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FORSYTH CO. NC FEE \$64.00

PRESENTED &amp; RECORDED

06/12/2018 01:34:06 PM

LYNNE JOHNSON

REGISTER OF DEEDS

BY: OLIVIA DOYLE

ASST

**BK: RE 3409****PG: 2163 - 2184****Drawn by and return to:**

Neal Cook

Parker Poe Adams &amp; Bernstein LLP

Three Wells Fargo Center

401 South Tryon Street, Suite 3000

Charlotte, North Carolina 28202

<b>STATE OF NORTH CAROLINA</b>	)	<b>DEED OF TRUST, ASSIGNMENT OF</b>
	)	<b>RENTS AND LEASES, SECURITY</b>
<b>COUNTY OF FORSYTH</b>	)	<b>AGREEMENT AND FIXTURE FILING</b>

**COLLATERAL IS OR INCLUDES FIXTURES**

**(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.)**

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING** (the "Deed of Trust") is made and entered into as of the 11 day of June, 2018, by **Y&O WS LLC**, a Delaware limited liability company, whose address is c/o Y&O Group, LLC 366 North Broadway, Suite 406, Jericho, New York 11753 (the "Grantor"), in favor of **CHICAGO TITLE INSURANCE COMPANY**, a Florida corporation, whose address is P.O. Box 45023, Jacksonville, Florida 32232-5023 (the "Trustee"), for the benefit of **FIELDPOINT PRIVATE BANK & TRUST** (the "Bank"), with offices at 100 Field Point Road, Greenwich, Connecticut 06830.

**WITNESSETH:**

In consideration of the indebtedness herein recited, and in further consideration of the premises and for the purposes herein recited, and to secure the payment, performance and observance by Grantor of the Secured Indebtedness (as defined in Section 1.1 below), Grantor does hereby grant, convey, bargain, sell, transfer, assign and set over to Trustee and Trustee's successors and assigns, with general warranty, in trust, with power of sale, all of the following described land, real property interests, buildings, improvements, fixtures and other personal property:

Submitted electronically by "Craig Jenkins Liipfert & Walker LLP"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Forsyth County Register of Deeds.

(a) All those tracts or parcels of land and other real property interests in Forsyth County, North Carolina more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the "Land"), and all buildings and improvements of every kind and description now or hereafter erected or placed on the aforesaid Land (the "Improvements"), and all right, title and interest of the Grantor, now owned or hereafter acquired, in and to (i) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (ii) any strips or gores between the Land and abutting or adjacent property; (iii) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (iv) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this paragraph (a) being herein sometimes called the "Premises");

(b) All fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Grantor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land);

(c) All (i) plans and specifications related to the Premises created by or for the Grantor; (ii) Grantor's rights, but not liability for any breach by Grantor, under all commitments, insurance policies, any contracts and agreements for the design, construction, operation or inspection of the Premises and/or Improvements and other contracts and general intangibles (including but not limited to trade marks, trade names, goodwill and symbols) related to the Premises or the Accessories or the operation thereof; (iii) all deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Grantor's rights in deposits with respect to sales contracts, tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts, (including deposit accounts) instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Grantor may from time to time authorize Bank to debit and/or credit payments due with respect to the Loan Documents; (iv) all general intangibles, including payment intangibles, copyrights, trademarks, patents, tradenames, tax refunds, company records (paper and electronic), rights under equipment leases, warranties, and software licenses related to the Premises or the Accessories; (v) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (vi) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article III of the Deed of Trust described below); and (vii) engineering, accounting, title, legal and other technical or business data concerning the Property which are in the possession of the Grantor or in which the Grantor can otherwise grant a security interest; and

(d) All (i) accounts and proceeds (cash or non-cash including payment intangibles) of or arising from the properties, rights, titles and interests referred to in paragraphs a, b and c above, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of

insurance relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; and (ii) other interests of every kind and character which the Grantor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to in paragraphs a, b and c above and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of the Grantor in any of the property referred to in paragraphs a, b and c above is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by the Grantor in or to the property demised under the lease creating the leasehold estate;

To HAVE AND HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property") unto the Trustee and the Trustee's successors and assigns, in trust, in fee simple forever, to secure the obligations of Grantor under the Loan Documents and all Secured Indebtedness and upon this special trust: that should the Secured Indebtedness be paid according to the tenor and effect thereof when the same shall be due and payable and should the Grantor timely and fully discharge its obligations hereunder, then the Property shall be reconveyed to the Grantor or the title thereto shall be revested according to the provisions of law.

Grantor hereby grants to the Bank a security interest in all of the property described in paragraphs a, b, c and d above which constitutes personal property or fixtures and all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection with therewith (herein sometimes collectively called the "Collateral") to secure the Secured Indebtedness. In addition to its right hereunder or otherwise, the Bank shall have all of the rights of a secured party under the North Carolina Uniform Commercial Code, or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law.

Grantor covenants, represents and agrees to and with Trustee and Bank as follows:

## ARTICLE I

### The Secured Indebtedness

1.1 Secured Indebtedness. This Deed of Trust secures and enforces the payment and performance of all obligations of Grantor (hereinafter sometimes referred to as the "Secured Indebtedness") under the following instruments and agreements (collectively, the "Loan Documents"):

(a) Term Loan Agreement between Grantor and Bank of even date herewith which provides for extensions of credit in a principal amount not exceeding Three Million Three Hundred Thousand and No/100 Dollars (\$3,300,000.00) (hereinafter, together with any extensions, revisions, modifications or amendments hereafter made, referred to as the "Loan Agreement");

(b) Promissory Note executed by Grantor of even date herewith, payable to the order of Bank in the principal amount of \$3,300,000.00 (hereinafter, together with any extensions, revisions, modifications or amendments hereafter made, referred to as the "Note"), the terms and provisions of which are incorporated herein by reference;

(c) this Deed of Trust;

(d) Assignment of Leases and Rents executed by Grantor in favor of Bank of even date herewith, as amended, supplemented, superseded or replaced from time to time; and

(e) all other instruments, agreements and documents hereafter executed by Grantor which evidence an obligation of Grantor to Bank.

This Deed of Trust secures all present and future advances and/or future obligations, and all other sums from time to time owing to Bank by the Grantor under the Loan Documents (including without limitation any existing obligations incurred or any advances made at or prior to the filing of this Deed of Trust of record in the real estate records of the county where the Property is situated). The maximum principal amount that may be secured by this Deed of Trust at any one time is Six Million Six Hundred Thousand and No/100 Dollars (\$6,600,000.00). The time period within which any future advances may be made and future obligations may be incurred is the period between the date hereof and the date thirty (30) years from the date hereof.

All initially capitalized terms used herein without definition are as defined in the Loan Agreement.

## ARTICLE II

### **Grantor's Covenants, Representations, Warranties And Agreements**

2.1 **Title to Property.** Subject to the permitted encumbrances, including the Lease, Grantor represents and warrants that it is seized and possessed of the Premises (and any fixtures) in fee and has title to any appurtenant easements and interests described above and has the right to convey and encumber the same, that title to such property is free and clear of all liens, encumbrances and claims whatsoever except for the Permitted Encumbrances, and that it will warrant and defend the title to such property against the claims of all persons or parties. As to the Collateral, Grantor represents and warrants that it has title to such property, free and clear of all liens, encumbrances, and claims whatsoever except for the permitted encumbrances, including the Lease, that it has the right to convey and encumber such property and that it will warrant and defend such property against the claims of all persons or parties.

2.2 **Payment of Loan.** Grantor will punctually pay the principal and interest under the Loan Agreement and the Note and all other Secured Indebtedness at the time and place and in the manner specified in the Note, the Loan Agreement, this Deed of Trust or the other Loan Documents.

2.3 **Taxes and Fees.** If required by Bank upon the occurrence of an Event of Default, Grantor will pay to Bank on the first day of each month together with and in addition to the regular installment of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Bank to be sufficient to enable Bank to pay, at least thirty (30) days before they become delinquent, all taxes, assessments, and other similar charges against the Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Bank, and no interest shall be payable in respect thereof. Upon demand of Bank, Grantor agrees to deliver to Bank such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Bank to pay such taxes, assessments and similar charges. Upon the occurrence of an Event of Default, Bank may apply to the reduction of the sums secured hereby, in such manner as Bank shall determine, any amount under this Section 2.3 remaining to Grantor's credit.

2.4 **Other Taxes, Utilities and Liens.**

(a) Grantor will pay or cause to be paid promptly, when and as due, and will promptly exhibit to Bank receipts for the payment of, all real and personal property taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Property or any part thereof, or upon the interest of Bank in the Property (other than any of the same for which provision has been made in Section 2.3 hereof), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon Grantor or in respect of the Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Property prior to or equal to the lien of this Deed of Trust for any amounts secured hereby or would have priority or equality with this Deed of Trust in distribution of the proceeds of any foreclosure sale of the Property or any part thereof; provided, however, Grantor or any tenant of the Premises shall have the right to contest any such taxes, assessments, rates, dues, charges, fine or impositions if the execution or other enforcement of any lien or charge upon the Property is and continues to be effectively stayed or bonded in a manner reasonably satisfactory to Bank, the validity and amount of such taxes, assessments, rates, dues, charges, fines or impositions are being actively contested in good faith and by appropriate lawful proceedings and such liens or charges do not, in the aggregate, materially detract from the value of the Property or materially impair the use thereof and the operation of Grantor's business.

(b) Grantor will promptly pay or cause to be paid all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) Grantor will promptly pay or cause to be paid and will not suffer any mechanics, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Deed of Trust to be created or to remain outstanding upon any of the Property; provided, however, such a lien may be filed against the Property if the execution or other enforcement of any such lien is and continues to be effectively stayed or bonded in a manner reasonably satisfactory to Bank for the full amount thereof, the validity and amount of the lien secured thereby are being actively contested in good faith and by appropriate lawful proceedings and such liens do not, in the aggregate, materially detract from the value of the Property or materially impair the use thereof and the operation of Grantor's business.

2.5 Reimbursement. Grantor agrees that if it shall fail to pay or cause to be paid when due any tax, assessment or charge levied or assessed against the Property or any utility charge, whether public or private, or any insurance premium or if it shall fail to procure the insurance coverage and the delivery of the insurance certificates required hereunder or under the Loan Agreement, or if it shall fail to pay any other charge or fee required hereunder, then Bank, at its option, may pay or procure the same. Grantor will reimburse Bank upon demand for any sums of money paid by Bank pursuant to this Section, together with interest on each such payment at the rate set forth in the Loan Agreement and the Note. All such sums so expended by Bank, and the interest thereon, shall become part of the Secured Indebtedness.

2.6 Further Assurances. Grantor agrees to execute and deliver to Bank, concurrently with the execution of this Deed of Trust and upon the request of Bank from time to time hereafter, all financing statements and other documents required to perfect and maintain the security interest created hereby. Grantor hereby irrevocably (as long as the Secured Indebtedness remains unpaid) makes, constitutes and appoints Bank as the true and lawful attorney of Grantor to sign the name of Grantor (after Grantor has failed or refused to timely execute such documents upon request of Bank) on any financing statement, continuation or amendment of financing statement or similar document required to perfect or continue such security interests, it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked.

2.7 Secondary Financing; Sale or Encumbrance. Except as otherwise permitted under the Loan Agreement or this Deed of Trust, there shall not exist at the time of the recording of this Deed of Trust, and during the term of the Secured Indebtedness, any secondary or supplemental financing, no other mortgage, lien, charge, pledge, hypothecation, or security interest upon or affecting the Property or any of the property (real or personal, tangible or intangible) encumbered by the Loan Documents or in which Bank otherwise has a security interest, or any agreement to grant any such interest other than liens or charges which will be discharged from the proceeds of the Note. Grantor shall not, without Bank's prior written consent, directly or indirectly, sell, transfer, convey, or lease all or any part of the Property or any interest therein, whether voluntary, involuntary, or by operation of law, and shall not suffer or permit the same, except as may be permitted under the Loan Agreement. Notwithstanding the preceding sentence, a taking of a portion of the Property by eminent domain (or a conveyance in lieu thereof) will not be considered a violation of this Section so long as (i) no portion of any building is taken (or so conveyed); (ii) after such taking (or such conveyance) the Property still complies with all laws, ordinances, permits, and regulations of any federal, state, or other political subdivision, agency, commission, bureau, or court exercising jurisdiction over Grantor or the Property (including all zoning and parking requirements); (iii) Bank, in exercise of its reasonable judgment determines that such taking (or such conveyance) will not have a material adverse effect on the operation or leasing of the Property; and (iv) such taking (or such conveyance) will not give any tenant the right to terminate its lease or not pay its rent. Grantor shall not subdivide the Property, submit the Property, or any portion thereof, to condominium or other multiple form of ownership, or dedicate any portion of the Property to public ownership, without the prior written consent of Bank, which will not be unreasonably withheld.

2.8 Fees and Expenses. Grantor will pay or reimburse Bank and the Trustee for all reasonable attorneys' fees (based on actual time incurred at the attorneys customary hourly rates), costs and expenses incurred by Bank or the Trustee in any action, legal proceeding or dispute of any kind which affects the Secured Indebtedness, the interest created herein, the Property, the Collateral, the Leases or the Rents, including but not limited to, any foreclosure of this Deed of Trust, enforcement of payment of the Note and other Secured Indebtedness, any condemnation action involving the Property, any bankruptcy proceeding or any action to protect the security hereof. Any such amounts paid by Bank shall be due and payable upon demand and shall become part of the Secured Indebtedness.

2.9 Maintenance of the Property. Grantor will and will cause the tenants in possession of the Premises under leases with Grantor to abstain from and will not permit the commission of waste in or about the Property and will cause its tenants to maintain the Property in good condition and repair, reasonable wear and tear excepted.

2.10 Compliance with Law. Grantor will do, or cause to be done, all such things as may be required by law in order fully to protect the security and all rights of Bank under this Deed of Trust. Grantor shall not cause or permit the lien of this Deed of Trust to be impaired in any way.

2.11 Inspection. Subject to the rights of any tenant in possession of the Premises under a lease with Grantor, Grantor will permit Bank, or its agents, at any and all reasonable times to enter and pass through or over the Property for the purpose of appraising, inspecting or evaluating same in accordance with Section 4.1 of the Loan Agreement.

2.12 Releases and Waivers. Grantor agrees that no release by Bank of any of Grantor's successors in title from liability on the Secured Indebtedness, no release by Bank of any portion of the Property, the Collateral, the Rents or the Leases, no subordination of lien, no forbearance on the part of Bank to collect on the Secured Indebtedness or any part thereof, no waiver of any right granted or remedy available to Bank and no action taken or not taken by Bank shall in any way diminish Grantor's obligation to Bank or have the effect of releasing Grantor, or any successor to Grantor, from full

responsibility to Bank for the complete discharge of each and every of Grantor's obligations hereunder or under the Note, the Loan Agreement, any other Loan Document or any other Secured Indebtedness.

2.13 Insurance. Grantor and/or any tenant in possession of the Premises under a lease with Grantor shall obtain and maintain at its sole expense or cause to be maintained: (1) mortgagee title insurance issued to Bank covering the Property as required by Bank without exception for mechanics' liens; (2) property insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against such other insurable hazards as Bank may require, including acts of terrorism, and in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor and Bank from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any construction on the Premises; (3) if and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by Bank, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (4) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability of at least \$3,000,000.00 per occurrence and \$5,000,000.00 annual aggregate for the benefit of Grantor, as named insured and Bank as additional insured; (5) statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Bank), covering all employees of Grantor and any contractor; (6) if there is a general contractor, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in clause (4) above, for the benefit of the general contractor as named insured and Grantor and Bank as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Bank), covering all employees of the general contractor and any contractor; and (7) such other insurance on the Property and endorsements as may from time to time be reasonably required by Bank (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance, wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers with a current A.M. Best's Insurance Guide Rating of at least A-IX, in amounts, with deductibles, limits and retentions, and in forms satisfactory to Bank, and shall require not less than thirty (30) days' prior written notice to Bank of any cancellation or change of coverage. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Property, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Grantor or Bank and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Deed of Trust or any other Loan Document becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding or if in Bank's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Grantor shall, in each instance promptly upon the request of Bank and at Grantor's expense, obtain and deliver to Bank a like policy (or, if and to the extent permitted by Bank, a certificate of insurance) issued by another insurer, which insurer and policy meet the requirements of this Deed of Trust or such other Loan Document, as the case may be. Without limiting the discretion of Bank with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Bank as mortgagee with loss proceeds payable

to Bank, such proceeds to be held for application as provided in the Loan Documents. An original Acord 28 (2003/10) Certificate of Insurance and an original Acord 25 Certificate of General Comprehensive Liability Insurance and, if requested by Bank, the originals of each initial insurance policy (or to the extent permitted by Bank, a copy of the original policy) shall be delivered to Bank at the time of execution of this Deed of Trust, with premiums fully paid, and each renewal or substitute policy (or evidence of insurance) shall be delivered to Bank, with premiums fully paid, at least ten (10) days before the termination of the policy it renews or replaces. Grantor shall pay or shall cause its tenants to pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Bank evidence satisfactory to Bank of the timely payment thereof. If any loss occurs at any time when Grantor has failed to perform Grantor's covenants and agreements in this Section, Bank shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Grantor, to the same extent as if it had been made payable to Bank. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Grantor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Bank shall have the right (but not the obligation), upon the occurrence of an Event of Default, to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property, and the expenses incurred by Bank in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Bank on demand. Bank shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Grantor. Any such proceeds received by Bank shall, after deduction therefrom of all reasonable expenses actually incurred by Bank in the collection of the same, including reasonable attorneys' fees, at Grantor's option (unless an Event of Default or any event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default shall have occurred hereunder, in which event such decision shall be exercised by Bank in its sole discretion) be (1) applied (upon compliance with the terms and conditions hereinafter more particularly set forth) to repair or restoration, of the Property so damaged, or (2) applied to the payment of the Secured Indebtedness in such order and manner as Bank, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Grantor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property. In the event that, and to the extent that, insurance proceeds are to be applied to the restoration of the Property, each of the following conditions must also be met and complied with:

(i) Grantor presents sufficient evidence to Bank that there are sufficient funds from the insurance proceeds and from equity funds, if needed, to completely restore or repair the Property to its use, value and condition immediately prior to the casualty as well as to maintain relevant debt service coverages and other operating expenses.

(ii) Grantor presents sufficient evidence to Bank that the Property will be completely restored prior to the maturity date of the Note.

(iii) An escrow account shall have been established with the Bank composed of such insurance proceeds, and, if necessary, additional deposits made by Grantor, which, in the reasonable judgment of Bank, are sufficient to restore the Property to its use, value and condition immediately prior to the casualty. Bank shall be entitled, at the expense of Grantor, to consult such professionals as Bank may deem necessary, in its sole discretion, to determine the total costs of restoring the Property. Grantor hereby assigns to, and grants Bank a security interest in, such

escrow account and the funds therein to secure the payment and performance of the Secured Indebtedness.

(iv) The Lease shall continue in full force and effect or, if terminated, the Lease must have been replaced with a lease of equal quality in the reasonable judgment of Bank. If the tenant has the right to terminate the Lease due to the casualty, and has not exercised that right, such tenant shall have confirmed in writing to Bank its irrevocable waiver of such termination right.

(v) Proceeds from any rental loss or business interruption insurance, or both, or other moneys of the Grantor, must be available to the Grantor in such amounts as Bank, in its reasonable judgment, considers sufficient to pay the debt service under the Note, and all property assessments, insurance premiums and other sums becoming due from Grantor pursuant to this Deed of Trust, the Loan Agreement and the Note during the time required for restoration.

(vi) All restoration will be conducted under the supervision of an architect or engineer, or both, selected and paid for by Grantor but approved in advance by Bank, and by a general contractor who must be acceptable in all respects to Bank and who shall have executed a fixed price contract.

(vii) The restoration will be performed pursuant to plans and specifications approved by Bank.

(viii) If required by Bank at its sole option, the contractor or contractors responsible for the restoration shall have obtained payment and performance bonds from a corporate surety reasonably acceptable to Bank and naming Bank as dual obligee.

(ix) All guaranties of the Secured Indebtedness shall remain in full force and effect and all guarantors shall so confirm to Bank.

(x) Bank will not incur any liability to any other person as a result of such use or release of insurance proceeds.

If any of the foregoing conditions set forth above are not satisfied within ninety (90) days of receipt of the insurance proceeds, Bank shall apply all insurance proceeds to the payment of the Secured Indebtedness in such order and manner as Bank, in its sole discretion, may elect, whether or not due. Furthermore, if applied to restoration, all insurance proceeds (and any other funds required to be deposited with Bank) shall be disbursed from time to time in accordance with Bank's standard construction loan practices. Immediately upon the occurrence of any Event of Default, Bank may apply all insurance proceeds and any other sums deposited with Bank to the repayment of the Secured Indebtedness.

2.14 Condemnation. Grantor shall notify Bank immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Grantor shall, at Grantor's expense, diligently prosecute any such proceedings. Bank shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice and cost unless an Event of Default has occurred, in which event such costs shall be borne by Grantor. Bank shall be entitled to receive all sums which may be awarded or become payable to Grantor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for injury or damage to the Property. Grantor shall, promptly upon request of Bank, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Bank to collect and receipt for any such sums. All such sums are hereby assigned to Bank, and

shall, after deduction therefrom of all reasonable expenses actually incurred by Bank in the collection of the same, including reasonable attorneys' fees, at Grantor's option (unless an Event of Default or any event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default shall have occurred hereunder, in which event such decision shall be exercised by Bank in its sole discretion) be (1) applied by Bank (upon compliance with the terms and conditions hereinafter more particularly set forth) to the restoration of the Property, or (2) applied to the payment of the Secured Indebtedness in such order and manner as Bank, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. In the event that, and to the extent that, condemnation proceeds are to be applied to the restoration of the Property, each of the following conditions must also be met and complied with:

(i) Grantor presents sufficient evidence to Bank that (A) there are sufficient funds from the condemnation award or proceeds and from equity funds, if needed, to completely restore the Property to an architectural whole as well as to maintain relevant debt service coverages and other operating expenses, and (B) the loss of the property taken will not materially diminish the value of the Property.

(ii) Grantor presents sufficient evidence to Bank that the Property will be restored to an architectural whole prior to the maturity date of the Note.

(iii) An escrow account shall have been established with the Bank composed of such condemnation proceeds, and, if necessary, additional deposits made by Grantor, which, in the reasonable judgment of Bank, are sufficient to restore the Property to an architectural whole. Bank shall be entitled, at the expense of Grantor, to consult such professionals as Bank may deem necessary, in its sole discretion, to determine the total costs of restoring the Property. Grantor hereby assigns to, and grants Bank a security interest in, such escrow account and the funds therein to secure the payment and performance of the Secured Indebtedness.

(iv) The Lease shall continue in full force and effect (subject to rent abatement during restoration as may be provided in the Lease) or, if terminated, the Lease must have been replaced with a lease of equal quality in the reasonable judgment of Bank. If the tenant has the right to terminate the Lease due to the condemnation, and has not exercised that right, such tenant shall have confirmed in writing to Bank its irrevocable waiver of such termination right.

(v) Proceeds from any rental loss or business interruption insurance, or both, or other moneys of the Grantor, must be available to the Grantor in such amounts as Bank, in its reasonable judgment, considers sufficient to pay the debt service under the Note, and all property assessments, insurance premiums and other sums becoming due from Grantor pursuant to this Deed of Trust, the Loan Agreement and the Note during the time required for restoration.

(vi) All restoration will be conducted under the supervision of an architect or engineer, or both, selected and paid for by Grantor but approved in advance by Bank, and by a general contractor who must be acceptable in all respects to Bank and who shall have executed a fixed price contract.

(vii) The restoration will be performed pursuant to plans and specifications approved by Bank.

(viii) If required by Bank at its sole option, the contractor or contractors responsible for the restoration shall have obtained payment and performance bonds from a corporate surety reasonably acceptable to Bank and naming Bank as dual obligee.

(ix) All guaranties of the Secured Indebtedness shall remain in full force and effect and all guarantors shall so confirm to Bank.

(x) Bank will not incur any liability to any other person as a result of such use or release of proceeds.

If any of the foregoing conditions set forth above are not satisfied within ninety (90) days of receipt of the condemnation proceeds, Bank shall apply all condemnation proceeds to the payment of the Secured Indebtedness in such order and manner as Bank, in its sole discretion, may elect, whether or not due. Furthermore, if applied to restoration, all condemnation proceeds (and any other funds required to be deposited with Bank) shall be disbursed from time to time in accordance with Bank's standard construction loan practices. Immediately upon the occurrence of any Event of Default, Bank may apply all condemnation proceeds and any other sums deposited with Bank to the repayment of the Secured Indebtedness in such order and manner as Bank, in its sole discretion, may elect.

Notwithstanding the foregoing, in the event any governmental agency or authority shall require or commence any proceedings for the demolition of any buildings or structures comprising a part of the Property, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Property, Bank may, at its option, declare the Secured Indebtedness to be immediately due and payable in full and apply any condemnation proceeds to the outstanding balance of the Secured Indebtedness in such order and manner as Bank, in its sole discretion, may elect. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Bank shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Grantor. Bank is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. Except as otherwise provided herein, all costs and expenses (including but not limited to reasonable attorneys' fees) incurred by Bank in connection with any condemnation shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Bank pursuant to this Deed of Trust.

2.15 Appraisal. Bank may obtain from time to time, an appraisal ("Appraisal") of all or any part of the Property prepared in accordance with written instructions from Bank by a third-party appraiser engaged directly by Bank. Each such appraiser and appraisal shall be satisfactory to Bank and the appraisal shall satisfy all applicable regulatory requirements. The cost of (i) the first appraisal (which has been obtained by Bank and paid for by Grantor), (ii) additional appraisals required by governmental or regulatory authorities but no more than one (1) during any twelve (12) month period, and (iii) any appraisal after the occurrence of an Event of Default shall be borne by Grantor and such cost shall be part of the Secured Indebtedness and shall be payable by Grantor to Bank on demand (which obligation Grantor hereby promises to pay).

2.16 Indemnification. (i) Grantor will indemnify and hold harmless Bank and Trustee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this Section 2.16, the terms "Bank" and "Trustee" shall include the directors, officers, partners, employees and agents of Trustee and Bank, respectively, and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Bank or Trustee, respectively. Such indemnities shall not apply to a particular indemnified person to the extent that the subject of the

indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person or their agents, employees or officers. Any amount to be paid under this Section 2.16 by Grantor to Bank and/or Trustee shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Bank and/or Trustee pursuant to this Deed of Trust. Nothing in this Section 2.16, elsewhere in this Deed of Trust or in any other Loan Document shall limit or impair any rights or remedies of Bank and/or Trustee (including without limitation any rights of contribution or indemnification) against Grantor or any other person under any other provision of this Deed of Trust, any other Loan Document, any other agreement or any applicable federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, order or decree.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages, causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys based on actual hours worked at customary rates without regard to statutory presumption and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Bank and/or Trustee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Deed of Trust or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date (hereinafter defined), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Grantor of any representation, warranty, covenant, agreement or condition contained in this Deed of Trust or in any other Loan Document, any Event of Default, any claim under or with respect to any Lease (hereinafter defined) or arising under the Hazardous Material Indemnity Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the Secured Indebtedness has been paid and performed in full and this Deed of Trust has been released, or (ii) the date on which the lien of this Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Grantor and Grantor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this Section 2.16 shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Deed of Trust but will survive the Release Date, foreclosure of this Deed of Trust or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the discharge and release of this Deed of Trust and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

2.17 Taxes on Note and Deed of Trust. Grantor will promptly pay all income, franchise and other taxes owing by Grantor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Grantor is prohibited by law) which may be required to be paid with respect to the Note, the Loan Agreement, this Deed of Trust or any other instrument evidencing or securing any of the Secured Indebtedness. If at any time after the date hereof there is assessed or imposed a license fee, tax or assessment imposed on Bank and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, Grantor shall pay and discharge the same prior to delinquency. If Grantor fails to pay such license fee, tax or assessment prior to delinquency, Bank may at its option declare all Secured Indebtedness together with all accrued interest thereon, immediately due and payable. Anything to the contrary herein notwithstanding, Grantor will have no obligation to pay any franchise,

estate, inheritance, income, excess profits or similar tax levied on Bank or on the obligations secured hereby.

2.18 Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes the Bank at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without signature of the Grantor as authorized by applicable law, as applicable to all or part of the Collateral. For purposes of such filings, the Grantor agrees to furnish any information requested by the Bank promptly upon request therefor by the Bank. The Grantor also ratifies its authorization for the Bank to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Agreement. The Grantor hereby irrevocably constitutes and appoints the Bank and any officer or agent of the Bank, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and the stead of the Grantor or in the name of the Grantor to execute in the name of the Grantor any such documents and otherwise to carry out the purposes of this Section 2.18, to the extent that the authorization above by the Grantor is not sufficient. To the extent permitted by law, the Grantor hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

### ARTICLE III

#### Assignment Of Rents And Leases

3.1 Assignment. Grantor hereby assigns to Bank all Rents (hereinafter defined) and all of Grantor's rights in and under all Leases (hereinafter defined). So long as no Event of Default has occurred, Grantor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of an Event of Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Bank and to otherwise deal with all Leases as permitted by this Deed of Trust. Each month, provided no Event of Default has occurred, Grantor may retain such Rents as were collected that month and held in trust for Bank. Upon the revocation of such license, all Rents shall be paid directly to Bank and not through Grantor, all without the necessity of any further action by Bank, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Grantor hereby authorizes and directs the tenants under the Leases to pay Rents to Bank upon written demand by Bank, without further consent of Grantor, without any obligation of such tenants to determine whether an Event of Default has in fact occurred and regardless of whether Bank has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Bank to the tenants. Any such payments to Bank shall constitute payments to Grantor under the Leases, and Grantor hereby irrevocably appoints Bank as its attorney-in-fact to do all things, after an Event of Default, which Grantor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the Secured Indebtedness or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Bank, all in such manner as may be determined by Bank, or at the option of Bank, holding the same as security for the payment of the Secured Indebtedness, (ii) leasing, in the name of Grantor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Event of Default, unless other Events of Default also then exist, shall entitle Grantor to recover its aforesaid license to do any such things which Grantor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this Section 3.1 shall be in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed

to impose any obligation upon Bank to exercise any power or right granted in this Section 3.1 or to assume any liability under any Lease of any part of the Property and no liability shall attach to Bank for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section 3.1 shall become null and void upon the release of this Deed of Trust. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Grantor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, issues, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated Lease termination or buy out of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, and all of Grantor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts or similar laws affecting the rights of creditors, and all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

3.2 Covenants, Representations and Warranties Concerning Leases and Rents. Grantor covenants, represents and warrants that: (a) Grantor has good title to, and is the owner of the entire Landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect; (c) neither Grantor nor any tenant is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) Grantor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (e) Grantor will not without the prior written consent of the Bank, enter into any Lease after the date hereof except as contemplated in the Loan Agreement, or waive, release, discount, setoff, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant, reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease, or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise; (f) Grantor will not, without the prior written consent of the Bank, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more; (g) Grantor shall as often as requested by the Bank, within ten (10) days of each request, deliver to Bank a complete rent roll of a particular property in such detail as Bank may reasonably require; and (h) promptly upon request by the Bank, Grantor shall deliver to Bank executed originals of all Leases and copies of all records relating thereto.

3.3 No Liability of Bank. Bank's acceptance of this assignment shall not be deemed to constitute Bank a "mortgagee in possession," nor obligate Bank to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Grantor by any tenant and not as such delivered to and accepted by Bank. Bank shall not be liable for any injury or damage to person or property in or about the Property, or for Bank's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Bank's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Bank nor Bank's consent to or approval of any Lease (nor all of the same), shall render Bank liable on any obligation under

or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option. If Bank seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Bank neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Bank under this Article III shall be cumulative of all other rights of Bank under the Loan Documents or otherwise.

## ARTICLE IV

### Events Of Default

4.1 Events of Default. An "Event of Default" shall be (i) the occurrence of an Event of Default under the Loan Agreement or the occurrence of an event of default under any other Loan Document, or (ii) Grantor's failure to comply with Section 2.7 of this Deed of Trust, or (iii) Grantor's failure to perform, observe or comply with any of the other covenants, terms or conditions of this Deed of Trust not otherwise appearing in any other Loan Document (other than Events of Defaults expressly listed in Section 5.1 of the Loan Agreement) and any such failure shall remain unremedied for a period of thirty (30) days after the date upon which written notice of such failure, requiring the same to be remedied, shall have been given to Grantor by the Bank, except that if the event or condition constituting such Event of Default is of a nature that it cannot be cured within such thirty (30) day period and Grantor has commenced curative actions within such thirty (30) day period, a period of up to ninety (90) days so long as Grantor diligently attempts to complete all curative actions within such time period.

## ARTICLE V

### Foreclosure

5.1 Acceleration of Loan; Foreclosure. Upon the occurrence of an Event of Default, the entire balance of the Note, including all accrued interest and all other Secured Indebtedness, shall, at the option of Bank, become immediately due and payable. Upon failure to pay the Secured Indebtedness in full at any stated or accelerated maturity, Bank may direct the Trustee to (and the Trustee shall, if so directed) foreclose the lien of this Deed of Trust pursuant to the power of sale hereby granted or by judicial proceeding.

5.2 Foreclosure; Power of Sale. The Trustee is hereby granted a power of sale and may sell the Property (together with the Collateral), or such part or parts thereof or interests therein as Bank may select, at public auction to the highest bidder for cash, after first having given such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and after giving such notice of sale and advertising the time and place of such sale as may then be required by law, and upon such sale and any resale and upon compliance with the law then relating to foreclosure proceedings, to convey title to the purchaser in fee simple. Grantor agrees that in the event of a sale hereunder, Bank shall have the right to bid at such sale and shall have the right to credit the Secured Indebtedness against the purchase price. 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 ten percent (10%) of the bid. The bid may be rejected if the deposit is not immediately made. 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 Premises, any portion of the Property which constitutes personal property, including without limitation the Collateral. If personal property is sold hereunder, it need not be at the place of sale. The Property may be sold as a whole or as separate parcels, and such sales may be conducted simultaneously or otherwise, all as the Trustee, in its reasonable discretion, deems to be in the best interest of the parties. Should the Trustee

elect to sell the Property as separate parcels, the exercise of the power of sale with respect to one or more of such parcels shall not extinguish or otherwise affect the right to exercise the power of sale with respect to the remainder of the Property.

5.3 Proceeds of Sale; Trustees Fees. Following a foreclosure sale, the Trustee shall deliver to the purchaser the Trustee's deed (and bill of sale as to any personalty) conveying the property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the statements made therein. The Trustee shall apply the proceeds of such sale in accordance with the requirements of applicable laws and to the extent consistent therewith, in the following order: (a) to all costs and expenses of the sale, including but not limited to all reasonable attorneys' fees and legal expenses, advertising costs, auctioneer's fees, costs of title rundowns and lien searches, inspection fees, appraisal costs, fees for professional services, environmental assessment and remediation fees, all court costs and charges of every character, and a reasonable fee to the Trustee of not more than five percent (5%) of the gross sales price; (b) taxes due and unpaid on the property sold; (c) special assessments, or any installments thereof, against the property sold, which are due and unpaid; (d) to the payment of all other Secured Indebtedness, including specifically without limitation the principal, accrued interest and reasonable attorneys' fees due and unpaid on the Note and the Loan Agreement and the amounts due and unpaid and owed to Bank under this Deed of Trust; and (e) the excess, if any, to the person or persons legally entitled thereto. If a foreclosure proceeding is commenced by the Trustee but terminated prior to its completion, Grantor shall pay all expenses incurred by the Trustee, including reasonable attorneys' fees, and a reasonable fee to the Trustee of not more than three percent (3%) of the principal balance of the Note if the termination occurs prior to the first public auction sale and not more than five percent (5%) of the principal balance of the Note if the termination occurs after the first public auction sale.

## ARTICLE VI

### Additional Rights And Remedies Of Bank

6.1 Rights upon an Event of Default. Upon the occurrence of an Event of Default, Bank, immediately and without additional notice and without liability therefor to Grantor, may do or cause to be done any or all of the following: (a) take physical possession of the Property subject to the terms of the Lease and that certain Subordination, Non-Disturbance and Attornment Agreement by and among Bank, Grantor, and tenant; (b) exercise its right to collect the Rents; (c) enter into contracts for the completion, repair and maintenance of the Improvements; (d) expend loan funds and any rents, income and profits derived from the Property for payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the Improvements, preservation of the lien of this Deed of Trust and satisfaction and fulfillment of any liabilities or obligations of Grantor arising out of or in any way connected with the construction of the Improvements on the Property whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Deed of Trust; (e) enter into leases demising the Property or any part thereof; (f) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in the Note, this Deed of Trust, the Loan Agreement, or the other Loan Documents, or to aid the execution of any power herein granted; and (g) generally, supervise, manage, and contract with reference to the Property as if Bank were equitable owner of the Property. Notwithstanding the occurrence of an Event of Default or acceleration of the Secured Indebtedness, Bank shall continue to have the right to pay money, whether or not loan funds, for the purposes described in Sections 2.3, 2.8 and 2.13 hereof, and all such interest thereon shall be secured hereby. Grantor also agrees that any of the foregoing rights and remedies of Bank may be exercised at any time independently of the exercise of any other such rights and remedies, and Bank may continue to exercise any or all such rights and remedies until the Event(s) of Default of Grantor are cured with the consent of Bank or until

foreclosure and the conveyance of the Property to the highest bidder or until the Secured Indebtedness is otherwise satisfied or paid in full.

6.2 Appointment of Receiver. Upon the occurrence of an Event of Default, Bank shall be entitled, without notice to Grantor or any other party and without regard to the adequacy of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property, and to collect the rents, issues, profits, and income thereof, and all amounts collected by the receiver shall, after expenses of the receivership (including reasonable attorneys' fees of the receiver) be applied to the payment of the Secured Indebtedness. The receiver shall have all rights and powers permitted under the laws of the state where the Property is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Bank shall be liable to account only for such rents, issues and profits actually received by Bank, whether received pursuant to this Section 6.2 or Section 6.1. Notwithstanding the appointment of any receiver or other custodian, Bank shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust, to Bank.

6.3 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 appraisalment, 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 Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisalment, 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 Property, 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 Bank under the terms of this Deed of Trust to a sale of the Property for the collection of the Secured Indebtedness without any prior or different resort for collection, or the right of Bank under the terms of this Deed of Trust to the payment of the Secured Indebtedness out of the proceeds of sale of the Property 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 Property 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.

6.4 Remedies Cumulative. All remedies provided in this Deed of Trust, in the Note, in the Loan Agreement and in the other Loan Documents are cumulative and may, at the election of Bank, be exercised alternatively, successively, or in any manner and are in addition to any other rights provided by law.

6.5 Suits to Protect the Property. Bank and the Trustee shall have power (a) to institute and maintain such suits and proceedings as they may deem expedient to prevent any impairment of the Property, the Collateral, the Rents or the Leases by any acts which may be unlawful or any violation of this Deed of Trust, (b) to preserve or protect their interest in the Property, the Collateral, the Rents and the Leases, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Bank.

## ARTICLE VII

### General Conditions

7.1 Substitution of Trustee. Bank shall have the irrevocable right to remove the Trustee herein named or any successor trustee without notice or cause and to appoint a successor Trustee by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in the Registers of Deeds of North Carolina, and in the event of the death, incapacity or resignation of the Trustee herein named or any successor trustee, Bank shall have the right to appoint a successor thereto by such written instrument; and each new Trustee immediately upon recordation of such instrument shall become successor in title to the Property for the uses and purposes of this Deed of Trust, with all the powers, duties and obligations conferred on the original Trustee in the same manner and to the same effect as though he were named herein as the Trustee.

7.2 Terms. 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 "Bank" shall include any payee of the Secured Indebtedness or any transferee thereof whether by operation of law or otherwise.

7.3 Notices. All notices required to be given shall be in writing and delivered personally, by registered or certified United States mail, or by Federal Express or other similar national overnight courier, and shall be deemed served at the earlier of (i) actual receipt by the intended recipient or (ii) two (2) days following deposit when sent by mail or overnight courier, and addressed to the parties at the following addresses, or such other addresses as may from time to time be designated by written notice given as herein required:

to Grantor:	Y&O WS LLC c/o Y&O Group, LLC 366 North Broadway, Suite 406 Jericho, New York 11753 Attention: Yoav Rubenstein
to the Trustee:	Chicago Title Insurance Company P.O. Box 45023 Jacksonville, Florida 32232-5023
to Bank:	Fieldpoint Private Bank & Trust 100 Field Point Road Greenwich, Connecticut 06830 Attn: James Savage

All fees or expenses of mail or overnight courier shall be paid by the sender. Personal delivery to a party or to any officer, member, manager, agent or employee of such party at its address herein shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Notwithstanding the foregoing, no notice of change of address shall be effective until the date of receipt thereof.

7.4 Effective as a Financing Statement. This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and owned by Grantor and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the North Carolina Uniform Commercial Code, as in effect from time to time, and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Deed of Trust shall also be effective as a financing statement covering any surplus of withheld funds resulting from the invalidity of "stop notice" claims or the failure of claimants to prosecute their claims to judgment and any other Property in which an interest can be perfected by filing and may be filed in any other appropriate filing or recording office. The mailing address of Grantor and the Bank are set forth in Section 7.3 of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section.

7.5 Greater Estate. In the event that Grantor is the owner of a leasehold estate with respect to any portion of the Property and, prior to the satisfaction of the Secured Indebtedness and the cancellation of this Deed of Trust of record, Grantor obtains a fee estate in such portion of the Property, then such fee estate shall automatically, and without further action of any kind on the part of Grantor, be and become subject to the security lien of this Deed of Trust.

7.6 Invalidation of Provisions. Invalidation of any one or more of the provisions of this Deed of Trust shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

7.7 Headings. 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.

7.8 Governing Law. This Deed of Trust shall be governed by and construed under the laws of the State of North Carolina.

7.9 No Third-Party Beneficiary. Grantor and Bank 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.

7.10 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor, and shall inure to the benefit of Trustee and Bank and shall constitute covenants running with the Land. All references in this Deed of Trust to Grantor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Grantor.

7.11 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.

[SIGNATURE AND NOTARY ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned Grantor has caused these presents to be executed and delivered as of the day and year first written above.

**Y&O WS LLC**

a Delaware limited liability company (SEAL)

By: \_\_\_\_\_ (SEAL)

Name: Steven I. Holm

Title: Authorized Signatory

STATE OF New York

COUNTY OF New York  
(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 for the purpose stated therein and in the capacity indicated: Steven I. Holm, Authorized Signatory for Y&O WS LLC.

Date: June 7, 2018.

Marc S. Brodsky  
Official Signature of Notary

Marc S. Brodsky  
Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: 2/23/19

**MARC S. BRODSKY**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 02BR6320019**  
**Qualified in New York County**  
**My Commission Expires February 23, 2019**

**EXHIBIT A**

**TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING**

Legal Description

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 "C", containing approximately 4.972 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.