

ENVELOPE

PREPARED BY AND  
UPON RECORDATION RETURN TO:

THE MILLER-HOGUE LAW FIRM, P.C.  
1130 Harding Place  
Charlotte, North Carolina 28204  
Attention: Janeen Miller-Hogue, Esq.  
704.307.4330



**2008033564 00094**

FORSYTH CO, NC FEE \$35.00  
PRESENTED & RECORDED:

**06-27-2008 10:59 AM**

KAREN GORDON  
REGISTER OF DEEDS  
BY: BETTY C CAMPBELL  
DPT

**BK: RE 2841**

**PG: 785-792**

LOAN NO.  
4000047600

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MODIFICATION TO REAL ESTATE DEED OF TRUST AND ASSIGNMENT OF LEASES AND  
RENTS

by and between

JONESTOWN RETAIL INVESTMENT, LLC

as Grantor

and

NEWDOMINION BANK,

as Beneficiary

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Dated as of June 6, 2008

NO TITLE SEARCH WAS REQUESTED OR PERFORMED

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## MODIFICATION TO REAL ESTATE DEED OF TRUST AND ASSIGNMENT OF LEASES AND RENTS

This Modification to Real Estate Deed of Trust and Assignment of Leases and Rents (this "Modification") is made and entered into as of this 6th day of June, 2008, by and between,

JONESTOWN RETAIL INVESTMENT, LLC, a North Carolina limited liability company (hereinafter referred to as "Grantor"), having a business address of 3611 Mount Holly-Huntersville Road, Suite 122, Charlotte, North Carolina 28216;

NEWDOMINION BANK, a North Carolina banking corporation (hereinafter referred to as "Beneficiary"), having a business address of 1100 Kenilworth Avenue, Charlotte, North Carolina 28204; and

X HOLDINGS, LLC, a North Carolina limited liability company, trustee for Beneficiary of the hereinafter described Original Deed of Trust (the "Trustee"), having a business address of 3611 Mount Holly-Huntersville Road, Suite 122, Charlotte, North Carolina 28216.

**WHEREAS**, on or about May 9, 2006, Borrower executed a promissory note in the original principal amount of \$1,950,000.00 (the "Original Note"), payable to the order of Beneficiary, as said Original Note is secured in part by that certain real property owned by the Grantor, known as Centre Stage at Jonestown Shopping Center in Winston-Salem, Forsyth County, North Carolina as further described on the legal description as set forth on Exhibit A attached hereto and incorporated herein by reference thereto (the "Property") pursuant to that certain Real Estate Deed of Trust of even date therewith, recorded in Book 2660 at Page 3981 of the Forsyth County, North Carolina Register of Deeds Office (the "Original Deed of Trust") and as further secured by that certain Assignment of Leases and Rents of even date therewith recorded in Book 2660 at Page 3988 of the Forsyth County, North Carolina Register of Deeds Office (the "Original Assignment of Leases and Rents");

**WHEREAS**, Beneficiary and Grantor desire to reduce the principal amount of the Original Note to One Million Eight Hundred and Fifty Thousand and 00/100 Dollars (\$1,850,000.00) as evidenced by that certain Commercial Debt Modification Agreement executed by Grantor contemporaneously herewith (hereinafter the "Note Modification") and also cause an additional promissory note in the principal amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) to be executed contemporaneously herewith (the "Additional Note");

**WHEREAS**, Grantor hereby represents, warrants, acknowledges and agrees that it derives a direct benefit from this Modification since it affords the Grantor the flexibility to use the remaining funds not yet advanced under the Original Note;

**WHEREAS**, the Grantor has requested that Beneficiary cause delivery of the Note Modification and the Additional Note and Beneficiary would not agree to issue said Note Modification and Additional Note without the Grantor entering into this Modification for the purposes set forth herein (capitalized terms used herein and not defined shall have the respective meanings set forth in the Original Note, Original Deed of Trust and the Original Assignment of Leases and Rents, as applicable).

**NOW THEREFORE**, intending to be legally bound and in consideration of the premises herein stated and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Beneficiary agree that, effective as of the date hereof, the Original Note, the Original Deed of Trust and the Original Assignment of Leases and Rents are hereby amended as follows:

1. The "Note" under the Original Deed of Trust and the Original Assignment of Leases and Rents and this Modification shall mean collectively, the Original Note (as modified by this Modification and the Note Modification) and the Additional Note with said Original Deed of Trust and the Original Assignment of Leases and Rents and this Modification securing the Original Note (as modified by this Modification and the Note Modification) and Additional Note.

2. The Original Note shall be modified to incorporate the terms of this Modification and the Note Modification and the Additional Note, as applicable.

3. The Original Note (as modified by this Modification and the Note Modification) and the Additional Note are cross defaulted so a default under one shall be a default under the other affording Beneficiary the remedies under any loan document securing the same.

4. **Reaffirmation of Obligations; Modification Not to be Construed as a Novation.** The Grantor promises to pay the principal sums as set forth in the respective Original Note (as modified by this Modification and the Note Modification) and the Additional Note in accordance with the terms thereof and agrees to perform all of the requirements, conditions and obligations under the terms of the Original Deed of Trust, the Original Assignment of Rents and Leases and the Original Note (as modified by this Modification and the Note Modification) and the Additional Note, as hereby modified or supplemented, said documents being hereby ratified and affirmed. The execution and delivery hereof shall not constitute a novation or modification of the lien, encumbrance or security title of the respective Original Deed of Trust, Original Assignment of Leases and Rents or Original Note and said respective

documents shall retain their priority as originally filed for record. Grantor expressly agrees that the Original Note, Original Deed of Trust and Original Assignment of Leases and Rents are in full force and effect and that Grantor has no right to set-off, counterclaim or defense to the payment thereof. Except as specifically set forth herein, each of the terms and conditions under the Original Note, Original Deed of Trust and Original Assignment of Leases and Rents are hereby reaffirmed and remain in full force and effect.

5. **Miscellaneous**

a. This Modification shall be deemed to be a contract made under, and for all purposes shall be construed in accordance with, the laws of the State of North Carolina.

b. This Modification may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Modification may be detached from any counterpart of this Modification without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Modification identical in form hereto but having attached to it one or more additional signature pages.

c. This Modification is given by the Grantor in consideration for the loans and/or other financial accommodation given by Beneficiary to Grantor. The Grantor understands and accepts that the loans and/or financial accommodation secured hereby would not have been granted or extended, but for the execution of this Modification. In the event of a default by Grantor under the Original Note (as modified by the Note Modification) or the Additional Note, Grantor expressly acknowledges, covenants and agrees that the Original Note (as modified by the Note Modification) and the Additional Note are cross defaulted and Beneficiary shall have all rights and remedies under the Original Deed of Trust and the Original Assignment of Leases and Rents, as modified by this Modification, along with any other loan documents securing the same. The foregoing provisions are set forth and made by Grantor as an inducement to Beneficiary to enter into this Modification.

d. This Modification shall be binding upon and shall inure to the benefit of the parties and their heirs, executors, administrators, successors and assigns.

e. No representation or recommendation is made by Beneficiary, its members or agents (including its attorneys) as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. Each party acknowledges that they have had independent legal counsel concerning the contents and legal consequences of this Modification. In the event that any party has not in fact secured such counsel they hereby acknowledge that they have been advised to do so; that by signing this Modification, they may be giving up for now and all times certain rights which they may have; that they may be creating rights and obligations of which a cause of action for money damages may be awarded; that they have been offered no inducement to execute this Modification without the benefit of counsel.

6 **Guarantors Acknowledgment and Acceptance of Modification.**

WHEREAS, Andrew C. Hooker and wife, Dawn S. Hooker (each a "Guarantor" and collectively "Guarantors"), executed those certain "Guaranty of Payment Agreements" contemporaneously with the executed of the Original Note, Original Deed of Trust and Original Assignment of Leases and Rents and other loan documents executed in connection therewith to guaranty the payment and performance of the same;

WHEREAS, the Guarantors acknowledge, agree and accept that the Beneficiary would not enter into this Modification without the Guarantors' acknowledgment and acceptance of the terms of this Modification.

NOW, THEREFORE, in consideration of the existing amounts owing under the Original Note (as modified by this Modification and the Note Modification) and the Additional Note and as a condition precedent to Beneficiary's willingness to consent to this Modification, Guarantors hereby agree and accept as follows:

1. Guarantors acknowledge and accept the terms of this Modification;

3. Guarantors acknowledge and accept that the amounts due under the Original Note (as modified by this Modification and the Note Modification) and the Additional Note and the loan documents that secure the same shall continue to be secured by their personal guaranty (jointly and severally) pursuant to the Guaranty Agreements;

4. Guarantors warrant to Beneficiary that this Modification is of value to Guarantor; and

5. Each Guarantor absolutely, irrevocable and unconditionally guarantees and promises to pay and perform all of the obligations under the Original Note (as modified by this Modification and the Note Modification) and the Additional Note in the event of an event of default under any one or all of the foregoing. Beneficiary shall have the right to proceed against each Guarantor (jointly or collectively) immediately upon default by Grantor in payment or performance of any obligations and shall not be required to take any action or proceedings of any kind against Grantor or any other party liable for such Borrowers' debt or obligations or any security which Beneficiary may hold, to give notice of default to the Guarantor or any other person, or to pursue any other remedy in Beneficiary's power whatsoever. Specifically, each Guarantor waives its rights under North Carolina General Statutes Section 26-1 et seq.

[IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the day and year first written above.

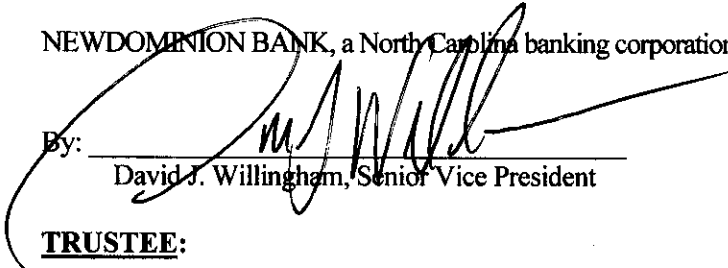
**GRANTOR:**

JONESTOWN RETAIL INVESTMENT, LLC, a  
North Carolina limited liability company

By:   
Andrew C. Hooker, Member/Manager

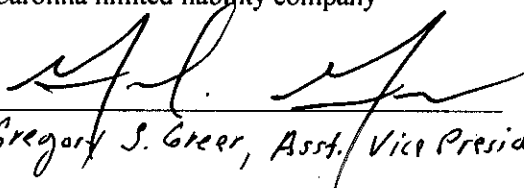
**BENEFICIARY:**

NEWDOMINION BANK, a North Carolina banking corporation

By:   
David J. Willingham, Senior Vice President

**TRUSTEE:**

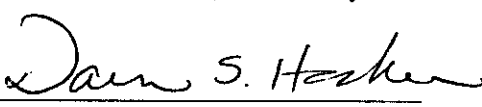
X HOLDINGS, LLC, a  
North Carolina limited liability company

By:   
Gregory S. Greer, Asst. Vice President

Guarantors are executing this Modification to acknowledge, agree and accept and agree with the terms hereof.

**GUARANTORS:**

  
Andrew C. Hooker, Individually

  
Dawn S. Hooker, Individually

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, CAROLYN T. OWENS, a Notary Public of the County and State aforesaid, certify that Andrew C. Hooker, personally appeared before me this day and acknowledged that s/he is the Member/Manager of JONESTOWN RETAIL INVESTMENT, LLC, a North Carolina limited liability company, and that s/he as the Member/Manager of the limited liability company being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal, this 16<sup>TH</sup> day of JUNE, 2008.

My commission expires: My Commission Expires SEPT. 9, 2008  
Notary Public, STATE OF SOUTH CAROLINA

Carolyn T. Owens Notary Public  
Printed Name: CAROLYN T. OWENS



STATE OF North Carolina  
COUNTY OF Mecklenburg

I, Theresa M. Bowles, a Notary Public of the County and State aforesaid, certify that David J. Willingham, personally appeared before me this day and acknowledged that s/he is the Senior Vice President of NEWDOMINION BANK, a North Carolina banking corporation, and that s/he as the Senior Vice President of the banking corporation being authorized to do so, executed the foregoing instrument on behalf of the banking corporation.

Witness my hand and official stamp or seal, this 18 day of June, 2008.

My commission expires: \_\_\_\_\_

Theresa M. Bowles Notary Public  
Printed Name: Theresa M. Bowles

**Theresa M. Bowles**  
**Notary Public**  
**Mecklenburg Co., NC**  
**Comm. Exp. 5/18/2011**

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STATE OF North Carolina  
COUNTY OF Mecklenburg

I, Theresa M. Bowles, a Notary Public of the County and State aforesaid, certify that Gregory S. Greer, personally appeared before me this day and acknowledged that s/he is the Asst. Vice Pres. of X HOLDINGS, LLC, a North Carolina limited liability company, and that s/he as the AUP of the limited liability company being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal, this 18 day of June, 2008.

My commission expires: Theresa M. Bowles, Notary Public

\_\_\_\_\_  
Notary Public  
Printed Name: Theresa M. Bowles

**Theresa M. Bowles**  
**Notary Public**  
**Mecklenburg Co., NC**  
**Comm. Exp. 5/18/2011**

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, CAROLYN T. OWENS, a Notary Public of the County and State aforesaid, certify that ANDREW C. HOOKER personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 16<sup>TH</sup> day of JUNE, 2008.

My commission expires: Notary Public, STATE OF SOUTH CAROLINA  
My Commission Expires SEPT. 9, 2008

Carolyn T. Owens Notary Public  
Printed Name: CAROLYN T. OWENS

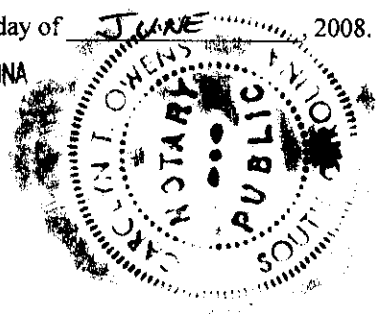
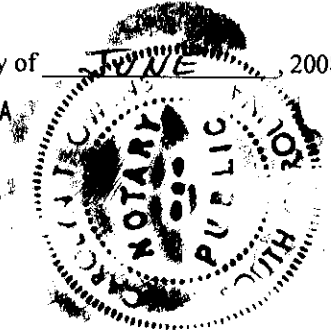
STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, CAROLYN T. OWENS, a Notary Public of the County and State aforesaid, certify that DAWN S. HOOKER personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 16<sup>TH</sup> day of JUNE, 2008.

My commission expires: Notary Public, STATE OF SOUTH CAROLINA  
My Commission Expires SEPT. 9, 2008

Carolyn T. Owens Notary Public  
Printed Name: CAROLYN T. OWENS



The foregoing Certificate(s) of

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

\_\_\_\_\_  
\_\_\_\_\_  
COUNTY REGISTER OF DEEDS FOR

By \_\_\_\_\_ Deputy/Assistant-Register of Deeds.

Exhibit A*Legal Description*

BEGINNING at an iron stake in the eastern right of way line of Jonestown Road, said stake being located N 32°02'23"E, 200.15' from an existing iron stake, having North Carolina Grid Coordinates of North 848,411.492 feet, East 1,604,732.581 feet and being the southwest corner of Lot 1, Block 6187; thence with the eastern right of way of Jonestown Road the two (2) following courses and distances N 31°55'19"E 512.33' to an existing iron stake; thence on a curve to the left, having a radius of 1330', 79.38' a chord bearing and distance of N 30°20'00"E, 79.37' to an existing iron stake; thence N 82°09'51"E, 17.36' to an iron stake in the southern right of way of Mar-Don Drive; thence with the southern right of way of Mar-Don Drive S 43°11'52"E, 290.52' to an existing iron stake in the right of way of Mar-Don Drive and the center of the former right of way of LaHoma Lane (now closed) and the northwest corner of lot 112; thence with the western property lines of lots 112, 111, 110, 109 & 108 Tax Block 3940, S 02°30'09"W, 803.45' to an existing iron stake in the northern right of way of US Highway 421; thence with the northern right of way of US Highway 421 on a curve to the right, with a radius of 1354.39', 318.47' passing existing iron stakes at the four (4) following chord bearings and distances N 88°53'19"W, 30.01' to an existing iron stake; N 86°08'38"W, 100.03' to an existing iron stake; thence N 81°58'23"W, 100.02' to an existing iron stake; and N 77°48'01"W, 88.36' to an existing right of way monument in said right of way; thence continuing with said right of way the three (3) following courses and distances S 13°54'02"W, 28.00' to an existing iron stake; thence N 76°01'05"W, 141.22' to a right of way monument and N 76°05'42" W, 157.17' to an existing iron stake, the southeast corner of Lien T. Nguyen Property as described in DB. 2504, Page 277, Lot no. 42J, Block 3905; thence with the eastern line of Nguyen property N 32°20'48"E, 220.36' to an existing iron stake the northeast corner of Lien T. Nguyen Property as described in DB. 2504, Page 277, and in the southern line of Lot 1, Block 6187, DB, 1701, Pg. 2771; thence S 57°09'15"E, 78.50' to an existing iron stake, the southeast corner of lot 1, Block 6187; thence N 31°55'19"E, 52.50' to an existing iron stake; thence N 02°30'09"E, 142.00' to an existing iron stake; thence N 23°36'38"W, 48.20' to an existing iron stake, and N 58°04'41"W, 95.00' to the place of BEGINNING and containing 9.194 acres more or less as shown on that certain "Centre Stage at Jonestown Shopping Center ALTA/ACSM Land Title Survey" prepared by Summit Land Surveying Company dated January 2006 and last revised May 5, 2006.

SAVE AND EXCEPT THE FOLLOWING TRACT:

THE KROGER PAD

Starting at the point of intersection of the Southern right of way line of Mar-Don Drive with the center of the former right of way of LaHoma Lane (LaHoma Lane now being closed; see recorded road closing resolution at Book 1547, Page 434); thence with the former center line of LaHoma Lane S 02°30'09"W, 494.00' to a point; thence N 87°29'51"W, 109.42' to the place of BEGINNING of the property known as "the Kroger Pad"; thence from said BEGINNING point thus established S 02°30'09"W, 192.00' to a point; thence N 87°29'51"W, 95.00' to a point; thence S 02°30'09"W, 33.00' to a point; thence N 87°29'51"W, 117.00' to a point; thence N 02°30'09"E, 33.00' to a point; thence N 87°29'51"W, 38.00' to a point; thence N 02°30'09"E,

192.00' to a point; thence S 87°29'51"E, 45.46' to a point; thence N 02°30'09"E, 12.00' to a point; thence S 87°29'51"E, 109.92' to a point; thence S 02°30'09"W, 12.00' to a point, thence S 87°29'51"E, 94.62' to the point and place of BEGINNING and containing 1.220 acres more or less as shown on that certain "Centre Stage at Jonestown Shopping Center ALTA/ACSM Land Title Survey" prepared by Summit Land Surveying Company dated January 2006 and last revised May 5, 2006.

TOGETHER WITH a nonexclusive, perpetual easement appurtenant of ingress and egress consisting of a thirty foot (30ft) right of way, the centerline of which being described as follow: BEGINNING at a point in the new proposed right of way of Jonestown Road, said point being located at North 32 degrees 17 minutes 45 seconds East 41.05 feet from a monument located at the Northeast corner of the intersection of Jonestown Road and US Highway 421, and said BEGINNING point also being located South 32 degrees 17 minutes 45 seconds West 168.45 feet from an iron stake which bears N.C. State Plane Coordinates of North 848,411.492 feet and East 1,604,732.581 feet; and running from said BEGINNING point thus established with the centerline of this easement the following two (2) calls; (1) South 31 degrees 09 minutes 44 seconds East 34.75 feet to a point; and (2) south 69 degrees 26 minutes 36 seconds East, 97.23 feet to a point in the new boundary line between V.V. Beroth Oil Company (now or formerly) and Marquis Properties-Jonestown, LTD., a Georgia Limited Partnership (now or formerly).

TOGETHER WITH that all easements, rights, title and interest contained in the Reciprocal Easement Agreement and Purchase Option by and between Kroger Co. and Marquis Properties – Jonestown, Ltd. appurtenant to the property described above, dated August 5, 1996 and recorded in Book 1557, page 1311 in the Forsyth County, North Carolina Registry.