

This Instrument Prepared By  
and To Be Returned To:

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2008022923 00104

FORSYTH CO, NC FEE \$98.00  
PRESENTED & RECORDED:

05-02-2008 02:01 PM

KAREN GORDON  
REGISTER OF DEEDS  
BY: SHANNON BOSTIC-GRIFFITH  
DPTY

BK: RE 2829  
PG: 3752-3780

*Box 52*

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

This Deed of Trust is made as of April 30, 2008, by FS WINSTON-SALEM, LLC, a North Carolina limited liability company, as trustor ("Trustor"), to CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation, as trustee ("Trustee"), for the benefit of REGIONS BANK, an Alabama banking corporation, as beneficiary ("Beneficiary").

1. GRANT IN TRUST.

(a) The Property. For the purpose of securing payment and performance of the Secured Obligations defined in Paragraph 2 below, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in the following property (all or any part of such property, or any interest in all or any part of it, together with the Personalty (as hereinafter defined) being hereinafter collectively referred to as the "Property"):

(i) The real property located in the County of Forsyth, State of North Carolina, as described in Exhibit A hereto (the "Land");

(ii) All buildings, structures, improvements, fixtures and appurtenances now or hereafter placed on the Land, and all apparatus and equipment now or hereafter attached in any manner to the Land or any building on the Land, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment (collectively, the "Improvements");

(iii) All easements and rights of way appurtenant to the Land; all crops growing or to be grown on the Land (including all such crops following severance from the Land); all standing timber upon the Land (including all such timber following severance from the Land); all development rights or credits and air rights; all water and water rights (whether

riparian, appurtenant, or otherwise, and whether or not appurtenant to the Land) and shares of stock pertaining to such water or water rights, ownership of which affect the Land; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon the Land;

(iv) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of the Land or the Improvements (collectively, the "Lease"), and any and all guaranties and other agreements relating to or made in connection with any of the foregoing;

(v) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or the other property described above or any part of them; and

(vi) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

TOGETHER WITH all of Trustor's rights in and to the machinery, equipment, fixtures and other property of every kind and nature whatsoever owned by Trustor or which Trustor has or shall acquire an interest now or hereafter with respect to the Property, and all other property and rights described on Exhibit B attached hereto;

To HAVE AND HOLD the foregoing Property unto the Trustee and the Trustee's successors and assigns, in trust, in fee simple forever, to secure the Secured Obligations and upon this special trust: that should the Secured Obligations be paid according to the tenor and effect thereof when the same shall be due and payable and should the Trustor timely and fully discharge its obligations hereunder, then the Property shall be reconveyed to the Trustor or the title thereto shall be revested according to the provisions of law. Beneficiary will provide evidence of such reconveyance upon written request of Trustor.

Trustor covenants with and warrants to Beneficiary: (a) that Trustor has good and marketable title to the Property, is lawfully seized and possessed of the Property in fee simple and has good right to sell and convey the same; (b) that the Property are unencumbered; and (c) that Trustor shall forever warrant and defend the Property unto Beneficiary against the lawful claims and demands of all persons whomsoever, except for those permitted exceptions set forth in the title insurance commitment referenced on Exhibit C attached hereto and made a part hereof.

(b) Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing under the North Carolina Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become a fixture attached to

the Land or any building located thereon. Trustor's North Carolina Secretary of State I.D. No. is 1013789.

2. THE SECURED OBLIGATIONS.

(a) Purpose of Securing. Trustor makes the grant, conveyance, transfer and assignment set forth in Paragraph 1, makes the irrevocable and absolute assignment set forth in Paragraph 3, and grants the security interest set forth in Paragraph 4, all for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(i) Payment of all obligations of FS WINSTON-SALEM, LLC, a North Carolina limited liability company ("Obligor"), to Beneficiary arising under that certain promissory note dated even date herewith payable by Obligor as maker in the stated principal amount of \$3,200,000.00 to the order of Beneficiary (the "Debt Instrument").

This Deed of Trust also secures payment of all obligations of Obligor under the Debt Instrument which arise after the Debt Instrument is extended, renewed, modified or amended pursuant to any written agreement between Obligor and Beneficiary, and all obligations of Obligor under any successor agreement or instrument which restates and supersedes the Debt Instrument in its entirety;

(ii) Payment and performance of all obligations of Trustor under this Deed of Trust;

(iii) Payment and performance of all obligations of Obligor under any Swap Contract. "Swap Contract" means any document, instrument or agreement with Beneficiary, now existing or entered into in the future, relating to an interest rate swap transaction, forward rate transaction, interest rate cap, floor or collar transaction, any similar transaction, any option to enter into any of the foregoing, and any combination of the foregoing, which agreement may be oral or in writing, including, without limitation, any master agreement relating to or governing any or all of the foregoing and any related schedule or confirmation, each as amended from time to time; and

(iv) Payment and performance of all future advances and other obligations that Trustor (or any successor in interest to Trustor) or Obligor (if different from Trustor) may agree to pay and/or perform (whether as principal, surety or guarantor) to or for the benefit of Beneficiary.

This Deed of Trust does not secure any obligation which expressly states that it is unsecured, whether contained in the foregoing Debt Instrument or in any other document, agreement or instrument. Unless specifically described in subparagraph (a) above or otherwise agreed in writing, "Secured Obligations" shall not include any debts, obligations or liabilities which are or may hereafter be "consumer credit" subject to the disclosure requirements of the Federal Truth in Lending law or any regulation promulgated thereunder.

(b) Terms of Secured Obligations. All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Debt Instrument and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Debt Instrument which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

(c) Future Advances; Maximum Amount Secured. This Deed of Trust secures all present and future loan disbursements made by Beneficiary under the Debt Instrument, and all other sums from time to time owing to Beneficiary by Obligor under the Debt Instrument. The amount of the present disbursement secured hereby is \$3,200,000.00 and the maximum principal amount which may be secured hereby at any one time is \$6,400,000.00. The time period within which such future disbursements are to be made is the period between the date hereof and the date fifteen (15) years from the date hereof. Disbursements secured hereby shall not be required to be evidenced by a "written instrument or notation" as described in Section 45-68(2) of the North Carolina General Statutes, it being the intent of the parties that the requirements of Section 45-68(2) for a "written instrument or notation" for each advance shall not be applicable to disbursements made under the Debt Instrument.

3. ASSIGNMENT OF RENTS.

(a) Assignment. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary all rents, royalties, issues, profits, revenue, income and proceeds of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (collectively, the "Rents"), and confers upon Beneficiary the right to collect such Rents with or without taking possession of the Property. In the event that anyone establishes and exercises any right to develop, bore for or mine for any water, gas, oil or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Paragraph. THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.

(b) Grant of License. Notwithstanding the provisions of Paragraph 3(a), Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default as defined in Paragraph 6(b), shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of the security for the Secured Obligations.

4. GRANT OF SECURITY INTEREST.

(a) Grant of Security Interest. Trustor grants to Beneficiary a security interest in, and pledges and assigns to Beneficiary, all of Trustor's right, title and interest now or hereafter acquired in and to all of the following described personal property (collectively, the "Personalty"):

(i) All tangible personal property of every kind and description, whether stored on the Land or elsewhere, including, without limitation, all goods, materials, supplies, tools, books, records, chattels, furniture, fixtures, equipment, and machinery, and which in all cases is (A) used or useful or acquired in connection with any construction undertaken on the Land or the maintenance of the Land and the Improvements, or (B) affixed or installed, or to be affixed or installed, in any manner on the Land or the Improvements;

(ii) All crops growing or to be grown on the Land (including all such crops following severance from the Land); all standing timber upon the Land (including all such timber following severance from the Land); all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant to the Land) and shares of stock pertaining to such water or water rights, ownership of which affect the Land; and all architectural and engineering plans, specifications and drawings, and as-built drawings which arise from or relate to the Land or the Improvements;

(iii) All general intangibles and rights relating to the Property, including, without limitation, all permits, licenses and claims to or demands for the voluntary or involuntary conversion of any of the Land, Improvements, or other Property into cash or liquidated claims, proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or other Property or any part of them;

(iv) All deposit accounts from which Trustor may from time to time authorize Beneficiary to debit payments due on the Secured Obligations; all rights and interests under all Swap Contracts, including all rights to the payment of money from Beneficiary under any such Swap Contracts; and all accounts, deposit accounts, and general intangibles, including payment intangibles, described in any such Swap Contracts;

(v) All substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing, and all books, records and files relating to any of the foregoing, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

5. RIGHTS AND DUTIES OF THE PARTIES.

(a) Representations and Warranties. Trustor represents and warrants that Trustor lawfully possesses and holds fee simple title to all of the Land and the Improvements.

(b) Taxes, Assessments, Liens and Encumbrances. Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. Trustor shall immediately

discharge any lien on the Property which Beneficiary has not consented to in writing, and shall also pay (by payment or bonding) when due each obligation secured by or reducible to a lien, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust. Notwithstanding the foregoing provisions of this Section, Trustor may contest real estate taxes and/or utility fees in good faith provided such is done in accordance with all applicable governmental requirements and, if requested by Beneficiary, Trustor shall escrow the amount being contested with the Beneficiary.

(c) Damages and Insurance and Condemnation Proceeds.

(i) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment (collectively, the "Claims"):

(A) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it;

(B) all other awards, claims and causes of action, arising out of any breach of warranty or misrepresentation affecting all or any part of the Property, or for damage or injury to, or defect in, or decrease in value of all or part of the Property or any interest in it;

(C) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; and

(D) all interest which may accrue on any of the foregoing.

(ii) Trustor shall immediately notify Beneficiary in writing if:

(A) any damage occurs or any injury or loss is sustained to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or

(B) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

If Beneficiary chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on breach of warranty or misrepresentation, or for damage or injury to, defect in, or decrease in value of all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance.

(iii) All proceeds of the Claims assigned to Beneficiary under this Paragraph shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. Trustor further authorizes Beneficiary, at Beneficiary's option and in Beneficiary's sole discretion, and regardless of whether there is any impairment of the Property, (A) to apply the balance of such proceeds, or any portion of them, to pay or prepay some or all of the Secured Obligations in such order or proportion as Beneficiary may determine, or (B) to hold the balance of such proceeds, or any portion of them, in an interest-bearing account to be used for the cost of reconstruction, repair or alteration of the Property, or (C) to release the balance of such proceeds, or any portion of them, to Trustor. If any proceeds are released to Trustor, neither Beneficiary nor Trustee shall be obligated to see to, approve or supervise the proper application of such proceeds. If the proceeds are held by Beneficiary to be used to reimburse Trustor for the costs of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing. Beneficiary may, at Beneficiary's option, condition disbursement of the proceeds on Beneficiary's approval of such plans and specifications prepared by an architect satisfactory to Beneficiary, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage of completion of construction, application of payments, and satisfaction of liens as Beneficiary may reasonably require.

(d) Insurance. Trustor shall provide and maintain in force at all times all risk property damage insurance (including without limitation windstorm coverage, and hurricane coverage as applicable) on the Property and such other type of insurance on the Property as may be required by Beneficiary in its reasonable judgment. At Beneficiary's request, Trustor shall provide Beneficiary with a counterpart original of any policy, together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. Each such policy of insurance shall be in an amount, for a term, and in form and content satisfactory to Beneficiary, and shall be written only by companies approved by Beneficiary. In addition, each policy of hazard insurance shall include a Form 438BFU or equivalent loss payable endorsement in favor of Beneficiary. Notwithstanding anything contained herein to the contrary, insurance may be obtained and paid for by the tenant or its parent under any lease entered into by Trustor and shall name Trustor as the additional insured and Beneficiary as the mortgagee.

(e) Maintenance and Preservation of Property.

(i) Trustor shall keep the Property in good condition and repair and shall not commit or allow waste of the Property. Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except with Beneficiary's express prior written consent in each instance.

(ii) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not

Beneficiary agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction under Paragraph 5(c).

(iii) Trustor shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen, or any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under this Deed of Trust.

(iv) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

(f) Releases, Extensions, Modifications and Additional Security. Without affecting the personal liability of any person, including Trustor (or Obligor, if different from Trustor), for the payment of the Secured Obligations or the lien of this Deed of Trust on the remainder of the Property for the unpaid amount of the Secured Obligations, Beneficiary and Trustee are respectively empowered as follows:

- (i) Beneficiary may from time to time and without notice:
- (A) release any person liable for payment of any Secured Obligation;
  - (B) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;
  - (C) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or
  - (D) alter, substitute or release any property securing the Secured Obligations.

(ii) Trustee may perform any of the following acts when requested to do so by Beneficiary in writing:

- (A) consent to the making of any plat or map of the Property or any part of it;
- (B) join in granting any easement or creating any restriction affecting the Property;
- (C) join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or



(D) reconvey the Property or any part of it without any warranty.

(g) Reconveyance. When all of the Secured Obligations have been paid in full and no further commitment to extend credit continues, Trustee shall reconvey the Property, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

(h) Compensation and Reimbursement of Costs and Expenses.

(i) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a reconveyance. Trustor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services.

(ii) Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee to protect or preserve the Property or to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under Paragraph 6(c), whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any sale of the Property and any cost of evidence of title.

(iii) Trustor shall pay all obligations arising under this Paragraph immediately upon demand by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Secured Obligations, and shall bear interest from the date the obligation arises at the rate provided in any instrument or agreement evidencing the Secured Obligations. If more than one rate of interest is applicable to the Secured Obligations, the highest rate shall be used for purposes hereof.

(i) Exculpation and Indemnification.

(i) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(A) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to it in this Deed of Trust;

(B) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust;

(C) Beneficiary's failure to produce Rents from the Property or to perform any of the obligations of the lessor under any lease covering the Property;

(D) any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property; or

(E) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in operating or managing the Property upon exercise of the rights or remedies afforded Beneficiary under Paragraph 6(c), unless the loss is caused by the willful misconduct, gross negligence or bad faith of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(ii) Trustor agrees to indemnify Trustee and Beneficiary against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which either may suffer or incur in performing any act required or permitted by this Deed of Trust or by law or because of any failure of Trustor to perform any of its obligations, unless caused by the willful misconduct or gross negligence of the Beneficiary. This agreement by Trustor to indemnify Trustee and Beneficiary shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Deed of Trust.

(iii) The aforesaid indemnification and hold harmless agreement shall benefit Beneficiary from the date hereof and shall continue notwithstanding payment, release or discharge of this Deed of Trust or the indebtedness, and, without limiting the generality of the foregoing such obligations shall continue for the benefit of Beneficiary and any subsidiary of Beneficiary during and following any possession of the Property hereby or any ownership of the Property thereby, whether arising by foreclosure or deed in lieu of foreclosure or otherwise, such indemnification and hold harmless agreement to continue forever.

(j) Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

(k) Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county where the Property is situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

(l) Hazardous Waste. "Hazardous Waste" as used herein shall mean and include those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (EPA) and the list of toxic pollutants designated by Congress or the EPA or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time in effect.

(i) Representations and Warranties. Trustor represents and warrants that, to the best of Trustor's knowledge, the use and operation of the Premises comply with all applicable environmental laws, rules and regulations, including, without limitation, the Federal Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act of 1980 and all amendments and supplements thereto and Trustor shall continue to comply therewith at all times. Except for (A) any use in compliance with all Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required by applicable environmental law), (B) de-minimis amounts necessary to operate the Property for the purposes set forth in the Loan Documents which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under and used in compliance with applicable environmental laws and (C) any other matter disclosed to Beneficiary in writing, to the best of Trustor's knowledge, there are not now and there shall not in the future be any Hazardous Waste located or stored in, upon or at the premises, and there are not now nor shall there be at any time any releases or discharges from the premises.

(ii) Indemnification.

(A) Trustor hereby agrees to indemnify Beneficiary and hold Beneficiary harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees for attorneys of Beneficiary's choice, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Beneficiary by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the premises of any Hazardous Waste (including, without limitation, any losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorney's fees for attorneys of Beneficiary's choice, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local "Superfund" or "Superlien" laws, and any and all other statutes, laws, ordinances, codes, rules, regulations, orders or decrees regulating, with respect to or imposing liability, including strict liability, substances or standards of conduct concerning any hazardous waste), regardless of whether within Trustor's control unless caused by the gross negligence or willful misconduct of Beneficiary.

(B) The aforesaid indemnification and hold harmless agreement shall benefit Beneficiary from the date hereof and shall continue notwithstanding payment, release or discharge of this Deed of Trust or the indebtedness, and, without limiting the generality of the foregoing such obligations shall continue for the benefit of Beneficiary and any subsidiary of Beneficiary during and following any possession of the premises hereby or any

ownership of the premises thereby, whether arising by foreclosure or deed in lieu of foreclosure or otherwise, such indemnification and hold harmless agreement to continue forever.

(iii) Notice of Environmental Complaint. If Trustor shall receive any notice of: (A) the happening of any material event involving the spill, release, leak, seepage, discharge or cleanup of any Hazardous Waste on the Property in connection with Trustor's operations thereon; or (B) any complaint, order, citation or material notice with regard to air emissions, water discharges or any other environmental, health or safety matter affecting Trustor (an "Environmental Complaint") from any person or entity, then Trustor immediately shall notify Beneficiary orally and in writing of said notice.

(iv) Beneficiary's Reserved Rights. In the event of receipt of an Environmental Complaint, Beneficiary shall have the right, but not the obligation (and without limitation of Beneficiary's rights under this Deed of Trust) to enter onto the premises or to take such other actions as it shall deem necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Waste or Environmental Complaint following receipt of any notice from any person or entity having jurisdiction asserting the existence of any Hazardous Waste or an Environmental Complaint pertaining to the premises or any part thereof which, if true, could result in an order, suit or other action against Trustor and/or which, in Beneficiary's sole opinion, could jeopardize its security under this Mortgage. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Mortgage and shall be payable by Trustor upon demand.

(v) Environmental Audits. If Beneficiary shall have reason to believe that Hazardous Waste has been discharged on the Premises, Beneficiary shall have the right, in its sole discretion, to require Trustor to perform periodically to Beneficiary's satisfaction (but not more frequently than annually unless an Environmental Complaint shall be then outstanding), at Trustor's expense, an environmental audit and, if deemed necessary by Beneficiary (as determined in Beneficiary's sole discretion acting reasonably), an environmental risk assessment of: (A) the Premises; (B) hazardous waste management practices and/or (C) Hazardous Waste disposal sites used by Trustor. Said audit and/or risk assessment must be by an environmental consultant reasonably satisfactory to Beneficiary. Should Trustor fail to perform any such environmental audit or risk assessment within thirty (30) days after Beneficiary's request, Beneficiary shall have the right to retain an environmental consultant to perform such environmental audit or risk assessment. All reasonable costs and expenses incurred by Beneficiary in the exercise of such rights shall be secured by this Mortgage and shall be payable by Trustor upon demand.

(vi) Breach. Any breach following any applicable cure or grace period of any warranty, representation or agreement contained in this Section shall be an Event of Default and shall entitle Beneficiary to exercise any and all remedies provided in this instrument, or otherwise permitted by law.

(m) Site Visits, Observation and Testing. Beneficiary and its agents and representatives shall have the right at any reasonable time, after giving reasonable notice to Trustor, to enter and visit the Property for the purposes of performing appraisals, observing the Property, taking and removing environmental samples, and conducting tests on any part of the

Property. Trustor shall reimburse Beneficiary on demand for the costs of any such environmental investigation and testing. Beneficiary will make reasonable efforts during any site visit, observation or testing conducted pursuant this Paragraph to avoid interfering with Trustor's use of the Property. Beneficiary is under no duty, however, to visit or observe the Property or to conduct tests, and any such acts by Beneficiary will be solely for the purposes of protecting Beneficiary's security and preserving Beneficiary's rights under this Deed of Trust. No site visit, observation or testing or any report or findings made as a result thereof ("Environmental Report") (i) will result in a waiver of any default of Trustor; (ii) impose any liability on Beneficiary; or (iii) be a representation or warranty of any kind regarding the Property (including its condition or value or compliance with any laws) or the Environmental Report (including its accuracy or completeness). In the event Beneficiary has a duty or obligation under applicable laws, regulations or other requirements to disclose an Environmental Report to Trustor or any other party, Trustor authorizes Beneficiary to make such a disclosure. Beneficiary may also disclose an Environmental Report to any regulatory authority, and to any other parties as necessary or appropriate in Beneficiary's judgment. Trustor further understands and agrees that any Environmental Report or other information regarding a site visit, observation or testing that is disclosed to Trustor by Beneficiary or its agents and representatives is to be evaluated (including any reporting or other disclosure obligations of Trustor) by Trustor without advice or assistance from Beneficiary.

#### 6. TRANSFERS, DEFAULT AND REMEDIES.

(a) Until full payment and performance of all obligations of Trustor under the Loan Documents, Trustor will not, without the prior written consent of Beneficiary (and without limiting any requirement of any other Loan Documents):

(i) Transfer of Assets. Sell, lease, assign or otherwise dispose of or transfer any assets, except in the normal course of its business.

(ii) Change of Ownership. Cause, permit, or suffer any change, direct or indirect, in the Trustor's or FS Real Estate Holdings LLC's (the "Guarantor") capital ownership or enter into any merger or consolidation, or transfer control or ownership of the Trustor or Guarantor or form or acquire any subsidiary; provided, however, upon prior written notice to Beneficiary, members of the Trustor may transfer interests: (i) between themselves; (ii) pursuant to redemptions and for bonafide estate planning purposes; provided that following such transfer(s) the current members of the Guarantor continue to directly or indirectly control not less than 51% of the Guarantor.

(b) Events of Default. At Beneficiary's option, all of the principal and interest and other sums secured by this Deed of Trust shall immediately or at any time thereafter become due and payable without notice to any Obligor, and Beneficiary shall immediately have all the rights accorded Beneficiary by law and hereunder to foreclose this Deed of Trust or otherwise to enforce this Deed of Trust, the Debt Instrument, any agreement between Borrower and Bank and/or any affiliate of Bank including, without limitation, any interest rate swap or hedge agreement which accomplishes an interest rate swap for the interest payments due under the Debt Instrument, any guaranties, agreements, security agreements, assignments and all other documents executed in connection with the loan evidenced by the Debt Instrument (the "Loan")

(collectively, the "Loan Documents"), upon the occurrence of any of the following defaults (each an "Event of Default"): (i) failure to pay any sum due under the Debt Instrument and the expiration of the grace period (if any) provided in the Debt Instrument for such payment; or (ii) failure to repay (or contest, if applicable) any sum paid or advanced by Beneficiary under the terms of this Deed of Trust or any other Loan Document (with interest thereon) beyond any applicable grace or cure period; or (iii) failure to pay (or contest, as applicable, including the posting of collateral or a bond reasonably acceptable to Trustor) any tax, assessment, utility charge, or other charge against the Property or any part thereof as and when required by this Deed of Trust; or (iv) actual waste, impairment, abandonment, deterioration, removal, demolition, material alteration or enlargement of any building or other improvements on the Property, or the commencement of construction of any new building or other improvements on any part of the Property, in violation of this Deed of Trust; or (v) failure to obtain, assign, deliver or keep in force the policies of insurance required by this Deed of Trust or any other Loan Document; or (vi) Trustor's failure or refusal to certify, within the time required by this Deed of Trust, the amount due under the Loan and whether any offsets or defenses exist against payment of the Loan beyond any applicable cure or grace period; or (vii) Trustor's filing for record, without the prior written consent of Beneficiary, which Beneficiary may grant or withhold in its sole discretion, of any notice limiting the maximum principal amount that may be secured by this Deed of Trust to an amount less than the limit set forth in Paragraph 2(c) of this Deed of Trust; or (viii) any sale, transfer (whether voluntary or by operation of law), pledge, hypothecation or further encumbering of all or any part of the Property or any interest therein or any interest of Trustor, or the additional assignment of all or any part of the rents, income or profits arising therefrom, in violation of this Deed of Trust or (ix) Trustor's failure to remove any involuntary lien on the Property or any part thereof within twenty (20) days after its filing, or the filing of any suit against the Property upon any claim or lien other than this Deed of Trust (whether superior or inferior to this Deed of Trust) unless transferred to bond or other security satisfactory to Beneficiary within such twenty (20) day period; or (x) Trustor's failure to comply (or contest, as applicable, in accordance with all requirements under applicable law and the posting of collateral or a bond reasonably acceptable to Trustor) within fifteen (15) days with a requirement, order or notice of violation of a law, ordinance, or regulation issued or promulgated by any political subdivision or governmental department claiming jurisdiction over the Property or any operation conducted on the Property (or, if such order or notice provides a time period for compliance, Trustor's failure to comply within such period), or, in the case of a curable noncompliance requiring longer than the applicable time period for its cure, Trustor's failure to commence to comply with said order or notice within said period or failure thereafter to pursue such cure diligently to completion; or (xi) the issuance of any order by the State of North Carolina, or any subdivision, instrumentality, administrative board or department thereof, declaring unlawful or suspending any operation conducted on the Property; or (xii) this space is intentionally left blank; or (xiii) if any representation, warranty, affidavit, certificate or statement made or delivered to Beneficiary by or on behalf of any Obligor from time to time in connection with the Loan or this Deed of Trust or any other Loan Document shall prove false, incorrect or misleading in any respect deemed material by Beneficiary; or (xiv) any default following any applicable notice or cure period shall occur under any Loan Document between Trustor and Beneficiary; or (xv) if any Obligor shall make an assignment for the benefit of creditors, file a petition in bankruptcy, apply to or petition any tribunal for the appointment of a custodian, receiver, intervenor or trustee for such Obligor or a substantial part of such Obligor's assets, or if

any Obligor shall commence any proceeding under any bankruptcy, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if any Obligor shall by act or omission approve, consent to or acquiesce in the filing of any such petition or application against such Obligor or the appointment of any such custodian, receiver, intervenor or trustee or the commencement of any such proceeding against such Obligor or the entry of an order for relief with respect to such Obligor, or if any such petition or application shall have been filed or proceeding commenced against any Obligor which remains undismissed for ninety (90) days or more or in which an order for relief is entered, or if any Obligor shall suffer any such appointment of a custodian, receiver, intervenor or trustee to continue undischarged for ninety (90) days or more; or (xvi) if any Obligor shall have concealed, transferred, removed, or permitted to be concealed or transferred or removed, any part of such Obligor's property with intent to hinder, delay or defraud any of such Obligor's creditors, or if any Obligor shall have made or suffered a transfer of any of such Obligor's properties which may be invalid under any bankruptcy, fraudulent conveyance, preference or similar law, or if any Obligor shall have made any transfer of such Obligor's properties to or for the benefit of any creditor at a time when other creditors similarly situated have not been paid; or (xvii) thirty (30) days following the failure to obtain any permit, license, approval or consent from, or to make any filing with, any governmental authority (or the lapse or revocation or rescission thereof once obtained or made) which is necessary in connection with the Loan, any Loan Document or the enforcement thereof, or if it shall become unlawful for Beneficiary to make or maintain the Loan or for any Obligor to perform any of such Obligor's obligations under any Loan Document; or (xviii) Beneficiary's election to accelerate the maturity of the Loan under the provisions of any other Loan Document following any default beyond any applicable cure or grace period in such Loan Document; or (xix) a monetary default following any applicable cure period under the lease set forth on Exhibit 6(b)(xix) attached hereto; or (xx) a default following any applicable cure period under any of the loans referenced on Exhibit 6(b)(xx) attached hereto; or (xxi) thirty (30) days following the date in which any change or event shall occur which in Beneficiary's exclusive judgment, acting reasonably, impairs any security for the Loan, increases Beneficiary's risk in connection with the Loan, or indicates that any Obligor may be unable to perform such Obligor's obligations under any Loan Document. No consent or waiver expressed or implied by Beneficiary with respect to any default under this Deed of Trust shall be construed as a consent or waiver with respect to any further default of the same or a different nature; and no consent or waiver shall be deemed or construed to exist by reason of any curative action initiated by Beneficiary or any other course of conduct or in any other manner whatsoever except by a writing duly executed by Beneficiary, and then only for the single occasion to which such writing is addressed. In order to accelerate the maturity of the Loan because of Trustor's failure to pay any tax, assessment, insurance premium, charge, liability, obligation or encumbrance upon the Property as required by this Deed of Trust, or in order to accelerate because of any other default, Beneficiary shall not be required to pay the same or to advance funds to cure the default, notwithstanding Beneficiary's option under this Deed of Trust or any other Loan Document to do so; no such payment or advance by Beneficiary shall be deemed or construed a waiver of Beneficiary's right to accelerate the maturity of the Loan on account of such failure or other default beyond any applicable cure or grace period.

(c) Remedies. Following an Event of Default:

(i) Beneficiary shall have the right (but in no event the obligation) at its option to cure the default or take any other action Beneficiary deems necessary to protect its security (including without limitation the payment of any taxes, assessments, insurance premiums, charges, liens or encumbrances required of Trustor under this Deed of Trust), without thereby waiving any rights or remedies otherwise available to Beneficiary. If Beneficiary shall elect to advance at any time any sum(s) for the protection of its security or for any other reason permitted or provided by any of the terms of this Deed of Trust or any other Loan Document, then such sum(s) shall be deemed Loan funds, shall be secured by this Deed of Trust and shall bear interest until paid at the "Default Rate" provided in the Debt Instrument commencing on the date they are advanced by Beneficiary. If advanced by Beneficiary before the (natural or accelerated) maturity date of the Loan, such sum(s) shall be due and payable by Trustor on such maturity date or ten (10) days after Trustor first learns of the advance, whichever is earlier, but if advanced after the (natural or accelerated) maturity date, such sum(s) shall be due and payable immediately. Beneficiary's lien on the Property for such advances shall be superior to any right or title to, interest in, or claim upon all or any portion of the Property junior to the lien of this Deed of Trust. Without the prior written consent of Beneficiary, which Beneficiary may grant or withhold in its sole discretion, Trustor shall not file for record any notice limiting the maximum principal amount that may be secured by this Deed of Trust to an amount less than the limit set forth in Paragraph 2(c) above.

(ii) Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(iii) Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(iv) Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; completing any unfinished construction; contracting for and making repairs and alterations; performing such acts of cultivation or irrigation as necessary to conserve the value of the Property; and preparing for harvest, harvesting and selling any crops that may be growing on the property. Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. Trustor agrees to deliver to Beneficiary all books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Paragraph.

(v) Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may



also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under this Deed of Trust; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted hereunder either with or without giving notice to any person.

(vi) Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

(vii) Beneficiary may cause the Property which consists solely of real property to be sold by Trustee as permitted by applicable law. Before any such trustee's sale, Beneficiary or Trustee shall give such notice of default, notice of hearing and obtained such findings or leave of court as then may be required by law, and/or Trustee shall give such notice of sale and advertise the time and place of such sale as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the Property, either as a whole or in separate parcels, and in such order as Trustee may determine, at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any trustee's sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any trustee's sale by public announcement at the time and place noticed for that sale. At any trustee's sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, or such other form of payment satisfactory to Trustee. Any person, including Trustor, Trustee or Beneficiary, may purchase at the trustee's sale to the extent permitted by then applicable law. Beneficiary shall have the benefit of any law permitting credit bids. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any trustee's sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

(viii) Beneficiary may proceed under the North Carolina Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the North Carolina Uniform Commercial Code. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee may sell the Personalty at a public sale to be held at the time and place specified in the notice of sale. It shall be deemed commercially reasonable for the Trustee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties.

(d) Application of Sale Proceeds and Rents.

(i) Beneficiary and Trustee shall apply the proceeds of any sale of the Property in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs, fees and expenses of the sale, including costs of evidence of title in connection with the sale; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto.

(ii) Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of any sale of the Property which Beneficiary may receive or collect under Paragraph 6(c), in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Beneficiary or any receiver; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto. Beneficiary shall have no liability for any funds which it does not actually receive.

7. MISCELLANEOUS PROVISIONS.

(a) No Waiver or Cure.

(i) Each waiver by Beneficiary or Trustee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance.

(ii) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust:

(A) Beneficiary, its agent or a receiver takes possession of all or any part of the Property;

(B) Beneficiary collects and applies Rents, either with or without taking possession of all or any part of the Property;

(C) Beneficiary receives and applies to any Secured Obligation proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under this Deed of Trust;

(D) Beneficiary makes a site visit, observes the Property and/or conducts tests thereon;

(E) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations;

(F) Beneficiary, Trustee or any receiver performs any act which it is empowered or authorized to perform under this Deed of Trust or invokes any right or remedy provided under this Deed of Trust; or

(G) Any notice of default and election to sell under this Deed of Trust is cancelled.

(b) Powers of Beneficiary and Trustee.

(i) Trustee shall have no obligation to perform any act which it is empowered to perform under this Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(ii) Beneficiary may take any of the actions permitted under Paragraphs 6(b) and/or 6(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(iii) From time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming or approving acts in executing this trust and enforcing these rights and remedies.

(iv) Beneficiary's rights or Nonborrower Trustor's obligations under this Deed of Trust:

(c) Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

(d) Applicable Law. This Deed of Trust shall be governed by the laws of the State of North Carolina.

(e) Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Paragraph does not waive the provisions of Paragraph 6(a).

(f) Waiver of Jury Trial. TRUSTOR AND BENEFICIARY, BY ACCEPTANCE HEREOF, HEREBY KNOWINGLY, VOLUNTARILY AND

INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED OF TRUST AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. TRUSTOR ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO THE BENEFICIARY IN EXTENDING CREDIT TO THE TRUSTOR, THAT THE BENEFICIARY WOULD NOT HAVE EXTENDED SUCH CREDIT WITHOUT THIS JURY TRIAL WAIVER, AND THAT TRUSTOR HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.

(g) Interpretation. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

(h) In-House Counsel Fees. Whenever Trustor is obligated to pay or reimburse Beneficiary or Trustee for any reasonable attorneys' fees, those fees shall include the allocated costs for services of in-house counsel to the extent permitted by applicable law.

(i) Waiver of Marshaling. Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust. Each successor and assign of Trustor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

(j) Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

(k) Notices. Trustor hereby requests that a copy of notice of default and notice of sale be mailed to it at the address set forth below. That address is also the mailing address of Trustor as debtor under the North Carolina Uniform Commercial Code. Beneficiary's



IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written.

TRUSTOR:

FS WINSTON-SALEM, LLC, a North Carolina limited liability company

By: FS REAL ESTATE HOLDINGS, LLO, a Florida limited liability company, its sole Member

By: [Signature]  
David Morgan, Vice President

Forstyth County  
North Carolina

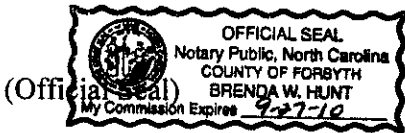
I certify that DAVID MORGAN personally appeared before me this day, and  
(check one of the following)

- I have personal knowledge of the identity of the principal(s); or
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of:  
(check one of the following)
- a driver's license, or
- in the form of \_\_\_\_\_; or
- a credible witness (i) personally known to me, (ii) unaffected by this instrument and the transaction to which it relates, and (iii) who personally knows such principal(s), has sworn to the identity of the principal(s);

Each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Date: April 30, 2008

Brenda W. Hunt  
Notary Public  
Printed Name Brenda W. Hunt



My commission expires: 9/27/10

EXHIBIT A TO DEED OF TRUST

Exhibit A to DEED OF TRUST executed as of April 3, 2008, by FS WINSTON-SALEM, LLC, a North Carolina limited liability company, as "Trustor" to CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation, as "Trustee" for the benefit of REGIONS BANK, an Alabama banking corporation, as "Beneficiary."

Description of Property

Lying and being in Abbotts Creek Township, Forsyth County, North Carolina, and more particularly described as follows:

Fee Parcel:

BEGINNING at an iron pipe found, said iron pipe being in the western boundary line of the Forsyth County Development Corporation property described in Deed Book 2049, Page 3042, of the Forsyth County Registry, said beginning point being the northeast corner of Lot 3 of the Union Cross Business Park, as shown in Plat Book 42, Page 14, of the Forsyth County Registry, and said beginning point being further described as the southeast corner of the within-described tract, and running thence, from said beginning point, with the northern boundary line of Lot 3 of the Union Cross Business Park, North 78 degrees 25 minutes 31 seconds West 333.11 feet to an iron pipe found, said iron pipe being the northeast corner of Lot 3A-Revised of Union Cross Business Park, as shown in Plat Book 41, Page 139, of the Forsyth County Registry; thence, with the northeast boundary line of the said Lot 3A, North 49 degrees 50 minutes 06 seconds West 397.85 feet to an iron pipe found, said iron pipe being in the eastern boundary line of the Crestview Baptist Church property described in Deed Book 916, Page 64, of the Forsyth County Registry; thence, with the eastern boundary line of the Crestview Baptist Church property, North 03 degrees 50 minutes 52 seconds East 429.35 feet to an iron pipe found, said iron pipe being the southwest corner of the James D. Pence property described in Deed Book 1335, Page 714, of the Forsyth County Registry; thence, with the southern boundary line of the James D. Pence property, North 81 degrees 07 minutes 12 seconds East 652.03 feet to an iron pipe set, said iron pipe being in the western boundary line of the Forsyth County Development Corporation property described in Deed Book 1125, Page 1705, of the Forsyth County Registry; thence, with the western boundary line of the Forsyth County Development Corporation property, South 02 degrees 29 minutes 00 seconds West 244.47 feet to an iron pipe found; thence, continuing with the said western boundary line of the Forsyth County Development Corporation property, South 03 degrees 01 minute 03 seconds West 609.09 feet to the point and place of Beginning, and containing 10.205 acres, as shown on a survey dated January 7, 2002, by Kent J. Franklin, Professional Land Surveyor.

The above-described property also being known and designated as Tax Lots 43D, 45A, and 68E, or portions thereof, Block 5621, on the Forsyth County Tax Maps.

Easement Area:

TOGETHER WITH rights of ingress, egress, and regress as described in Deed Book 1317, Page 1493, of the Forsyth County Registry.

Street Address of Property

1947 Union Cross Road, Winston-Salem, North Carolina 27107

EXHIBIT B TO DEED OF TRUST

UCC-LIST

- (a) all easements and other rights now or hereafter made appurtenant to the real property described on Exhibit "A" (the "Real Property");
- (b) all goods, inventory, intangible personal property, licenses (including without limitation, liquor licenses), apparatus, machinery, equipment, furnishings, fixtures, fittings, appliances and air conditioning and heating equipment, furniture, freezing equipment, and other property of every kind and nature whatsoever owned by Mortgagor/Debtor, or in which Mortgagor/Debtor has or shall have an interest, now or hereafter located upon the Real Property, or appurtenant thereto, and usable in connection with the Real Property, and the right, title and interest of Mortgagor/Debtor in and to any of the equipment, which may be subject to any security agreements (as defined in the North Carolina Uniform Commercial Code);
- (c) all awards or payments, including interest thereon, which may be made with respect to the Real Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Real Property;
- (d) all leases and other agreements affecting the use or occupancy of the Real Property now or hereafter entered into and the right to receive and apply the rents, issues and profits of the Real Property, and any security deposits paid in connection therewith;
- (e) all rights of Mortgagor/Debtor in and to all present and future fire, flood, liability, windstorm, business interruption/rent loss and/or hazard insurance policies pertaining to all or any portion of the Real Property and/or any items covered by this instrument, including without limitation any unearned premiums and all insurance proceeds or sums payable in lieu of or as compensation for the loss of or damage to all or any portion of the Real Property and/or any items covered by this instrument;
- (f) the right (but not the obligation), in the name and on behalf of Mortgagor/Debtor, to appear in and defend any action or proceeding brought with respect to the Real Property and to commence any action or proceeding to protect the interest of the Mortgagee/Secured Party in the Real Property;
- (g) all tenements, hereditaments, easements, riparian or other rights and appurtenances thereunto belonging or in any wise appertaining, including all right, title and interest of Mortgagor/Debtor in and to the underlying title of any roads or other dedicated area abutting the Real Property, and the reversions, remainders, rents, issues and profits thereof, and all after acquired title of Mortgagor/Debtor in the Real Property;
- (h) all abstracts of title, contract rights, management, franchise and service agreements, accounts, occupancy permits and licenses, building and other permits, governmental approvals, licenses, agreements with utilities companies, water and sewer capacity reservation agreements,



bonds, governmental applications and proceedings, feasibility studies, maintenance and service contracts, marketing agreements, development agreements, surveys, engineering work, architectural plans and engineering plans, site plans, landscaping plans, engineering contracts, architectural contracts, and all other contracts respecting the Real Property and all other consents, approvals and agreements which Mortgagor/Debtor may now or hereafter own in connection with the Real Property and/or any improvements constructed thereon, and all deposits, down payments and profits paid or deposited thereunder, now existing or hereafter obtained by or on behalf of Mortgagor/Debtor;

(i) all sanitary and storm sewer, water and utility service agreements as to which Mortgagor/Debtor is a party or beneficiary;

(j) all building materials, appliances and fixtures now owned or hereafter to be acquired by or on behalf of Mortgagor/Debtor and intended for use in the construction of or incorporated, annexed to, or located in, or to be incorporated in, annexed to, or located in the buildings and improvements to be constructed on the Real Property or any part thereof. Said materials and personal property shall include but not be limited to lumber, plaster, cement, shingles, roofing, plumbing fixtures, pipe, lath, wallboard, cabinets, nails, sinks, toilets, furnaces, heaters, brick, tile, water heaters, screens, window frames, glass doors, flooring, paint, lighting fixtures and unattached refrigerating, cooking, heating and ventilating appliances and equipment, kitchen goods, hotel goods, restaurant goods, bar goods, tools, lawn equipment, floor coverings;

(k) any monies and any escrow accounts established or accrued pursuant to that certain Mortgage encumbering the Real Property made by Mortgagor/Debtor in favor of Mortgagee/Secured Party;

(l) any property or other things of value acquired with or paid for by any future advances pursuant to the said Mortgage;

(m) all contracts of sale and purchase agreements respecting the Real Property, all contracts for deed and any notes and mortgages executed and delivered to Mortgagor/Debtor in connection with any contracts for deed otherwise, and any other contracts entered into by Mortgagor/Debtor respecting or relating in any manner to the Real Property;

(n) all income and profits due or to become due under any contracts of sale or purchase agreements respecting the Real Property, now existing or hereafter obtained by or on behalf of Mortgagor/Debtor;

(o) all refunds of property taxes relating to the Real Property;

(p) all accounts receivable arising from operations conducted at the Real Property;

(q) all of the water, sanitary and storm sewer systems now or hereafter owned by the Mortgagor/Debtor which are now or hereafter located by, over, or upon the Real Property or any part or parcel thereof, and which water system includes all water mains, service laterals,

hydrants, valves and appurtenances, and which sewer system includes all sanitary sewer lines, including mains, laterals, manholes and appurtenances;

(r) all of the right, title and interest of the Mortgagor/Debtor in and to any copyrights, trademarks, service marks, trade names, names of businesses, or fictitious names of any kind used in conjunction with the operation of any business or endeavor located on the Real Property;

(s) all of Mortgagor/Debtor's interest in all utility security deposits or bonds on the Real Property or any part or parcel thereof;

(t) any and all balances, credits, deposits, accounts or monies of the Mortgagor/Debtor and all guarantors and all other such properties and securities then or thereafter established with or in the possession of the Mortgagee/Secured Party;

(u) all warranties, guaranties, instruments, documents, chattel papers and general intangibles relating to or arising from the foregoing collateral, now owned or hereafter acquired by Mortgagor/Debtor; and

(v) any impact fee credits owned by Mortgagor/Debtor.

Together with all substitutions for, alterations, repairs and replacements of any of the foregoing and any and all proceeds (whether cash proceeds or non cash proceeds), products, renewals, accessions and additions or any of the foregoing.

EXHIBIT C TO DEED OF TRUST

Permitted Exceptions

All matters shown on Schedule B, Part II of Lawyers Title Insurance Corporation Mortgagee Commitment No. NC-07-1010.

EXHIBIT 6(b)(xix) TO DEED OF TRUST

LEASE

Lease Agreement, dated April 30, 2008, between FS Winston-Salem, LLC, a North Carolina limited liability company, and Lyndon Steel Company LP, a North Carolina limited partnership

EXHIBIT 6(b)(xx) TO DEED OF TRUST

OTHER LOANS

**SCHEDULE / BORROWERS AND LOAN AMOUNTS**

Property to be encumbered by a mortgage or deed of trust in favor of Regions Bank

<u>Borrower</u>	<u>Loan Amount</u>	<u>Address of Property</u>
FS Ft. Lauderdale, LLC	\$1,500,000	721 NE 44 <sup>th</sup> St., Ft. Lauderdale, FL
FS Georgia, LLC	\$2,000,000	405 N. Clarendon Ave, Scottdale, GA
FS Log Cabin, LLC	\$400,000	1945 Union Cross Rd., Winston-Salem, NC
FS Daytona, LLC	\$1,500,000	1490 Frances Dr., Daytona Beach, FL
FS Kinston, LLC	\$1,050,000	2300 Albemarle Paper Co. Road, Kinston, NC