 83° 41' 00" E 1,349.62 ft. to an existing iron stake, the Southwest corner of Mildred T. Sapp; thence; S 81° 30' 44" E 147.27 ft. to an iron stake in the Western right-of-way line of Jonestown Road, the point and place of BEGINNING, containing 13.446 acres, more or less, in accordance with a survey made by Kenneth L. Foster, RLS, dated February 3, 1986, bearing Project No. 5054-86D. For further reference see Deed Book 1520, page 835 of the Forsyth County Registry. Also see Block 3899 of the Forsyth County Tax Maps, Lot 113. 1100 Barber Ave Circle, Winston-Salem, NC. 27103

1635P0416

EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. Taxes subsequent to the year 1987, not yet due and payable.
2. Easement to Summit Cable Television, recorded in Book 1537, page 1421, Forsyth County Registry, North Carolina.
3. Easement to Duke Power Company recorded in Book 390, page 157, Forsyth County Registry, North Carolina.
4. Easement to Southern Bell Telephone and Telegraph Company recorded in Book 480, page 343, Forsyth County Registry, North Carolina.
5. Easement ten (10) feet in width granted to Thomas E. Shutt, et ux and Flora B. Shutt (Widow), recorded in Book 1583, page 720, Forsyth County Registry, North Carolina.
6. Twenty-five (25) foot easement for access and utilities as shown on plat recorded in Plat Book 30, page 175; sanitary sewer easement with manholes located therein, water easement and storm drains as shown on survey dated February 10, 1988; and right-of-way of Jonestown Road as shown on survey dated February 10, 1988.
7. Riparian rights of the downstream land owners in the continued uninterrupted flow of stream crossing a portion of the subject property, as shown on survey prepared by Kenneth Lee Foster, registered land surveyor dated February 10, 1988.
8. Rights of tenants as tenants only under unrecorded leases.

*For Creek United  
Church  
by [signature]*

9. Dedication of Streets to the City of Winston-Salem, North Carolina recorded in Book 1634, page 1915 and 1916.
10. UCC Filing in favor of Metropolitan Life Insurance Company recorded in Book 1634, page 3991.

1635P0417

EXHIBIT "C"

Schedule 1

(Description of "Debtor" and "Secured Party")

A. Debtor:

1. Name and Identity or Corporate Structure: FOX CREEK LIMITED PARTNERSHIP, a limited partnership created pursuant to the laws of the State of Illinois, having two general partners who are O & R Carolina, Inc., a corporation created pursuant to the laws of the State of Illinois, and Jerry Oakley, an individual resident of the State of North Carolina.
2. The principal place of business and chief executive office of Debtor in the State of North Carolina is located at: 1100 Barbara Anne Circle, Winston-Salem, North Carolina 27103

- B. Secured Party: METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation.

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Schedule 2

(Notice Mailing Addresses of "Debtor" and "Secured Party")

A. The mailing address of Debtor is:

Fox Creek Limited Partnership  
1100 Barbara Anne Circle  
Winston-Salem, North Carolina 27103

B. The mailing address of Secured Party is:

One Madison Avenue,  
New York, New York 10010  
Attention: Executive Vice President  
Real Estate Investments

with a duplicate copy to:

400 Perimeter Center Terrace  
Suite 900  
Atlanta, Georgia 30346  
Attention: Vice President