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FORSYTH CO. NC FEE \$64.00

PRESENTED & RECORDED

08/07/2014 04:22:32 PM

C. NORMAN HOLLEMAN

REGISTER OF DEEDS

BY: OLIVIA DOYLE

ASST

**BK: RE 3191**

**PG: 1666 - 1682**

Drawn by and mail to:  
Kirk Palmer & Thigpen, P.A.  
1300 Baxter Street, Suite 300  
Charlotte, NC 28204  
Attention: J. Christian Stevenson

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT**

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT**  
dated as of August 7, 2014 (together with any amendments or modifications hereto in effect from time to time, the "Deed of Trust"), made by **PAVILION WINSTON-SALEM, LLC**, a North Carolina limited liability company ("Grantor"), whose address is 5605 Carnegie Blvd., Ste. #110, Charlotte, North Carolina 28209, in favor of **BNC CREDIT CORP.** ("Trustee"), whose address is 831 Julian Avenue, Thomasville, NC 27360 for the benefit of **BANK OF NORTH CAROLINA** ("Lender"), whose address is 5980 Fairview Road, Charlotte, NC 28210.

(This Document Serves as a Fixture Filing under Section 9-502 of the North Carolina Uniform Commercial Code and is to be filed in the real property records.)

Grantor's Organizational Identification Number: 1349858

**WITNESSETH:**

**WHEREAS**, pursuant to that certain Loan Agreement dated as of August 7, 2014 by and between Grantor and Lender (as amended, modified, restated or supplemented from time to time, the "**Loan Agreement**"), Lender agreed to make available to Grantor a loan in the maximum principal amount of up to **\$14,227,353.00** (the "**Loan**"), as evidenced by that certain Promissory Note dated the same date as the Loan Agreement, executed by Grantor payable to the order of Lender in the original principal amount of **\$14,227,353.00** (as amended, modified, restated or supplemented from time to time, the "**Note**"). Unless the context otherwise requires, all terms used herein without definition shall have the respective definitions provided therefor in the Loan Agreement; and

**WHEREAS**, Grantor is the owner of fee simple title to those certain tracts of land located in the County of Forsyth, State of North Carolina, as more particularly described in Schedule "A" attached hereto and made a part hereof (the "**Land**"); and

**WHEREAS**, to induce Lender to make the Loan and to secure payment of the Note and the other obligations described below, Grantor has agreed to execute and deliver this Deed of Trust.

**GRANTING CLAUSES**

Submitted electronically by "wyatt Early Harris wheeler LLP"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Forsyth County Register of Deeds.  
000544...

**NOW, THEREFORE**, to secure to Lender (i) the repayment of all sums due under this Deed of Trust, the Loan Agreement, the Note (and all extensions, renewals, replacements and amendments thereof) and the other Loan Documents; (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all sums due or that may become due under or in connection with any present or future swap agreements (as defined in 11 U.S.C. §101) between Grantor and Lender or its affiliates; (iv) the repayment of all reimbursement obligations due or that may become due under or in connection with any present or future letters of credit issued by Lender for the account of Grantor; and (v) all other obligations or indebtedness of Grantor to Lender of whatever kind or character and whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees (subsections (i), (ii), (iii), (iv) and (v) collectively, the **"Liabilities"**), Grantor has granted, conveyed, bargained, sold, transferred, assigned and set over and by these presents DOES HEREBY GRANT, CONVEY, BARGAIN, SELL, TRANSFER, ASSIGN AND SET OVER TO TRUSTEE, ITS SUCCESSORS AND ASSIGNS, in fee simple, all of Grantor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the **"Premises"**):

(A) The Land;

(B) Any and all buildings and improvements now or hereafter erected on, under or over the Land (the **"Improvements"**);

(C) Any and all fixtures, machinery, equipment and other articles of real, personal or mixed property, belonging to Grantor, at any time now or hereafter installed in, attached to or situated in or upon the Land, or the buildings and improvements now or hereafter erected thereon, or used or intended to be used in connection with the Land, or in the operation of the buildings and improvements, plant, business or dwelling situate thereon, whether or not such real, personal or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing (all of the foregoing herein called the **"Service Equipment"**), including without limitation: (i) all appliances, furniture and furnishings; all articles of interior decoration, floor, wall and window coverings; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers and generators; (iii) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with any construction or repair or renovation of the buildings and improvements; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports and records relating to any of the foregoing;

(D) Any and all leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of the Land, Improvements, Service Equipment or all or any other portion of the Premises and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the **"Leases"**); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Land, Improvements, Service Equipment or all or any other portion of the Premises including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents (collectively, the **"Rents"**); all of the following personal property (collectively referred to as the **"Contracts"**): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) of any nature relating to the Land, Improvements, Service Equipment or all or any other portion of the Premises or the use, occupancy, maintenance, construction, repair, operation or sale thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts and architect's agreements; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Land, Improvements, Service Equipment or all or any other portion of the Premises;

(E) Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders and appurtenances of any kind benefiting or appurtenant to the Land, Improvements or all or any other portion of the Premises; all means of access to and from the Land, Improvements or all or any other portion of the Premises, whether public or private; all streets, alleys, passages, ways, water courses, water and mineral rights relating to the Land, Improvements or all or any other portion of the Premises; all rights of Grantor as declarant or unit owner under any declaration of condominium or association applicable to the Land, Improvements or all or any other portion of the Premises including, without limitation, all development rights and special declarant rights; and all other claims or demands of Grantor, either at law or in equity, in possession or expectancy of, in, or to the Land, Improvements or all or any other portion of the Premises (all of the foregoing described in this subsection E herein called the “**Appurtenances**”); and

(F) Any and all “proceeds” of any of the above-described Land, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, which term “proceeds” shall have the meaning given to it in the Uniform Commercial Code (the “**Code**”) of the State in which the Premises is located (collectively, the “**Proceeds**”) and shall additionally include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Land, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

**TO HAVE AND TO HOLD** the above granted and conveyed Premises unto and to the proper use and benefit of Trustee, its successors and assigns, in fee simple, forever.

**IN TRUST, HOWEVER,** that if (i) all the Liabilities, including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements secured hereunder, are paid in full, (ii) each and every representation, warranty, agreement and covenant of this Deed of Trust and the other Loan Documents are complied with and abided by, and (iii) any swap agreements secured hereunder have matured or been terminated, then this Deed of Trust and the estate hereby created shall cease and be null and void and canceled of record and the absolute assignments set forth in Section 4 of this Deed of Trust shall automatically terminate and become null and void.

**AND** Grantor covenants and agrees with and represents to Lender as follows:

1. **FUTURE ADVANCES; PROTECTION OF PROPERTY.** This Deed of Trust is given wholly or partly to secure any future obligations and additional loans as well as any and all present or future advances and readvances under the Liabilities made by Lender to or for the benefit of Grantor or the Premises, to the fullest extent permitted by applicable law, including, without limitation: (a) principal, interest, late charges, fees and other amounts due under the Liabilities or this Deed of Trust; (b) all advances by Lender to Grantor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Premises; (c) all advances made or costs incurred by Lender for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, and costs incurred by Lender for the enforcement and protection of the Premises or the lien of this Deed of Trust; (d) all legal fees, costs and other expenses incurred by Lender by reason of any default or otherwise in connection with the Liabilities; and (e) as otherwise permitted pursuant to Article 7 of Chapter 45 of the North Carolina General Statutes. The maximum principal amount which may be secured hereby at any one time shall not exceed \$28,454,706.00. The time period within which such future Liabilities may be incurred and such future advances may be made shall not extend for more than thirty (30) years from the date of this Deed of Trust.

Grantor agrees that if, at any time during the term of this Deed of Trust or following a foreclosure hereof (whether before or after the entry of a final account of foreclosure), Grantor fails to perform or observe any covenant or obligation under this Deed of Trust including, without limitation, payment of any of the foregoing, Lender may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Lender shall be added to the amount secured by this Deed of Trust and the other Loan Documents (and, if advanced after the entry of a final account of foreclosure, by such judgment of foreclosure), and shall be due and payable on demand, together with interest at the

Default Rate (as defined in the Note), such interest to be calculated from the date of such advance to the date of repayment thereof.

## 2. REPRESENTATIONS, WARRANTIES AND COVENANTS.

2.1. Payment and Performance. Grantor shall (a) pay to Lender all sums required to be paid by Grantor under the Loan Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions and covenants set forth in each of the Loan Documents by which Grantor is bound; and (c) perform and comply with all of Grantor's obligations and duties as landlord under any Leases.

2.2. Seisin and Warranty. Grantor hereby warrants that (a) Grantor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Premises; (b) Grantor has the right, full power and lawful authority to grant, convey and assign the same to Trustee in the manner and form set forth herein; and (c) this Deed of Trust is a valid and enforceable first lien on the Premises. Grantor hereby covenants that Grantor shall (a) preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Trustee against all lawful claims whatsoever; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Trustee or Lender to protect fully the lien of this Deed of Trust.

2.3. Insurance. (a) Grantor shall obtain and maintain, or cause to be obtained and maintained by tenants of the Premises, at all times throughout the term of this Deed of Trust the following insurance: (i) comprehensive general public liability insurance covering all operations of Grantor; (ii) "All-Risk" fire and extended coverage hazard insurance (non-reporting Commercial Premises Policy with Special Cause of Loss form) covering the Improvements in an aggregate amount not less than 100% of the agreed upon full insurable replacement value of the Improvements, including coverage for loss of rents or business interruption; (iii) during the course of any construction, reconstruction, remodeling or repair of any Improvements, builders' all-risk extended coverage insurance (non-reporting Completed Value with Special Cause of Loss form) in amounts based upon the completed replacement value of the Improvements (excluding roads, foundations, parking areas, paths, walkways and like improvements) and endorsed to provide that occupancy by any person shall not void such coverage; (iv) if any of the Improvements are required to be insured pursuant to the National Flood Insurance Reform Act of 1994, and the regulations promulgated thereunder, flood insurance in an amount at least equal to the lesser of the agreed upon full insurable replacement value of the applicable Improvements (less any value attributable to the Land) or the maximum limit of coverage available; (v) insurance which complies with the workers' compensation and employers' liability laws of all states in which Grantor shall be required to maintain such insurance; and (vi) such other insurance as Lender may reasonably require.

(b) Each insurance policy required under this Section shall: (i) be written by an insurance company reasonably acceptable to the Lender, which is authorized or licensed to do business in the state within which the Premises is located; (ii) be for terms of a least one year, with premium prepaid; (iii) be subject to the reasonable approval of Lender as to insurance companies, amounts, content, forms of policies and expiration dates; and (iv) name Lender, its successors and assigns: (1) as an additional insured under all liability insurance policies, and (2) as the first mortgagee, under a standard non-contributory mortgagee clause, on all property insurance policies and all loss of rents or loss of business income insurance policies.

(c) Grantor further agrees that each insurance policy: (i) shall provide at least thirty (30) days prior written notice to Lender prior to any policy reduction or cancellation for any reason; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act or negligence of Grantor which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of setoff, counterclaim, deduction or subrogation against Grantor; and (iv) shall exclude Lender from the operation of any coinsurance clause.

(d) At least thirty (30) days prior to the expiration of any insurance policy, Grantor shall furnish evidence satisfactory to Lender that such policy has been renewed or replaced or is no longer required.

(e) Notwithstanding the foregoing, in the event that Grantor fails to maintain insurance in accordance with this Section 2.3., and Lender elects to obtain insurance to protect its interests hereunder, Lender may obtain insurance in any amount and of any type Lender deems appropriate to protect Lender's interest only and Lender shall have no duty or obligation to Grantor to maintain insurance in any greater amount or of any other type for the benefit of Grantor. All insurance premiums incurred or paid by Lender shall be at Grantor's sole cost and expense in accordance with Section 1 hereof. Lender's election to obtain insurance shall not be deemed to waive any Event of Default (as hereinafter defined) hereunder.

(f) Grantor may carry any policy of insurance required to be carried hereunder as part of a so-called blanket policy of insurance covering multiple locations, as long as the coverage limites set forth in this Deed of Trust are satisfied.

2.4. **Taxes and Other Charges.** Grantor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Premises when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Premises. Notwithstanding the foregoing, Grantor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such taxes, assessments, water and sewer rents, or other governmental charges, provided that: (a) Grantor has established on its books or by deposit of cash with Lender, at the option of Lender after an Event of Default, a reserve for the payment thereof in such amount as Lender may require; and (b) such contest operates to prevent collection, stay any proceedings which may be instituted to enforce payment of such item, and prevent a sale of the Premises to pay such item. Grantor shall promptly provide to Lender, upon request, copies of receipted tax bills, canceled checks or other evidence satisfactory to Lender evidencing that such taxes, assessments, water and sewer rents, and other governmental charges have been timely paid. Grantor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Premises or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Premises, or any part thereof, by reason of this Deed of Trust.

2.5. **Escrows.** If required by Lender after the occurrence of an Event of Default, Grantor shall pay to Lender at the time of each installment of principal and interest due under the Note and the Loan Agreement, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of taxes and assessments levied or assessed against the Premises, and/or (b) the premiums which will next become due on the insurance policies required by this Deed of Trust, all in amounts as estimated by Lender, less all sums already paid therefor or deposited with Lender for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Lender to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, as the same become due, Grantor shall pay to Lender, upon request, such additional amounts as Lender shall estimate to be sufficient to make up any deficiency. No amount paid to Lender hereunder shall be deemed to be trust funds but may be commingled with general funds of Lender and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Lender shall have the right, at its sole discretion, to apply any amounts so held against the Liabilities.

2.6. **Transfer of Title.** Without the prior written consent of Lender in each instance unless otherwise permitted in the Loan Agreement or a Permitted Transfer (as defined below), Grantor shall not cause or permit any transfer of the Premises or any part thereof, whether voluntarily, involuntarily or by operation of law (a "**Transfer**"), nor shall Grantor enter into any agreement or transaction to Transfer, or accomplish in form or substance a Transfer, of the Premises. A Transfer of the Premises includes: (a) the direct or indirect sale, transfer or conveyance of the Premises or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Premises; (c) if Grantor, or any general partner or member of Grantor, is a corporation, partnership, limited liability company or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity; (d) if Grantor, or any general partner or member of Grantor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Grantor leasing all or a substantial part of the Premises for other than actual occupancy by a

space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases. For purposes of the Loan Documents, the term “**Permitted Transfer**” means any of the following: (a) a Transfer under any will, trust or applicable law of descent arising because of the death of an individual, provided (i) the Lender is given prompt notice of the Transfer and the transferee and (ii) managerial control of the Grantor remains unchanged or is otherwise satisfactory to the Lender following the Transfer; (b) a Transfer of personal property or fixtures which, in the reasonable judgment of the Grantor, have become obsolete or unfit for use or which are no longer useful in the Grantor’s operations, on the condition that the Grantor shall replace such personal property or fixtures by, or substitute for the same, other personal property or fixtures (not necessarily of the same character) owned by the Grantor, which shall (i) be of at least equal value to the personal property or fixtures disposed of, and (ii) perform a function or serve a purpose the same as, similar to or related to that of the personal property or fixtures disposed of; (c) a contract for the sale of all or a portion of the Premises so long as the Net Sale Proceeds of such sale are sufficient to pay the applicable Release Price and satisfy all other requirements for such release as set forth in the Loan Agreement, and the Grantor will not otherwise be in default under the Loan Documents, including the Debt Service Coverage Ratio requirements in the Loan Agreement; (d) a lease for all or a portion of the Premises permitted pursuant to the terms of the Loan Agreement; or (e) a transfer of the equity ownership interest of Grantor permitted pursuant to Section 6.07 of the Loan Agreement.

2.7. **No Encumbrances.** Except for (a) the Permitted Liens, (b) utility easements for utilities serving the Project that do not grant the beneficiary of any such easement lien rights or the right to relocate or demolish any vertical improvements on the Real Property, and (c) as may otherwise be permitted in the Loan Agreement, Grantor shall not create or permit to exist any mortgage, deed of trust, pledge, lien, security interest (including, without limitation, a purchase money security interest), encumbrance, attachment, levy, distraint or other judicial process on or against the Premises or any part thereof (including, without limitation, fixtures and other personalty), whether superior or inferior to the lien of this Deed of Trust, without the prior written consent of Lender.

2.8. **Removal of Fixtures.** Except as part of a Permitted Transfer, Grantor shall not remove or permit to be removed from the Premises any fixtures presently or in the future owned by Grantor as the term “fixtures” is defined by the law of the state where the Premises is located (unless such fixtures have been replaced with similar fixtures of equal or greater utility and value).

2.9. **Maintenance and Repair; Alterations.** (a) Grantor shall (i) abstain from and not permit the commission of waste in or about the Premises; (ii) keep, or cause to be kept, the Premises, at Grantor’s own cost and expense, in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements, whether or not insurance proceeds are available therefor; and (iv) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Premises. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Premises and shall be covered by the lien of this Deed of Trust.

(b) Lender, and any persons authorized by Lender, shall have the right, but not the obligation, to enter upon the Premises at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals, in the sole discretion of Lender, the necessity for any repair, alteration, replacement, clean-up or maintenance, Grantor shall, at the discretion of Lender, either: (i) take prompt action to cause such work to be effected within thirty (30) days, but if such work cannot reasonably be completed within such thirty (30) day period, Grantor shall commence such work within thirty (30) days and thereafter diligently prosecute and complete the same within ninety (90) days of receipt of written notice from the Bank or such longer period of time as the Bank in its sole discretion may agree; or (ii) after an Event of Default and at the Lender’s request, promptly establish an interest bearing reserve fund with Lender in an amount determined by Lender for the purpose of effecting such work.

2.10. **Compliance with Applicable Laws.** Grantor agrees to observe, conform and comply, and to cause its tenants to observe, conform and comply with all federal, state, county, municipal and other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Hazardous Materials Laws (as defined in the Environmental Indemnity Agreement) and the Americans with Disabilities Act of 1990

(collectively, the “**Legal Requirements**”), now or hereafter affecting all or any part of the Premises, its occupancy or the business or operations now or hereafter conducted thereon and the personalty contained therein, within such time as required by such Legal Requirements. Grantor represents and warrants that it has caused the Premises to be designed, and the Premises currently is, in compliance with all Legal Requirements applicable to the Premises.

2.11. **Damage, Destruction and Condemnation.** (a) If all or any part of the Premises shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Premises shall be taken or condemned by a competent authority for any public or quasi-public use or purpose, there shall be no abatement or reduction in the amounts payable by Grantor under the Loan Documents and Grantor shall continue to be obligated to make such payments.

(a) If all or any part of the Premises is partially or totally damaged or destroyed, Grantor shall give prompt notice thereof to Lender, and Lender may make proof of loss if not made promptly by Grantor. Grantor hereby authorizes and directs any affected insurance company to make payment under such insurance, including return of unearned premiums, to Lender instead of to Grantor and Lender jointly, and Grantor appoints Lender as Grantor’s attorney-in-fact to endorse any draft thereof, which appointment, being for security, is coupled with an interest and irrevocable. Lender is hereby authorized and empowered by Grantor to settle, adjust or compromise, in consultation with Grantor, any claims for loss, damage or destruction to the Premises. Grantor shall pay all costs of collection of insurance proceeds payable on account of such damage or destruction. Grantor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Lender as security for payment of the Liabilities. Lender shall have the option, in its sole discretion, of paying or applying all or any part of the insurance proceeds to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Premises in accordance with Lender’s standard construction loan disbursement conditions and requirements; or (iii) Grantor. Notwithstanding the foregoing, if at any time during the term of this Deed of Trust the whole or materially all of the Premises shall be damaged or destroyed, the Lender may, at its discretion, apply such insurance proceeds which it receives to payment of the Liabilities and any balance then remaining shall be paid to the Grantor as its interest may appear. In the event that the amount of the proceeds received by the Lender shall not be sufficient to pay the then unpaid principal balance of the Liabilities, with the accrued interest thereon, and any other sums secured by this Deed of Trust, the Grantor shall, within ten (10) days after the application of the award or proceeds as aforesaid, pay such deficiency to the Lender. For the purposes of this Section 2.11 “materially all of the Premises” shall be deemed to have been taken if the portion of the Premises taken shall preclude, in the Lender’s sole judgment, the effective use of the Premises as an economically viable unit for its intended purposes.

(b) Immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of all or any part of the Premises, Grantor shall give notice to Lender. Grantor shall, at its sole cost and expense, diligently prosecute any such proceeding and shall consult with Lender, its attorneys and experts, and shall cooperate with it in the defense of any such proceeding. Lender and Trustee may participate in any such proceeding and Grantor shall from time to time deliver to Lender all instruments requested by it to permit such participation. Grantor shall not, without Lender’s prior written consent, enter into any agreement (i) for the taking or conveyance in lieu thereof of all or any part of the Premises, or (ii) to compromise, settle or adjust any such proceeding. All awards and proceeds of condemnation are hereby assigned to Lender, and Grantor, upon request by Lender, agrees to make, execute and deliver any additional assignments or documents necessary from time to time to enable Lender to collect the same. Such awards and proceeds shall be paid or applied by Lender, in its sole discretion, to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Premises in accordance with Lender’s standard construction loan disbursement conditions and requirements; or (iii) Grantor. Notwithstanding the foregoing, if at any time during the term of this Deed of Trust title to the whole or materially all of the Premises shall be taken in any condemnation proceedings or by agreement between the Grantor and the Lender and those authorized to exercise such right, the Lender may, at its discretion, apply such award or proceeds which it receives to payment of the Liabilities and any balance then remaining shall be paid to the Grantor as its interest may appear. In the event that the amount of the award or proceeds received by the Lender shall not be sufficient to pay the then unpaid principal balance of the Liabilities, with the accrued interest thereon, and any other sums secured by this Deed of Trust, the Grantor shall, within ten (10) days after the application of the award or proceeds as aforesaid, pay such deficiency to the Lender.

(c) Nothing herein shall (i) relieve Grantor of its duty to repair, restore, rebuild or replace the Premises following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding or replacement, unless the Lender elects to apply any such proceeds or award to pay the then unpaid principal balance of the Liabilities or (ii) limit the Lender's rights and remedies under any of the other Loan Documents.

(d) Notwithstanding the provisions of subparagraphs (b) and (c) above, in the event that all or any part of the Premises is damaged by fire or other casualty or is condemned, and Grantor promptly notifies Lender of its desire to repair and restore the same, then provided that the following terms and conditions are and remain fully satisfied by Grantor, Lender shall disburse insurance proceeds for repair and restoration of the Premises against completed work in accordance with Lender's standard construction loan disbursement conditions and requirements (which may be contained in an agreement which Lender may require Grantor to sign); otherwise, and to the extent of any excess proceeds, Lender shall have the right to apply the proceeds toward reduction of the Liabilities, and in the event that the amount of the award or proceeds received by the Lender shall not be sufficient to pay the then unpaid principal balance of the Liabilities, the Grantor shall, within ten (10) days after the application of the award or proceeds as aforesaid, pay such deficiency to the Lender:

(i) no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under any of the Loan Documents shall have occurred;

(ii) Grantor shall have delivered evidence satisfactory to Lender that the Premises can be fully repaired and restored at least six (6) months prior to the maturity of the Loan;

(iii) no Lease is cancelable or terminable by the tenant or Grantor on account of the casualty or, if it is, the tenant or Grantor, as applicable, has waived in writing its right to cancel;

(iv) the work is performed under a stipulated sum or guaranteed maximum price contract satisfactory to Lender in accordance with plans and specifications and a budget satisfactory to Lender and in compliance with all Legal Requirements;

(v) Grantor shall have deposited with Lender for disbursement in connection with the restoration the greater of: (1) the applicable deductible under the insurance policies covering the loss; or (2) the amount by which the cost of restoration of the Premises to substantially the same value, condition and character as existed prior to such damage is estimated by Lender to exceed the net insurance proceeds available for restoration; and

(vi) Grantor has paid as and when due all of Lender's costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering and legal fees. If not paid on demand, and at Lender's option, such costs may be deducted from the disbursements made by Lender or added to the sums secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

2.12. Required Notices. In addition to any notice requirements set forth in the Loan Agreement, Grantor shall immediately notify Lender of any of the following: (a) a substantial change in the occupancy or use of all or any part of the Premises; (b) receipt of any notice from the holder of any lien or security interest in all or any part of the Premises; (c) a pending or threatened condemnation of all or any part of the Premises; (d) a fire or other casualty causing damage to all or any part of the Premises; (e) receipt of any notice with regard to any Hazardous Materials (as defined in the Environmental Indemnity Agreement) or any other environmental matter affecting the Premises or Grantor's interest therein; (f) receipt of any request for information, demand letter or notification of potential liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Materials (as defined in the Environmental Indemnity Agreement) on the Premises or at any other site owned or operated by Grantor; (g) receipt of any notice from any tenant of all or any part of the Premises alleging a default, failure to perform or any right to terminate its lease or to set-off rents; or (h) receipt of any notice of the imposition of, or of threatened or actual execution on, any lien on or security interest in all or any part of the Premises.



2.13. Books and Records; Inspection. In addition to any rights granted the Lender in the Loan Agreement, Grantor shall keep and maintain (a) complete and accurate books and records, in accordance with generally accepted accounting principles consistently applied, reflecting all items of income and expense in connection with the operation of the Premises, and (b) copies of all written contracts, leases and other agreements affecting the Premises. Lender or its designated representatives shall, upon reasonable prior notice to Grantor, have (a) the right of entry and free access to the Premises during business hours (which may be without notice in any case of emergency) to inspect the Premises, and (b) the right to examine and audit all books, contracts and records of Grantor relating to the Premises.

2.14. Right to Reappraise. Lender shall have the right to conduct or have conducted by an independent appraiser acceptable to Lender appraisals of the Premises in form and substance satisfactory to Lender at the sole cost and expense of Grantor; provided, however, that Grantor shall not be obligated to bear the expense of such appraisals so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule or regulation of any governmental authority having jurisdiction over Lender. The cost of such appraisals, if chargeable to Grantor as aforesaid, shall be added to the Liabilities and shall be secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

3. SECURITY AGREEMENT. This Deed of Trust constitutes a security agreement under the Code and shall be deemed to constitute a fixture financing statement. Grantor, as debtor, hereby grants to Lender, as secured party, a security interest in the personal and other property (other than real property) included in the Premises, and all replacements of, substitutions for, and additions to, such property, and the proceeds thereof. Grantor shall, at Grantor's own expense, execute, deliver, file and refile any financing or continuation statements or other security agreements Lender may require from time to time to perfect, confirm or maintain the lien of this Deed of Trust with respect to such property. A photocopy of an executed financing statement shall be effective as an original. Without limiting the foregoing, Grantor hereby irrevocably appoints Lender attorney-in-fact for Grantor to execute, deliver and file such instruments for or on behalf of Grantor at Grantor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable. With respect to goods that become fixtures after the recording of this Deed of Trust and before the completion of construction of the Improvements, this Deed of Trust is, and shall be construed to be, a "Construction Mortgage" under the Code, and any deed of trust given to refinance this Deed of Trust shall be, and shall be construed to be, a deed of trust given to refinance a construction mortgage.

#### 4. ASSIGNMENT OF LEASES.

4.1. Grantor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Lender all of Grantor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Grantor shall have the privilege under a revocable license granted hereby to operate and manage the Premises and to collect, as they become due, but not prior to accrual, the Rents. Grantor shall receive and hold such Rents in trust as a fund to be applied, and Grantor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Premises and the payment of interest, principal and other sums becoming due under the Liabilities, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Grantor shall automatically, without notice or any other action by Lender, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Grantor shall be held in trust by Grantor for the sole and exclusive benefit of Lender. Nothing contained in this Section 4.1, and no collection by Lender of Rents, shall be construed as imposing on Lender any of the obligations of the lessor under the Leases.

4.2. Grantor shall timely perform all of its obligations under the Leases. Grantor represents and warrants that: (a) Grantor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; (b) no other assignment of any interest in any of the Leases or Rents has been made; (c) there are no leases or agreements to lease all or any portion of the Premises now in effect except the Leases, true and complete copies of which have been furnished to Lender, and no written or oral modifications have been made thereto; (d) there is no existing default by Grantor or by any tenant under any of the Leases, nor has any event occurred which due to the passage of time, the giving or failure to give notice, or both, would constitute a default under any of the Leases and, to the best of Grantor's knowledge, no tenant has any defenses, set-offs or counterclaims against Grantor; (e) the Leases are in full force and effect; and (f) Grantor has not accepted Rent

under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised.

4.3. Grantor shall not, without the prior written consent of Lender: (a) enter into any lease of all or any portion of the Premises; (b) amend, modify, terminate or accept a surrender of any Lease; or (c) collect or accept rent from any tenant of the Premises for a period of more than one month in advance. Any of the foregoing acts, if done without the prior written consent of Lender in each instance, shall be null and void.

5. **DECLARATION OF NO OFFSET.** Grantor represents to Lender that Grantor has no knowledge of any offsets, counterclaims or defenses to the Liabilities either at law or in equity. Grantor shall, within three (3) days upon request in person or within seven (7) days upon request by mail, furnish to Lender or Lender's designee a written statement in form satisfactory to Lender stating the amount due under the Liabilities and, to Grantor's knowledge, whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

6. **ENVIRONMENTAL MATTERS.** Upon Lender's request, Grantor has executed and delivered an Environmental Indemnity Agreement satisfactory in form and substance to Lender, to more fully reflect Grantor's representations, warranties, covenants and indemnities with respect to environmental matters (the "Environmental Indemnity Agreement").

7. **EVENTS OF DEFAULT.** Each of the following shall constitute a default (each, an "Event of Default") hereunder:

7.1. The occurrence or existence of any of the events or conditions described in Article VII of the Loan Agreement as an "Event of Default";

7.2. A breach of any covenant contained in Sections 2.6 or 2.7 hereof; or

7.3. A breach by Grantor of any other term, covenant, condition, obligation or agreement under this Deed of Trust, and the continuance of such breach for a period of thirty (30) days; provided, however, that if such default cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied, such default shall not constitute an Event of Default if the Grantor shall immediately upon receipt of such notice commence take commercially reasonable steps to cure such default and shall thereafter diligently prosecute and complete the same within ninety (90) days of receipt of written notice from the Lender or such longer period of time as the Lender in its sole discretion may agree.

8. **REMEDIES.** If an Event of Default shall have occurred, Lender may take any of the following actions:

8.1. **Acceleration.** Lender may declare the entire amount of the Liabilities immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Lender may charge and collect interest from the date of default on the unpaid balance of the Liabilities, at the Default Rate set forth in the Note. In addition, any and all accelerations of any portion of the remaining principal balance of the Liabilities (including, without limitation, foreclosure by Lender under this Deed of Trust) shall be subject to any prepayment consideration set forth in the Note or Loan Agreement, if any.

8.2. **Possession.** Lender may enter upon and take possession of the Premises, with or without legal action, lease the Premises, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Lender, in Lender's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Premises, or on account of the Liabilities. Lender is given full authority to do any act which Grantor could do in connection with the management and operation of the Premises. This covenant is effective either with or without any action brought to foreclose this Deed of Trust and without applying

for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Grantor shall pay monthly in advance to Lender or to any receiver appointed to collect said rents the fair and reasonable rental value for Grantor's use and occupation of the Premises (if any), and upon default in any such payment Grantor shall vacate and surrender the possession of the Premises to Lender or to such receiver. If Grantor does not vacate and surrender the Premises then Grantor may be evicted by summary proceedings.

8.3. **Foreclosure and Sale.** Lender may (a) direct Trustee to sell (and Trustee is hereby empowered to sell) all or any part of the Premises at public auction to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, courtesy or other exemption, all of which are expressly waived by Grantor) at such time and place and upon such terms and conditions as may be required by applicable law or rule of court and after having complied with the North Carolina law applicable to power of sale foreclosures provided in Article 2A of Section 45 of the North Carolina General Statutes (a "**Power of Sale Foreclosure**"); (b) elect to foreclose this Deed of Trust pursuant to a judicial foreclosure action; or (c) take such other action at law, equity or by contract for the enforcement of this Deed of Trust and realization on the security herein or elsewhere provided for, as the law may allow. In any action or proceeding to foreclose this Deed of Trust or to collect the sums secured hereby, Lender may proceed therein to final judgment and execution for the entire unpaid balance of the Liabilities, together with all future advances and any other sums due by Grantor in accordance with the provisions of this Deed of Trust, together with interest from the date of default at the Default Rate and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys' fees. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the Default Rate.

In the event that Lender elects to direct the Trustee to sell the Premises pursuant to a Power of Sale Foreclosure, the following provisions shall apply: (a) in exercising the power of sale and selling the Premises, the Trustee shall comply with the provisions of North Carolina law governing power of sale foreclosures and shall give such notice of hearing as to the commencement of foreclosure proceedings, obtain such findings and leave of court, and give such notice of and advertise such foreclosure sale all as may then be required by such law; (b) upon such foreclosure sale or any required resale, it shall be lawful for the Trustee to convey the Premises (or such portion thereof as may have been sold) to the successful bidder by way of a Trustee's deed without any covenant or warranty and any recitals of fact in such Trustee's deed shall be prima facie evidence of such facts; (c) the Trustee shall be entitled to a reasonable and customary Trustee's fee as provided in N.C.G.S. § 45-21.15, not to exceed the maximum fee allowed by applicable law (the "**Commission**") as well as reimbursement for any attorney's fees incurred by Trustee; (d) the Trustee shall apply the proceeds of the sale first to the payment of all expenses and costs incurred in connection with such sale, including without limitation, advertising costs, title examination fees, transfer taxes, and court costs; second to the payment of the Trustee's Commission; third to payment of any taxes or governmental assessments which may be a lien against the Premises, unless Trustee advertised and sold the Premises subject to such taxes or assessments; and fourth, to the payment of the Liabilities and sums secured hereby, with the excess, if any, of such proceeds after the payment in full of the Liabilities and secured sums being distributed to the person or persons entitled thereto as their interests may appear; (e) if the Trustee commences a Power of Sale Foreclosure and such proceeding is terminated prior to the completion thereof, Grantor shall pay to Trustee all expenses incurred by Trustee in connection with such proceeding and sale and a reasonable and customary commission or compensation for services rendered by such Trustee but not more than the maximum fee allowed by applicable law; (f) at any sale conducted by the Trustee, Lender may bid for and become the purchaser of the Premises or such portion thereof as has been offered for sale and in lieu of paying cash therefor Lender may take settlement of the purchase price by a credit upon the Liabilities due and payable and secured by this Deed of Trust; (g) the Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount up to twenty-five percent (25%) of the bid and such bid may be rejected if the deposit is not immediately made; (h) pursuant to Section 25-9-604(a), (b) and (c) of the North Carolina General Statutes (or any amendment thereto), the Trustee is expressly authorized and empowered to expose to sale and sell, together with the Land, any portion of the Premises which constitutes personal property (If personal property is sold hereunder, it need not be at the place of sale); (i) any sale scheduled by the Trustee may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law; and (j) the sale by Trustee of less than the whole of the Premises shall not exhaust the right to sell any remainder of the Premises and Trustee is specifically empowered to make a successive sale or sales until the whole of the Premises shall be sold; and if the proceeds of such sale of less than the whole of the Premises shall be less than the aggregate of the Liabilities, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Premises just as though no sale had been made.

8.4. **Appointment of Receiver.** Lender may petition a court of competent jurisdiction to appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Grantor at the time of application for such receiver, without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not, and without regard to whether Grantor has committed waste or allowed deterioration of the Premises, and Lender or any agent of Lender may be appointed as such receiver. Grantor hereby agrees that Lender has a special interest in the Premises and absent the appointment of such receiver the Premises shall suffer waste and deterioration and Grantor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Lender pursuant to Section 8.2 above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Premises during such period.

8.5. **Waiver of Certain Rights.** To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Grantor, for Grantor, Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Grantor, including the Premises, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of this Deed of Trust to a sale of the Premises for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Deed of Trust to the payment of the secured indebtedness out of the proceeds of sale of the Premises in preference to every other claimant whatsoever. Grantor waives any right or remedy which Grantor may have or be able to assert pursuant to any provision of North Carolina law, including, but not limited to, the rights or remedies set forth in North Carolina Gen. Stat. §26-7, et. seq., pertaining to the rights and remedies of sureties. If any law referred to in this Section and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Premises might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

8.6. **Rights as a Secured Party.** Lender shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Code. Lender may elect to foreclose such of the Premises as then comprise fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Code. To the extent permitted by law, Grantor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

8.7. **Excess Monies.** Lender may apply on account of the Liabilities any unexpended monies still retained by Lender that were paid by Grantor to Lender: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Grantor.

8.8. **Other Remedies.** Lender shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Grantor under the terms of this Deed of Trust, as they become due, without regard to whether or not any other Liabilities shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for any default by Grantor existing at the time the earlier action was commenced. In addition, Lender shall have the right to set-off all or any part of any amount due by Grantor to Lender under any of the Liabilities, against any indebtedness, liabilities or obligations owing by Lender in any capacity to Grantor, including any obligation to disburse to Grantor any funds or other property on deposit with or otherwise in the possession, control or custody of Lender.

## 9. **MISCELLANEOUS.**

9.1. **Substitute Trustee.** Lender may, at any time and from time to time, without notice, at the Lender's discretion, remove Trustee and appoint a substitute trustee (the "**Substitute Trustee**") by filing in the records where this Deed of Trust is recorded an instrument affecting such removal and appointment. A Substitute Trustee shall be vested with title to the Premises and with all rights, powers, and duties of the original Trustee herein and all provisions hereof pertaining to the Trustee shall similarly affect any Substitute Trustee. The necessity of Trustee, or any Substitute Trustee, making oath or giving bond is expressly waived.

9.2. **Notices.** All notices and communications under this Deed of Trust shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed at the beginning of this Deed of Trust. Notice shall be deemed to have been given and received: (a) if by hand delivery, upon delivery; (b) if by mail, the third (3<sup>rd</sup>) day that the United States postal service was operating after the date first deposited in the United States mail; and (c) if by overnight courier, upon delivery. A party may change its address by giving written notice to the other party as specified herein.

9.3. **Remedies Cumulative.** The rights and remedies of Lender as provided in this Deed of Trust or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Lender at law or in equity. The failure, at any one or more times, of Lender to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Deed of Trust or the rights of Lender.

9.4. **No Implied Waiver.** Lender shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Lender, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

9.5. **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Deed of Trust shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

9.6. **Binding Effect; No Third Party Beneficiary.** The covenants, conditions, waivers, releases and agreements contained in this Deed of Trust shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Deed of Trust cannot be assigned by Grantor without the prior written consent of Lender, and any such assignment or attempted assignment by Grantor shall be void and of no effect with respect to Lender. Grantor and Lender acknowledge that this Deed of Trust is made solely for the benefit of the parties hereto and no third party should or may assume that any third-party beneficiary rights are extended or created hereby.

9.7. **Modifications.** This Deed of Trust may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.8. **Intentionally Omitted.**

9.9. **Commercial Loan.** Grantor represents and warrants that the loans or other financial accommodations included as Liabilities secured by this Deed of Trust were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

9.10 **Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the substantive laws of the State of North Carolina without reference to conflict of laws principles.

9.11. **Joint and Several Liability.** If Grantor consists of more than one person or entity, the word "Grantor" shall mean each of them and their liability shall be joint and several.

9.12. **No Liability of Trustee.** The Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or its successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Grantor will reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of its duties. The foregoing indemnity shall not terminate upon discharge of the secured indebtedness or foreclosure, or release or other termination, of this Deed of Trust.

9.13. **Loan Agreement.** This Deed of Trust is made subject to and with the benefit of the respective representations and warranties, agreements, covenants, terms, conditions, limitations and other provisions of the Loan Agreement. In the event of a conflict between this Deed of Trust and the Loan Agreement, the terms of the Loan Agreement shall take precedence and control.

9.14. **Terms; Headings.** The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, successors and assigns. The term "Lender" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Deed of Trust or the intent of any provision hereof.

9.15. **Imposition of Tax.** In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation which in any manner changes or modifies the laws now in force governing the taxation of debts secured by deeds of trust or the manner of collecting taxes so as to affect adversely Lender, Grantor will promptly pay any such tax on or before the due date thereof; and if Grantor fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Grantor from making such payment or would penalize Lender if Grantor makes such payment, then the entire balance of the Loan shall become due and payable upon demand at the option of Lender.

9.16 **WAIVER OF TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY LAW, THE GRANTOR, THE TRUSTEE AND THE LENDER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR THE LENDER TO ACCEPT THIS DEED OF TRUST AND MAKE THE LOANS.**


[INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, Grantor, intending to be legally bound, has duly executed and delivered this Deed of Trust as of the day and year first above written.

**GRANTOR:**

**PAVILION WINSTON-SALEM, LLC,**  
a North Carolina limited liability company

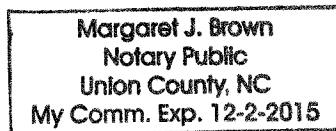
By: Pavilion Management Company,  
a North Carolina corporation  
its sole Manager

By:   
Name: Thomas Gauch  
Title: Vice President

STATE OF NORTH CAROLINACOUNTY OF MECKLENBURG

(Place of Acknowledgement)

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document: Thomas Gauch.

Date: AUGUST 6, 2014

Margaret J Brown  
 Official Signature of Notary

Margaret J Brown  
 Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: 12-2-2015



**EXHIBIT A****LEGAL DESCRIPTION****Parcel A**

All that tract or parcel of land lying and being in the City of Winston-Salem, Forsyth County, North Carolina, and being shown and designated as "Parcel A," containing approximately 7.626 acres, on that certain subdivision plat entitled "Final Subdivision Plat For: Pavilion Winston-Salem," and recorded in Plat Book 62, Pages 104-106 in the Office of the Register of Deeds for Forsyth County, North Carolina (the "**Registry**").

TOGETHER WITH all real estate rights and easements appurtenant to the property described above as set forth under (a) that certain Declaration of Easements and Restrictions recorded in Book 3191, Page 1452 of the Registry; (b) that certain Grant of Temporary Grading Easement recorded in Book 2660, Page 1502 of the Registry; (c) that certain Grant of Access Easement recorded in Book 2660, Page 1509 of the Registry; and (d) Reciprocal Easement and Restrictive Covenant Agreement recorded in Book 3191, Page 1594 of the Registry.

**Parcel B**

All that tract or parcel of land lying and being in the City of Winston-Salem, Forsyth County, North Carolina, and being shown and designated as "Parcel B," containing approximately 3.424 acres, on that certain subdivision plat entitled "Final Subdivision Plat For: Pavilion Winston-Salem," and recorded in Plat Book 62, Pages 104-106 in the Office of the Register of Deeds for Forsyth County, North Carolina (the "**Registry**").

TOGETHER WITH all real estate rights and easements appurtenant to the property described above as set forth under (a) that certain Declaration of Easements and Restrictions recorded in Book 3191, Page 1452 of the Registry; (b) that certain Grant of Temporary Grading Easement recorded in Book 2660, Page 1502 of the Registry; (c) that certain Grant of Access Easement recorded in Book 2660, Page 1509 of the Registry; and (d) Declaration of Sign Easement recorded in Book 3191, Page 1581 of the Registry.

**Outparcel 4**

All that tract or parcel of land lying and being in the City of Winston-Salem, Forsyth County, North Carolina, and being shown and designated as "Outparcel 4," containing approximately 0.996 acres, on that certain subdivision plat entitled "Final Subdivision Plat For: Pavilion Winston-Salem," and recorded in Plat Book 62, Pages 104-106 in the Office of the Register of Deeds for Forsyth County, North Carolina (the "**Registry**").

TOGETHER WITH all real estate rights and easements appurtenant to the property described above as set forth under (a) that certain Declaration of Easements and Restrictions recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the Registry; (b) that certain Grant of Temporary Grading Easement recorded in Book 2660, Page 1502 of the Registry; and (c) that certain Grant of Access Easement recorded in Book 2660, Page 1509 of the Registry.