

2008055905 00126

FORSYTH CO, NC FEE \$153.00
PRESENTED & RECORDED:

11-20-2008 04:42 PM

KAREN GORDON

REGISTER OF DEEDS
BY: TIMOTHY R WILLIAMS
ASST

BK: RE 2862

PG: 4500-4543

(Space Above For Recorder's Use)

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT
WITH ASSIGNMENT OF LEASES AND RENTS

Dated as of

November 20, 2008

made by

KERNERSVILLE MARKETPLACE, LLC,
a North Carolina limited liability company,
as "Grantor" or "Borrower,"

to

NANCY HUGHES, individually,
as Trustee

in favor of

RIVERSOURCE LIFE INSURANCE COMPANY, a Minnesota corporation
as "Grantee" or "Beneficiary"

PREPARED BY AND AFTER
RECORDING, RETURN TO:

Tatum Levine & Powell, LLP
1750 Main Street, NE
Conyers, Georgia 30012
Attn: Michelle A. Hickerson, Esq.

ENVELOPE

Loan Number: 694082473

COLLATERAL IS OR INCLUDES FIXTURES

DEED OF TRUST, SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT
WITH ASSIGNMENT OF LEASES AND RENTS

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT WITH ASSIGNMENT OF LEASES AND RENTS (this "Instrument") is made and delivered as of the 20th day of November, 2008, by KERNERSVILLE MARKETPLACE, LLC, a North Carolina limited liability company, as grantor ("Grantor" or "Borrower"), having a mailing address of 2209 Blue Bell Lane, Charlotte, North Carolina 28270, in favor of NANCY HUGHES, a resident of the State of Minnesota, as trustee (individually, "Trustee"), for the benefit of RIVERSOURCE LIFE INSURANCE COMPANY, a Minnesota corporation, as beneficiary ("Grantee" or "Beneficiary"), having a mailing address of c/o RiverSource Investments, LLC, Real Estate Loan Management, 25540 Ameriprise Financial Center, Minneapolis, Minnesota 55474.

WITNESSETH, that Borrower, in consideration of the Indebtedness (as hereinafter defined) and the sums advanced to Borrower in hand paid by Beneficiary, receipt whereof is hereby acknowledged, does hereby GRANT, BARGAIN, SELL AND CONVEY AND GRANTS A SECURITY INTEREST IN the following unto (i) Trustee, her heirs, successors and assigns, in trust, with power of sale and right of entry and possession, except to those portions and components of the Premises (as hereinafter defined) that constitute personal property, and (ii) Beneficiary, its successors and assigns, as secured party, as to those portions and components of the Premises that constitute personal property, to secure (a) payment of the Note (as hereinafter defined) and all amounts owing under the Note and any documents securing the Note; and (b) due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Borrower contained in the Note, this Instrument and any other Loan Documents (as hereinafter defined) (all of the following being hereafter collectively referred to as the "Premises"):

GRANTING CLAUSE A
REAL PROPERTY

All the tracts or parcels of real property (collectively, the "Land") lying and being in the County of Forsyth, State of North Carolina, all as more fully described in Exhibit A attached hereto and made a part hereof, together with all the estates and rights in and to the Land, water, mineral or oil rights and in and to lands lying in streets, alleys and roads or gores of land adjoining the Land and all buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the Land and all proceeds and products derived therefrom whether now owned or hereafter acquired.

GRANTING CLAUSE B
IMPROVEMENTS, FIXTURES, EQUIPMENT
PERSONAL PROPERTY

All buildings, equipment (including Borrower's interest in any lease of such equipment), fixtures, improvements, building supplies and materials and other personal property now or hereafter attached to, located in, placed in or necessary to the use, operation or maintenance of the improvements on the Land including, but without being limited to, all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, as well as all elevators, escalators, overhead cranes, hoists and assists, and the like, and all furnishings, supplies, draperies, maintenance and repair equipment, window and structural cleaning rigs and equipment, floor coverings, appliances, screens, storm windows, blinds, awnings, shrubbery and plants, stoves, ranges, ovens, refrigerators, dishwashers, clothes dryers, washing machines, disposals and compactors and including but not limited to the specific articles of property set forth on Exhibit B attached hereto (it being understood that the enumeration of specific articles of property shall in no way be held to exclude items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Borrower in any such items hereafter acquired, and all personal property which by the terms of any lease shall become the property of Borrower at the termination of such lease, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises, but excluding therefrom the removable personal property owned by tenants in the Premises.

GRANTING CLAUSE C
RENTS, LEASES AND PROFITS

All rents, issues, income, revenue, receipts, fees, and profits now due or which may hereafter become due under or by virtue of and together with all right, title and interest of Borrower in and to any lease, license, sublease, contract or other kind of occupancy agreement, whether written or verbal, for the use or occupancy of the improvements located on the Land or any part thereof, together with all security therefor and all monies payable thereunder, including, without limitation, tenant security deposits, and all books and records which contain information pertaining to payments made thereunder and security therefor, subject, however, to the conditional permission herein given to Borrower to collect the rents, income and other normal income benefits arising under any agreements. Beneficiary shall have the right, not as a limitation or condition hereof but as a personal covenant available only to Beneficiary, at any time and from time to time, to notify any lessee of the rights of Beneficiary hereunder.

Together with all right, title and interest of Borrower in and to any and all contracts for sale and purchase of all or any part of the property described in Granting Clauses (A), (B) and (C) hereof, and any down payments, earnest money deposits or other sums paid or deposited in connection therewith.

GRANTING CLAUSE D
JUDGMENTS, CONDEMNATION AWARDS,
INSURANCE PROCEEDS,
AND OTHER RIGHTS

All awards, compensation or settlement proceeds made by any governmental or other lawful authorities for the threatened or actual taking or damaging by eminent domain of the whole or any part of the Premises, including any awards for a temporary taking, change of grade of streets or taking of access, together with all insurance proceeds resulting from a casualty to any portion of the Premises; all rights and interests of Borrower against others, including adjoining property owners, arising out of damage to the Premises including damage due to environmental injury or release of hazardous substances.

GRANTING CLAUSE E
LICENSES, PERMITS, EQUIPMENT LEASES
AND SERVICE AGREEMENTS

All right, title and interest of Borrower in and to any licenses, permits, regulatory approvals, government authorizations, franchise agreements, and equipment or chattel leases, service contracts or agreements, tradenames, and any and all other intangibles, including general intangibles, and all proceeds therefrom, arising from, issued in connection with or in any way related to the use, occupancy, operation, maintenance or security of the Premises, together with all replacements, additions, substitutions and renewals thereof, which may be assigned pursuant to agreement or law.

GRANTING CLAUSE F
PROCEEDS

All sale proceeds, refinancing proceeds or other proceeds, including deposits and down payments derived from or relating to the property described in Granting Clauses A through E above.

GRANTING CLAUSE G
ACCOUNTS RECEIVABLE AND GENERAL INTANGIBLES

All accounts receivable, chattel paper, general intangibles, instruments, and all proceeds therefrom, whether cash or non-cash, derived by Borrower from the use, occupancy or operation of the Premises, including, without limitation, all third party payments, but excepting the proceeds of any borrowed funds, and reserving to Borrower a license to collect the same unless and until an Event of Default occurs under this Instrument.

AND BORROWER for Borrower, Borrower's heirs, administrators, personal representatives, successors and assigns, covenants with Beneficiary and Trustee, and their respective heirs, successors and assigns, that Borrower is lawfully seized of the Premises in fee simple and has good right to sell and convey the same; that the Premises are free from all

encumbrances except as may be set forth in the ALTA Loan Policy (the "Title Policy") to be issued to Beneficiary and insuring the first lien position of this Instrument (hereinafter referred to as the "Permitted Encumbrances"); that Beneficiary, its successors and assigns, shall quietly enjoy and possess the Premises; and that Borrower, its successors and assigns, will WARRANT AND DEFEND the title to the same against all lawful claims not specifically excepted in this Instrument.

TO HAVE AND TO HOLD THE SAME, together with the possession and right of possession of the Premises, unto Beneficiary and Trustee, and their respective heirs, successors and assigns, forever.

PROVIDED NEVERTHELESS, that if Borrower, Borrower's heirs, administrators, personal representatives, successors or assigns, shall pay to Beneficiary, its successors or assigns, the sum of Two Million Nine Hundred Fifty Thousand and No/100 Dollars (\$2,950,000.00), according to the terms of that certain Promissory Note in said principal amount (such Promissory Note, as amended, modified and extended from time to time is hereinafter referred to as the "Note") of even date herewith executed by Borrower and payable to Beneficiary, the terms and conditions of which are incorporated herein by reference and made a part hereof, together with any extensions, modifications, substitutions, replacements, consolidations or renewals thereof, due and payable with interest thereon as provided therein, the balance of said principal sum together with interest thereon being due and payable in any event on December 1, 2018, and shall repay to Beneficiary, its successors or assigns, at the times demanded and with interest thereon at the same rate specified in the Note, all sums advanced in protecting the lien of this Instrument, in payment of taxes on the Premises, in payment of insurance premiums covering improvements thereon, in payment of principal and interest on prior liens, in payment of expenses and reasonable attorneys' fees actually incurred herein provided for and all sums advanced for any other purpose authorized herein (the Note and all such sums, together with interest thereon, and prepayment fee, if any, being hereinafter collectively referred to as the "Indebtedness"), and shall keep and perform all of the covenants and agreements herein contained, then this Instrument shall become null and void, and shall be released at Borrower's expense.

AND IT IS FURTHER COVENANTED AND AGREED AS FOLLOWS:

ARTICLE 1
GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 1.1 REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Beneficiary and Trustee, and their respective heirs, successors and assigns, that, as of the date hereof:

(a) Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina, has been duly qualified to do business in the State of North Carolina, and has all requisite power and authority to own and operate the Premises, to enter into the Note, this Instrument, that certain Assignment of Leases and Rents of even date herewith (the "Assignment of Leases ") from Borrower to Beneficiary, that certain Hazardous Materials or Wastes Indemnity Agreement of even date herewith (the "Indemnity Agreement"), and any other document securing the Note, to execute all other documents relating to the loan evidenced by the Note (the "Loan") and make all representations, warranties and covenants contained in such documentation. The Note, this Instrument, the Assignment of Leases, the Indemnity Agreement, all UCC Financing Statements and all other documents, instruments and agreements relating to any of them or evidencing or securing the Loan are herein referred to as the "Loan Documents." Borrower has the power and authority to borrow the monies and otherwise assume and perform as contemplated hereunder and under all documents relating to or executed in connection with the Indebtedness, and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) Fincher Limited Partnership, the sole manager of Borrower, is a limited partnership duly organized, validly existing and in good standing under the laws of the State of North Carolina, and has all requisite power and authority to act as the sole manager of Borrower.

(c) Neither the borrowing of the monies nor the execution and delivery of the Loan Documents nor the performance of the provisions of the agreements therein contained on the part of Borrower will contravene, violate or constitute a default under the Articles of Organization or Operating Agreement of Borrower, or any agreement with any member of Borrower, or any creditors of Borrower, or any law, ordinance, governmental regulation, agreement or indenture to which Borrower is a party or by which Borrower or Borrower's properties are bound.

(d) There are no (i) bankruptcy proceedings involving Borrower and none are contemplated; (ii) dissolution proceedings involving Borrower and none is contemplated; (iii) unsatisfied judgments of record against Borrower; or (iv) tax liens filed against Borrower or any properties of Borrower.

(e) The Loan Documents have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligations of Borrower, enforceable in accordance with their terms.

(f) There are no judgments, suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of Borrower's knowledge, threatened against Borrower or its properties, or both, nor has any judgment, decree or order been issued against Borrower or its properties, or both, which would

have a material adverse effect on the Premises or the financial condition of Borrower or Borrower's properties.

(g) No consent or approval of any regulatory authority having jurisdiction over Borrower is necessary or required by law as a prerequisite to the execution, delivery and performance of the terms of the Loan Documents.

(h) Borrower is not, as of the date hereof, in default in the payment or performance of any of Borrower's obligations in connection with borrowed money or any other major obligation.

(i) The Premises is free from any mechanics' or materialmen's liens or claims. There has been no labor or materials furnished to the Premises that has not been paid for in full.

(j) Borrower has no notice, information or knowledge of any change contemplated in any applicable law, ordinance, regulation, or restriction; or any judicial, administrative, governmental or quasi-governmental action; or any action by adjacent land owners; or natural or artificial condition existing upon the Premises which would limit, restrict, or prevent the contemplated or intended use and purpose of the Premises.

(k) There is no pending Condemnation (as defined in Section 5.2 hereof) or similar proceeding affecting the Premises, or any portion thereof, nor to the best knowledge of Borrower, is any such action being presently contemplated.

(l) No part of the Premises is being used for agricultural purposes or being used for a personal residence by Borrower or any member of Borrower.

(m) The Premises is undamaged by fire, windstorm, or other casualty.

(n) The Premises complies with all zoning and subdivision ordinances, energy and environmental codes, building and use restrictions and codes, and any requirements with respect to licenses, permits and agreements necessary for the lawful use and operation of the Premises.

(o) The heating, electrical, sanitary sewer plumbing, storm sewer plumbing, potable water plumbing and other building equipment, fixtures and fittings in the existing improvements on the Premises are in good condition and working order, are adequate in quantity and quality for normal and usual use, and are fit for the purposes intended and the use contemplated.

(p) The Premises is covered by one or more tax parcel(s) which pertain to the Premises only and not to any property which is not subject to this Instrument.

(q) The Premises is improved with a retail center and related parking and has frontage on, and direct access for ingress and egress to publicly dedicated streets known as South Main Street (as to Lot 1) and Century Place Boulevard (as to Lots 1 and 2).

(r) Borrower has good and clear record and marketable title in fee to such of the Premises as is real property, subject to no liens, encumbrances or restrictions other than Permitted Encumbrances.

SECTION 1.2 CONTINUING OBLIGATION. Borrower further warrants and represents that all statements made hereunder are true and correct and that all financial statements, data and other information provided to Beneficiary by Borrower relating to or provided in connection with this transaction has not and does not contain any statement which, at the time and in the light of the circumstances under which it was made, would be false or misleading with respect to any material fact, or would omit any material fact necessary in order to make any such statement contained therein not false or misleading in any material respect, and since such statement, data or information was provided there has been no material change thereto or to the financial condition of Borrower. Should Borrower subsequently obtain knowledge that any such representation was or is untrue, Borrower shall immediately notify Beneficiary as to the untrue nature of said representation and agrees, to the extent possible, to take action as may be necessary to cause such representation to become true.

ARTICLE 2 COVENANTS AND AGREEMENTS

Borrower covenants and agrees for the benefit of Beneficiary and Trustee, and their respective heirs, successors and assigns, as follows:

SECTION 2.1 PAYMENT OF INDEBTEDNESS; OBSERVANCE OF COVENANTS. Borrower will duly and punctually pay each and every installment of principal, fee, if any, and interest on the Note, all deposits required herein, and all other Indebtedness, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note and any other Loan Documents, as such instrument may be amended, modified, restated and in effect from time to time.

SECTION 2.2 MAINTENANCE AND REPAIRS. Borrower agrees that it will keep and maintain the Premises in good, first class condition, repair and operating condition free from any waste or misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Premises and their use, and will promptly repair or restore any buildings, improvements or structures now or hereafter on the Premises, which may become damaged or destroyed, to their condition prior to any such damage or destruction. Borrower further agrees that, without the prior written consent of Beneficiary, it will not remove or expand any improvements on the Premises, erect any new improvements or make any material alterations in any improvements which will alter the basic structure, adversely affect the market value or change the existing architectural character of the Premises, and agrees that any other buildings, structures and improvements now or hereafter constructed on or in the Premises or repairs made to the Premises shall be completed in a good and workmanlike manner, in accordance with all applicable governmental laws, regulations, requirements and permits and in accordance with plans and specifications previously delivered to, and approved in advance and in writing by, Beneficiary. Borrower agrees not to acquiesce in any rezoning classification, modification or restriction affecting the Premises without the written consent of Beneficiary. Borrower agrees that it will not abandon or vacate the Premises. Borrower agrees that it will provide, improve, grade, surface and thereafter maintain, clean, repair and adequately light all parking areas within the Premises, together with any sidewalks, aisles, streets, driveways and curb cuts and sufficient paved areas for ingress and right-of-way to and from the adjacent public thoroughfare necessary or desirable for the use thereof and maintain all landscaping thereon.

Borrower shall obtain and at all times keep in full force and effect such governmental approvals as may be necessary to comply with all governmental requirements relating to Borrower and the Premises.

SECTION 2.3 PAYMENT OF OPERATING COSTS; LIENS AND OTHER INDEBTEDNESS. Borrower agrees that it will pay all operating costs and expenses of the Premises; keep the Premises free from mechanic's liens, materialmen's liens, judgment liens and other liens, executions, attachments or levies (hereinafter collectively referred to as "Liens"); and will pay when due all permitted indebtedness which may be secured by a mortgage, deed of trust, lien or charge on the Premises, whether prior to, subordinate to or of equal priority with the lien hereof, and upon request will exhibit to Beneficiary satisfactory evidence of such payment and discharge.

SECTION 2.4 PAYMENT OF IMPOSITIONS. Borrower will pay when due and before any penalty or interest attaches because of delinquency in payment, all taxes, installments of assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein or the Indebtedness (hereinafter collectively referred to as the "Impositions"); and will upon demand furnish to Beneficiary proof of the payment of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a lender the payment of the whole or any part of the Impositions herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages, deeds of trust, or debts secured by mortgages or a lender's interest in mortgaged (or encumbered) premises, so as to impose such Imposition on Beneficiary or on the interest of Beneficiary in the Premises, then, in any such event, Borrower shall bear and pay the full amount of such Imposition, provided that if for any reason payment by Borrower of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness wholly or partially usurious, Beneficiary, at its option, may declare the whole sum secured by this Instrument with interest thereon to be immediately due and payable, without prepayment fee, or Beneficiary, at its option, may pay that amount or portion of such Imposition as renders the Indebtedness unlawful or usurious, in which event Borrower shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said Imposition.

SECTION 2.5 CONTEST OF LIENS AND IMPOSITIONS. Borrower shall not be required to pay, discharge or remove any Liens or Impositions so long as Borrower shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the Liens or Impositions so contested and the sale of the Premises, or any part thereof to satisfy the same, provided that Borrower shall, prior to any such contest, have given such security as may be demanded by Beneficiary to ensure such payments and prevent any sale or forfeiture of the Premises by reason of such nonpayment. Any such contest shall be prosecuted in accordance with the laws and rules pertaining to such contests and in all events with due diligence and Borrower shall promptly after final determination thereof pay the amount of any such Liens or Impositions so determined, together with all interest and penalties, which may be payable in connection therewith. Notwithstanding the provisions of this Section, Borrower shall (and if Borrower shall fail so to do, Beneficiary, may but shall not be required to) pay any such Liens or Impositions notwithstanding such contest if, in the opinion of Beneficiary, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed.

SECTION 2.6 PROTECTION OF SECURITY. Borrower agrees to promptly notify Beneficiary or Trustee of and appear in and defend any suit, action or proceeding that affects the value of the Premises, the Indebtedness or the rights or interest of Beneficiary or Trustee hereunder. Beneficiary may elect to appear in or defend any such action or proceeding and Borrower agrees to indemnify and reimburse Beneficiary from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including without limitation costs of evidence of title and reasonable attorneys' fees actually incurred.

SECTION 2.7 ANNUAL STATEMENTS. Within ninety (90) days after the end of each of its fiscal years during the term of this Instrument, Borrower, and any successor to the interest of Borrower in the Premises, will furnish to Beneficiary annual certified financial statements of Borrower or such successor and of any guarantor of the Loan and annual certified operating statements of the Premises, which shall include all relevant financial information showing at a minimum, but shall not be limited to, gross income (itemized as to source), operating expenses (itemized), depreciation charges, and Net Operating Income before and after federal income taxes and such additional information as Beneficiary may from time to time request. The financial statements shall be prepared and certified by the manager of Borrower and the operating statements shall be prepared and certified by Borrower. Both the financial and operating statements shall be prepared at the expense of Borrower. All of the above required statements shall be prepared in reasonable detail, conform to generally accepted accounting principles and be satisfactory in form and content to Beneficiary. Borrower or any successor borrower, if the Premises is conveyed pursuant to a transfer permitted by Beneficiary, shall provide: (a) as to a corporate entity, such entity shall submit annual audited financial statements of the corporation and any supplemental schedules provided stockholders or officers, (b) as to an individual(s), such individual(s) shall submit annual statements certified by each individual or by an independent certified public accountant in good standing and shall include a balance sheet and a profit and loss statement, and (c) as to a partnership, trust entity or limited liability company, the partnership, trust or limited liability company shall submit annual reports certified by an authorized partner, trustee or member. Borrower covenants that it shall keep true and accurate records of the operation of the Premises. In the event Borrower fails to furnish any of the statements as required herein or upon an Event of Default, as herein defined, Beneficiary may cause an audit to be made of the respective books and records at the sole cost and expense of Borrower. Beneficiary also shall have the right to examine at their place of safekeeping all books, accounts and records relating to the operation of the Premises, to make copies or abstracts therefrom and to discuss the affairs, finances or accounts with the members of Borrower and Borrower's accountants. Said examination shall be at Beneficiary's expense unless an Event of Default has occurred or Borrower's statements are found to contain significant discrepancies, in which case the examination shall be at Borrower's expense. Borrower shall also furnish a rent roll in form acceptable to Beneficiary of all tenants having leases on the Premises on an annual basis along with the operating statements provided for above or at such other times as requested by Beneficiary from time to time.

SECTION 2.8 ADDITIONAL ASSURANCES. Borrower agrees upon request by Beneficiary to execute and deliver further instruments, financing statements and/or continuation statements under the Uniform Commercial Code and assurances and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Instrument and,

without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clauses hereof, or intended so to be. Borrower agrees to pay any recording fees, filing fees, stamp taxes or other charges arising out of or incident to the filing, the issuance and delivery of the Note, the filing or recording of this Instrument and the Assignment of Leases or the delivery filing and recording of such further assurances and instruments as may be required pursuant to the terms of this Section.

SECTION 2.9 MAINTENANCE OF EXISTENCE. Borrower agrees to maintain its domestication as a limited liability company under the laws of the State of North Carolina, and not to re-domesticate, dissolve, liquidate, wind-up, consolidate or merge during the term hereof, without the prior written consent of Beneficiary.

SECTION 2.10 DUE ON SALE OR MORTGAGING, ETC. In the event that without the written consent of Beneficiary being first obtained: (a) Borrower sells, conveys, transfers, further mortgages, changes the form of ownership, or encumbers (except for necessary utility easements and governmental requirements) or disposes of the Premises, or any part thereof, or any interest therein, or agrees so to do; or (b) any membership interest in Borrower is sold, conveyed, transferred, pledged or encumbered or there is an agreement so to do, whether any such event described in (a) or (b) above is voluntary, involuntary or by operation of law, then at Beneficiary's sole option, Beneficiary may declare the Indebtedness immediately due and payable in full and call for payment of the same at once, together with the prepayment fee then in effect under the terms of the Note.

In the event Borrower shall request the consent of Beneficiary in accordance with this section, Borrower shall deliver a written request to Beneficiary together with (a) a review fee of Five Hundred and No/100 Dollars (\$500.00) ("Review Fee"); and (b) complete information regarding such conveyance or encumbrance (including complete information concerning the person or entity to acquire the interest conveyed). Beneficiary shall be allowed thirty (30) days after receipt of all requested information for evaluation of such request. In the event that Beneficiary fails to respond within such thirty (30) day period, Borrower's request shall be deemed not approved. If such a conveyance or encumbrance is approved, Borrower shall pay to Beneficiary a processing fee in the amount of Three Thousand and No/100 Dollars (\$3,000.00) ("Processing Fee") to compensate Beneficiary for processing the request, along with a good faith deposit in the amount of Five Thousand and No/100 Dollars (\$5,000.00) (the "Good Faith Deposit") which shall be held by Beneficiary in a non-interest bearing account. The Good Faith Deposit shall be returned to Borrower after the transaction has closed and in accordance with Beneficiary's requirements and after Beneficiary has received all required post-closing documentation, including but not limited to, recorded documents, title policies/endorsements and insurance policies. In the event the transaction does not close for any reason, Beneficiary shall refund the Good Faith Deposit, less any out-of-pocket expenses, including reasonable attorneys' fees actually incurred, incurred by Beneficiary. Approval hereunder by Beneficiary may be conditioned upon payment of a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan ("Transfer Fee"), which Transfer Fee shall be equal to two percent (2%) of the outstanding principal balance of the Loan if the request for transfer is made by Borrower during the first Loan Year (as such term is defined in the Note), payment of all out-of-pocket expenses incurred by Beneficiary in processing such transfer, and such modifications of the loan terms, interest rate, and maturity date as determined by Beneficiary in its sole discretion.

Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

If any person or entity who holds a controlling and/or managing membership interest, general partnership interest, beneficial interest, trustee interest or corporate stock interest in Borrower (any such person or entity being hereafter referred to as a "Controlling Party"), or any permitted subsequent owner of the Premises (a "Subsequent Owner"), transfers or pledges such membership interest, general partnership interest, beneficial interest, trustee interest or corporate stock interest, as applicable, such action shall constitute a conveyance or transfer for purposes of this section.

The dissolution of any entity or the death of any person which is the Borrower, a Controlling Party or a Subsequent Owner shall constitute a transfer of such interest for the purpose of this section. The death of an individual Borrower, Controlling Party or Subsequent Owner shall constitute a transfer of such interest for purposes of this section. In the event of the death of a person who is the Borrower, Controlling Party or Subsequent Owner, (a) Beneficiary must receive written notice thereof within ninety (90) days of such death; and (b) Beneficiary shall be provided with a replacement person or entity acceptable to Beneficiary in its sole discretion within one (1) year after such death or prior to any distribution of assets to a devisee, an heir or other beneficiary, whichever is sooner. If such replacement is acceptable to Beneficiary, such acceptance being at the sole discretion of Beneficiary, the transfer shall be permitted without a transfer fee or change in the Loan terms.

SECTION 2.11 PERMITTED TRANSFER. Notwithstanding the terms of Section 2.10 above, in addition to Borrower's rights regarding leases as set forth in Section 6.1 below, Beneficiary shall allow certain transfers or conveyances in the following situations pursuant to the specified conditions:

(a) Estate Planning. Beneficiary agrees that it shall neither withhold its consent nor require payment of a Review Fee, Processing Fee or Transfer Fee for transfers of membership interests in Borrower by the members of Borrower among themselves or to immediate family members (i.e. spouse and children) or entities owned by such family members, for estate planning purposes, provided the following conditions have been met:

- (i) Timothy E. Fincher ("Guarantor") maintains an interest in Borrower;
- (ii) current financial information (reflecting the current assets) is provided for the present Guarantor;
- (iii) Guarantor shall remain liable for all obligations under the terms of the Indemnity Agreement and that certain Limited Guaranty Agreement dated of even date herewith (the "Guaranty");
- (iv) no Event of Default, as defined in the Loan Documents, or event which with the passage of time, or giving of notice or both, would become such an event of default, exists under the Loan Documents;

- (v) Beneficiary has been given thirty (30) days prior written notice of such transfer;
- (vi) prior to such transfer, copies of all transfer documents, and such other documentation or information as Beneficiary deems necessary, and satisfactory in all respects to Beneficiary, have been received;
- (vii) Beneficiary's out-of-pocket expenses, including reasonable attorneys' fees actually incurred, are paid by Borrower; and
- (viii) Borrower shall provide other items as requested from Beneficiary or its counsel.

Notwithstanding the foregoing, in the event any Guarantor or Borrower transfers its interest to a trust for the benefit of said immediate family members, Beneficiary shall require that the trust (or the trustee on behalf of the trust, if applicable under local law) join in the Guaranty.

(b) Entity Conversion. Beneficiary shall consent to the transfer of the entire Premises, without requiring payment of a Review Fee, Processing Fee or Transfer Fee, from Borrower to an entity whose sole asset is the Premises ("Entity"), provided the following conditions have been met:

- (i) Entity shall fully assume the obligation to pay the Note and otherwise perform the terms and conditions of the Loan Documents pursuant to an assumption agreement in form and content acceptable to Beneficiary;
- (ii) Borrower provides evidence satisfactory to Beneficiary that the ownership, control and management of the Entity shall be the same as those of Borrower;
- (iii) Beneficiary receives an acceptable opinion from Entity's counsel confirming that Entity is duly organized, validly existing and in good standing under the laws of the State of its organization and in the State where the Premises is located; and all documents executed in connection with the transfer, including the assumption agreement, have been duly authorized, executed and delivered and are enforceable in accordance with their terms;
- (iv) Borrower shall execute, deliver and record (when necessary) such amendments, supplements, corrections and replacements in regard to the Loan Documents and shall deliver such endorsements to Beneficiary's title insurance policy as Beneficiary may require including an endorsement to the title insurance policy insuring the first lien position of this Instrument, such endorsement to insure that Entity is the owner of the Premises, subject to no liens or encumbrances other than those shown in the title policy and current taxes not yet due and payable;
- (v) Thirty (30) days prior to such transfer, copies of all transfer documents and such other documentation or information (including organizational documentation and updated property insurance information) as Beneficiary deems necessary, and which is satisfactory in all respects to Beneficiary, have been received;

- (vi) Guarantor shall remain liable for all obligations under the terms of the Indemnity Agreement and the Guaranty;
- (vii) No Event of Default, as defined in the Loan Documents, or event which with the passage of time, or giving of notice or both, would become such an event of default, exists under the Loan Documents;
- (viii) Beneficiary has been given thirty (30) days prior written notice of such transfer;
- (ix) Beneficiary's out-of-pocket expenses, including reasonable attorneys' fees actually incurred, are paid by Borrower; and
- (x) Borrower shall provide other items as requested from Beneficiary or its counsel.

(c) One-Time Transfer. After the first Loan Year, upon written request and provided no Event of Default has occurred and remains uncured, Beneficiary will approve one and only one transfer of the Premises at any time, without requiring modification of the interest rate or maturity date stated in the Note, upon satisfaction of the following conditions:

- (i) The transfer shall be to a transferee that Beneficiary determines, in its sole judgment and discretion, to be a reputable and competent entity that:
 - (1) has experience in the business of owning commercial real estate of similar type, size and quality to the Premises and has a favorable reputation with respect to such business; and
 - (2) has experience or has retained management with experience in the management of similar properties; and
 - (3) has the necessary financial strength; and
 - (4) has never been in default under any loan held by Beneficiary or an affiliate of Beneficiary.
- (ii) For the twelve (12) month period immediately following the date of the proposed transfer, the annualized Net Operating Income (as defined below) prior to the payment of debt service is at least one hundred twenty-five percent (125%) of the annual debt service on the Note and on all subordinate financing secured by the Premises, or any part thereof;
- (iii) The proposed transferee must assume and agree to perform all obligations under the Loan Documents pursuant to an assumption agreement acceptable to Beneficiary. Borrower shall remain liable for payment of all sums due under the Note and performance of all other terms and conditions of the Loan Documents and Guarantor shall remain liable for all obligations under the terms of the Indemnity Agreement and the Guaranty. Beneficiary may, in its sole discretion, agree to release Borrower and Guarantor from continuing liability under the Loan Documents; provided, however, that such release shall be prospective only and Borrower and Guarantor shall remain liable for all actions taken and all events occurring prior to the date of the transfer of the Premises;

- (iv) Beneficiary shall receive a Review Fee and a Processing Fee in connection with the request. Beneficiary shall receive a Transfer Fee at the time of transfer. If required by Beneficiary, Borrower shall also provide to Beneficiary a good faith deposit of Five Thousand and No/100 Dollars (\$5,000.00), which Beneficiary shall hold in a non-interest bearing account. The good faith deposit shall be returned to Borrower after the transaction has closed in accordance with Beneficiary's requirements and after Beneficiary has received all required post-closing documentation, including but not limited to recorded documents, title policies/endorsements and insurance policies. In the event the transaction does not close for any reason, Beneficiary shall refund the good faith deposit, less any out-of-pocket expenses, including reasonable attorneys' fees actually incurred, incurred by Beneficiary;
- (v) The purchaser must acknowledge that future transfers and encumbrances will be subject to Beneficiary's approval, which may, at Beneficiary's sole discretion, be withheld or be conditioned upon payment of a fee and/or modification of the terms of the Note and/or other Loan Documents;
- (vi) Notice of such transfer together with such documentation regarding the transfer and the assuming person or entity as Beneficiary shall request shall be given to Beneficiary at least thirty (30) days prior to such transfer;
- (vii) Beneficiary's out-of-pocket expenses, including reasonable attorneys' fees actually incurred, are paid by Borrower;
- (viii) Transfer of the Premises may only be as a whole and not in part;
- (ix) Borrower shall execute, deliver and record (when necessary) such amendments, supplements, corrections and replacements to the Loan Documents and shall deliver endorsements to the Title Policy as Beneficiary may require including an endorsement to the Title Policy insuring the first lien position of this Instrument, such endorsement to insure that transferee is the owner of the Premises, subject to no liens or encumbrances other than those shown in the Title Policy and current taxes not yet due and payable;
- (xiii) Beneficiary is in receipt of a copy of a fully executed purchase/sale contract for the Premises, which contract shows that the Indebtedness does not exceed seventy-five percent (75%) of the purchase price. Beneficiary may also require an appraisal of the Premises (exclusive of chattels), in form and content satisfactory to Beneficiary, showing sufficient value of the Premises so that the total of all loans secured by the Premises does not exceed seventy-five percent (75%) of such appraised value. If the purchase/sale contract or the appraisal shows that the total amount of debt secured by liens against the Premises exceeds seventy-five percent (75%) of the value of the Premises, Beneficiary may require, at Beneficiary's option, a payoff of the Note or a payoff of the indebtedness secured by subordinate liens on the Premises so that such total will not exceed seventy-five percent (75%) of value;

- (xiv) Beneficiary receives an acceptable opinion from proposed purchaser's counsel confirming that the proposed purchaser is duly organized, validly existing, and in good standing under the laws of the State of its organization and in the State where the Premises is located; and all documents have been duly authorized, executed and are enforceable by their terms;
- (xv) Borrower shall provide other items as requested from Beneficiary or its counsel.

(d) Limited Partner and Non-Controlling Member Transfers: Limited partners and/or non-controlling members may transfer their interests in Borrower without Beneficiary consent and without payment of a transfer fee.

SECTION 2.12 NET OPERATING INCOME. For the purposes hereof, the term "Net Operating Income" for any period shall mean the aggregate rent, receipts and other revenues which have accrued to the benefit of the owner of the Premises during such period from bona fide arms-length tenants in actual possession of space in the Premises (based upon the then current certified rent roll), less the sum of all operating expenses, maintenance costs, management fees, insurance premiums, real estate taxes and assessments, and other costs, expenses and expenditures (including required capital expenditures) attributable to ownership of the Premises which is paid or accrued during such period, calculated in accordance with generally accepted accounting principles and management practices, but not including payments of principal or interest on the Indebtedness or on any secondary financing on the Premises, depreciation or other non-cash charges and income taxes. Beneficiary shall have the right to require delivery of evidence it deems necessary to establish operating income from the Premises.

SECTION 2.13 CONSENT BY BENEFICIARY. If Borrower requests Beneficiary's review of, consent to and/or execution of documents in connection with (a) the assignment of the Instrument and other Loan Documents to a subsequent lender, (b) a subordination agreement with a tenant of the Premises, which subordination agreement is on a form that is not Beneficiary's standard form, or (c) any other transaction for which Borrower seeks Beneficiary's approval except for lease approvals, Borrower agrees that it shall (i) provide copies of such documents and other documentation or information as Beneficiary deems necessary, satisfactory in all respects to Beneficiary, (ii) give Beneficiary thirty (30) days prior written notice of such requested consent and after receipt of all items in (i) above; and (iii) pay Beneficiary a processing fee of Three Thousand and No/100 Dollars (\$3,000.00) and reasonable attorneys' fees actually incurred and costs, if any. If required by Beneficiary, Borrower shall also provide to Beneficiary a good faith deposit of Five Thousand and No/100 Dollars (\$5,000.00), which Beneficiary shall hold in a non-interest bearing account and return after Beneficiary has received all information necessary in connection with Borrower's request.

SECTION 2.14 INDEMNIFICATION OF TRUSTEE. Except for gross negligence or willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by him in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for

interest thereon. Borrower shall protect, indemnify and hold harmless Trustee against all liability and expenses that Trustee may incur in the performance of his duties hereunder.

SECTION 2.15 SUBSTITUTION OF TRUSTEE. Trustee may resign by an instrument in writing addressed to Beneficiary, or Trustee may be removed at any time with or without cause by an instrument in writing in recordable form executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named Trustee or any substitute or successor trustee, then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by Beneficiary and the proper recording of that instrument in the Office of the Register of Deeds of Forsyth County, State of North Carolina, and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Indebtedness has been paid in full or until the Premises is sold hereunder. In the event the Indebtedness is owed to more than one person or entity, the holder or holders of not less than a majority of the amount of such Indebtedness shall have the right and authority to make the appointment of a successor or substitute trustee provided for in the preceding sentence. Such appointment and designation by Beneficiary shall be full evidence of the right and authority to make the same and of all facts therein recited. Upon the making of any such appointment and designation, all of the estate and title of the Trustee in the Premises shall vest in the named successor or substitute trustee and he shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges immunities and duties herein conferred upon the Trustee; but nevertheless, upon the written request of Beneficiary or of the successor or substitute trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute trustee all of the estate and title in the Premises of the trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver any of the properties and money held by said Trustee hereunder to said successor or substitute trustee. All references herein to the Trustee shall be deemed to refer to the trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder. Borrower hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

SECTION 2.16 ACTION BY TRUSTEE. At any time, or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Instrument and the Note for endorsement, and without affecting the personal liability of any person for payment of the Indebtedness or the effect of this Instrument upon the remainder of the Premises, Trustee may take such actions as Beneficiary may request and which are permitted by this Instrument or by applicable law. .

SECTION 2.17 SECONDARY FINANCING. Notwithstanding the above restrictions, Lender will consent to encumbrance of the Premises by a secondary lien ("Permitted Subordinate Lien") securing indebtedness ("Permitted Subordinated Debt") provided that a request is made in writing accompanied by the Review Fee and:

(a) The instruments (the "Subordinate Loan Documents") evidencing such Permitted Subordinate Lien and Permitted Subordinated Debt shall be delivered to Lender for its approval at least thirty (30) days prior to their execution.

(b) The Subordinate Loan Documents shall by their terms in all respects be subject, subordinate and inferior in lien, right and claim to all liens securing the Indebtedness, including but not limited to the lien of this Instrument and the lien of the Assignment of Leases and the rights of Lender thereunder, whether present or future rights, and to the rights of all tenants of the Premises, and the Subordinate Loan Documents shall specifically so provide. At the request of Lender, the holder of the subordinate lien (the "Subordinate Lender") shall execute a subordination agreement in form and content acceptable to Lender.

(c) No Event of Default shall have occurred and be continuing under the terms of the Loan Documents.

(d) For the six (6) month period immediately following the date of the proposed encumbrance, the Net Operating Income from the Premises as certified by Borrower based upon effective rents and with income and expenses calculated on an annualized basis shall equal or exceed one hundred twenty-five percent (125%) of the combined debt service of the Permitted Subordinated Debt and the Indebtedness, and Borrower will furnish Lender evidence of the foregoing satisfactory to Lender.

(e) Subordinate Lender shall be obligated to provide Lender with written notice of any defaults under the Permitted Subordinated Debt together with an opportunity to cure such defaults, at the sole option of Lender. Lender shall be given a ten (10) day grace period beyond any grace period provided to Borrower.

(f) Intentionally Deleted.

(g) Lender shall not be obligated to provide estoppel letters or notices of any kind to the Subordinate Lender.

(h) Consent to a particular secondary financing shall not be deemed to be a waiver of the right of Lender to require that Borrower obtain its consent to future financing.

(i) Lender shall receive the Processing Fee and Borrower shall pay all fees and expenses (including attorneys' fees) in connection with such request. If required by Lender, Borrower shall also provide to Lender a good faith deposit of Five Thousand and No/100 Dollars (\$5,000.00), which Lender shall hold in a non-interest bearing account and return after Lender has received all information necessary in connection with Borrower's request. The good faith deposit shall be returned when all conditions have been met, the transaction has closed and Lender has received all the required documents (including recorded documents), title policies/endorsements, insurance policies, and all other required documentation and when any other closing exceptions have been cleared. In the event the transaction does not close for whatever reason, Lender shall refund the good faith deposit less any out-of-pocket expenses, including attorney's fees incurred by Lender.

(j) Lender shall receive an appraisal of the Premises satisfactory to it by an MAI appraiser approved by Lender, which appraisal shows sufficient value, exclusive of chattels, so that the total of all loans secured by the Premises does not exceed seventy-five percent (75%) of such appraised value.

(k) Lender shall be put to no expense in connection with such Permitted Subordinated Debt and Borrower shall pay all costs and expenses, including Lender's attorneys' fees and related costs.

(l) Borrower shall provide other items as requested from Lender or its counsel.

ARTICLE 3 INSURANCE AND ESCROWS

SECTION 3.1 INSURANCE. During the term of this Instrument, Borrower shall obtain and keep in full force and effect at its sole cost and expense the following insurance:

(a) Insurance against loss by fire, lightning and risk customarily covered by standard extended coverage endorsement, including the cost of debris removal, together with a vandalism and malicious mischief endorsement, sprinkler leakage endorsement, such perils endorsements as determined by Beneficiary, all in the amount of not less than full replacement cost without deduction for depreciation of the improvements, (as shown in the appraisal submitted to and approved by Beneficiary), and an agreed-amount endorsement, a replacement cost endorsement and a waiver of subrogation endorsement;

(b) Broad Form Equipment Breakdown (Boiler and Machinery) Insurance on all equipment and pressure fired vehicles or apparatus located on the Premises, and providing for full repair and replacement cost coverage;

(c) Flood Insurance in the maximum amount available at any time during the term of this Instrument that the Premises are designated as lying within a flood plain as defined by the Federal Insurance Administration;

(d) Loss of Rents and/or Business Interruption Insurance covering risk of loss due to the occurrence of hazards insured against under the policies required in Subsections (a), (b) and (c) hereof in an amount equal to: (i) rental for a twelve (12) month period, plus (ii) real estate taxes, special assessments, insurance premiums and other expenses required to be paid by the tenants under each lease of the Premises for such twelve (12) month period;

(e) Comprehensive General Public Liability Insurance covering the legal liability of Borrower against claims for bodily injury, death or property damage occurring on, in or about the Premises in such minimum amounts and with such minimum limits as Beneficiary may reasonably require;

(f) Builders Risk Insurance and Worker's Compensation Insurance during the making of any alterations or improvements to the Premises; and

(g) Such other forms of insurance as Beneficiary may require or as may be required by law.

In addition, Beneficiary is to be furnished with such engineering data as it may require regarding the risk of earthquake or sinkhole damage to the Premises. If Beneficiary shall determine in its

sole opinion that there is a material earthquake or sinkhole risk, or if insurance against earthquake or sinkhole is required by law, Borrower will provide earthquake or sinkhole insurance. Insurance policies shall be written on forms and with insurance companies which are satisfactory to Beneficiary, shall name as the insured parties Borrower and Beneficiary, as their interests may appear, shall be in amounts sufficient to prevent Borrower from becoming a co-insurer of any loss thereunder, and shall bear a satisfactory lender clause in favor of Beneficiary with loss proceeds under any such policies to be made payable to Beneficiary. All required policies of insurance together with evidence of the payment of current premiums therefor shall be delivered to Beneficiary and shall provide that Beneficiary shall receive at least thirty (30) days' advance written notice prior to cancellation, amendment or termination of any such policy of insurance. Borrower shall, within five (5) days prior to the expiration of any such policy, deliver evidence acceptable to Beneficiary, in its sole judgment, verifying the renewal of such insurance together with evidence of the payment of current premiums therefor. Borrower shall at its expense furnish on renewal of insurance policies or upon request of Beneficiary evidence of the replacement value of the improvements on the Premises in form satisfactory to Beneficiary. Insurance coverage must at all times be maintained in proper relationship to such replacement value and must always provide for agreed amount coverage. Notwithstanding anything contained herein to the contrary, if Borrower currently has a blanket policy of insurance that satisfies the coverage required hereunder for the Premises, Beneficiary will accept a certified or conformed copy of the blanket policy, together with an original Certificate of Insurance naming Beneficiary as lender of the Premises.

In the event of foreclosure of this Instrument or acquisition of the Premises by Beneficiary, all such policies and any proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of Beneficiary to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance, Borrower empowers Beneficiary to effect insurance upon the Premises at Borrower's expense and for the benefit of Beneficiary in the amounts and types aforesaid for a period of time covering the time lapse of insurance including lapse during redemption from foreclosure sale, and if necessary, to cancel any or all existing insurance policies. Borrower agrees to furnish Beneficiary copies of all inspection reports and insurance recommendations received by Borrower from any insurer. Beneficiary makes no representations that the above insurance requirements are adequate protection for a prudent borrower.

SECTION 3.2 ESCROWS. Borrower shall deposit with Beneficiary, or at Beneficiary's request, with its servicing agent, on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness, a deposit to pay the Impositions and insurance premiums (hereinafter collectively referred to as the "Charges") in an amount equal to:

(a) One-twelfth (1/12th) of the annual Impositions next to become due upon the Premises; provided that, with the first such deposit, there shall be deposited in addition an amount as estimated by Beneficiary which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Beneficiary's satisfaction that there will be sufficient funds on deposit to pay the Impositions as they come due; plus

(b) One-twelfth (1/12th) of the annual premiums on each policy of insurance required to be maintained hereunder; provided that with the first such deposit there shall be deposited, in addition, an amount equal to one-twelfth (1/12th) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;

provided that the amount of such deposits shall be based upon Beneficiary's estimate as to the amount of Impositions and insurance premiums next to be payable and may require that the full amount of such payment will be available to Beneficiary at least one month in advance of the due date. Beneficiary will, upon timely presentation to Beneficiary by Borrower of the bills therefor, pay the Charges from such deposits. Borrower agrees to cooperate and assist in the obtaining of tax bills when requested by Beneficiary. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then Borrower shall immediately pay to Beneficiary on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited towards subsequent Charges.

If an Event of Default shall occur under the terms of this Instrument, Beneficiary may, at its option, without being required so to do, apply any deposits on hand to the payment of Charges whether then due or not or to the Indebtedness, in such order and manner as Beneficiary may elect. When the Indebtedness has been fully paid any remaining deposits shall be returned to Borrower as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness, shall be held for the purposes for which made as herein provided, may be held by Beneficiary or its servicing agent and may be commingled with other funds of Beneficiary, or its servicing agent, shall be held without allowance of interest thereon and without fiduciary responsibility on the part of Beneficiary or its agents and shall not be subject to the direction or control of Borrower. Neither Beneficiary nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, Beneficiary or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, Beneficiary shall be under no duty to seek a tax division or apportionment of the tax bill, and any payment of taxes based on a larger parcel shall be paid by Borrower, the deposits to be made hereunder shall be based on the larger tax parcel and Borrower shall expeditiously cause a tax subdivision to be made.

ARTICLE 4 UNIFORM COMMERCIAL CODE

SECTION 4.1 SECURITY AGREEMENT. This Instrument shall constitute a security agreement as defined in the Uniform Commercial Code in effect in the State of North Carolina, as amended from time to time (hereinafter referred to as the "Code"), and Borrower hereby grants to Beneficiary a security interest within the meaning of the Code in favor of Beneficiary on the improvements, fixtures, equipment and personal property, the rents, leases and profits, the judgments, condemnation awards and insurance proceeds and other rights, and the licenses, permits, equipment leases, service agreements and the proceeds and the accounts receivable and general intangibles described in Granting Clauses B, C, D, E, F and G of this Instrument (hereinafter referred to as the "Collateral"). Borrower hereby authorizes Beneficiary to file such

financing statements, amendments and continuations as Beneficiary deems reasonable in Beneficiary's discretion to perfect Beneficiary's lien in the Collateral and to maintain such perfection.

SECTION 4.2 FIXTURE FILING. As to those items of Collateral described in this Instrument that are, or are to become fixtures related to the real estate mortgaged herein, and all products and proceeds thereof, it is intended as to those items that THIS INSTRUMENT SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the County where the Premises are situated. The name of the record owner of said real estate is Borrower set forth in page one to this Instrument. Information concerning the security interest created by this Instrument may be obtained from Beneficiary, as secured party, at its address as set forth on page one of this Instrument. The address of Borrower, as debtor, is as set forth on page one to this Instrument. This document covers goods which are or are to become fixtures. Borrower is a limited liability company organized under the laws of the State of North Carolina. Borrower's organizational number is NC-1069621. Borrower is the owner of the Land.

SECTION 4.3 REPRESENTATIONS AND AGREEMENTS. Borrower represents and agrees:

(a) Borrower is and will be the true and lawful owner of the Collateral, subject to no liens, charges, security interests and encumbrances other than the lien hereof and the Permitted Encumbrances;

(b) the Collateral is to be used by Borrower solely for business purposes, either installed upon the Premises for Borrower's own use or, as to equipment and furnishings leased or furnished by Borrower, as landlord, to tenants of the Premises;

(c) the Collateral will not be removed from the Premises without the consent of Beneficiary except in accordance with Section 4.4 hereof;

(d) unless stated otherwise in this Instrument the only persons having any interest in the Collateral are Borrower and Beneficiary and no financing statement covering any such property and any proceeds thereof is on file in any public office except pursuant hereto;

(e) the remedies of Beneficiary hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other rights of Beneficiary including having such Collateral deemed part of the realty upon any foreclosure thereof;

(f) if notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by mail or otherwise in accordance with N.C.G.S. § 25-1-201(38);

(g) Borrower will from time to time provide Beneficiary on request with itemizations of all Collateral;

(h) the filing of a financing statement pursuant to the Code shall never impair the stated intention of this Instrument that all improvements, fixtures, equipment and personal property described in Granting Clause B hereof are, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement;

(i) Borrower will on demand deliver all financing statements and/or continuations that may from time to time be required by Beneficiary to establish and perfect the priority of Beneficiary's security interest in such Collateral and all costs, including recording fees, shall be paid by Borrower;

(j) Borrower shall give at least thirty (30) days written notice of any proposed change in Borrower's name, address, state of domestication, identity, state of registration for a registered organization, principal place of business, or structure and authorizes Beneficiary to file prior to or concurrently with such change all additional financing statements that Beneficiary may require to establish and perfect the priority of Beneficiary's security interest in the collateral;

(k) Borrower shall renew and pay all expenses of renewing the financing statements covering the Collateral in the event the security interest in such Collateral will expire by reason of statutory law prior to the end of the term of this Instrument; and

(l) by signing this Instrument, Borrower specifically authorizes Beneficiary to file such financing statements, either before, on or after the date hereof, as Beneficiary determines are necessary or desirable to perfect the lien of Beneficiary's security interest in the Collateral. Borrower further authorizes Beneficiary to file such amendments or continuation statements as Beneficiary determines are necessary or desirable from time to time to perfect or continue the lien of Beneficiary's security interest in the Collateral.

SECTION 4.4 MAINTENANCE OF PROPERTY. Subject to the provisions of this Section, in any instance where Borrower in its discretion determines that any item subject to a security interest under this Instrument has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Premises, Borrower may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function, provided, that such removal and substitution shall be of comparable quality and shall not impair the operating utility and unity of the Premises. All substitute items shall become a part of the Premises and subject to the lien of this Instrument. Any amounts received or allowed Borrower upon the sale or other disposition of the removed items of property shall be applied only against the cost of acquisition and installation of the substitute items. Nothing herein contained shall be construed to prevent any tenant or subtenant from removing from the Premises trade fixtures, furniture and equipment installed by tenant and removable by such tenant under the terms of its lease, on the condition, however, that all damages to the Premises resulting from or caused by the removal thereof shall be repaired at the sole cost of Borrower if such tenant shall fail to so repair.

ARTICLE 5
APPLICATION OF INSURANCE AND AWARDS

SECTION 5.1 DAMAGE OR DESTRUCTION OF THE PREMISES. Borrower will give Beneficiary notice within thirty (30) days of damage to or destruction of the Premises, and in case of loss covered by policies of insurance, Borrower shall provide to Beneficiary a copy of all notices and/or correspondence between Borrower and the insurance company. Beneficiary (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom, provided, if Borrower is not in default hereunder, Borrower may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of Seventy-Five Thousand and No/100 Dollars (\$75,000.00). If Beneficiary fails to assert claims against the insurance carrier, such failure shall not diminish or impair Beneficiary's rights against Borrower. Any expense incurred by Beneficiary in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to Beneficiary first out of any such insurance proceeds. The insurance proceeds or any part thereof shall be applied to reduction of the Indebtedness or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary. In the event Beneficiary does not make insurance proceeds available for restoration and applies the insurance proceeds to payment of the Indebtedness no prepayment fee shall be due on the insurance proceeds so applied. In the event Beneficiary does not make insurance proceeds available for reconstruction of the Premises, Borrower shall have the right to prepay the Loan in full without a prepayment fee within one hundred twenty (120) days of notice from Beneficiary stating such insurance proceeds will not be made available for reconstruction.

Notwithstanding the provisions above, in the event of insured damage to the improvements on the Premises, Beneficiary agrees to make insurance proceeds available to the restoration or repair of the improvements on the Premises in accordance with the provisions of Section 5.3 hereof provided satisfactory evidence is delivered to Beneficiary that: (a) the total cost of restoration and repair does not exceed fifty percent (50%) of the then outstanding principal balance of the Note; and (b) all conditions of Section 5.3 below have been met.

SECTION 5.2 CONDEMNATION. Borrower will give Beneficiary notice within thirty (30) days of any action, actual or threatened, in Condemnation (as defined herein) or eminent domain and provide copies of all notices and/or correspondence between Borrower and the condemning agency. Borrower hereby assigns, transfers, and sets over to Beneficiary the entire proceeds of any award or claim for damages for all or any part of the Premises taken or damaged under the power of eminent domain or condemnation (herein referred to as "Condemnation"), Beneficiary being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Borrower will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises unless prior written consent of Beneficiary is obtained. Any expenses incurred by Beneficiary in intervening in such action or collecting Condemnation proceeds (including the cost of any independent appraisal) shall be reimbursed to Beneficiary out of Condemnation proceeds prior to other payments or disbursements. Borrower shall direct the condemning authority to deliver the Condemnation proceeds to Beneficiary but should Borrower receive any Condemnation proceeds directly it shall deliver such Condemnation proceeds to

Beneficiary within five (5) days of receipt thereof. Condemnation proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary. Any principal reduction as a result of an application of Condemnation proceeds will cause a reduction in debt service payments to maintain the current interest rate and amortization period and no prepayment fee shall be due.

SECTION 5.3 DISBURSEMENT OF INSURANCE PROCEEDS. Should any insurance proceeds be applied to the restoration or repair of the Premises in accordance with this Article 5, the restoration or repair shall be done under the supervision of an architect acceptable to Beneficiary (or, at Beneficiary's discretion, an engineer acceptable to Beneficiary) and pursuant to site and building plans and specifications approved by Beneficiary. The proceeds from insurance, after payment of costs and expenses of collection ("Net Proceeds"), shall be held by Beneficiary for such purposes and will from time to time be disbursed by Beneficiary to defray the costs of such restoration or repair under such safeguards and controls as Beneficiary may require and in accordance with standard construction loan procedures. Net Proceeds may at the option of Beneficiary be disbursed through a title insurance company selected by Beneficiary and at the sole cost of Borrower. Prior to making Net Proceeds available for the payment of costs of repair or restoration of the improvements upon the Premises, Beneficiary shall be entitled to receive the following:

(a) Evidence that no Event of Default exists under any of the terms, covenants and conditions of this Instrument, the Note, or other Loan Documents.

(b) Evidence that all leasing requirements for the Premises as established by Beneficiary have been met.

(c) Satisfactory proof that the Net Proceeds will be sufficient to pay the cost to repair, restore or rebuild the improvements located on the Premises free and clear of all liens except the lien of this Instrument. In the event Net Proceeds shall be insufficient to pay the cost to so repair, restore or rebuild the improvements, Borrower shall deposit with Beneficiary funds equaling such deficiency, which, together with the Net Proceeds, shall be sufficient to pay for restoration, repair and rebuilding of the Premises. Beneficiary shall agree to make the Net Proceeds available for disbursement in installments pursuant to an escrow agreement acceptable to Beneficiary. The terms of such escrow agreement shall provide for disbursement of the Net Proceeds to Borrower not more than one per month and after the following criteria have been met:

- (i) The Loan shall not be in default;
- (ii) Borrower shall have submitted a written request to Beneficiary for disbursement;
- (iii) Borrower shall have submitted invoices or paid receipts for the amount of the disbursement requested, as well as the appropriate lien waivers; and
- (iv) Beneficiary shall have ten (10) business days from receipt of the documentation requested to process the disbursement request.

(d) (i) A statement of Borrower's architect, certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration and rebuilding have been performed to date in conformity with the plans and specifications that have been approved by Beneficiary, and (ii) evidence satisfactory to Beneficiary of payment for labor and materials furnished to the Premises with lien waivers substantiating such payments. Beneficiary will release funds upon the satisfaction of requirements set forth herein at such time as lien waivers are deposited in escrow with the title company and the title company can assure Beneficiary of a first lien position.

(e) A waiver of subrogation from any insurer to the effect that such insurer has no liability as to Borrower or the then owner or other insured under the policy of insurance in question.

(f) Evidence that zoning, building and other necessary permits and approvals have been obtained.

(g) Satisfactory evidence is delivered to Beneficiary that the improvements can be rebuilt substantially to the same condition as when originally financed and can with restoration and repair continue to be operated for the purposes utilized prior to such damage.

(h) Tenants of the Premises as designated by Beneficiary shall certify to Beneficiary their intention to continue to occupy the Premises without any abatement or adjustment of rental payments (other than temporary abatements during the period of restoration and repair).

(i) Evidence that the appraised value of the Premises after such restoration or repair shall not be less than its appraised value as of the date hereof.

(j) Evidence of fulfillment of all other requirements, which Beneficiary may make in connection with repair of the improvements on the Premises.

(k) Executed escrow agreement by Borrower with Beneficiary for Net Proceeds disbursement.

In the event Borrower shall fail to restore, repair or rebuild the improvements upon the Premises within a reasonable time, then such failure shall constitute an Event of Default hereunder and Beneficiary, at its option and upon not less than thirty (30) days written notice to Borrower, may in addition to its remedies contained in Article 8 hereof (i) restore, repair or rebuild the said improvements for or on behalf of Borrower and for such purpose, may perform all necessary or appropriate acts to accomplish such restoration, repair or rebuilding or (ii) apply all or any part of Net Proceeds on account of the last maturing installments of the Indebtedness whether then due or not. In the event insurance proceeds or an eminent domain award shall exceed the amount necessary to complete the repair, restoration, or the rebuilding of the improvements upon the Premises, such excess may, at Beneficiary's option, be applied on account of the last maturing installments of the Indebtedness, irrespective of whether such installments are then due and payable, without application of a prepayment fee, or be returned to Borrower. Damage to the Premises shall not excuse or defer payment on the indebtedness evidenced by the Note as it comes due.

ARTICLE 6
LEASES AND RENTS

SECTION 6.1 BORROWER TO COMPLY WITH LEASES. Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under leases of all or any part of the Premises and use its best efforts to enforce or secure the performance of each obligation and undertaking of the respective tenants under any such leases and will appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with Borrower's interest in any leases pertaining to the Premises. Borrower will not modify, extend, renew, terminate, accept a surrender of, or in any way alter the terms of the leases, nor borrow against, pledge or assign any rentals due under the leases, nor consent to a subordination or assignment of the interest of a tenant thereunder to any party other than Beneficiary, nor anticipate the rents thereunder for more than one (1) month in advance or reduce the amount of rents and other payments thereunder, nor waive, excuse, condone or in any manner release or discharge a tenant of or from any obligations, covenants, conditions and agreements to be performed nor incur any indebtedness to a tenant, nor agree to any "free rent" period, nor enter into any additional leases of all or any part of the Premises without in each such case or event the prior written consent of Beneficiary. Borrower will deliver a copy of all lease amendments and new leases to Beneficiary within thirty (30) days after execution. Notwithstanding anything to the contrary contained herein, Beneficiary hereby consents in advance to Borrower modifying any lease or entering into any new or renewal lease with respect to space in the Premises which is subject to a lease disclosed to Beneficiary and in effect as of the date hereof, which modified, new or renewal lease affects leased property not exceeding 57,590 rentable square feet when aggregated with other leases with such tenant at the Premises. Borrower will deliver a copy of all lease amendments and new leases to Beneficiary within thirty (30) days after execution whether or not the prior written consent of Beneficiary was required for such amendment or new and renewable leases. Borrower shall notify Beneficiary of a default by any tenant of the Premises who occupies 57,590 square feet or more.

SECTION 6.2 BENEFICIARY'S RIGHT TO PERFORM UNDER LEASES. Should Borrower fail to perform, comply with or discharge any obligations of Borrower under any lease of all or any part of the Premises or should Beneficiary become aware of or be notified by a tenant under any such lease of a failure on the part of Borrower to so perform, comply with or discharge its obligations under said lease, Beneficiary may, but shall not be obligated to, and without further demand upon Borrower, and without waiving or releasing Borrower from any obligation contained in this Instrument, remedy such failure, and Borrower agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure including, without limitation, Beneficiary's reasonable attorneys' fees actually incurred together with interest at the Default Rate (as defined in the Note). All such sums, together with interest as aforesaid shall become so much additional Indebtedness, but no such advance shall be deemed to relieve Borrower from any default hereunder.

SECTION 6.3 ASSIGNMENT OF LEASES AND RENTS. Borrower does hereby unconditionally and absolutely sell, assign and transfer unto Beneficiary all of the leases, rents, issues, income and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any agreement or license for the use or occupancy of the Premises, whether now existing or entered into at any time during the term of this Instrument, all

guaranties of any lessee's obligations under any such lease and all security deposits, it being the intention of this Instrument to establish an absolute transfer and assignment of all such leases and agreements and all of the rents, issues, income, and profits from the Premises and/or Borrower's operation or ownership thereof unto Beneficiary and Borrower does hereby appoint irrevocably Beneficiary as Borrower's true and lawful attorney in Borrower's name and stead, which appointment is coupled with an interest, to collect all of said rents, issues, income, and profits; provided, Borrower shall have the right to collect and retain such rents, issues, income and profits unless and until an Event of Default exists under this Instrument. Borrower assigns to Beneficiary all guarantees of lessee's obligations under leases and all proceeds from settlements relating to terminations of leases and all claims for damages arising from rejection of any lease under the bankruptcy laws. Upon the occurrence of an Event of Default and whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder or during any period of redemption existing by law, forthwith, upon demand of Beneficiary, Borrower shall surrender to Beneficiary and Beneficiary shall be entitled to enter upon and take and maintain possession of the Premises and any leases thereunder and collect and retain any rents, issues, income and profits from the Premises and hold, operate, manage and control the Premises and any such leases and to do such things in its discretion as may be deemed proper or necessary to enforce the payment or security of the rents, issues, income and profits of the Premises and the performance of the tenants' obligations under any leases of the Premises, with full power to cancel or terminate any lease for any cause or on any grounds which would entitle Borrower to cancel the same and to elect to disaffirm any lease made subsequent to this Instrument or subordinated to the lien hereof. All rents, issues, income, profits and payments received by Borrower after Beneficiary has exercised any of its rights under this assignment or the Assignment of Leases and Rents shall be held by Borrower in trust for Beneficiary and shall be delivered to Beneficiary immediately without demand.

Beneficiary shall not be obligated to perform or discharge any obligation or liability of the landlord under any of said leases and Borrower shall and does hereby agree to indemnify and hold Beneficiary harmless of and from any and all expenses, liability, loss or damage which it might incur under said leases or under or by reason of this Instrument. Any amounts incurred by Beneficiary in connection with its rights hereunder, including costs, expenses and reasonable attorneys' fees actually incurred, shall bear interest thereon at the Default Rate and shall be additional Indebtedness and Borrower shall reimburse Beneficiary therefor immediately upon demand. Beneficiary may apply any of said rents, issues, income and profits received to the costs and expenses of collection, including reasonable attorneys' fees actually incurred, to the payment of taxes, assessments and insurance premiums and expenditures for the upkeep of the Premises, to the performance of the landlord's obligations under the leases, to the performance of any of Borrower's covenants hereunder, and to any Indebtedness in such order as Beneficiary may determine. The entering upon and taking possession of the Premises, the collection of such rents, issues, income and profits and the application thereof as aforesaid shall not cure or waive any Event of Default under this Instrument nor in any way operate to prevent Beneficiary from pursuing any other remedy which it may now or hereafter have under the terms of this Instrument nor shall it in any way be deemed to constitute Beneficiary a lender-in-possession. The rights hereunder shall in no way be dependent upon and shall apply without regard to whether the Premises are in danger of being lost, materially injured or damaged or whether the Premises are adequate to discharge the Indebtedness. Borrower represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more

than one installment in advance and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived, released, reduced, discounted, or otherwise discharged or compromised by Borrower. Borrower waives any right of set off against any person in possession of any portion of the Premises. Borrower further agrees that Borrower will not execute or agree to any subsequent assignment of any of the rents, issues, income or profits from the Premises without the prior written consent of Beneficiary. The rights contained herein are in addition to and shall be cumulative with the rights given in the Assignment of Leases. To the extent inconsistent with the terms of this Article 6, the terms of the Assignment of Leases shall control.

ARTICLE 7 RIGHTS OF BENEFICIARY

SECTION 7.1 RIGHT TO CURE EVENT OF DEFAULT. Upon the occurrence of an Event of Default, Beneficiary may, but shall not be obligated to, without demand upon Borrower, and without waiving or releasing Borrower from any obligation in this Instrument contained, remedy such failure, and Borrower agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure together with expenses and reasonable attorneys' fees actually incurred and with interest at the Default Rate. All such sums, together with interest as aforesaid, shall become Indebtedness. No such advance shall be deemed to relieve Borrower from any failure hereunder.

SECTION 7.2 NO CLAIM AGAINST BENEFICIARY. Nothing contained in this Instrument shall constitute any consent or request by Beneficiary, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving Borrower or any party in interest with Borrower any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against Beneficiary in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Instrument.

SECTION 7.3 INSPECTION. Borrower will permit Beneficiary or its authorized representatives to enter the Premises at all times during normal business hours for the purpose of inspecting the same; provided Beneficiary shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

SECTION 7.4 WAIVERS; RELEASES; RESORT TO OTHER SECURITY, ETC. Without affecting the liability of any party liable for payment of any Indebtedness or performance of any obligation contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time, and without notice to or the consent of Borrower or any party in interest with respect to the Premises or the Note: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation herein; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) accept any additional security; (d) release or otherwise deal with any property, real or

personal, including any or all of the Premises, including making partial releases of the Premises; or (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as Beneficiary may determine.

SECTION 7.5 RIGHTS CUMULATIVE. Each right, power or remedy herein conferred upon Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Beneficiary, at law or in equity, or under the Code, or under any other agreement, and each and every right, power and remedy of Beneficiary herein set forth or otherwise so existing shall be cumulative to the maximum extent permitted by law and may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary and any such exercise shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by Beneficiary in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of Beneficiary to resort thereto at a later date or be construed to be a waiver of any Event of Default under this Instrument or the Note.

SECTION 7.6 SUBSEQUENT AGREEMENTS. Any agreement hereafter made by Borrower and Beneficiary pursuant to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

SECTION 7.7 WAIVER OF APPRAISEMENT, HOMESTEAD, MARSHALING. Borrower hereby waives to the full extent lawfully allowed the benefit of any homestead, appraisal, evaluation, stay and extension laws now or hereinafter in force. Borrower hereby waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Premises, or as to require Beneficiary to exhaust its remedies against a specific portion of the Premises before proceeding against the other and does hereby expressly consent to and authorize the sale of the Premises or any part thereof as a single unit or parcel. Borrower also hereby waives any and all rights of reinstatement and redemption from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Premises described herein subsequent to the date of this Instrument, and on behalf of all other persons to the extent permitted by applicable law.

SECTION 7.8 BUSINESS LOAN REPRESENTATION. Borrower represents and warrants to Beneficiary that the Loan is a business loan transacted solely for the purpose of carrying on the business of Borrower and not a consumer transaction and that the Premises does not constitute the homestead of Borrower or any of its principals.

SECTION 7.9 DISHONORED CHECKS. In the event Borrower shall send to Beneficiary two (2) or more checks or electronic payments in any twelve (12) month period which are not honored by the bank, for any reason, Beneficiary shall have the right to require that all future payments be made by certified check, or other good funds, at Beneficiary's option.

ARTICLE 8
EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1 EVENTS OF DEFAULT. In addition to the occurrence of any event designated as an Event of Default hereunder or under any other Loan Document, the occurrence of any of the following shall be deemed an event of default under this Instrument (hereinafter referred to as an "Event of Default"):

(a) Borrower or any co-maker, guarantor or surety shall fail to pay any regularly scheduled payment of principal and interest due under the Note prior to the expiration of ten (10) days following the respective due date of such payment when and as the same becomes due, but Beneficiary shall have no obligation to provide notice to Borrower of such failure;

(b) Borrower or any co-maker, guarantor or surety shall fail to pay principal or interest on the Note when the same becomes due at the stated maturity or any accelerated payment date or otherwise;

(c) Borrower shall fail to deposit the Charges with Beneficiary or to pay when due any other Indebtedness prior to the expiration of ten (10) days following the respective due date of such payment, but Beneficiary shall have no obligation to provide notice to Borrower of any such failure; or

(d) THIS SUBSECTION DOES NOT APPLY TO SECTIONS 2.7, 2.10, 3.1, 9.4 and 10.8 HEREOF. Borrower shall fail to comply with or perform any other term, condition or covenant of this Instrument or any other Loan Document other than as described in Section 8.1(a), 8.1(b) and 8.1(d) through 8.1(i) hereof, inclusive, and, unless a different cure period is provided for (in which case such other cure period shall apply), the continuance of such default for thirty (30) days after written notice by Beneficiary to Borrower of such failure to comply or perform, provided that if Borrower has commenced and is diligently pursuing the cure of such default, such period shall be extended for an additional thirty (30) days; or

(e) Borrower or any maker, guarantor or surety of the Note shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, dissolution, liquidation, arrangement, composition, readjustment or similar relief under any present or future bankruptcy or insolvency statute, law or regulation or shall file an answer admitting to or not contesting the material allegations of a petition filed against it in such proceedings, or shall not within sixty (60) days after the filing of such a petition have the same dismissed or vacated, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties, or shall not within sixty (60) days after the appointment of a trustee, receiver or liquidator of any material part of its properties without Borrower's consent have such appointment vacated; or

(f) Any material certification, representation or warranty made by Borrower herein, in the Note or in any other instrument or certificate now or hereafter given as security for the

Note or made in connection with the application for the Loan or given as an inducement to Beneficiary to make the Loan shall be materially false, breached or dishonored; or

- (g) Borrower shall be deceased, dissolved, liquidated or go out of existence; or
- (h) any of the guarantors of the Indebtedness shall be dissolved, liquidated or go out of existence; or
- (i) the institution of foreclosure or other proceedings to enforce against the Premises or Borrower any junior mortgage or deed of trust or junior security interest or other lien or encumbrance of any kind upon the Premises or any portion thereof; or
- (j) the occurrence of any event in violation of the provisions set forth in Sections 2.7, 2.10, 3.1, 9.4 or 10.8 hereof; or
- (k) any of the Guarantors shall die and Borrower either (i) has failed to notify Beneficiary of such death within ninety (90) days thereof, or (ii) has failed to provide Beneficiary with an acceptable substitute guarantor, in the sole judgment of Beneficiary, who shall have executed a guaranty agreement in the form of that executed by Guarantors, before the earlier to occur of (A) one (1) year from the date of such person's death, or (B) the date on which the first distribution of assets has been made from such person's estate to any devisee, heir or other beneficiary.

SECTION 8.2 BENEFICIARY'S RIGHT TO ACCELERATE. If an Event of Default shall occur, Beneficiary may immediately and without notice to Borrower declare the entire unpaid principal balance of the Note together with all other Indebtedness to be immediately due and payable and thereupon all such unpaid principal balance of the Note together with all accrued interest thereon, any prepayment premium under the terms of the Note and all other Indebtedness shall be and become immediately due and payable.

SECTION 8.3 FORECLOSURE. 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 attorney's fees incurred by Trustee for legal services actually preformed; (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 (5%) percent 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 25-9-604 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.

SECTION 8.4 PURCHASE BY BENEFICIARY. Upon any such foreclosure sale, Beneficiary may bid for and purchase the Premises and, upon compliance with the terms of sale, may hold, retain and possess and dispose of the Premises in its own absolute right without further accountability.

SECTION 8.5 APPLICATION OF INDEBTEDNESS TOWARD PURCHASE PRICE. Upon any such foreclosure sale, Beneficiary may, if permitted by law, after allowing for any portion of the total purchase price required to be paid in cash and for the costs and expenses of the sale (including, but not limited to, Trustee's fees and advertising expenses), compensation and other charges (all of which is secured hereby), in paying the purchase price apply any portion of all sums due to Beneficiary under the Note and the other Loan Documents, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

SECTION 8.6 RECEIVER. Upon the occurrence of an Event of Default, Beneficiary shall be entitled as a matter of right without notice (to the extent permitted by applicable law) and without regard to the solvency or insolvency of Borrower, or the existence of waste of the Premises or the value or adequacy of the security of the Premises, and without giving bond apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the rents, and all other income of any kind; manage the Premises so to prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the Premises and perform the terms of this Instrument and apply the rents, issues, income and profits to the costs and expenses of the receivership, including reasonable attorneys' fees actually incurred, to the repayment of the Indebtedness and to the operation, maintenance and upkeep and repair of the Premises, including payment of taxes on the Premises and payments of premiums of insurance on the Premises and any other rights permitted by law. Borrower does hereby irrevocably consent to such appointment. The receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises, or any part thereof, by force, summary proceedings, ejectment or otherwise, and remove Borrower or any

other person or entity and any personal property therefrom, and may hold, operate and manage the same, receive all rents, earnings, incomes, issues and proceeds and do the things the receiver finds necessary to preserve and protect the Premises, whether during pendency of foreclosure, during a redemption period, if any, or otherwise.

SECTION 8.7 RIGHTS UNDER UNIFORM COMMERCIAL CODE. In addition to the rights available to a lender on real property, Beneficiary shall also have all the rights, remedies and recourse available to a secured party under the Code including the right to proceed under the provisions of the Code governing default as to any Collateral as defined in this Instrument which may be included on the Premises or which may be deemed nonrealty in a foreclosure of this Instrument or to proceed as to such Collateral in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

SECTION 8.8 RIGHT TO DISCONTINUE PROCEEDINGS. In the event Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under this Instrument and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right to do so and in such event Borrower and Beneficiary shall be restored to their former positions with respect to the Indebtedness in which case this Instrument and all rights, remedies and recourse of Beneficiary shall continue as if such action or exercise of a right had not been invoked.

SECTION 8.9 WAIVERS. Borrower also waives the benefit of all laws now existing or that may hereinafter be enacted providing for (i) any appraisal before sale of any portion of the Premises, and (ii) in any way extending the time for the enforcement and collection of the Note or this Instrument or creating or extending a period of redemption from any sale made in collecting said debt. To the fullest extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter enforced providing for any appraisal, evaluation, stay, extension or redemption and Borrower, to the extent permitted by law, waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshaling in the event of foreclosure of the liens hereby created.

ARTICLE 9 HAZARDOUS MATERIALS

SECTION 9.1 DEFINITIONS. The term "Hazardous Materials or Wastes" shall mean any hazardous or toxic materials, pollutants, chemicals, or contaminants, including without limitation asbestos, polychlorinated biphenyls (PCBs) and petroleum products as defined, determined or identified as such in any Laws, as hereinafter defined. The term "Laws" means any federal, state or local laws, rules or regulations (whether now existing or hereinafter enacted or promulgated) including, without limitation, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (1972); the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* (1970); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Subsection 1802; and The Resource Conservation and Recovery Act, 42 U.S.C. Subsection 6901 *et seq.*; the North Carolina Oil Pollution and Hazardous Substances Control Act, N.C.G.S. §§ 143-215.75 *et seq.*; the North Carolina Inactive Hazardous Sites Act, N.C.G.S. §§ 130A-310 *et seq.*; and the North Carolina Solid Waste Management Act, N.C.G.S. §§ 130A-290 *et seq.*; and any similar state

laws, as well as any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments.

SECTION 9.2 REPRESENTATIONS BY BORROWER. Borrower hereby represents to Beneficiary that: (a) to the best of Borrower's knowledge after due inquiry, which inquiry consists of ordering, obtaining and reviewing the Phase I Environmental Site Assessment including testing for asbestos prepared by Terracon and dated October 2, 2008 (Project No. 70087746), as supplemented (the "Environmental Inspection"), and except as otherwise disclosed in the Environmental Inspection, the Premises has never been used either by previous owners or occupants or by Borrower or current occupants to generate, manufacture, refine, transport, treat, store, handle or dispose of asbestos or any Hazardous Materials or Wastes and no such Hazardous Materials or Wastes exist on the Premises or in its soil or groundwater; (b) to the best of Borrower's knowledge after due inquiry, which inquiry consists of the Environmental Inspection, and except as otherwise disclosed in the Environmental Inspection, no portion of the improvements on the Premises has been constructed with asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and/or the environment; (c) to the best of Borrower's knowledge after due inquiry, which inquiry consists of the Environmental Inspection, and except as otherwise disclosed in the Environmental Inspection, there are not now nor have there been electrical transformers or other equipment which have dielectric fluid-containing polychlorinated biphenyls (PCBs) located in, on or under the Premises; (d) to the best of Borrower's knowledge after due inquiry, which inquiry consists of the Environmental Inspection, and except as otherwise disclosed in the Environmental Inspection, the Premises has never contained any underground storage tanks; and (e) to the best of Borrower's knowledge after due inquiry, Borrower has not received any summons, citation, directive, letter or other communication, written or oral, from any local, state or federal governmental agency concerning (i) the existence of Hazardous Materials or Wastes on the Premises or on adjacent lands, or (ii) the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Hazardous Materials or Wastes onto the Premises or into waters or adjacent lands.

SECTION 9.3 COVENANTS OF BORROWER. Borrower hereby covenants to Beneficiary that: (a) Borrower shall (i) comply and shall cause all occupants of the Premises to comply with all federal, state and local laws, rules, regulations and orders with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Materials or Wastes, (ii) remove any Hazardous Materials or Wastes immediately upon discovery of same, in accordance with applicable laws, ordinances and orders of governmental authorities having jurisdiction thereof, (iii) pay or cause to be paid all costs associated with such removal; and (iv) indemnify Beneficiary from and against all losses, claims and costs arising out of the migration of Hazardous Materials or Wastes from or through the Premises onto or under other properties; (b) Borrower shall keep the Premises free of any lien imposed pursuant to any state or federal law, rule, regulation or order in connection with the existence of Hazardous Materials or Wastes on the Premises; (c) Borrower shall not install or permit to be installed or to exist in or on the Premises any asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and environment; (d) Borrower shall not cause or permit to exist, as a result of an intentional or unintentional act or omission on the part of Borrower or any occupant of the Premises, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of any Hazardous

Materials or Wastes onto the Premises or into waters or other lands; (e) Borrower shall give all notifications and prepare all reports required by Laws or any other law with respect to Hazardous Materials or Wastes existing on, released from or emitted from the Premises; (f) Borrower shall promptly notify Beneficiary in writing of any release, spill, leak, emittance, pouring, discharging, emptying or dumping of Hazardous Materials onto the Premises or into waters or other lands; and (g) Borrower shall promptly notify Beneficiary in writing of any summons, citation, directive, notice, letter or other communication, written or oral, from any local, state or federal governmental agency, or of any claim or threat of claim known to Borrower, made by any third party relating to the presence or releasing, spilling, leaking, pumping, emitting, pouring, discharging, emptying or dumping of any Hazardous Materials onto the Premises or into waters or other lands.

SECTION 9.4 EVENTS OF DEFAULT AND REMEDIES. It shall constitute an Event of Default hereunder and Beneficiary shall be entitled to exercise all remedies available to it hereunder if: (a) any of Borrower's representations contained in Section 9.2 hereof prove to be false, inaccurate or misleading; (b) Borrower shall fail to comply with the covenants contained in Section 9.3 hereof; (c) any Hazardous Materials or Wastes are hereafter found to exist on the Premises or in its soil or groundwater; or (d) any summons, citation, directive, letter or other communication, written or oral, shall be issued by any local, state or federal governmental agency concerning the matters described in Section 9.2(e)(i) and (ii) above. Borrower hereby grants Beneficiary and its employees and agents an irrevocable and non-exclusive license to enter the Premises, subject to rights of tenants, in order to inspect, conduct testing and remove Hazardous Materials or Wastes. All costs of such inspection, testing and removal shall immediately become due and payable to Beneficiary shall bear interest at the Default Rate, shall be secured by this Instrument and shall constitute additional Indebtedness.

SECTION 9.5 INDEMNIFICATION. Borrower hereby agrees to defend, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns ("Indemnified Parties") from and against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees actually incurred and costs incurred in the investigation, defense and settlement of claims or remediation of contamination) incurred by the Indemnified Parties as a result of or in connection with the presence or removal of Hazardous Materials or Wastes or as a result of or in connection with activities prohibited under this Article. Borrower shall bear, pay and discharge, as and when the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise, against the Indemnified Parties, shall hold the Indemnified Parties harmless against all claims, losses, damages, liabilities, costs and expenses, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth in this Article. This indemnification shall remain in full force and effect and shall survive the repayment of the Indebtedness and the satisfaction of the documents securing the same, as well as the exercise of any remedy by Beneficiary hereunder or under the Loan Documents, including a foreclosure of this Instrument or the acceptance of a deed in lieu of foreclosure.

SECTION 9.6 LOSS OF VALUE. Borrower hereby assures Beneficiary that Beneficiary will not suffer loss due to diminution of value of the Premises, whether during the term hereof or

thereafter, due to Hazardous Materials or Wastes upon the Premises, except for those Borrower proves were first introduced onto the Premises after title has passed to Beneficiary by foreclosure or otherwise and will, upon demand, reimburse Beneficiary for any such loss of value.

ARTICLE 10 MISCELLANEOUS

SECTION 10.1 RELEASE OF INSTRUMENT. When all Indebtedness has been paid, this Instrument and all assignments herein contained shall, except as otherwise provided herein, terminate and shall be released by Beneficiary at Borrower's expense.

SECTION 10.2 CHOICE OF LAW. This Instrument is made and executed under the laws of the State of North Carolina and is intended to be governed by and construed and interpreted in accordance with the laws of said State.

SECTION 10.3 SUCCESSORS AND ASSIGNS. This Instrument and each and every covenant, agreement and other provision hereof shall be binding upon Borrower and its successors and assigns, including, without limitation each and every person or entity that may, from time to time, be record owner of the Premises and any person, or entity, other than Beneficiary, having an interest therein, shall run with the land and shall inure to the benefit of Beneficiary and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to this Instrument. Nothing in this Section shall be construed to constitute consent by Beneficiary to assignment by Borrower.

SECTION 10.4 PARTIAL INVALIDITY. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Instrument shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Instrument shall in no way be affected thereby.

SECTION 10.5 CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Instrument are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

SECTION 10.6 NOTICES. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and either (a) mailed by certified mail, return receipt requested, or (b) sent by an overnight carrier which provides for a return receipt, or (c) sent by facsimile followed up by mailing of such notice by either of the methods set forth in (a) or (b) above on the day of sending such facsimile or the next succeeding business day. Any such notice shall be sent to the respective party's address as set forth on Page 1 of this Instrument or to such other address as such party may, by notice in writing given in compliance with this Section, designate as its address. Any such notice shall constitute service of notice hereunder

three (3) days after the mailing thereof by certified mail, one (1) day after the sending thereof by overnight carrier, and on the same day as the sending of a facsimile pursuant to the terms hereof.

SECTION 10.7 BUILDING USE. During the entire term of the Note and this Instrument, Borrower agrees not to convert the Premises to a condominium or cooperative of any kind or to any use other than as a retail center. In that connection, Borrower covenants that the sale of units and/or recording of condominium or cooperative documents on the Premises or any part thereof shall constitute an Event of Default hereunder.

SECTION 10.8 MANAGEMENT OF THE PREMISES. Borrower acknowledges that the successful management of the Premises is of critical importance to Beneficiary and a primary inducement in the making of the Loan. In the event management becomes unsatisfactory, Beneficiary shall notify Borrower of the same and Borrower shall, within 30 days of such notice, correct any management deficiencies. Failure to so correct shall constitute an Event of Default hereunder.

SECTION 10.9 AMENDMENT/MODIFICATION. Amendment to, waiver of or modification of any provision of this Instrument must be made in writing. No oral waiver, amendment, or modification may be implied.

SECTION 10.10 REPRESENTATIONS OF BORROWER. Borrower affirmatively represents and warrants that the written terms of the Note, this Instrument, the Assignment of Leases, the financing statements and other documents executed in connection with the Loan, and each of them, accurately reflect the understanding of Borrower, as to all matters addressed therein, and Borrower further represents and warrants that there are no other agreements or understandings, written or oral, which exist between Borrower and Beneficiary relating to the matters addressed in said documents.

SECTION 10.11 BENEFICIARY'S AND TRUSTEE'S EXPENSE. Should Beneficiary or Trustee make any payments hereunder or under the Note or under any of the other Loan Documents or incur any liability, loss or damage under or by reason of this Instrument, the Note or any of the other Loan Documents, or in the defense of any claims or demands, the amount thereof, and all costs and expenses, including all filing, recording, and title fees and any other expenses relating to the Loan, including without limitation filing fees for UCC continuation statements and any expense involving modification thereto, reasonable attorneys' fees actually incurred, and any and all costs and expenses incurred in connection with making, performing, or collecting the Indebtedness or exercising any of Beneficiary's or Trustee's rights under the Note, this Instrument or any other Loan Documents, including reasonable attorneys' fees actually incurred, the cost of appraisals and the cost of any environmental inspections in connection therewith, and all claims for brokerage and finder's fees which may be made in connection with the making of the Loan, together with interest thereon, at the Default Rate, shall become part of the Indebtedness and shall be secured by this Instrument and the other Loan Documents and Borrower hereby agrees to reimburse Beneficiary or Trustee therefor immediately upon demand. Such sums, costs and expenses shall be, until so paid, part of the Indebtedness and Beneficiary shall be entitled, to the extent permitted by law, to receive and retain the full amount of the Indebtedness in any action for redemption by Borrower, for an accounting for the proceeds of a

foreclosure sale or of insurance proceeds or for apportionment of an eminent domain damage award.

SECTION 10.12 BENEFICIARY'S AND TRUSTEE'S RIGHT TO COUNSEL. If Beneficiary or Trustee retains attorneys to enforce any of the terms hereof or the Note or of any of the other Loan Documents or because of the breach by Borrower of any of the terms hereof or of any of the Loan Documents, or for the recovery of any Indebtedness secured hereby or by any of the other Loan Documents, Borrower shall pay to Beneficiary or Trustee reasonable attorneys' fees actually incurred and all costs and expenses, whether or not an action is actually commenced and the right to such reasonable attorneys' fees actually incurred and all costs and expenses shall be deemed to have accrued on the date such attorneys are retained, shall include fees and costs in connection with litigation, arbitration, mediation and/or administrative proceedings, and shall be enforceable whether or not such action is prosecuted to judgment and shall include all appeals. Attorneys' fees and expenses shall for purposes of this Instrument include all paralegal, electronic research, legal specialists and all other costs in connection with the performance of Beneficiary's or Trustee's attorneys. As used herein, "reasonably attorneys' fees" shall mean fees calculated for time in fact spent, at such timekeeper's standard hourly rate, without regard to any statutory presumption.

If Beneficiary or Trustee is, by reason of being the holder of this Instrument, made a party defendant in any litigation or other proceedings concerning this Instrument or the Premises or any part thereof or therein, or the construction, maintenance, operation or the occupancy or use thereof by Borrower, then Borrower shall indemnify, defend and hold Beneficiary or Trustee harmless from and against all liability by reason of said litigation or other proceedings, including reasonable attorneys' fees actually incurred and all costs and expenses incurred by Beneficiary or Trustee in any such litigation or other proceedings, whether or not any such litigation or other proceedings is prosecuted to judgment or other determination.

SECTION 10.13 OTHER REPRESENTATIONS AND WARRANTIES. All statements contained in any loan application, certificate or other instrument delivered by or on behalf of Borrower to Beneficiary or Beneficiary's representatives in connection with the Loan shall constitute representations and warranties made by Borrower hereunder. Such representations and warranties made hereunder and thereunder shall survive the delivery of this Instrument, and any misrepresentations thereunder shall be deemed as misrepresentations hereunder.

SECTION 10.14 LIMITATION OF INTEREST. It is the intent of Borrower and Beneficiary in the execution of this Instrument and the Note and all other Loan Documents securing the Note to contract in strict compliance with the usury laws of the State of North Carolina governing the Note. In furtherance thereof, Beneficiary and Borrower stipulate and agree that none of the terms and provisions contained herein or in the Note or in any Loan Document shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of North Carolina. Borrower, or any guarantors, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of North Carolina and the provisions of this Section shall

control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. If, from any circumstances whatsoever fulfillment of any provision of the Note, this Instrument or any Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit on interest presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then Beneficiary may, at its option (i) reduce the obligations to be fulfilled to such limit on interest, or (ii) apply the amount that would exceed such limit on interest to the reduction of the outstanding principal balance of the Note, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Beneficiary had agreed to accept such extra payment(s) as a prepayment without a fee, so that in no event shall any exaction be possible under the Note that is in excess of the applicable limit on interest.

SECTION 10.15 TIME OF THE ESSENCE. Borrower agrees that time is of the essence with respect to all of the covenants, agreements and representations under this Instrument.

SECTION 10.16 SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS. All representations, warranties and covenants contained herein or in any other Loan Document, executed by Borrower in connection herewith shall survive the delivery of the Note, this Instrument and all other Loan Documents, executed in connection herewith and the provisions hereof shall continue to inure to the benefit of Beneficiary, its successors and assigns.

SECTION 10.17 WAIVER OF JURY TRIAL. NO PARTY TO THIS INSTRUMENT OR ANY ASSIGNEE, SUCCESSOR, HEIR OR PERSONAL REPRESENTATIVE OF A PARTY SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEEDINGS BASED UPON OR ARISING OUT OF THIS INSTRUMENT, ANY RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE INDEBTEDNESS OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG THE PARTIES, OR ANY OF THEM. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

SECTION 10.18 MINIMUM REQUIREMENTS. Borrower recognizes that the requirements imposed upon Borrower hereunder, including, without limitation, insurance requirements, are minimum requirements as determined by Beneficiary and do not constitute a representation that the requirements are complete or adequate. Borrower understands that it is Borrower's duty and responsibility to act prudently and responsibly at all times for Borrower's protection and for the protection of the Premises.

SECTION 10.19 PARTIAL NON-RECOURSE TO THE MEMBERS OF BORROWER. Notwithstanding anything to the contrary contained in this Instrument, the liability of the members of Borrower for the Indebtedness and for the performance of the other agreements, covenants and obligations contained in the Loan Documents shall be limited as set forth in Section 20 of the Note.

SECTION 10.20 FUTURE ADVANCES. It is the intention of the parties hereto that this Instrument is made and executed to comply with the provisions of N.C. Gen. Stat. § 45-67, *et seq.*, and shall secure any and all present and future indebtedness which Borrower now or may hereafter owe to Beneficiary (but in no event incurred more than fifteen (15) years after the date hereof), including, without limitation, any future loans and advances made by Beneficiary pursuant to the Loan Documents to or for the benefit of Borrower, up to a maximum aggregate amount of principal indebtedness outstanding at any one time of \$2,950,000. The principal amount of indebtedness of Borrower to Beneficiary secured hereby is the sum of \$2,950,000 as of the date hereof; the amount disbursed to Borrower on or about the date hereof is \$2,950,000, and the principal amount of all present and future indebtedness of Borrower to Beneficiary secured hereby is the sum of \$2,950,000, plus interest, costs and advances made by Beneficiary to protect or preserve the Premises or the lien hereof on the Premises, or for taxes, assessments or insurance premiums as provided herein or in the other Loan Documents. Pursuant to N.C. Gen. Stat. § 45-68(2), Borrower and Beneficiary agree that at the time each indebtedness is incurred, it shall not be necessary for each such indebtedness to be evidenced by any written instrument or notation signed by Borrower and stipulating that such indebtedness is secured by this Instrument.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower has caused this Instrument to be executed by its duly authorized representatives as of the day and year first written above.

KERNERSVILLE MARKETPLACE, LLC, a North Carolina limited liability company

By: Fincher Limited Partnership, a North Carolina limited partnership, Sole Manager

By: Timothy E. Fincher [SEAL]
Timothy E. Fincher,
General Partner

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Timothy E. Fincher.

Date: November 19, 2008

Mark V. Thigpen
Notary Public

Print Name: Mark V. Thigpen, Notary Public

My Commission Expires: 12/13/09

[NOTARY SEAL]

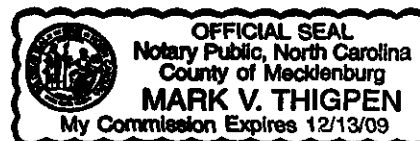


EXHIBIT A

Legal Description

Lying and being situate in Forsyth County, North Carolina, and being more particularly described as follows:

BEING ALL of Lots 1 and 2 as shown on that certain map consisting of three pages, entitled "Final Plat Kernersville Shopping Center Century Place Boulevard", dated August 7, 1995 and recorded in Plat Book 38 at Pages 119, 120 and 121, Forsyth County Registry, and plat recorded in Plat Book 39 at Pages 55 and 56 and Plat Book 39 at Page 46, Forsyth County Registry.

TOGETHER WITH and including all of the right title and interest of Grantor in and to the non-exclusive easements appurtenant to any or all of said Lots 1 and 2 created in (1) that certain Declaration of Reciprocal Easements and Restrictions recorded in Book 1868 at Page 3681, Forsyth County Registry; (2) that certain Deed of Easement recorded in Book 1868 at Page 3663, Forsyth County Registry; (3) that certain Slope Easement Agreement recorded in Book 1667 at Page 820, Forsyth County Registry; (4) that certain map recorded in Plat Book 38 at Pages 119, 120 and 121, Forsyth County Registry; (5) that certain map recorded in Plat Book 39 at Page 55, Forsyth County Registry; (6) that certain map recorded in Plat Book 39 at Page 136, Forsyth County Registry; (7) that certain map recorded in Plat Book 39 at Page 46, Forsyth County Registry; (8) or Deed of Easement recorded in Book 1940 at Page 2088, Forsyth County Registry .

EXHIBIT B

Inventory of Personal Property

None