

FORSYTH CO., NC 30 FEE: \$ 48.00  
 PRESENTED & RECORDED: 10/04/2001 10:12AM  
 DICKIE C. WOOD REGISTER OF DEEDS BY: THOMAS  
 BK2203 P3880 - P3898

This instrument was prepared by Hardin G. Halsey, Esq.,  
 whose address is Womble Carlyle Sandridge & Rice, PLLC, *BOX*  
 P.O. Drawer 84, Winston-Salem, NC 27102  
 MAIL TO: Nancy Dillingham, Wachovia Bank, N.A.,  
 1400 Crossways Boulevard, Suite A, Chesapeake, VA 23320.



NORTH CAROLINA, FORSYTH COUNTY

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT and FINANCING STATEMENT made and entered into as of the 2nd day of October, 2001, by and among MULVANEY HOMES, INC., a North Carolina corporation, whose address is 1330 East Fourth Street, Suite 300, Charlotte, North Carolina 28204 (hereinafter called "Grantor" or "Maker"); and NEW SALEM, INC., a North Carolina corporation, Trustee (hereinafter called "Trustee"); and WACHOVIA BANK, N.A., whose address is 100 North Main Street, Winston-Salem, North Carolina 27150, Attention: General Counsel, Legal Division (hereinafter called "Beneficiary");

#### RECITALS:

#### COLLATERAL INCLUDES FIXTURES

This Deed of Trust is one of the Security Instruments as defined and described in that certain Revolving Loan Agreement dated January 13, 2000 between Maker and Beneficiary (as modified or amended from time to time the "Revolving Loan Agreement") and secures the Loan under the Revolving Loan Agreement. The terms and conditions of the Revolving Loan Agreement are incorporated herein by reference to the same extent as if set forth herein verbatim. The Revolving Loan Agreement sets forth certain terms and provisions regarding the Loan including, without limitation, Events of Default, conditions to disbursement, financial covenants, collateral security, commitment fees, and other relevant provisions regarding the Loan and this Deed of Trust. Each capitalized term used herein, unless otherwise defined herein, shall have the same meaning as set forth in the Revolving Loan Agreement.

The Maker has made and issued to Beneficiary a Revolving Loan Note dated January 13, 2000 evidencing an original principal indebtedness of \$18,000,000.00, or so much thereof as shall have been disbursed from time to time and remain unpaid (said Revolving Loan Note, as may be hereafter modified, amended, extended or renewed from time to time, is hereinafter collectively referred to as the "Revolving Loan Note"). The Revolving Loan Note is the Revolving Loan Note issued under the Revolving Loan Agreement. The Revolving Loan Note is due and payable in full on the Revolving Commitment Termination Date, as the same may be extended from time to time. Subject to the terms and provisions of the Revolving Loan Agreement and the other Loan Documents, the indebtedness evidenced by the Revolving Loan Note may be borrowed, repaid, and reborrowed again, from time to time, on a revolving basis, provided that the maximum principal amount of the Revolving Loan Note outstanding at any one time shall not exceed the aggregate amount of \$18,000,000.00.

Maker may hereafter become indebted to Beneficiary pursuant to other additional future notes or future note increases and/or modifications and this Deed of Trust has also been granted to secure indebtedness evidenced by any other additional note or notes or note modifications hereafter executed by the Maker to the order of the Beneficiary if such other additional future notes or note modifications generally state that they are secured by the Security Instruments executed pursuant to the Revolving Loan Agreement (any such other future note or notes or note increases or note modifications being collectively referred to herein as the "Future Notes", which term shall include any and all renewals, modifications and extensions thereof).

The Revolving Loan Note and all Future Notes together with all extensions, renewals, amendments, and modifications thereof, are hereinafter collectively referred to as the "Notes", it being the express intention of the parties hereto that this Deed of Trust shall secure the payment and performance of all of the foregoing described Notes.

This Deed of Trust is given to secure present and future obligations of Maker to Beneficiary. The period in which future obligations may be incurred and secured by this Deed of Trust is the period from the date hereof up to and including that date which is fifteen (15) years from the date hereof. The amount of present obligations secured by this Deed of Trust as of the date of recording hereof is \$0.00; and the maximum principal amount, including present and future obligations, which may be secured by this Deed of Trust at any one time is an amount equal to \$36,000,000.00. Any additional amounts advanced by Beneficiary pursuant to the provisions of this Deed of Trust shall be deemed necessary expenditures for the protection of the security. Neither Grantor nor Maker need sign any instrument or notation evidencing or stipulating that future advances or obligations are secured by this Deed of Trust.

The Grantor desires to secure by and with the collateral hereinafter described (a) the payment of the Notes with interest and any renewals, modifications, amendments or extensions thereof, in whole or in part, (b) the payment and performance by Grantor and/or Maker of all obligations, agreements, covenants, representations and warranties contained in this Deed of Trust, the Notes, the Revolving Loan Agreement, the Security Instruments, all other Loan Documents and any other document executed and delivered in connection therewith and (c) the additional payments hereinafter agreed to be made (the liabilities, obligations and indebtedness described in (a), (b) and (c) of this paragraph are herein collectively referred to as the "Obligations").

NOW, THEREFORE, in consideration of the premises, and the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has given, granted, bargained, sold and conveyed, and by these presents does give, grant, bargain, sell and convey unto Trustee, its successors and assigns, with power of sale, the following property (the "Premises"):

(a) The real property described in EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE (the "Land"); and

(b) All buildings and other improvements now or hereafter located in, on or about the Land, and all of Grantor's building materials intended for incorporation but not incorporated into the improvements to the Land, and all furnishings, furniture, fixtures, machinery, equipment, tools, and all other personal property or chattels used in connection with the operation of such improvements, specifically including, without limitation, appliances, gas and electric fixtures and systems, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, water heaters, air conditioning apparatus and systems, window screens, awnings, storm sashes AND ANY OTHER PERSONAL PROPERTY COLLATERAL DESCRIBED IN ANY SCHEDULE OF ADDITIONAL PERSONAL PROPERTY COLLATERAL ATTACHED HERETO, whenever acquired by Grantor and now or hereafter located in, upon or under the Land, together with all additions and accessions thereto and replacements and proceeds thereof (the "Improvements"); and

(c) All leases, rents, issues, profits, royalties, income and other benefits derived from the Land and the Improvements (the "Rents"), subject to the right, power and authority hereinafter given to Grantor to collect and apply such Rents, and the proceeds from any insurance or condemnation award relating to the Land and the Improvements; and

(d) All easements, rights-of-way and rights used in connection with the Land and the Improvements or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto; and

(e) All the rights, interest and privileges which the Grantor as lessor has or may have in the leases now existing or hereafter made and affecting the Land or the Improvements or any part thereof, as said leases may have been or may from time to time be hereafter modified, extended and renewed, together with any and all guarantees of any leases affecting all or any part of the Land or the Improvements (collectively, the "Leases") and all security deposits received in respect of any Lease (the "Security Deposits"); and

(f) All of the right, title and interest of Grantor in, to and under the following described collateral, whether now existing or hereafter arising or acquired:

(i) All now existing or hereafter created options, contracts or other agreements for the sale of (x) any improvements now or hereafter situated upon the Land or any part thereof, (y) all or any portion of the Land and/or all or a portion of any parcels within the Land, and (z) any and all other contracts or agreements now or hereafter relating to the sale of any portions of the Land or any portions of the Improvements situated or to be situated on the Land (all of the foregoing being collectively referred to as the "Contracts");

(ii) All monies in the nature of earnest-money deposits, escrow deposits, pre-sales deposits, or other similar deposits now or hereafter made pursuant to the Contracts and all monies now or hereafter payable or owing to the Grantor under the Contracts; and

(iii) All cash and non-cash proceeds of all of the foregoing (all of the foregoing is herein collectively referred to as the "Sales Contracts Collateral").

The term "Loan Documents" shall mean this Deed of Trust, the Notes, the Revolving Loan Agreement, any loan agreement, any security agreement, any master agreement, any guaranty, and all such other agreements or documents evidencing or securing the Notes.

TO HAVE AND TO HOLD the Premises unto Trustee in fee simple forever, upon the trusts and for the uses and purposes hereinafter set out;

And Grantor covenants with Trustee that Grantor is seized of the Premises in fee and has the right to convey the same in fee simple; that the same are free and clear of all encumbrances, that Grantor has done no act to encumber the Premises and that Grantor will warrant and defend the title to the same against the lawful claims of all persons whomsoever, and that Grantor will execute such further issuances of said lands as may be required.

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if either Maker or Grantor shall pay the Obligations in accordance with its terms and shall comply with all the covenants, terms and conditions of this Deed of Trust, this conveyance shall be released and cancelled of record. Grantor and Maker, as applicable, hereby further covenant and agree with Trustee and Beneficiary as follows:

**Section 1. Commitment Letter; Loan Agreement.** The terms and provisions of the Revolving Loan Agreement and of any loan agreement between Maker and Beneficiary relating to the loan evidenced by the Notes or to any other Obligations are incorporated herein by reference. An Event of Default under any such Revolving Loan Agreement or loan agreement shall for all purposes constitute a default hereunder and under the Obligations. If there is any conflict between any such Revolving Loan Agreement and the Notes (or any

other Obligations), this Deed of Trust or any such loan agreement, then the Revolving Loan Agreement shall control.

**Section 2. Financial Statements.** Grantor or Maker will furnish to Beneficiary without cost to Beneficiary the financial statements and financial information as provided in the Revolving Loan Agreement.

**Section 3. Payment of Indebtedness; Impositions.** Maker will pay, when due, the Obligations and will pay, prior to delinquency, all real and personal property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation non-governmental levies or assessments (hereinafter referred to as Impositions) such as owner association dues or charges or fees and maintenance charges which are assessed or imposed upon the Premises or the Loan Documents. If at any time after the date hereof, there shall be assessed or imposed (the following hereafter referenced to as the "Additional Impositions") (a) a tax or assessment on the Premises in lieu of or in addition to the Impositions payable by Grantor or (b) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, Grantor shall pay and discharge all such taxes, assessments or fees before they become delinquent. Beneficiary may, at its option, pay any such Impositions or Additional Impositions of which payment, amount and validity thereof the official receipt shall be conclusive evidence, and any amounts so expended shall immediately become debts due by the Maker, shall bear interest at the rate specified in the Notes, and such payment shall be secured by this Deed of Trust.

**Section 4. Insurance.** Maker or Grantor will cause the Improvements to be insured against loss and damage by fire, flood, tornado and windstorm, vandalism, malicious mischief and builder's risk (if applicable) and against such other hazards as are customary in the locale for Improvements or as Beneficiary may otherwise require, including, if applicable, rent loss or business interruption for periods of no less than twelve (12) months, in amounts at no time less than the total replacement cost of such Improvements, plus an amount sufficient to prevent any co-insurance liability on the part of the owner of the Premises. The Maker shall maintain general liability insurance in an amount satisfactory to the Beneficiary. All insurance shall be with reputable companies with a *Best Insurance Report* Rating of B+ or better; and Maker or Grantor will cause to be paid all premiums for such insurance when due. Unless and until requested by Beneficiary, Grantor shall not be required to cause such insurance to name Beneficiary as mortgagee or loss payee or to deliver such policies or renewals or evidence of payment of premiums to Beneficiary, but if requested by Beneficiary, Grantor or Maker immediately (but no later than ten (10) business days) shall cause Beneficiary to be named as mortgagee and additional insured under such policies and renewals, shall deliver to Beneficiary copies of such policies and renewals and such other evidence of compliance with this Section 4 as Beneficiary may request, and Grantor or Maker shall make such adjustments in the coverage of such insurance as Beneficiary may require. If Grantor fails or refuses to keep the Premises so insured, Beneficiary may obtain such insurance without prejudice to its right to foreclose hereunder by reason of such default. In the event of loss, Grantor or Maker will give immediate notice by mail to Beneficiary who, if then named as mortgagee and additional insured, may make proof of loss if not made promptly by Grantor, and, if the Beneficiary is then named as mortgagee and additional insured, each insurance company concerned shall hereby be authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor, Maker and Beneficiary jointly. If the Beneficiary is then named as mortgagee and additional insured, the proceeds of any insurance, or any part thereof, may be applied by Beneficiary, at its option, either to the reduction of the Obligations or to the restoration or repair of the Improvements. Beneficiary may, at its option, pay any such insurance premiums of which payment, amount and validity thereof the official receipt shall be conclusive evidence, and any amounts so expended shall immediately become debts due by Maker, shall bear interest at the rate specified in the Notes, and such payment shall be secured by this Deed of Trust.

If any portion of the Improvements is located in a special flood hazard area according to the Federal Emergency Management Agency ("FEMA"), then the Grantor or Maker must maintain a flood insurance policy in the amount of the Notes plus the outstanding principal balance of any senior liens on the Premises or the replacement value of the Improvements located in a special flood hazard area, whichever is less. If at any time during the term of the Notes, the Improvements are classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur federal law requires the Beneficiary to notify the Grantor or Maker of the reclassification. If, within forty-five (45) days of receipt of notification from the Beneficiary that any portion of the Improvements has been reclassified by the FEMA as being located in a special flood hazard area, the Grantor or Maker has not provided sufficient evidence of flood insurance, the Beneficiary is mandated under federal law to purchase flood insurance on behalf of the Grantor, and any amounts so expended shall immediately become debts of the Maker, shall bear interest at the rate specified in the Notes, and payment thereof shall be secured by this Deed of Trust.

**Section 5. Maintenance of Premises; Compliance with Laws.** Grantor will keep the Premises in good order, repair and condition, reasonable wear and tear excepted and shall not commit or permit any waste. Grantor will also comply with all applicable laws, statutes, ordinances, codes, judicial and administrative decisions (including without limitation and as applicable, all such laws, statutes, judicial and administrative decisions relating to the physical accessibility requirements of Title III of the Americans with Disabilities Act of 1990 (as amended) and the implementing regulations promulgated thereunder by the Department of Justice and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) associated therewith and the applicable ANSI Standards under the Fair Housing Act (as amended) and all applicable regulations) of all applicable state, federal or local governmental entities (the "Requirements"). Grantor will not make material changes to the Premises, change the use of the Premises, or consent to a change in zoning of the Premises without the Beneficiary's prior written consent. Grantor shall promptly provide notice of proposed zoning changes to the Beneficiary.

**Section 6. Conveyance of Premises.** Except as otherwise permitted or provided in the Revolving Loan Agreement, Grantor will not sell, convey, transfer or encumber the Premises, or any part thereof or interest therein, legal or equitable, without the prior written consent of Beneficiary; provided, however, that Grantor may dispose of, free and clear of the security interest granted herein and the lien hereof, any personal property or fixtures which, in the reasonable judgment of Grantor, have become obsolete or unfit for use or which are no longer useful in Grantor's operations, on the condition that 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 Grantor, which shall (a) be of at least equal value to the personal property or fixtures disposed of and (b) perform a function or serve a purpose the same as, similar to or related to that of the personal property or fixtures disposed of. Any such replacement personal property or fixtures shall forthwith, without further action, become subject to the security interest granted in, and the lien created by, this Deed of Trust, and such security interest is hereby granted by Grantor. Beneficiary's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Notes (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Notes or this Deed of Trust. For purposes of this Section 6, a change of ownership interests in violation of the Revolving Loan Agreement in Grantor, Maker or any guarantor shall be deemed a conveyance or transfer of the Premises.

**Section 7. Hazardous Material.**

**7.01 Representations and Warranties.** Grantor and Maker represent, warrant and agree that (a) to the best knowledge of Grantor and Maker, no Hazardous Material (as hereinafter defined) has been used or placed on the Premises in violation of Environmental Laws (as hereinafter defined); (b) to the best knowledge of Grantor and Maker, there are no unregistered underground storage tanks on the Premises that are

subject to any underground storage tank registration laws or regulations; (c) no notice has been received with regard to any Hazardous Material on the Premises; (d) to the best knowledge of Grantor and Maker, the Premises are presently in compliance with Environmental Laws; (e) no action, investigation or proceeding is pending or to Grantor's or Maker's knowledge threatened which seeks to enforce any right or remedy against Grantor or the Premises under any Environmental Law; (f) Grantor shall permit no installation or placement of Hazardous Material on the Premises in violation of Environmental Laws; (g) Grantor shall permit no release of Hazardous Material onto or from the Premises; (h) Grantor shall cause the Premises to comply with Environmental Laws and be free and clear of any liens imposed pursuant to Environmental Laws; (i) all licenses, permits and other governmental or regulatory actions necessary for the Premises to comply with Environmental Laws (the "Permits") shall be obtained and maintained and Grantor shall assure compliance therewith; and (j) Grantor shall give Beneficiary prompt written notice if Grantor receives any notice with regard to Hazardous Material on, from or affecting the Premises and shall conduct and complete all investigations and all cleanup actions necessary to remove, in accordance with Environmental Laws, such Hazardous Material from the Premises.

**7.02 Inspections and Audits.** Beneficiary shall have the right at any time during the term of this Deed of Trust, whether before or after default, to conduct or cause to be conducted an environmental inspection or audit of the Premises by itself or by a qualified environmental consultant or engineer selected by Beneficiary; and Grantor hereby grants to Beneficiary and its employees, agents, and independent contractors (hereinafter collectively called "Beneficiary and its Representatives"), the right to enter the Premises upon reasonable notice for the purpose of conducting, whether before or after default, any inspection, audit or tests, making soil borings, extracting samples, installing monitoring wells, and conducting such other procedures as Beneficiary and its Representatives deem necessary or desirable in connection with such inspection or audit. At any time during the term of this Deed of Trust, provided Beneficiary has a reasonable basis for doing so or an Event of Default exists, Beneficiary may require Grantor or Maker to cause to be performed, at the expense of Grantor, for the benefit of Grantor, Maker and Beneficiary, an inspection or audit of the Premises by an environmental consultant or engineer approved by Beneficiary, and Grantor shall furnish to Beneficiary, at no cost to Beneficiary, the written inspection or audit report certifying as to the presence or absence of Hazardous Material on, at, or under the Premises. All inspection reports may be submitted to governmental entities or agencies as requested or as may be required by law or regulations.

**7.03 Indemnification.** Grantor and Maker, jointly and severally, shall indemnify and hold harmless Beneficiary from and against all losses, expenses (including, without limitation, reasonable attorneys' fees) and claims of every kind suffered by or asserted against Beneficiary as a direct or indirect result of (i) the presence on or release from the Premises of any Hazardous Material, whether or not caused by Grantor or Maker, (ii) the violation of Environmental Laws applicable to the Premises, whether or not caused by Grantor or Maker, (iii) the requirement to conduct any remediation of Hazardous Materials from the Premises, (iv) the failure by Grantor or Maker to comply fully with the terms and provisions of this section, or (v) any warranty or representation made by Grantor or Maker in this section being false or untrue in any material respect.

**7.04 Definitions; Survival of Provisions.** "Hazardous Material" means polychlorinated biphenyls, petroleum, flammable explosives, radioactive materials, asbestos, lead and any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) Environmental Laws or listed as such by the Environmental Protection Agency. "Environmental Laws" means any current or future federal, state or local law, regulation or ruling applicable to environmental conditions on, under or about the Premises including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act and the Clean Water Act. Grantor's and Maker's obligations under this section shall survive the repayment of the Notes and other Obligations, a foreclosure of or exercise of power of sale under this Deed of Trust, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this Deed of Trust and the transfer of the Premises.

**Section 8. Execution by Parties Other Than Maker of Obligations.** Any Grantor who executes this Deed of Trust but does not execute the Notes (or other Obligations) has executed this Deed of Trust only to subject whatever interest, if any, such Grantor has or may hereafter have in the Premises to the lien of this Deed of Trust, has no personal liability under the Notes (or other Obligations) or under this Deed of Trust (nothing herein limits or affects such Grantor's liability to Beneficiary under any separate guaranty or any other instrument), and agrees that Beneficiary and any other Grantor hereunder and Maker may extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Obligations without such Grantor's consent and without releasing such Grantor hereunder or modifying or affecting this Deed of Trust as to such Grantor's interest in the Premises.

**Section 9. Assignment of Rents, Leases, and Profits.**

**9.01 Assignment.** As further security for the payment of the Obligations and for the faithful performance of all the covenants, agreements, terms and provisions of this Deed of Trust, Grantor hereby sells, transfers and assigns unto Beneficiary all the right, title and interest of Grantor in and to the Rents, and to that end Grantor hereby assigns and sets over unto Beneficiary all Leases of the Premises now made, executed or delivered, whether written or verbal, or hereafter made, whether written or verbal, and Grantor does hereby authorize and empower Beneficiary to collect the Rents when due, and does hereby direct each tenant of the Premises to pay the Rents to Beneficiary, upon demand for payment thereof by Beneficiary; it being understood and agreed, however, that no such demand shall be made absent the occurrence of an Event of Default hereunder; and until such demand is made, Grantor is authorized to collect or continue collecting the Rents; such privilege to collect or continue collecting the Rents by Grantor shall not operate, however, to permit the collection of any Rents more than thirty (30) days in advance of their due date.

It is intended that the assignment set forth above be an absolute, present assignment from Grantor to the Beneficiary and not merely the passing of a security interest. The rents, issues, income and profits are hereby assigned absolutely by Grantor to the Beneficiary contingent only upon the occurrence of an Event of Default. Immediately upon the occurrence of an Event of Default, the Grantor's right to collect the rents, income and profits from the Leases and to retain, use and enjoy the same shall at the Beneficiary's option immediately cease and terminate, and the Beneficiary's absolute, present and continuing right to collect the rents, issues, income and profits shall continue in full force and effect, and the Beneficiary shall be entitled at its option to collect such rents, issues, income and profits without taking possession of the Premises, without the appointment of a receiver and without any further act whatsoever. Notwithstanding anything to the contrary set forth in this Deed of Trust, or any other document executed in connection herewith, there shall be no condition precedent other than Grantor's default together with the expiration of any applicable cure or grace period to the Beneficiary's right to collect such rents, issues, income and profits. The Grantor may apply in writing to the Beneficiary for a reinstatement of the Grantor's right to collect the rents, income and profits from the Leases and to retain, use and enjoy the same; however, the Beneficiary shall be under no obligation to do so.

Anything to the contrary notwithstanding, Grantor hereby assigns to the Beneficiary any award made hereafter to it in any court procedure involving any of the Leases in any bankruptcy, insolvency, or reorganization proceedings in any state or Federal court and any and all payments made by lessees in lieu of rent. Grantor appoints the Beneficiary as its irrevocable attorney in fact to appear in any action and/or to collect any such award or payment. Grantor hereby assigns to the Beneficiary all Security Deposits received by Grantor or any agent in respect of any Leases. Prior to an Event of Default hereunder or under the Notes or under any other Obligations and demand by the Beneficiary for delivery of the Security Deposits to it or its designee, Grantor shall maintain the Security Deposits in a separate, identifiable account in a bank acceptable to Beneficiary. After an Event of Default and upon demand by the Beneficiary, Grantor shall deliver the Security Deposits to the Beneficiary or its designee. Upon delivery of the Security Deposits to Beneficiary, the

Beneficiary shall hold such deposits pursuant to the terms of the Leases in respect of which such deposits were obtained by Grantor. Provided, however, in no event shall Beneficiary be liable under any Lease of any part of the Premises for the return of any Security Deposit in any amount in excess of the amount delivered to the Beneficiary by Grantor. Any Security Deposits delivered to and held by the Beneficiary shall not bear interest. The Beneficiary shall be entitled to exercise its rights under this Section 9 to the fullest extent permitted by law, without the need for the commencement of foreclosure action hereunder or the undertaking of any other remedy available at law or equity.

**9.02 Leases Affecting Premises.** Grantor will promptly and fully keep, perform and comply with all the terms and covenants imposed upon or assumed by Grantor as landlord under the Leases and will not do, permit anything to be done, or omit or refrain from doing anything, the doing or omission of which will entitle any tenant to terminate any of the Leases. Grantor, if requested by Beneficiary, shall furnish promptly to Beneficiary executed copies of all Leases, renewals, or amendments now existing or hereafter created, all of which shall be subject to the approval of the Beneficiary.

**9.03 Separate Assignment of Leases.** Grantor will, upon request of the Beneficiary, execute a separate assignment of any Lease affecting any part of the Land or Improvements. A default under any separate assignment of Grantor's interest in leases given as additional security for the Obligations shall constitute an Event of Default hereunder.

**9.04 Representations.** The Grantor covenants and represents that:

(a) Grantor has full right and title to assign the Leases and the rents, issues, income and profits due or to become due thereunder;

(b) The terms of the Leases have not been changed from the terms in the copies of the Leases submitted to the Beneficiary for approval;

(c) No other assignment of any interest in the Leases has been made;

(d) To the best of Grantor's knowledge, there are no existing defaults under the provisions of any of the Leases;

(e) The Grantor will not without the prior written consent of the Beneficiary cancel, surrender or terminate any of the Leases, or exercise any option which might lead to such termination, or change, alter or modify any of the Leases, or consent to the release of any party liable thereunder, or consent to the assignment of any lessee's interest therein;

(f) No tenant has been granted a concession in the form of a waiver, release, reduction, discount or other alteration of rental due or to become due under any Lease;

(g) No rent for any period subsequent to the date of this Deed of Trust has been collected more than one month in advance of the time when the same is due under the terms of the Leases;

(h) To the best of Grantor's knowledge, no lessee has any defense, setoff or counterclaim against Grantor under any Lease; and

(i) Grantor shall give prompt written notice to Beneficiary of any notice of Grantor's default received from any tenant and will furnish Beneficiary with a complete copy thereof.

**Section 10. Right to Cure; Protection of Security.** If Grantor or Maker, as applicable, shall fail in any of the covenants and provisions contained in this Deed of Trust, Beneficiary may (but shall not be obligated to) take any action Beneficiary deems necessary or desirable to prevent or cure any such default or failure. Beneficiary shall have the right to enter upon the Premises to such extent and as often as Beneficiary, in its sole discretion, deems necessary or desirable in order to prevent or cure any such default or failure by Grantor or Maker, as applicable. In addition, if any legal proceeding (such as bankruptcy, condemnation, forfeiture or other legal or regulatory proceeding) that may affect Beneficiary's rights or interests in the Premises (or any part thereof) is commenced, Beneficiary may act to protect or preserve such rights or interests (including, without limitation, the employment of an attorney or other professional(s)). Beneficiary may expend such sums of money as Beneficiary, in its sole discretion, deems necessary for any such purpose, and Grantor and Maker, jointly and severally, hereby agree to pay to Beneficiary, immediately upon demand, all sums so expended by Beneficiary, together with interest thereon from the date of each such payment at the rate provided for in the Notes. All sums so expended by Beneficiary, and the interest thereon, shall be added to and secured by the lien of this Deed of Trust.

**Section 11. Condemnation.** Upon condemnation of the Premises or any part thereof, this Deed of Trust shall become a lien, charge and encumbrance upon the proceeds or award realized as a result of any such proceeding or of any settlement or payment made in lieu of any such proceeding ("Condemnation Proceeds"). Grantor hereby grants to Beneficiary a security interest in any Condemnation Proceeds and hereby agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary may require. Grantor further covenants and agrees that Beneficiary may (and is hereby authorized and empowered but not required to) collect and receive any Condemnation Proceeds and, if received by Grantor, Grantor shall pay over and deliver immediately to Beneficiary all Condemnation Proceeds to be held by Beneficiary and applied as follows:

(a) In the event the entire Premises shall be taken by condemnation or in settlement of any threat of condemnation, then any Condemnation Proceeds shall be paid to Beneficiary and applied in payment in whole or in part to the Obligations, whether or not then due and payable, and any excess shall be delivered to the parties legally entitled thereto. In the event of a partial taking of the Premises, the portion of the Condemnation Proceeds necessary to prevent impairment of the security of this Deed of Trust, as determined in the Beneficiary's sole discretion, shall be set aside, withheld or paid over to the Beneficiary and applied to the Obligations, whether or not then due and payable, and the excess of such award or proceeds shall be delivered to Grantor or other parties legally entitled thereto. Upon any partial taking of the Premises, this Deed of Trust shall continue in full force as security for the unpaid portion of the Obligations. Upon any partial taking of the Premises, Grantor covenants with Beneficiary to restore the Premises as nearly as possible to the condition thereof immediately prior to such taking and to apply Grantor's portion of any Condemnation Proceeds together with any other necessary funds to complete and pay for the costs of restoration. Any amounts applied to principal of the Obligations shall be applied to principal last maturing thereon.

(b) Notwithstanding any contrary provision of this Deed of Trust, (i) upon condemnation of the entire Premises, or (ii) if it shall at any time be determined that N.C. Gen. Stat. Sec. 40A-68 shall for any reason be unenforceable or inapplicable to this Deed of Trust, upon partial condemnation of the Premises, the entire unpaid balance of the Obligations shall, at the option of Beneficiary, at once become due and payable, whereupon any Condemnation Proceeds shall be paid over to Beneficiary and applied in accordance with the first sentence of subparagraph (a) of this Section 11.

**Section 12. Inspection.** Beneficiary may inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose to Beneficiary and its representatives.

**Section 13. Events of Default.** The following shall constitute defaults or events of default hereunder subject, however, to the cure and grace periods set forth in the Revolving Loan Agreement

(hereinafter referred to as "Events of Default" and all of which also constitute "Events of Default" as defined in the Revolving Loan Agreement):

(a) Failure by Maker to pay when due any payment of interest, principal, principal and interest, commitment fees, deposits or other payments which are due and payable under the Notes, or the other Obligations, this Deed of Trust or any documents executed in connection therewith or as security therefor.

(b) Failure by Grantor or Maker to keep, perform or observe any covenant, term or condition required to be kept, performed or observed by Grantor or Maker under this Deed of Trust, the Notes, any of the other Obligations, or any documents executed in connection therewith or as security therefor.

(c) The occurrence of any event or condition which would allow Beneficiary to accelerate the Notes or other Obligations, or would constitute a default or event of default under the terms of the Notes, the other Obligations, this Deed of Trust, the Revolving Loan Agreement or any documents executed in connection therewith or as security therefor.

(d) The occurrence of an Event of Default as defined and described in the Revolving Loan Agreement.

**Section 14. Acceleration.** If an Event of Default shall have occurred, the Obligations shall, at the option of Beneficiary, immediately become due and payable without further notice of demand, time being of the essence of this Deed of Trust; and no omission on the part of Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

**Section 15. Power of Sale.** Upon the occurrence of an Event of Default, Beneficiary may notify Trustee to exercise the power of sale granted hereunder and upon such notification it shall be lawful for and the duty of Trustee, and Trustee is hereby authorized and empowered to expose to sale and to sell the Premises or any part thereof at public sale to the highest bidder for cash, in compliance with applicable requirements of North Carolina law governing the exercise of powers of sale contained in deeds of trust and upon such sale, Trustee shall collect the purchase proceeds and convey title to the portion of the Premises so sold to the purchaser in fee simple. In the event of a sale of the Premises or any part thereof, the proceeds of sale shall be applied in the following order of priority: (i) to the payment of all costs and expenses for and in connection with such sale, including a commission for Trustee's services as hereinafter provided and reasonable attorneys' fees incurred by Trustee for legal services actually performed; (ii) to the reimbursement of Beneficiary for all sums expended or incurred by Beneficiary under the terms of this Deed of Trust or to establish, preserve or enforce this Deed of Trust or to collect the Obligations (including, without limitation, reasonable attorneys' fees); (iii) to the payment of the Obligations and interest thereon and all other indebtedness hereby secured; and (iv) the balance, if any, shall be paid to the parties lawfully entitled thereto. In the event of a sale hereunder, Beneficiary shall have the right to bid at such sale and shall have the right to credit all or any portion of the indebtedness secured hereby against the purchase price. Trustee shall have the right to designate the place of sale in compliance with applicable law and the sale shall be held at the place designated by the notice of sale. Trustee may require the successful bidder at any sale to deposit immediately with Trustee cash or certified check or cashier's check in an amount up to five percent (5%) of the bid provided notice of such deposit requirement is published as required by law. The bid may be rejected if the deposit is not immediately made. Such deposit shall be refunded in case of a sale to another purchaser pursuant to an upset bid or if Trustee is unable to convey the portion of the Premises so sold to the bidder because the power of sale has been terminated in accordance with applicable law. If the purchaser fails to comply with its bid, the deposit may, at the option of Trustee, be retained and applied to the expenses of the sale and any resales and to any damages and expenses incurred by reason of such default (including the amount that such bid exceeds the final sales price), or may be deposited with the Clerk of Superior Court. In all other cases, the deposit shall be applied to the purchase price. Pursuant to Section 25-9-501(4) of the North Carolina General Statutes (or any amendment thereto), Trustee is

expressly authorized and empowered to expose to sale and sell, together with the real estate, any portion of the Premises which constitutes personal property. If personal property is sold hereunder, it need not be at the place of sale.

The Premises may be sold in such parcels or lots without regard to principles of marshalling and may be sold at one sale or in multiple sales, all as determined by Trustee. A previous exercise of the power of sale hereunder by Trustee shall not be deemed to extinguish the power of sale which power of sale shall continue in full force and effect until all the Premises shall have been finally sold and properly conveyed to the purchasers at the sale. The Trustee shall be entitled to receive a reasonable commission for both a completed foreclosure and an uncompleted foreclosure based upon the hourly rates of the Trustee and Trustee's paralegals for time actually spent on the matter.

**Section 16. Appointment of Receiver.** Beneficiary shall have the right, after the occurrence of an Event of Default, to the appointment of a receiver to collect the Rents from the Premises and to operate and manage the Premises without notice to Grantor, Maker or any other party (Grantor and Maker hereby waiving any right to such notice) and without consideration of the value of the Premises or the solvency of any person liable for the payment of the amounts then owing, and all amounts collected by the receiver shall, after expenses of the receivership, be applied to the payment of the Obligations. The Beneficiary, at its option, in lieu of an appointment of a receiver, shall also have the right to take all actions set forth in the previous sentence. If such receiver should be appointed, or if there should be a sale of the Premises, as provided in Section 15, Grantor, or any person in possession of the Premises thereunder, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

**Section 17. Delay Not to Operate as Waiver; Indemnification of Trustee and Beneficiary.** No delay or forbearance by Beneficiary in exercising any rights hereunder or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder, and all such rights shall be cumulative. In case Beneficiary or Trustee voluntarily or otherwise shall become a party to any suit or legal proceeding to protect the Premises or the lien of this Deed of Trust, Trustee and Beneficiary shall be saved harmless and reimbursed by Grantor and Maker for any amounts paid, including all reasonable costs, charges and attorneys' fees incurred in any such suit or proceeding, which obligations shall be secured by this Deed of Trust. No right, power or remedy conferred upon or reserved to Beneficiary by this Deed of Trust, or the Notes, the Revolving Loan Agreement or any separate assignment of rents and leases or the other Loan Documents is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. No act of the Beneficiary shall be construed as a waiver or as an election to proceed under any provision herein or the other documents evidencing the loan or securing same to the exclusion of any other provisions, and Beneficiary shall be entitled to enforce all remedies severally or concurrently as it shall see fit. No release or subordination by Beneficiary of any part of the Premises or any other property, collateral, or obligation securing the Notes or any other indebtedness secured by this Deed of Trust shall release or impair the lien or title of unreleased property.

**Section 18. Beneficiary's Powers.** Without affecting the liability of any other person liable for the payment of the Obligations, and without affecting the lien or charge of this Deed of Trust upon any portion of the Premises not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice, (i) release any person so liable, (ii) extend the maturity or alter any of the terms of the Obligations, (iii) grant other indulgences, (iv) release or reconvey (or cause to be released or reconveyed at any time at Beneficiary's option) any part or all of the Premises, (v) take or release any other or additional security for any obligation hereby secured, (vi) make compositions or other arrangements with debtors in relation thereto, or (vii) advance additional funds to protect the security hereof or pay or discharge the obligations of

Grantor or Maker hereunder, or under the Obligations or any document executed in connection with or securing the Obligations, and all amounts so advanced, with interest thereon at the applicable rate set forth in the Notes, shall be secured hereby.

**Section 19. Waivers.** Grantor and Maker hereby waive any rights or remedies on account of any extensions of time, releases granted or other dealings between Beneficiary and any subsequent owner of the Premises as said activities are contemplated or otherwise addressed in N.C. Gen. Stat. Sec. 45-45.1 or any similar or subsequent law. The foregoing waiver shall not be construed as affecting or otherwise amending the covenants of Grantor contained in Section 6 hereof. Grantor and Maker waive the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisalment before sale of any portion of the Premises and (ii) in any way extending the time for the enforcement of the collection of the Notes or the debt evidenced thereby or any of the other Obligations. To the full extent Grantor and Maker may do so, Grantor and Maker agree that Grantor and Maker will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisalment, valuation, stay, extension, redemption or extension, and Grantor, Maker, Grantor's and Maker's heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Premises, to the extent permitted by law, hereby waive and release all rights of valuation, appraisalment, redemption, stay of execution, notice of election to mature or declared due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Grantor and Maker further waive any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

**Section 20. Interest Not to Exceed Maximum Allowed by Law.** The parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party paying same.

**Section 21. Escrow of Taxes, Insurance.** The Grantor, in order to more fully protect the security of this Deed of Trust, agrees that in addition to the scheduled payments of principal and/or interest, as the case may be, under the terms of the Notes or other Obligations, Grantor will, upon request of Beneficiary following the occurrence of an Event of Default, pay on the first day of each month, or on the due date of scheduled payments of principal and/or interest, to Beneficiary a sum equal to one-twelfth of the known or estimated (by Beneficiary) yearly taxes, assessments and insurance premiums on or against the Premises. Beneficiary shall hold such payments (and Grantor does hereby expressly agree that Beneficiary shall be under no obligation to pay interest thereon and any interest earned shall belong to the Beneficiary) and shall apply the same to the payment of taxes, assessments and insurance premiums as and when due. If the total of such monthly payments shall exceed the amount needed, the excess shall be held for future needs; but, should such monthly payments at any time fail to provide sufficient funds to pay taxes, assessments and insurance premiums when due, then Grantor shall, upon demand, pay to Beneficiary the amount necessary to cover the deficiency. When Grantor shall have paid the Obligations, Beneficiary shall refund to Grantor or other person lawfully entitled thereto any excess funds accumulated hereunder. In the event of a foreclosure sale of the Premises, Beneficiary may apply any balance remaining of the funds accumulated for the above purposes to the payment of the Obligations.

**Section 22. Substitution of Trustee.** Beneficiary shall at any time have the irrevocable right to remove Trustee herein named without notice or cause and to appoint its successor by an instrument in writing, duly acknowledged and recorded.

**Section 23. Restoration to Former Positions.** In case Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by suit, receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to Beneficiary,

then and in every such case, Grantor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceeding had been taken.

**Section 24. Intentionally Omitted.**

**Section 25. Security Agreement.**

**25.01 Security Agreement.** This Deed of Trust shall constitute a security agreement pursuant to the Uniform Commercial Code for any items constituting a part of the Premises which, under applicable law, may be subjected to a security interest pursuant to the Uniform Commercial Code, and Grantor hereby grants Beneficiary a security interest in such items including, without limitation, the Sales Contracts Collateral. Without the prior written consent of Beneficiary, Grantor shall not create or suffer to be created any other security interest in such items, including replacements and additions thereto. In exercising such remedies, Beneficiary may proceed against the real property and personal property described herein separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the Uniform Commercial Code or herein. This Deed of Trust shall constitute a financing statement filed as a fixture filing in accordance with N.C. Gen. Stat. §25-9-402 (or any amendment thereto). For purposes of complying with the requirements of N.C. Gen. Stat. §25-9-402, the name of Grantor, as Debtor, and Beneficiary, as Secured Party, and the respective addresses of Grantor, as Debtor, and Beneficiary, as Secured Party, are set forth on the first page of this Deed of Trust; the types or items of Sales Contracts Collateral are described in this Section and in the definition of the "Premises" appearing in the granting clauses of this Deed of Trust; and the description of the Land is set forth on Exhibit "A" attached hereto. The Sales Contracts Collateral is or includes fixtures.

**25.02 Remedies.** In case any one or more Events of Default under the Notes, other Obligations and/or this Deed of Trust shall have occurred and be continuing beyond any applicable cure period therefor, the Beneficiary shall have, in addition to all other rights and remedies given to it by this Deed of Trust, those allowed by law, and the rights and remedies of a secured party under the Uniform Commercial Code as enacted and in effect in the applicable jurisdiction, and, without limiting the generality of the foregoing, the Beneficiary may immediately, without demand of performance and without other notice (except as set forth in the Notes, the other Obligations, this Deed of Trust or other documents executed and delivered pursuant thereto or in connection therewith) or demand whatsoever to Grantor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon in the county where the Premises are located, or elsewhere, the whole or, from time to time, any part of the Improvements, or any interest which Grantor may have therein, and, after deducting from the proceeds of sale or other disposition of the Improvements all expenses (including all reasonable expenses for legal services), shall apply the residue of such proceeds towards the satisfaction of the Notes and any other sums secured by this Deed of Trust. The remainder, if any, of the proceeds after satisfaction in full of the Notes and any other sums secured by this Deed of Trust shall be paid to Grantor. Notice of any sale or other disposition shall be given to Grantor at least ten days before the time of any intended public sale or the time any intended private sale or other disposition of the Improvements is to be made, which the Grantor hereby agrees shall be reasonable notice of sale or other disposition. Grantor agrees to assemble, or cause to be assembled, at its own expense, the Improvements at such place or places as the Beneficiary shall designate by written notice. At any such sale or disposition, the Beneficiary may, to the extent permissible under applicable law, purchase the whole or any part of the Improvements sold, free from any right of redemption on the part of Grantor, which right is hereby waived and released. Without limiting the generality of any rights and remedies conferred upon the Beneficiary under this Paragraph 25.02, the Beneficiary may, to the full extent permitted by law: (a) Enter upon the Premises, exclude therefrom Grantor or any affiliate thereof, and take immediate possession of the Improvements, either personally or by means of a receiver appointed by a court of competent jurisdiction, using all lawful, necessary

force to do so; (b) Use, operate, manage and control the Improvements in any lawful manner; (c) Collect and receive all rents, income, revenue, earnings, issues and profits therefrom; and (d) Maintain, repair, renovate, alter or remove the Improvements as the Beneficiary may determine in its discretion, and any monies so collected or received by the Beneficiary shall be applied to, or may be accumulated for application upon, satisfaction of the Notes or any other sums secured by this Deed of Trust.

**25.03. Filings; Further Assurances.** Grantor agrees to execute and deliver to the Beneficiary Uniform Commercial Code financing statements and such other documents, instruments, supplemental security agreements and chattel mortgages as the Beneficiary may deem necessary, proper or desirable to obtain the benefits of this Deed of Trust, and Grantor authorizes the Beneficiary, upon failure of the Grantor to do so at the request of the Beneficiary, to effect any filing or recording of any such financing statement or statements relating to the Improvements or amendments thereto without the signature of Grantor, where lawful, and hereby appoints the Beneficiary as its attorney in fact (without requiring the Beneficiary to act as such) to execute any such financing or other statement or statements in the name of Grantor, and to perform all other acts which the Beneficiary deems appropriate to perfect and continue the security interest in, and to protect and preserve, the Improvements. The power herein conferred upon the Beneficiary is coupled with an interest and is irrevocable. Grantor further agrees to assign the Beneficiary its rights in or under any financing statements relating to the Improvements filed in favor of Grantor.

**Section 26. Notices.** All notices and other communications required under this Deed of Trust shall be in writing and shall be deemed to have been properly given, if personally delivered, on the date of such delivery, or, if sent by Certified or Registered U.S. Mail, return receipt requested, on the third (3rd) business day following deposit in the U.S. Mail, postage prepaid or if sent by overnight courier with guaranteed overnight delivery, on the business day following the date delivered to such overnight courier. All notices shall be addressed to the party to whom it is intended at its address set forth on the first page of this Deed of Trust. Any party may designate a change of address by written notice to the other, given at least ten (10) business days before such change of address is to become effective.

**Section 27. Successors and Assigns.** The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "Beneficiary" shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

**Section 28. Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

**Section 29. Expenses.** Grantor or Maker shall pay or reimburse Beneficiary for all costs, charges and expenses, including reasonable attorney's fees and disbursements, incurred or paid by Beneficiary in documenting or servicing the Notes or in any pending or threatened action or proceeding in which Beneficiary is or may become a party and which affects or might affect the Notes, the other Obligations or the Premises or any part thereof, or the interests of Grantor, Maker or Beneficiary therein, including but not limited to, the foreclosure of this Deed of Trust, condemnation involving all or part of the Premises or any action to protect the security hereof. The amounts so incurred or paid by Beneficiary, together with interest thereon at the rate of interest set forth in the Notes from the date incurred until paid by Grantor or Maker, shall be added to the indebtedness and secured by the lien of this Deed of Trust.

**Section 30. Severability.** If any provisions of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent under applicable law, the remainder of

this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 31. Replacement of Notes.** In the event of loss, theft, destruction, total or partial obliteration, mutilation or inappropriate cancellation of the Notes, Maker will execute and deliver, in lieu thereof, a replacement Notes, identical in form and substance to the Notes and dated as of the date of the Notes.

**Section 32. Indemnity.** Grantor and Maker, jointly and severally, shall protect, defend, indemnify and save harmless Beneficiary from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys' fees and expenses) imposed upon or incurred by the Beneficiary by reason of (a) any claim for brokerage fees or other such commissions relating to the Premises or the Notes or any other Obligations, or (b) the condition of the Premises, or (c) failure to pay recording, mortgage, intangibles or similar taxes, roll back taxes, fees or charges relating to the Notes or any one or more of the Loan Documents, or (d) the Loan Documents or any claim or demand whatsoever which may be asserted against the Beneficiary by reason of any alleged action, obligation or undertaking of the Beneficiary relating in any way to the Notes or matter contemplated by the Loan Documents, or (e) any and all liability arising from any of the Leases or any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. In the event the Beneficiary incurs any liability, loss or damage arising out of or in any way relating to the loan transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such liability, loss or damage shall be added to the Notes, shall bear interest at the interest rate specified in the Notes from the date incurred until paid and shall be payable on demand.

**Section 33. Assignment of Sales Contracts Collateral.** Grantor hereby grants, conveys, transfers and assigns unto Beneficiary, its successors and assigns, and grants to Beneficiary a security interest in the Sales Contracts Collateral. The Grantor hereby authorizes and empowers Beneficiary, at its option following the occurrence of an Event of Default, to exercise any and all of the rights, powers and privileges conferred upon Grantor by the Contracts and the Sales Contracts Collateral in as full and ample a manner as Grantor is or may be authorized and empowered to exercise same; provided, however, nothing herein contained shall be deemed to impose upon Beneficiary any liability for the performance of any obligation of Grantor under any of the Contracts or the Sales Contracts Collateral. Grantor hereby represents and warrants that it has made no other assignment of any of its rights under any of the Sales Contracts Collateral to any other person or entity; that it has done no act, nor failed to do any act, which might prevent Beneficiary from exercising any of the rights, powers and privileges conferred upon Grantor by the Sales Contracts Collateral as contemplated by this Assignment; that each of the Contracts is in full force and effect and constitutes the valid, legal and binding obligation of the parties thereto; and that Grantor is not in default under the provisions of any of the Contracts and, to the knowledge of Grantor, no other party to any of the Contracts is in default under any of the provisions thereof. This Assignment is made in order to further secure the payment and performance of the Obligations. The Beneficiary may, upon the occurrence of an Event of Default (a) exercise and enforce in the name of the Grantor, the Beneficiary, or otherwise any rights, powers, and remedies of the Grantor under the Contracts, (b) apply any deposits and other moneys payable to the Grantor under the Contracts to the payment of the Obligations in such amounts and in such order as the Beneficiary in the exercise of its sole discretion shall determine, and/or (c) have all rights and remedies of a secured party under the Uniform Commercial Code as in effect in the applicable jurisdiction. In the event of a foreclosure or sale under this Deed of Trust, or the delivery of a deed in lieu of foreclosure to the Beneficiary or other acquisition of title to the Land by the Beneficiary or any purchaser at foreclosure, all rights, title and interest of the Grantor in, to and under the Sales Contracts Collateral shall pass to the purchaser or to Beneficiary, as the case may be, and Beneficiary is hereby irrevocably appointed by Grantor as its attorney-in-fact, to assign any such Sales Contracts Collateral to any such purchaser, without accounting to Grantor in any manner whatsoever. This power of attorney is coupled with an interest and shall be irrevocable. The Grantor hereby covenants and agrees to execute and deliver on

request of the Beneficiary any and all such further instruments, authorizations, or directions as may from time to time be requested by the Beneficiary in order to effectuate the purpose and intent of this Assignment of the Sales Contracts Collateral. This Agreement does not include the delegation to or assumption by the Beneficiary of any of the Grantor's duties, responsibilities, or obligations under the Contracts, and the Grantor specifically agrees to indemnify and forever hold the Beneficiary harmless from any claim or liability on account thereof.

**Section 34. Assignment of Construction Documents.** Grantor hereby grants, transfers and assigns unto Beneficiary, its successors and assigns, all of the right, title and interest of Grantor in, to and under any and all documents, instruments and agreements, whether now or hereafter existing, relating to the construction, development and operation of any Improvements (hereinafter collectively referred to as the "Construction Documents") including, without limitation, any and all construction contracts, architectural contracts, engineering contracts, plans, specifications, drawings, surveys, bonds, permits, licenses, and other governmental approvals, and all amendments, revisions and modifications thereto. Grantor hereby authorizes and empowers Beneficiary, at its option following the occurrence of an Event of Default, to exercise any and all of the rights, powers and privileges conferred by the Construction Documents in as full and ample manner as Grantor is or may be authorized and empowered to exercise the same; provided, however, nothing herein contained shall be deemed to impose upon Beneficiary any liability for the performance of any obligation of Grantor under any of the Construction Documents. Grantor represents and warrants that it has made no other assignment of any of its rights under the Construction Documents to any other person or entity; that it has done no act, nor failed to do any act, which might prevent Beneficiary from exercising any of the rights, powers and privileges conferred upon Grantor by the Construction Documents as contemplated by this Assignment; and that Grantor is not in default under the provisions of any of the Construction Documents and, to the knowledge of Grantor, none of the other parties to the Construction Documents are in default under the provisions thereof. This Assignment is made in order to secure the payment and performance of the Obligations. The rights of the Beneficiary under this Assignment of Construction Documents shall be operative, at the option of Beneficiary, from and after the time of any Event of Default by Grantor and the expiration of any applicable cure period therefor. In the event of a foreclosure or sale under the power of sale contained in this Deed of Trust or a deed in lieu of foreclosure or other acquisition of title to the land and Improvements by Beneficiary, all right, title and interest of Grantor in, to and under the Construction Documents shall pass to the purchaser or to Beneficiary, as the case may be, and Beneficiary is hereby irrevocably appointed by Grantor as attorney-in-fact for Grantor, to assign any such Construction Document to any such purchaser, without accounting to Grantor in any manner whatsoever.

**Section 35. Greater Estate.** In the event that Grantor or Maker is the owner of a leasehold estate with respect to any portion of the Premises and Grantor or Maker obtains a fee estate in such portions of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of the Grantor or Maker, be and become subject to the security title and lien hereof.

**Section 36. Headings.** The headings of the sections, paragraphs, and subparagraphs of this Deed of Trust are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

**Section 37. Addendum.** The terms and provisions of any addendum attached hereto are incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, Grantor and Maker have caused this Deed of Trust to be executed under seal the day and year first above written.

MULVANEY HOMES, INC.,  
a North Carolina corporation

Attest:

[Signature]  
Secretary  
[Corporate Seal]

By:

[Signature]  
VICE President



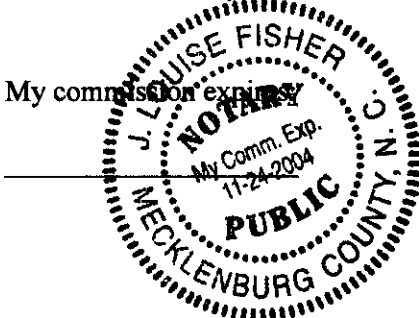
STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, J. Louise Fisher, a Notary Public, certify that Julie A. Walker personally came before me this day and acknowledged that he/she is Asst Secretary of MULVANEY HOMES, INC., a North Carolina corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself/herself as its Asst Secretary.

Witness my hand and notarial stamp or seal, this 2 day of October, ~~2000~~ 2001

My commission expires



[Signature]  
Notary Public

STATE OF NORTH CAROLINA

COUNTY OF FORGYTH

The foregoing certificate of J. Louise Fisher, a Notary Public of \_\_\_\_\_, is certified to be in due form and according to law. Let the said deed of trust and certificate be registered.

This 4<sup>th</sup> day of October, 2000.

DICKIE C. WOOD, REGISTER OF DEEDS

[Signature]  
Register of Deeds

FORGYTH

County

**EXHIBIT A TO DEED OF TRUST**

Being all of **Lots 2, 3, 5, 19, 21 and 22 of Bridgton Run Subdivision (revised)**, as shown on a map and plat of same which is recorded in Plat Book 44, Page 1, in the Office of the Register of Deeds of Forsyth County, North Carolina, reference to which is hereby made for a more particular description.

Being all of **Lots 7 and 8 as shown on the plat of Brooks Landing, Section One**, as recorded in Plat Book 39, Page 156, in the Office of the Register of Deeds of Forsyth County, North Carolina, reference to which is hereby made for a more particular description.

Being all of **Lots 47, 48 and 54 as shown on the plat of Brooks Landing, Section 2**, as recorded in Plat Book 42, Page 2, in the Office of the Register of Deeds of Forsyth County, North Carolina, reference to which is hereby made for a more particular description.

Being all of **Lots 4 and 5 as shown on the plat of Brooks Landing, Section 2**, as recorded in Plat Book 43, Page 32, in the Office of the Register of Deeds of Forsyth County, North Carolina, reference to which is hereby made for a more particular description.

A handwritten mark, possibly a signature or initials, consisting of a stylized 'D' followed by a diagonal line.

EXHIBIT B

## SCHEDULE OF ADDITIONAL PERSONAL PROPERTY COLLATERAL

(a) all furniture, furnishings, machinery, apparatus, equipment, fittings, fixtures and articles of every kind and nature including all stored building materials, any interest in which is now owned or hereafter acquired by Debtor or Grantor, and is now or hereafter installed in, affixed to, placed upon or used in connection with the Premises, or any portion thereof, and all additions thereto and all replacements thereof, including but not limited to, all machinery, engines, furnaces, boilers, stokers, pumps, heaters, incinerators, power equipment, laundry equipment, tanks, dynamos, motors, generators, switchboards, conduits, electrical equipment, heating, cooling, ventilating, air conditioning, lighting, incinerating and plumbing apparatus, compressors, exhaust fans, elevators, escalators, venetian blinds, shades, draperies, drapery and curtain rods, brackets, electric signs, bulbs, fire prevention and extinguishing apparatus, plumbing fixtures, vacuum cleaners, vacuum cleaning systems, floor cleaning, waxing and polishing apparatus, call systems, pictures, mirrors, lamps, ornaments, carpeting, rugs, linoleum and other floor covering, refrigerating and cooling apparatus and equipment, typewriters, office and accounting equipment, safes, cabinets, lockers, shelving, tools, spotlighting equipment, uniforms, screens, screen doors, awnings, blinds, refrigerators, ranges, ovens, garbage disposals, dishwashers, washing machines and clothes dryers, mantels and lobby furnishings, lawn mowers, landscaping and swimming pool equipment, and any and all such property which is at any time hereafter installed in, affixed to and to become fixtures on, placed upon or used in connection with, the Premises, or any portion thereof, save and except, however, any such furniture, furnishings, appliances, trade fixtures, and other personal property owned by tenants of Debtor or Grantor and installed for the purpose of their tenancy if such tenant has the right to remove the same at or before the expiration of the term of the applicable lease; (b) all proceeds or sums payable in lieu of or as compensation for the loss of or damage to any property described in (a) above, or to the Premises; (c) all rights in and to all pertinent present and future fire and/or hazard insurance policies; (d) all awards made by any public body or decreed by any court of competent jurisdiction for a taking or for degradation of value in any eminent domain proceeding; (e) all of Debtor's or Grantor's interest and rights in and to all rental income and/or security deposits derived from the Premises, whether payable pursuant to any present or future lease or otherwise growing out of any occupancy or use thereof; (f) all rights of the Debtor or Grantor under any contracts in connection with or relating to the construction and/or operation of any part of the Premises including, but not limited to, the construction contract for any part of the Premises and all contracts for architectural services for any part of the Premises; (g) all general intangibles including trademarks and trade names used in connection with the Premises; and (h) all proceeds and products of every kind and description of the property described in (a) through (g) above.

All of the right, title and interest of Debtor or Grantor in, to and under the following described collateral, whether now existing or hereafter arising or acquired: (i) all now existing or hereafter created options, contracts or other agreements for the sale of (x) any improvements now or hereafter situated upon the Land or any part thereof, (y) all or any portion of the Land and/or all or a portion of any parcels within the Land, and (z) any and all other contracts or agreements now or hereafter relating to the sale of any portions of the Land or any portions of the Improvements situated or to be situated on the Land (all of the foregoing being collectively referred to as the "Contracts"); (ii) all monies in the nature of earnest-money deposits, escrow deposits, pre-sales deposits, or other similar deposits now or hereafter made pursuant to the Contracts and all monies now or hereafter payable or owing to the Debtor or Grantor under the Contracts; and (iii) all cash and non-cash proceeds of all of the foregoing (all of the foregoing is herein collectively referred to as the "Sales Contracts Collateral").