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Register of Deeds
BOOK 1103 PAGE 476

PREPARED BY, RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

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DEED OF TRUST
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

THE PARTIES TO THIS DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made as of August 31, 2007, are HIGH ROCK PROPERTIES, LLC, a Delaware limited liability company ("Trustor"), SAMUEL S. WILLIAMS, ESQUIRE ("Trustee"), and NC HIGH ROCK MORTGAGE LENDER, LLC, a Florida limited liability company ("Beneficiary").

ARTICLE 1. GRANT IN TRUST

1.1 **GRANT**. For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in Salisbury Township, County of Rowan, State of North Carolina, described on Exhibit A attached hereto, together with all right, title, interest, and privileges of Trustor in and to all streets, ways, roads and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the "Improvements"); all interest or estate which Trustor may hereafter acquire in the property

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described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

1.2 **ADDRESS**. The address of the Subject Property (if known) is: N/A, NC. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A.

ARTICLE 2. OBLIGATIONS SECURED

2.1 **OBLIGATIONS SECURED**. Trustor makes this Deed of Trust for the purpose of securing the following obligations ("Secured Obligations"):

(a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note ("Note") of even date herewith, up to the original principal amount of ONE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS ($1,650,000.00) executed by Trustor, as borrower, and payable to the order of Beneficiary, as lender; and

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

(c) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Deed of Trust; and

(d) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 **OBLIGATIONS**. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 **INCORPORATION**. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

3.1 **ASSIGNMENT**. Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, revenue, income, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases

("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.

3.2 **GRANT OF LICENSE**. Beneficiary confers upon Trustor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

3.3 **EFFECT OF ASSIGNMENT**. The foregoing irrevocable assignment shall not, prior to Beneficiary taking actual possession of the Property through foreclosure or appointment of a receiver, cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary or Trustee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Beneficiary or Trustee hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 **REPRESENTATIONS AND WARRANTIES**. Trustor represents and warrants that: (a) the Schedule of Leases attached hereto as Schedule 1 is, as of the date hereof, a true, accurate and complete list of all Leases; (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.

3.5 **COVENANTS**. Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Beneficiary prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so; and (d) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the lessor and lessee) of any Lease to

the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request. Trustor shall not, without Beneficiary's prior written consent (i) enter into any Leases after the date thereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when they become due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

3.6 **ESTOPPEL CERTIFICATES**. Within thirty (30) days after written request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Beneficiary.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1 **SECURITY INTEREST**. Trustor hereby grants and assigns to Beneficiary this date, a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the real property pursuant to Section 1.1 above) or (ii) the Improvements (which real property and Improvements are collectively referred to herein as the "Subject Property"); together with all rents and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Trustor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary,

surface or underground or appropriated or unappropriated; and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing. As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Uniform Commercial Code as adopted in the State of North Carolina, as amended or recodified from time to time ("UCC"). For purposes of complying with the requirements of N.C. Gen. Stat. § 25-9-502, the respective name and address of Trustor, as debtor, and Beneficiary, as secured party, are set forth on the first page of this Deed of Trust; the types of items of collateral are described in Section 4.1 of this Deed of Trust; and the description of the land is set forth on Exhibit A attached hereto. The collateral is or includes fixtures.

4.2 **REPRESENTATIONS AND WARRANTIES**. Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; (c) Trustor's principal place of business is located at the address shown in Section 7.11; and (d) Trustor's legal name is exactly as set forth on the first page of this Deed of Trust and all of Trustor's organizational documents or agreements delivered to Beneficiary are complete and accurate in every respect.

4.3 **COVENANTS**. Trustor agrees: (a) to execute and deliver such documents as Beneficiary deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Beneficiary prior written notice thereof; (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Beneficiary is authorized to file financing statements in the name of Trustor to perfect Beneficiary's security interest in the Collateral.

4.4 **RIGHTS OF BENEFICIARY**. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under N.C. Gen. Stat. § 25-9-620, or other applicable law.

4.5 **RIGHTS OF BENEFICIARY ON DEFAULT**. Upon the occurrence of a Default (hereinafter defined) under this Deed of Trust, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

(a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales;

(b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell, lease, license or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral; and

(c) In disposing of Collateral hereunder, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Beneficiary to the payment of expenses incurred by Beneficiary in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Beneficiary toward the payment of the Secured Obligations in such order of application as Beneficiary may from time to time elect.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under N.C. Gen. Stat. § 25-9-620, or other applicable law. Trustor agrees that Beneficiary shall have no obligation to process or prepare any Collateral for sale or other disposition.

4.6 **POWER OF ATTORNEY**. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; *provided, however,* that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

4.7 **POSSESSION AND USE OF COLLATERAL**. Except as otherwise provided in this Section or the other loan documents execution in connection with this Deed of Trust, the Note and Commitment Letter (the "Loan Documents"), so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

5.1 **TITLE**. Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Deed of Trust is a first and prior

lien on the Subject Property, subject to those matters set forth on Exhibit B attached hereto and incorporated herein by this reference (the "Permitted Encumbrances").

5.2 **TAXES AND ASSESSMENTS**. Subject to Trustor's rights to contest payment of taxes, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; *provided, however*, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.

5.3 **TAX AND INSURANCE IMPOUNDS**. At any time following the occurrence of a Default, at Beneficiary's option and upon its demand, Trustor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when same are next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts when due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and the Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

5.4 **PERFORMANCE OF SECURED OBLIGATIONS**. Trustor shall promptly pay and perform each Secured Obligation when due.

5.5 **LIENS, ENCUMBRANCES AND CHARGES**. Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Trustor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly to Trustor by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards payable to Trustor for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Beneficiary to be maintained by Trustor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law and without regard to any requirement contained in Section 5.7(d), but subject to the provisions of Section 5.6(b) below, Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; *provided, however*, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.

(b) Provided there does not then exist a Default under the Loan Documents, Beneficiary shall permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

5.7 **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY**. Trustor covenants: (a) to insure the Subject Property and Collateral against such risks as Beneficiary may require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof, not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent, which consent shall not be unreasonably withheld or delayed; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6, but subject to the provisions of Section 5.6(b); (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property or Collateral; and (g) to do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.

5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS**. At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.

5.9 **ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE**.

(a) Trustee accepts this trust when this Deed of Trust is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.

(b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

(c) With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Subject Property for debts contracted for or liability or damages incurred in the management or operation of the Subject Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered pursuant to Section 8.8 below. **TRUSTOR WILL PAY THE COMPENSATION DUE TO TRUSTEE PURSUANT TO SECTION 8.8 HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES, EXCEPT FOR LIABILITY OR EXPENSES RESULTING FROM TRUSTEE'S GROSS NEGLIGENCE OR BAD FAITH.**

(d) All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder unless other required by law.

(e) Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

(f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

5.10 **COMPENSATION; EXCULPATION; INDEMNIFICATION**.

(a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust pursuant to Section 8.8 below, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or Collateral or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) **OTHER THAN WITH RESPECT TO TRUSTEE'S OR BENEFICIARY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TRUSTOR INDEMNIFIES TRUSTEE AND BENEFICIARY AGAINST, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (i) BY REASON OF THIS DEED OF TRUST; (ii) BY REASON OF THE EXECUTION OF THIS DEED OF TRUST OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF TRUSTOR TO PERFORM TRUSTOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE SUBJECT PROPERTY. THE ABOVE OBLIGATION OF TRUSTOR TO INDEMNIFY AND HOLD HARMLESS TRUSTEE AND BENEFICIARY SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE AND RECONVEYANCE OR PARTIAL RELEASE AND RECONVEYANCE OF THIS DEED OF TRUST.**

(c) Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

5.11 **SUBSTITUTION OF TRUSTEES**. From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Register of Deeds in the County in which the Subject Property is situated, Beneficiary may appoint another Trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new Trustee as the Trustee hereunder with the same effect as if originally named

Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.

5.12 **DUE ON SALE OR ENCUMBRANCE**. If the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Trustor), mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable, except as set forth in Section 14 herein.

5.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY**. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Deed of Trust upon the Subject Property and Collateral.

5.14 **RECONVEYANCE**. Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.

5.15 **SUBROGATION**. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to the Loan Documents or by the proceeds of any loan secured by this Deed of Trust.

5.16 **RIGHT OF INSPECTION**. Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and Collateral and ascertaining Trustor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

6.1 **DEFAULT**. The term "Event of Default", wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) Failure by Trustor to pay, within ten (10) days of when due and payable, any installment of principal or interest due under the Note, or any deposits for taxes and assessments or insurance premiums due hereunder, or any other sums to be paid by Trustor hereunder

or under any other instrument securing the Note or under any other instrument of indebtedness to which Trustor is a party.

(b) Failure by Trustor, after thirty (30) days written notice, to duly keep, perform and observe any other covenant, condition or agreement in the Note and this Deed of Trust or any other instrument securing the Note or any other instrument collateral to the Note or executed in connection with the sums secured hereby, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower has responsibly commenced to cure such default promptly upon notice thereof from Beneficiary and thereafter diligently proceeds to cure same, such thirty (30) day period shall be extended for so long as it shall require Borrower, in the exercise of due diligence, to cure such default, but in no event shall the entire cure period be more than sixty (60) days..

(c) Failure by Trustor, after thirty (30) days written notice, to duly keep, perform and observe any other covenant, condition or agreement contained in any instrument securing additional indebtedness of Trustor now existing or hereafter executed in connection with the Subject Property, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower has responsibly commenced to cure such default promptly upon notice thereof from Beneficiary and thereafter diligently proceeds to cure same, such thirty (30) day period shall be extended for so long as it shall require Borrower, in the exercise of due diligence, to cure such default, but in no event shall the entire cure period be more than sixty (60) days..

(d) In the event of (a) filing of any petition under the Bankruptcy Code (voluntary or involuntary) or any similar federal or state statute by any Trustor or guarantor of the Note or the insolvency of any Trustor or guarantor of the Note or such filing against any Trustor or guarantor of the Note, which is not dismissed within thirty (30) days of the filing date, (b) making of a general assignment by an Trustor or any guarantor of the Note for the benefit of creditors, appointment of or taking possession by a receiver, Trustee, custodian or similar official for any Trustor or any guarantor of the Note or for any assets of any such Trustor or guarantor of the Note or institution by any Trustor or guarantor of the Note, or (c) the filing against any Trustor or guarantor of the Note of any kind of insolvency proceedings or any proceeding for dissolution or liquidation of any Trustor or guarantor of the Note (each an "Insovency Event"); Beneficiary, in its sole discretion, shall not be under any obligation to make further advances under the Loan Documents. In the event of an Insolvency Event, the Beneficiary, in its sole discretion, shall be entitled to accelerate the whole amount of principal and interest due upon the Note(s) to the full amount thereof and all other payments, charges and costs due under this Deed of Trust, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Subject Property; provided, however, that in no case shall the Beneficiary receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Subject Property and the distribution from the estate of the Trustor. Trustor hereby acknowledges and agrees, in further consideration for Beneficiary entering into the Loan Documents that, in the event of an Insolvency Event, the Beneficiary shall, in its sole discretion, be entitled to relief from the automatic stay in effect pursuant to 11 U.S.C. § 362(a), or otherwise, in order to exercise any and all of its respective rights and remedies under the Loan Documents. This entitlement shall be irrespective of any of the requirements of Section 362 of the Bankruptcy Code and Beneficiary will not be obligated to satisfy those requirements in order to obtain relief from stay. Trustor now consents and will hereafter consent to any motion for relief from stay Beneficiary may file and Trustor irrevocably

waives and releases any right to object to such relief or to impede any of Beneficiary's remedies, including without limitation any rights under Sections 362 and 105 of the Bankruptcy Code. This provision is a material inducement to Beneficiary in entering into this Deed of Trust and the Loan Documents. Beneficiary, in turn, acknowledges that this paragraph shall not be construed as a restriction or prohibition on Trustor's right to file any voluntary petition or make application for or seek relief or protection under the Bankruptcy Code. Trustor hereby acknowledges that the waiver hereunder is done knowingly, intentionally and voluntarily, and that the Trustor has had a full and fair opportunity to consult bankruptcy counsel as to the foregoing waiver, and, in fact, did seek and obtain the advice of counsel. In the event of an Insolvency Event, Trustor hereby knowingly, intentionally and voluntarily waives any right to surcharge Beneficiary's collateral or property securing the Beneficiary's secured claim which may otherwise exist pursuant to 11 U.S.C. § 506(c). In the event of an Insolvency Event, Trustor hereby acknowledges and agrees that the Loan Documents, individually or collectively, do not constitute and are neither intended nor should be construed as an executory contract within the meaning of 11 U.S.C. § 365. In the event of an Insolvency Event, if the Loan Documents are construed or otherwise held to be an executory contract within the meaning of 11 U.S.C. § 365, Trustor absolutely agrees to file a motion to assume or reject the Loan Documents within twenty (20) days of the date of the Insolvency Event. In the event Trustor is permitted to assume the Loan Documents, and the Beneficiary is, for whatever reason, not entitled to relief from the automatic stay in effect pursuant to 11 U.S.C. § 362(a), Trustor agrees to cure any and all defaults within twenty (20) days of the entry of an order authorizing the Trustor's assumption of the Loan Documents. In the event the Loan Documents are rejected, Trustor consents and agrees that Beneficiary shall be immediately entitled to relief from the automatic stay provisions in effect pursuant to 11 U.S.C. § 362(a) and that such consent and otherwise deemed waiver of the protections afforded pursuant to 11 U.S.C. § 362(a) is done knowingly, intentionally and voluntarily, and that Trustor had a full and fair opportunity to consult bankruptcy counsel as to the foregoing consent and waiver, and, in fact, did seek and obtain the advice of counsel. In the event of an Insolvency Event, and in the event Trustor is permitted to pursue a sale of the Beneficiary's collateral or property otherwise securing the Beneficiary's secured claim, Trustor hereby acknowledges and agrees that Trustor shall, unless otherwise agreed to by Beneficiary in its sole discretion, be entitled to payment from sale proceeds of the full face value of its claim, i.e., the entire amount of its claim, in order to establish compliance with 11 U.S.C. § 363(f)(5), and that the Beneficiary shall be entitled, and the Trustor shall not oppose, to credit bid the entire amount of indebtedness owed to Beneficiary pursuant to 11 U.S.C. § 363(k). In the event of an Insolvency Event, Trustor acknowledges and agrees that Trustor shall not challenge or otherwise seek any determination relating to the extent, validity or priority of liens and claims in favor of the Beneficiary, as such liens and claims relate to the Loan Documents. The Trustor shall hereafter acknowledge that the liens granted and recorded in favor of Beneficiary are valid and perfected. Trustor hereby acknowledges and agrees that the foregoing terms and conditions were negotiated at arms-length and Trustor had every opportunity to consult with bankruptcy counsel as to the legal, equitable and practical effects of the foregoing. Furthermore, Trustor hereby acknowledges and agrees that the foregoing terms and conditions were a material part of the negotiations between Trustor and Beneficiary and a material inducement to the Beneficiary entering into the Loan and the Beneficiary's agreement to advance funds to the Trustor under the Note and hereunder.

(e) The entry by a court of last resort of a decision that an undertaking by Trustor as herein provided to pay taxes, assessments, levies, liabilities, obligations and encumbrances is legally inoperative or cannot be enforced, or in the event of the passage of any law

changing in any way or respect the laws now in force for the taxation of mortgages or debts secured thereby for any purpose or the manner of collection of any such taxes, so as to adversely affect this Deed of Trust or the debt secured hereby, provided, that Trustor has not paid such taxes within fifteen (15) days of notice thereof.

(f) The occurrence of any default in any deed of trust superior or inferior to the Deed of Trust, or the institution of foreclosure proceedings on any deed of trust superior or inferior to this Deed of Trust, or if any foreclosure proceeding on any lien of any kind, provided, that such proceedings are not terminated within ten (10) days of their institution.

(g) Any modification of any deed of trust superior or inferior to this Deed of Trust, or any increase in the amount outstanding under any deed of trust superior or inferior to this Deed of Trust, whether pursuant to a future advance agreement or otherwise, or any waiver of any principal or any interest payments on any note or deed of trust superior to this Deed of Trust, or release of any guarantor or modification of any guaranty affecting any superior deed of trust.

(h) Any breach of any warranty or untruth of any material representation of Trustor contained in the Note, this Deed of Trust, the Guaranty (as defined herein) or any other instrument securing or otherwise executed in connection with the Note.

(i) Failure by any Guarantor (as defined herein) of the Note to perform any covenant, term, or condition of the Guaranty.

(j) The existence of any material adverse change in the financial condition of Trustor or any Guarantor.

(k) The death of any guarantor (or multiple guarantors collectively) of the Note owning greater than a 25% membership interest in the Trustor.

(l) The transfer, conveyance, sale, pledge, deed of trust, or lien of or upon the Subject Property (other than the Permitted Encumbrances) or of any interest in Trustor that does not comply with the provisions of Section 14 below without having first obtained the prior written consent of Beneficiary.

(m) Other Default Provisions: More than ten percent (10%) of the Subject Property shall have been taken in condemnation or other like proceeding, or if any such proceeding is pending at the time of closing.

6.2 **RIGHTS AND REMEDIES**. At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

(a) With or without notice, to declare all Secured Obligations immediately due and payable;

(b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any

encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a deed of trust or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;

(e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;

(f) To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;

(g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion.

(h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS**. After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

6.4 **APPLICATION OF OTHER SUMS**. All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; *provided, however*, Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.5 **NO CURE OR WAIVER**. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or

remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Deed of Trust.

6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES**. Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.

6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS**. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, upon Trustor's failure to do so in a timely manner following beneficiary's request therefor, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Subject Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; *provided, however*, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Beneficiary under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 **ADDITIONAL PROVISIONS**. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and Collateral and such further rights and agreements are incorporated herein by this reference.

7.2 **MERGER**. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing.

7.3 **OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL**. If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.

7.4 **RECOURSE TO SEPARATE PROPERTY**. Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person's separate property, and any community property of which that person is a manager.

7.5 **WAIVER OF MARSHALLING RIGHTS**. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation ("Other Property") marshalled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Trustee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

7.6 **RULES OF CONSTRUCTION**. When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.

7.7 **SUCCESSORS IN INTEREST**. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; *provided, however*, that this Section 7.7 does not waive or modify the provisions of Section 5.12.

7.8 **EXECUTION IN COUNTERPARTS**. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

7.9 **FLORIDA LAW**. This Deed of Trust shall be construed under the laws of North Carolina; however, the balance of the Loan Documents shall be construed in accordance with the laws of the State of Florida, except to the extent that federal laws preempt the laws of the State of Florida.

7.10 **INCORPORATION**. Exhibit A, Exhibit B and Schedule 1, as attached, are incorporated into this Deed of Trust by this reference.

7.11 **NOTICES**. All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; *provided, however*, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Trustor:	High Rock Properties, LLC 9911 Rose Commons Drive Suite E132 Huntersville, North Carolina 28078
Trustee:	Samuel S. Williams, Esquire P.O. Box 32635 Charlotte, NC 28232
Beneficiary:	NC High Rock Mortgage Lender, LLC 24 South River Street Wilkes-Barre, PA 18702 Attn: Thomas R. Daniels, Esquire
with a copy to:	Jena Rissman Atlass, Esquire Savage & Atlass, P.L. 801 NE 167th Street #302 North Miami Beach, FL 33162

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Subject Property or to Trustor naming Beneficiary, "Beneficiary" or any similar designation as addressee, or which could reasonably be deemed to affect the ability of Trustor to perform its obligations to Beneficiary under the Note.

7.12 **PURPOSE**. This is a business purpose loan.

7.13 **STATUS OF PROPERTY**. This is commercial property.

ARTICLE 8. SPECIAL NORTH CAROLINA PROVISIONS

8.1 **INCONSISTENCIES.** To the extent possible, the terms and conditions of this Article 8 and the terms and conditions of the other provisions of this Deed of Trust shall be read and construed together; provided, however, if there is any inconsistencies between the terms and conditions of this Article 8 and the terms and conditions of the other provisions of this Deed of Trust, then the terms and conditions of this Article 8 shall control and be binding.

8.2 **CONSIDERATION.** The following language shall be added to Section 1.1 of this Deed of Trust, at the beginning of the first sentence thereof: "In consideration of $1.00 and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and".

8.3 **CONDITIONS TO GRANT; HABENDUM**. The following is added to the end of Section 1.1 of this Deed of Trust:

TO HAVE AND TO HOLD the above granted and described Subject Property unto Trustee, its successors and assigns, forever. To the extent that any of the above granted and described Subject Property is not real property that Trustee is empowered to sell at a public sale pursuant to North Carolina General Statutes Section 45-21.1 et seq., or is not real property that could be sold at a public sale pursuant to a judicial proceeding to foreclose the lien of this Deed of Trust, such Subject Property will automatically be deemed to have been assigned and conveyed

to Beneficiary and a security interest granted to Beneficiary in such Subject Property, effective as of the date of this Deed of Trust.

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if Trustor shall pay the Note in accordance with its terms, shall satisfy all of the Secured Obligations, and shall comply with all the covenants, terms and conditions of this Deed of Trust and the other Loan Documents, this conveyance shall be null and void and may be canceled of record at the request and at the cost of Trustor.

8.4 **PAYMENTS AFTER DEFAULT**. Upon the occurrence and during the continuance of an Event of Default, interest on tile outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at a rate per annum equal to the maximum rate permitted by applicable law, (such rate, the "Default Rate"). Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the earlier of (i) the actual receipt arid collection of the Debt (or that portion thereof that is then due) and (ii) the cure of such Event of Default. To the extent permitted by applicable law, interest at the Default Rate shall be added to the Debt, shall itself accrue interest at the same rate as the Loan and shall be secured by the Security Instrument. This Article shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Beneficiary by reason of the occurrence of any Event of Default; the acceptance of any payment from Trustor shall not be deemed to cure or constitute a waiver of any Event of Default; and Beneficiary retains its rights under this Note and the other Loan Documents to accelerate and to continue to demand payment of the Debt upon the happening of and during the continuance any Event of Default, despite any payment by Trustor to Beneficiary.

8.5 **FORECLOSURE AND SALE**. Upon a Default, Beneficiary may (a) direct Trustee to sell (and Trustee is hereby empowered to sell) all or any part of the Subject Property at public auction to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, courtesy or other exemption, all of which are expressly waived by Trustor) at such time and place and upon such terms and conditions as may be required by applicable law or rule of court and after having complied with the North Carolina law applicable to power of sale foreclosures (a "Power of Sale Foreclosure"); (b) elect to foreclose this Deed of Trust pursuant to a judicial foreclosure action; or (c) take such other action at law, in equity or by contract for the enforcement of this Deed of Trust and realization on the security herein or elsewhere provided for, as the law may allow. In any action or proceeding to foreclose this Deed of Trust or to collect the sums secured hereby, Beneficiary may proceed therein to final judgment and execution for the entire unpaid balance of the Secured Obligations, together with all future advances and any other sums due by Trustor in accordance with the provisions of this Deed of Trust, together with interest from the date of default at the default rate set forth in Section 8.4 hereof and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys' fees. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the default rate set forth in the Note.

If Beneficiary elects to direct Trustee to sell the Subject Property pursuant to a Power of Sale Foreclosure, then the following provisions shall apply: (a) in exercising the power of sale and selling the Subject Property, Trustee shall comply with the provisions of North Carolina law governing power of sale foreclosures and shall give such notice of hearing as to the commencement of foreclosure proceedings, obtain such findings and leave of court, and give such notice of and advertise such foreclosure sale all as may then be required by law; (b) upon such foreclosure sale or any required resale, it shall be lawful for Trustee to convey the Subject Property (or such portion thereof as may have been sold) to the successful bidder by way of a

Trustee's deed without any covenant or warranty and any recitals of fact in such Trustee's deed shall be prima facie evidence of such facts; (c) Trustee shall be entitled to a reasonable Trustee's fee, not to exceed the maximum fee allowed by applicable law (the "Commission"), as well as reimbursement for any attorney's fees incurred by Trustee; (d) Trustee shall apply the proceeds of the sale first to the payment of all expenses and costs incurred in connection with such sale, including advertising costs, title examination fees, transfer taxes, and court costs; second, to the payment of the Trustee's Commission; third, to payment of any taxes or governmental assessments which may be a lien against the Subject Property, unless Trustee advertised and sold the Subject Property subject to such taxes or assessments; and fourth, to the payment of the Secured Obligations and sums secured hereby, with the excess, if any, of such proceeds after the payment in full of the Secured Obligations and secured sums being distributed to the person or persons entitled thereto as their interests may appear; (e) if Trustee commences a Power of Sale Foreclosure and such proceeding is terminated prior to the completion thereof, Trustor shall pay to Trustee all expenses incurred by Trustee in connection with such proceeding and sale and a reasonable commission or compensation for services rendered by Trustee, but not more than the maximum fee allowed by applicable law; (f) at any sale conducted by Trustee, Beneficiary may bid for and become the purchaser of the Subject Property or such portion thereof as has been offered for sale and in lieu of paying cash therefor Beneficiary may take settlement of the purchase price by a credit upon the Secured Obligations due and payable and secured by this Deed of Trust; (g) any sale scheduled by Trustee may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law; (h) the sale by Trustee of less than the whole of the Subject Property shall not exhaust the right to sell any remainder of the Subject Property, and Trustee is specifically empowered to make a succesive sale or sales until the whole of the Subject Property shall be sold; and (i) if the proceeds of such sale of less than the whole of the Subject Property shall be less than the aggregate amount of the Secured Obligations, then this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Subject Property, just as though no sale had been made.

8.6 **CONCERNING THE TRUSTEE**. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction Trustee, by acceptance of this Security Instrument, covenants to perform and f the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with, the terms hereof Trustee may resign at any time upon giving thirty (30) days' notice to Trustor and to Beneficiary. Beneficiary may remove Trustee at any time or from time to time and select a successor Trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Beneficiary may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor Trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute Trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lcnder. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

8.7 **SUPPLEMENTS TO SECTION 8.6**.

(a) Trustee is hereby granted a power of sale, and Trustee, after having recorded and given all notices and conducted such hearings as required by law, upon the expiration of such time as is required by law, may sell the Property, and all estate, right, title, interest, claim, and demand of Trustor therein, at one or more sales, as an entirely or in parcels or lots (regardless of the manner in which the Property may be classified), with such elements of real and/or personal property (and, to the extent permitted by applicable law, may elect to deem all of the Property to be real property for purposes thereof), and at such time or place and upon such terms as Trustee may deem expedient or as may be required by applicable law. In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property.

(b) Subject to the provisions or other requirements of applicable law, the following provisions shall apply to any sale or sales of the Property under or by virtue of Section 8.4, whether made under the power of sale herein granted or by virtue of judicial proceedings:

(i) Trustee may conduct any number of sales from time to time of all or portions of the Property, and Trustor hereby waives any right which it may have to require the Property (or any part thereof) to be sold as separate tracts or units in the event of foreclosure or sale. The power of sale set forth in Section 8.4 shall not be exhausted by any one or more such sales as to any part of the Property which shall not have been sold, nor by any sale which is not completed or is defective in Trustee's opinion, until the Debt shall have been paid in full.

(ii) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice

(iii) After each sale, Trustee, or an officer of any court empowered to do so, shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning, and transferring all right, title, and interest of Trustor in and to the property so transferred and rights sold (but without any covenant or warranty, express or implied), and in connection therewith Trustee shall receive the proceeds of said sale or sales and apply the same as herein provided.

(iv) Any and all statements of fact or other recitals made in any of the instruments referred to in Section 8.4 as to nonpayment of the Debt, or as to the occurrence of any Event of Default, or as to Beneficiary having declared all or any of the Debt to be due and payable, or as to the request to sell, or as to notice of time, place, and terms of sale and of the property or rights to be sold having been duly given, or as to the refusal, failure, or inability to act of Trustee, or as to the appointment of any substitute or successor Trustee, or as to any other act or thing having been duly done by Trustor, Beneficiary or Trustee, or by such substitute or successor Trustee, shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited.

(v) The receipt of Trustee for the purchase money paid at any such sale, or the receipt of any other person authorized to receive the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees, or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price, or any part thereof, upon

or for any trust or purpose of this Security Instrument or. in any manner whatsoever, be answerable for any loss, misapplication, or non-application of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency, or regularity of any such sale.

(vi) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim, and demand whatsoever, whether at law or in equity, of Trustor in and to the properties and rights so sold, and shall be a perpetual bar both at law and iii equity against Trustor and any and all persons claiming or who may claim the same, or any part thereof of any interest therein, by, through. or under Trustor to the fullest extent permitted by applicable law.

(vii) In the event that Trustor, or any person claiming by, through, or under Trustor, shall transfer or refuse or fail to surrender possession of the Property after any sale thereof, then Trustor, or such person, shall be deemed a tenant at will of the purchaser at such sale, subject to eviction by means of writ of ejectment, summary ejectment, writ of possession, or any other right or remedy available hereunder or under applicable statutory or common laws.

(viii) Upon any such sale, it shall not be necessary for Trustee or any public officer acting under execution or order of court to have present at the sale or constructively in its possession any of the Property.

(ix) In the event a foreclosure hereunder shall be commenced by Trustee, Beneficiary may at any time before the sale of the Property abandon the sale, and may institute suit for the collection of the Debt and for the foreclosure of this Security instrument, or in the event that Beneficiary should institute a suit for collection of the Debt and for the foreclosure of this Security Instrument, Beneficiary may at any time before the entry of final judgment in said Suit dismiss the same and sell the Property in accordance with the provisions of this Security instrument.

(c) If a foreclosure proceeding is commenced by the Trustee but terminated prior to its completion, the Trustee's fees will be reasonable but not more than three percent (3%) of the Debt if the termination occurs prior to the first public auction sale.

8.8 **TRUSTEE'S FEES.** The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale or the maximum of $25,000.00, for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Trustor shall pay all expenses incurred by Trustee, including reasonable attorneys' fees, and a partial commission computed on five percent (5%) of the outstanding indebtedness, subject to the above stated maximum, in accordance with the following schedule:

(a) When a sale has been held, the Trustee is entitled to such compensation, if any, as is stipulated in the instrument.

(b) When no sale has actually been held, compensation for a Trustee's services is determined as follows:

(1) If no compensation for the Trustee's services in holding a sale is provided for in the instrument, the Trustee is not entitled to any compensation;

(2) If compensation is specifically provided for the Trustee's services when no sale is actually held, the Trustee is entitled to such compensation;

(3) If the instrument provides for compensation for the Trustee's services in actually holding a sale, but does not provide compensation for the Trustee's services when no sale is actually held, the Trustee is entitled to compensation as follows: (i) one-fourth of the completed sale compensation before the Trustee files the notice of hearing; (ii) one-half after the filing of the notice of hearing; and (iii) three-fourths after the hearing.

8.9 **ATTORNEYS' AND TRUSTEE'S FEES AND EXPENSES**. Notwithstanding anything in this Deed of Trust to the contrary, no party shall have any duty to pay or reimburse for a "Trustee fee", "reasonable Trustee fee", "attorneys' fees" or "reasonable attorneys' fees" and related expenses, except to the extent that such Trustee fee, attorneys' fees and related expenses are:

(i) reasonable in amount;
(ii) determined without reference to any statutory presumption as to amount;
(iii) based upon the actual amount of time expended and the standard hourly rate(s) of the Trustee, attorney(s) and paralegal(s) actually performing the tasks for which reimbursement is sought; and
(iv) actually incurred by the party seeking reimbursement.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 **RULES, REGULATIONS, ENVIRONMENTAL LAWS**: The Trustor hereby represents and warrants: (i) that the location, construction, occupancy, operation and use of the Property do not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (record or otherwise) affecting the Property, including without limitation all applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Regulations"); (ii) without limitation of (i) above, that the Property and the Trustor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any federal, state and local statutes, laws and ordinances (and the regulations, orders and decrees now or hereafter promulgated under any of the foregoing) and any common or decisional law, pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws") including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (**CERCLA/SARA**) and the Resource Conservation and Recovery Act of 1976 (**RCRA**), and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Property; (iii) that the Trustor has obtained all permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Property by reason of any Applicable Environmental Laws; and (iv) that the use which the Trustor makes and intends to make of the Property will not result in the disposal or other release of any hazardous substance or solid waste in, or, under or about the Property. The terms (as used in this Mortgage) "hazardous substance" and "release" shall have the meanings specified in CERCLA/SARA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA/SARA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and provided further, to the extent that the laws of the State of Florida establish a meaning for

"hazardous substance", "release", "solid waste" or "disposal" which is broader than that specified in either CERCLA/SARA or RCRA, such broader meaning shall apply.

The Trustor further represents and warrants that neither the Trustor, nor to the best of Trustor's knowledge after diligent inquiry, any previous owner or user of the Property used, generated, stored or disposed of any hazardous wastes, toxic substances or related materials ("Hazardous Materials") in, on, under, around or above the Property. Hazardous Materials shall include, but shall not be limited to, any substances, materials, or wastes that are or become regulated by any local governmental authority, the State of Florida, or the United States of America because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment. Hazardous Materials also include, without limitation, any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) as amended from time to time. Further the Trustor agrees that it will not use, handle, generate, treat, store or dispose of, or permit the use, handling, generation, treatment, storage or disposal of any Hazardous Materials, in, on, under, around or above the Property now or at any future time and will indemnify and save the Mortgagee harmless from any and all actions, proceedings, claims and losses of any kind, including but not limited to those arising from injury to any person including death, damage to or loss of use or value of real or personal property, and costs of investigation and cleanup or other environmental remedial work, which may arise in connection with Hazardous Materials as they relate to the Property.

If at any time it is determined that there are any Hazardous Materials located in, on, under, around or above the Property which are subject to any federal, state or local environmental law, statute, ordinance or regulation, court or administrative order or decree, or private agreement ("Environmental Requirements"), including Environmental Requirements requiring special handling of Hazardous Materials in their use, handling, collection, storage, treatment or disposal, the Trustor shall commence with diligence within thirty (30) days after receipt of notice of the presence of the Hazardous Materials and shall continue to diligently take all appropriate action, at the Trustor's sole expense, to comply with all such Environmental Requirements. Failure of the Trustor to comply with all Environmental Requirements shall constitute a default under this Mortgage.

The Trustor agrees to indemnify the Trustee against, to hold the Trustee harmless from and to reimburse the Trustee with respect to any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by the Trustee at any time and from time to time by reason of or arising out of: (a) the breach of any representation or warranty of the Trustor set forth in subsections (i) through (iv) above of this Section; (b) the failure of the Trustor to perform any obligation required to be performed by the Trustor in this Section; and (c) the ownership, construction, occupancy, operation, use and maintenance of the Property. These covenants of the Trustor apply, without limitation, to any violation of any Applicable Environmental Law in effect regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence.

Upon the occurrence of a default hereunder, the Trustor, or the Trustee, at its option but at the sole cost and expense of the Trustor, shall obtain and deliver to the Trustee an environmental audit of the Property prepared by a geohydroloist, an independent engineer or other qualified consultant or expert approved by the Trustee evaluating and confirming (i) whether any hazardous or other toxic substances are present in the soil or water at or adjacent to the Property and (ii) whether the operations at the Property comply with all air quality and other applicable

environmental laws. The Trustee reserves the right, upon reasonable notice, to enter and investigate the Property and to take such samples as may be necessary to perform soil, water, or other analyses. The Trustor warrants that the future use of the Property by either the Trustor or any lessee or any other third party shall not and will not violate any applicable air quality or other environmental laws of any nature and that it will notify the Trustee if it discovers that any have been or are about to be violated on the Property by anyone.

It is expressly acknowledged by the Trustor that the covenants, warranties and representations contained in this Section shall survive any payment and satisfaction of the Indebtedness evidenced by the Note and secured by this Mortgage or any foreclosure of the lien and security interest of this Mortgage and shall inure to the benefit of the Trustee in the event the Trustee becomes the successor-in-interest to the Property. The terms and provisions of this Section shall apply to any claim, demand, cause of action, loss, damage, liability, cost, expense and charge contemplated by this Section made or asserted at any time. Notwithstanding the above, this Section shall not be construed to impose any liability upon the Trustor for loss or damage resulting from any hazardous substance or solid waste materials which are placed on the Property solely and entirely after the Trustee has acquired title to the Property by foreclosure sale pursuant to the Mortgage or be a deed-in-lieu-of-foreclosure from the Trustor, so long as the Trustor shall have been in no way either directly or indirectly responsible for such hazardous substance or solid waste.

9.2 **LOAN COMMITMENT LETTER:** The parties have entered into a Commitment Letter dated August 8, 2007, the terms of which are incorporated herein by reference. Any conflict in the terms of this Deed of Trust and other loan documents and the terms of the commitment letter, the terms of the loan documents shall prevail.

9.3 **RELEASE**. The Trustor hereby RELEASES, DISCHARGES and ACQUITS FOREVER THE Trustee and its officers, directors, Trustees, agents, employees and counsel (in each case, past, present or future) from any and all Claims existing as of the date hereof (or the date of actual execution hereof by the Trustor, if later). As used herein, the term "Claim" shall mean any and all liabilities, claims, defenses, demands, actions, causes of action, judgments, deficiencies, interest, liens, costs or expenses (including court costs, penalties, attorneys' fees and disbursements, and amounts paid in settlement) of any kind and character whatsoever, including claims for usury, breach of contract, breach of commitment, negligent misrepresentation or failure to act in good faith, in each case whether nor known or unknown, suspected or unsuspected, asserted or unasserted or primary or contingent, and whether arising out of written documents, unwritten undertakings, course of conduct, tort, violations of law or regulations or otherwise.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

10.1 **REPRESENTATIONS.** The Trustor represents to the Trustee as follows:

(a) The Trustor is a limited liability company duly organized, validly existing and in good standing under the laws of North Carolina.

(b) The Trustor has fully power and authority to carry on its business as presently conducted, to own the Property, to execute and deliver the Loan Documents, and to perform its Obligations.

(c) No Trustor, Trustor affiliate, or person owning an interest in the Trustor or in any Trustor affiliate, is either a "Specially Designated National" or a "Blocked Person" as those terms

are defined in the Office of Foreign Asset Control Regulations (31 CFR Section 500 *et seq.*).

(d) The Loan transaction and the performance of all of the Trustor's Obligations have been duly authorized by all requisite limited liability company action, and each individual executing any Loan Document on behalf of the Trustor has been duly authorized to do so.

(e) The execution and performance of the Trustor's Obligations will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which the Trustor is a party or by which the Trustor may be bound or affected, and do not and will not violate or contravene any law to which the Trustor is subject; nor do any such other instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents.

10.2 **PATRIOT ACT**. Trustor warrants, represents and covenants that neither Trustor nor any guarantor nor any of its respective affiliated entities is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("EO13224"); (ii) whose name appears on the Untied States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons") (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, http:www.treas.gov/ofac/t11sdn.pdf); (iii) who commits, threatened to commit or supports "terrorism", as that term is defined in EO 13224, or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in subpart {i} – {iv} above are herein referred to as "Prohibited Person"). Trustor covenants and agrees that neither Trustor, nor any guarantor nor any of their respective affiliated entities will (i) conduct any business, nor engage in any transaction or dealing, with any "Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services to or for the benefit of a Prohibited Person, or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224, Deed of Trust further covenants and agrees to deliver (from time to time) to Trustee any such certification or other evidence as may be requested by Trustee in its sole and absolute discretion, confirming that (i) neither Trustor nor any Obligator is a Prohibited Person and (ii) neither Trustor nor any Obligator has engaged in any business, transaction or dealings with a Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person.

Trustor represents, warrants, covenants and agrees, as of the date of this Deed of Trust and continuing throughout the term of the Loan, that Trustor, Trustor affiliates, and all persons owning an interest in the Trustor or any Trustor affiliate (collectively, the "Trustor Parties") (i) are and at all times shall be in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act ("TWEA"), 50 U.S.C. App. Section 1 et seq., and the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. Section 1701 et seq., as the TWEA and the IEEPA may apply to Trustor's activities; (ii) are and at all times shall be in compliance with USA Patriot Act of 2001, Pub. L. No. 107-56 (the "Patriot Act") and all rules and regulations promulgated under the Patriot Act applicable to the Trustor Parties; (iii) are not now, nor have ever been under investigation by any governmental authority for, nor have been charged with or convicted for a crime under, 18 U.S.C. Sections 1956 or 1957 or any predicate offense thereunder, or a violation of Bank Secrecy Act, 31 U.S.C. Sections 5311 et seq (the "Bank Secrecy Act"); (iv) have never been assessed a civil penalty under any anti-money laundering laws or predicate offenses thereunder; (v) have not

had any of its funds seized, frozen or forfeited in any action relating to any Anti-Money Laundering Laws (as defined below) or predicate offenses thereunder; (vi) have taken such steps and implemental such policies as are reasonably necessary to ensure that the Trustor Parties are not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments which are (or which the Trustor Parties suspect or have reason to believe are) the proceeds of any illegal activity or which are intended to be used to promote or further any illegal activity; and (vii) have taken such steps and implemented such policies as are reasonably necessary to ensure that the Trustor Parties are in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, and that such steps include the development and implementation of an anti-money laundering compliance program within the meaning of Section 352 of the Patriot Act, to the extent Trustor is required to develop such a programs under the rules and regulations promulgated pursuant to Section 352 of the Patriot Act. For purposes of this provision, "Anti-Money Laundering Laws" means those laws, regulations and sanctions, state and federal, criminal and civil, that (a) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (b) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (c) require identification and documentation of the parties with whom a Financial Institution conducts business; or (d) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the Patriot Act, the Bank Secrecy Act, the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

SIGNATURES AND NOTARY BLOCK ON FOLLOWING PAGE.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust **under seal** as of the day and year set forth above.

"TRUSTOR"

HIGH ROCK PROPERTIES, LLC, a Delaware limited liability company

By: _____
Name: David Risdon
Title: Manager

STATE OF NORTH CAROLINA - COUNTY OF ROWAN

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

DAVID RISDON, as Manager of High Rock Properties, LLC, a Delaware limited liability company

This 31st day of August, 2007.

_____
Notary Public, State of North Carolina
Cindi A. Sprague

My Commission Expires: 6/09/09

CINDI A. SPRAGUE NOTARY PUBLIC ROWAN COUNTY, NC

STATE OF NORTH CAROLINA

COUNTY OF ROWAN

I, Cindi A. Sprague, a Notary Public of the County and State aforesaid, certify that David Risdon, either being personally known to me or proven by satisfactory evidence, who is the Manager of High Rock Properties, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is Manager of High Rock Properties, LLC and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and Notarial seal, this 31st day of August, 2007.

Notary Public

Printed or typed name of Notary Public:

Cindi A. Sprague

My Commission Expires:

06/09/09

(Affix Notarial Seal)

CINDI A. SPRAGUE NOTARY PUBLIC ROWAN COUNTY, NC

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EXHIBIT A

DESCRIPTION OF PROPERTY

All that tract or parcel of land, lying and being in the Salisbury Township, Rowan County, North Carolina containing 201 acres, more or less, and being more particularly described as follows:

BEGINNING at the N.C.G.S. Monument "Sign" having NAD 83 coordinates N: 718,945.20 and E: 1,586,373.38, said point being the POINT OF COMMENCEMENT; thence North 58 degrees 37 minutes 19 seconds West a distance of1638.84 feet to a point marked by a ½ inch rebar on the northwest right of way line of U.S. Hwy. 29 which is the POINT OF BEGINNING; thence North 47 degrees 15 minutes 25 seconds West a distance of 261.27 feet to a point marked by a ½ inch rebar; thence South 36 degrees 28 minutes 07 seconds West a distance of 107.37 feet to a point marked by a ½ inch rebar; thence North 43 degrees 57 minutes 46 seconds West a distance of 45.28 feet to a point marked by a ½ inch rebar; thence South 46 degrees 54 minutes 30 seconds West a distance of 243.39 feet to a point marked by a 2-1/2 inch galvanized iron pipe (g.i.p) on the east right of way line of Peace Street; thence along the east right of way line of Peace Street North 34 degrees 46 minutes 35 seconds West a distance of 171.48 feet to a point marked by a ½ inch rebar which is the intersection of the east right of way line of Peace Street and the north right of way line of Zeb Street; thence along the north right of way line of Zeb Street South 76 degrees 35 minutes 48 seconds West a distance of 150.30 feet to a point; thence North 11 degrees 44 minutes 20 seconds West a distance of 155.16 feet to a point marked by a 2-1/2 inch g.i.p; thence North 76 degrees 40 minutes 45 seconds West a distance of 949.43 feet to a point marked by a 1/2'" rebar; thence North 36 degrees 57 minutes 14 seconds East a distance of 799.67 feet to a point marked by a 2-1/2" g.i.p.; thence North 47 degrees 15 minutes 40 seconds East a distance of 712.77 feet to a point marked by a 2-1/2" g.i.p.; thence North 30 degrees 44 minutes 12 seconds East a distance of 246.07 feet to a point marked by a ½ inch rod; thence North 60 degrees 48 minutes 30 seconds East a distance of 353.02 feet to a point marked by a 2-1/2 inch g.i.p; thence North 77 degrees 37 minutes 07 seconds East a distance of 242.82 feet to a point marked by a railroad iron; thence North 01 degrees 20 minutes 39 seconds East a distance of 105.47 feet to a point marked by a ½ inch rebar set; thence North 86 degrees 12 minutes 15 seconds East a distance of 245.87 feet to a point marked by a ½ inch rebar; thence North 81 degrees 50 minutes 38 seconds East a distance of 97.98 feet to a point marked by a 2-1/2 inch g.i.p; thence South 74 degrees 54 minutes 29 seconds East a distance of 198.88 feet to a point marked by a ½ inch rebar; thence South 54 degrees 47 minutes 33 seconds East a distance of 495.59 feet to a point marked by a 1-1/2 inch pipe; thence South 14 degrees 23 minutes 18 seconds East a distance of 326.22 feet to a point marked by a 2-1/2 inch g.i.p; thence South 06 degrees 01 minutes 09 seconds East a distance of 337.21 feet to a point marked by a PK nail in the north bound lane of U.S. Hwy. 29; thence South 16 degrees 04 minutes 51 seconds West a distance of 262.71 feet to a point marked by a ½ inch rebar set; thence South 50 degrees 19 minutes 37 seconds West distance of 115.31 feet to a point and marked by 4 ½ rebar; thence South 44 degrees 54 minutes 09 seconds East a distance of 278.29 feet to a point marked by a ½ inch rebar set; thence South 13 degrees 36 minutes 09 seconds East a distance of 247.00 feet to a point marked by a ½ inch rebar set; thence South 00 degrees 16 minutes 51 seconds West a distance of 443.00 feet to a point marked by a ½ inch rebar set; thence along the meandering contour line elevation 655 a distance of 2000 feet, more or less, to a point on the west right of way line of Interstate 85, said point being South 44 degrees 08 minutes 56 seconds East a distance of 314.30 feet from the previously described point; thence along a curve to the left in the west right of way line of Interstate 85, a chord bearing of South 25 degrees 24 minutes 09 seconds West a chord distance of 162.40 feet, an arc distance of 162.42 feet, and a radius of

3167.5 feet to a point; thence along a curve to the left in the west right of way line of Interstate 85 a chord bearing of South 20 degrees 31 minutes 09 seconds West, a chord distance of 377.30 feet, an arc distance of 377.52 feet and a radius of 3167.5 to a point; thence along the west right of way line of Interstate 85 South 16 degrees 43 minutes 27 seconds West, through a 2-1/2 inch g.i.p at a distance of 1186.71 feet, a total distance of 2617.86 to a point marked by a ½ inch rebar set on the west right of way line of Interstate 85 said point also being North 29 degrees 14 minutes 17 seconds West a distance of 54.30 feet from a 2 inch pipe within the right of way of Interstate 85; thence North 29 degrees 14 minutes 17 seconds West a distance of 526.83 feet to a point marked by a 2-1/2 inch g.i.p; thence North 59 degrees 12 minutes 52 seconds West thorough a point marked by a ½ inch rebar set on the east right of way line of the Southern Railroad right of way at a distance of 1936.26 feet, a total distance of 1993.13 feet to a point marked by a stone; thence North 32 degrees 09 minutes 28 seconds East a distance of 2182.57 feet to a point; thence North 45 degrees 10 minutes 35 seconds East a distance of 463.00 feet to a point; thence North 52 degrees 10 minutes 25 seconds West a distance of 15.50 feet to a point; thence North 42 degrees 42 minutes 35 seconds East a distance of 100.36 feet to a point marked by a ½ inch rebar found which is the **POINT OF BEGINNING**.

Less and except the parcel of land containing 0.29 acre, more or less, belonging to Yadkin United Methodist Church which is more particularly described as follows:

Beginning at the N.C.G.S. Monument "Sign" having NAD 83 coordinates N: 718,945.20 and E: 1,586,373.38, said point being the POINT OF COMMENCEMENT; thence North 58 degrees 37 minutes 19 seconds West a distance of 1638.84 feet to a point marked by a ½ inch rebar on the northwest right of way line of U.S. Hwy. 29; thence North 18 degrees 25 minutes 02 seconds East a distance of 534.79 feet to a point marked by a 2-1/2 inch g.i.p said point being the POINT OF BEGINNING for this parcel; thence North 79 degrees 00 minutes 52 seconds West a distance of 170.01 feet to a point marked by a 2-1/2 inch g.i.p; thence North 10 degrees 39 minutes 51 seconds East a distance of 75.00 feet to a point; thence South 79 degrees 00 minutes 52 seconds East a distance of 170.01 feet to a point; thence South 10 degrees 39 minutes 51 seconds West a distance of 75.00 feet to a point, said point being the POINT OF BEGINNING.

Also, less and except the parcel of land containing 1.79 acres, more or less, belonging to Southern Railroad which is more particularly described as follows:

Beginning at the N.C.G.S Monument "Sign" having NAD 83 coordinates N: 718,945.20 and E: 1,586,373.38, said point being the POINT OF COMMENCEMENT; thence North 58 degrees 37 minutes 19 seconds West a distance of 1638.84 feet to a point marked by a ½ inch rebar on the northwest right of way line of U.S. Hwy 29; thence North 65 degrees 43 minutes 43 seconds East a distance of 1093.03 feet to a point marked by a ½ inch rebar set on the southeast right of way line of Southern Railroad, said point being the POINT OF BEGINNING; thence along the chord of a curve in the southeast right of way of Southern Railroad South 50 degrees 19 minutes 37 seconds West, passing through a ½ inch rebar set at 115.31 feet, a total distance of 1433.61 feet to a point on the southeast right of way line of Southern Railroad; thence along a curve to the right in the southeast right of way line of Southern Railroad an arc distance of 1445.91 feet to a point marked by a ½ inch rebar set, said curve having a chord bearing of North 50 degrees 19 minutes 37 seconds East, a chord distance of 1433.61 feet, and a radius of 3194.98 feet, said point being the POINT OF BEGINNING.

Less and except the parcel of land containing 2.807 acres, more or less, belonging to Aurora Motorsports and being more particularly described as follows:

Beginning at a ½ inch rebar found on the northwest side of U.S. Highway 29, said point being North 58 degrees 37 minutes 20 seconds West a distance of 1638.95 feet from NC Grid Monument "Sign"; thence North 47 degrees 15 minutes 25 seconds West a distance of 261.27

feet to a point marked by a ½ inch rebar on the east right of way line of Hunter Street; thence along a curve to the left in the east right of way line of Hunter Street, an arc length of 54.25 feet to a point, said curve having a radius of 242.10 feet, a chord bearing of North 16 degrees 37 minutes 59 seconds East and a chord distance of 54.14 feet; thence continuing along the east right of way line of Hunter Street North 10 degrees 12 minutes 49 seconds East a distance of 131.70 feet to a point; thence continuing along a curve to the left in the east right of way line of Hunter Street an arc distance of 135.94 feet, said curve having a radius of 305.52 feet, a chord bearing of North 02 degrees 34 minutes 31 seconds West and a chord distance of 134.82 feet; thence continuing along the east right of way line of Hunter Street North 15 degrees 21 minutes 51 seconds West a distance of 29.49 feet to a point which marks the intersection of the east right of way line of Hunter Street and the south right of way line of Piedmont Avenue; thence along the south right of way line of Piedmont Avenue South 79 degrees 01 minutes 08 seconds East a distance of 332.74 feet to a point marked by a 2 inch pipe which is also the intersection of the south right of way line of Piedmont Avenue and the west right of way line of NC Finishing Lane; thence along the west right of way line of NC Finishing Lane; thence along the west right of way line of NC Finishing Lane South 10 degrees 41 minutes 24 seconds West a distance of 363.34 feet to a point on the north side of US Hwy. 29; thence along the north side of US Hwy. 29 South 42 degrees 18 minutes 40 seconds West a distance of 137.21 feet to a point marked by a ½ inch rebar, said point being the Point of Beginning.

SCHEDULE OF LEASES

Schedule 1 to Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by High Rock Properties, LLC, a Delaware limited liability company, as Trustor to Samuel S. Williams, Esq., as Trustee for the benefit of NC High Rock Mortgage Lender, a Florida limited liability company, as Beneficiary, dated as of August 31, 2007.

1. NONE

EXHIBIT B

PERMITTED ENCUMBRANCES

United General Title Insurance Company

Commitment

Schedule B - II - Exceptions

The policy or policies to be issued will contain the following exceptions unless the same are disposed of to the satisfaction of the Company, including any changes in title occurring subsequent to the effective date of this commitment and prior to the date of issuance of the title policy:

1. Taxes for the year 2007, which are a lien but not yet due and payable.

2. Easement(s) to Southern Bell Telephone and Telegraph Company recorded in Book 252, Page 613 and Book 260, Page 97, aforesaid county registry.

3. Easement(s) to Duke Power Company recorded in Book 380, Page 459, aforesaid county registry.

4. Easement from Fieldcrest Mills, Inc. to Aluminum Company of America recorded in Book 533, Page 59, aforesaid county registry.

5. Lease to Southern Power Company recorded in Book 181, Page 302, aforesaid county registry.

6. Right of way Deed to Duke Power Company recorded in Book 415, Page 470, aforesaid county registry.

7. Easement(s) to State Highway Commission recorded in Book 349, Page 155, aforesaid county registry.

8. Right of Way Agreement to Duke Power Company recorded in Book 555, Page 384, aforesaid county registry.

9. Settlement Agreement between Rowan County, North Carolina and North Carolina Warehouse, LLC recorded in Book 920, Page 320, aforesaid county registry.

10. THE FOLLOWING AFFECTS EASEMENT TRACT 1:

11. Terms and Conditions of Appurtenant easement granted by Yadkin, Inc. to Fieldcrest Mills, Inc. recorded in Book 568, Page 889, aforesaid county registry.

12. Terms and conditions of instruments containing rights, agreements and reservations recorded in Book 191, Page 563; Book 486, Page 226; Book 551, Page 227; Book 448, Page 510; Book 427, Pages 230 & 233; and Book 199, Page 6, aforesaid county registry.

This commitment is invalid unless the Insuring Provisions and Schedule A and B are attached.

United General Title Insurance Company

Commitment

Schedule B - II - Exceptions

13. Agreement between Aluminum Company of America and Piedmont Natural Gas Company, Inc. for a right of way and easement recorded in Book 543, Page 383, aforesaid county registry.

14. Agreement between Aluminum Company of America and the Rowan County Board of Education for a right of way and easement for a sanitary sewer line recorded in Book 560, Page 190, aforesaid county registry.

15. Right of Way Deed to Duke Power Company recorded in Book 561, Page 159, aforesaid county registry.

16. Easement(s) to The Department of Transportation recorded in Book 594, Page 472, aforesaid county registry.

17. Right(s) of way of U.S. Highway 29, First Street, Rowan Avenue, Piedmont Avenue and Hunter Street

18. Right(s) of way of Southern Railroad.

19. Sixty-eight (68) foot power easement in favor of Duke Power Company located on the insured land as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

20. Portion of property lies within the 100 year flood plain located on the insured land as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

21. Rights of others in and to the Industrial Wastewater outfill line easement recorded in Book 568, Page 889, as shown on survey by John M. Story, Professonal Land Surveyor, dated October 28, 2005.

22. Substation Lot Lease recorded in Book 181, Page 302 located on the insured land as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

23. Rights of others in and to the 20 foot raw water pipe line easement recorded in Book 533, Page 59 as shonw on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

24. Processed water reservoir located on the insured land as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

This commitment is invalid unless the Insuring Provisions and Schedule A and B are attached.

United General Title Insurance Company

Commitment

Schedule B - II - Exceptions

25. Rights of others in and to the Yadkin pump station easement and original pump station easement as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

26. The Company does not insure riparian rights or title to that portion of the land lying below the highwater mark of Yadkin River as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

27. Power pole(s) located on insured land and power line(s) crossing said land as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

28. The Company does not insure riparian rights or title to that portion of the land lying below the highwater mark of pond as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

29. Southern Railroad Crossing insured property as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

30. Sign located on the insured land as shown on survey by John M. Story, Professional Land Surveyor, dated October 28, 2005.

31. The Company does not insure the area of acreage or square footage, if computed, of the land described in Schedule A hereof.

Closing Protection Letter - As to the transaction for which this commitment or policy is issued, the Company affords insured closing protection as described in the North Carolina Insured Closing Protection Letter (NCTIRB-01-2003) to the proposed insured Lender and its successors and/or assigns or the proposed insured Owner. Said letter is incorporated herein in its entirety. The approved attorney is the Closing Attorney. Claims under such letter shall be made promptly to the Company at its claims office at 999 18th Street, Suite 3400, Denver, CO 80201-1680 along with a copy of this commitment or policy.

Authorized Signature: H Anderson Berry III

This commitment is invalid unless the Insuring Provisions and Schedule A and B are attached.

Office: **Attorneys Title, a Division of United General Title**
Charlotte Plaza, 201 South College Street, Suite 1430, Charlotte, NC 28244 704-376-3503/800-432-6462