

**PROMISSORY NOTE**

\$2,655,000.00

May 23, 2005

Scoop Real Estate, L.P.  
 1618 Main Street  
 Sarasota, Florida 34236  
 (Individually and collectively "Borrower")

Wachovia Bank, National Association  
 214 North Hogan Street - FL0070  
 Jacksonville, Florida 32202  
 (Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America, at its office indicated above or wherever else Bank may specify, the sum of Two Million Six Hundred Fifty-Five Thousand Dollars (\$2,655,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

**USE OF PROCEEDS.** Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: purchase investment property.

**SECURITY.** Borrower has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, real and personal property collateral described in that certain security instrument of even date herewith.

**INTEREST RATE.** Interest shall accrue on the unpaid principal balance of this Note during each Interest Period from the date hereof at a rate per annum equal to 1-month LIBOR plus 2.15% ("Interest Rate"). The Interest Rate for each Interest Period shall accrue each day during such Interest Period, commencing on and including the first day to but excluding the last day. "Interest Period" means each period commencing on the first day of the calendar month and ending on the first day of the next succeeding calendar month; provided (i) the first Interest Period shall commence on the date hereof and (ii) any Interest Period that would otherwise extend past the maturity date of this Note shall end on the maturity date of this Note. "LIBOR" means, with respect to each Interest Period, the rate for U.S. dollar deposits with a maturity equal to the number of months specified above, as reported on Telerate page 3750 as of 11:00 a.m., London time, on the second London business day before such Interest Period begins, or, in the case of the first Interest Period, the second London business day before the first day of the calendar month during which such Interest Period begins (or if not so reported, then as determined by the Bank from another recognized source or interbank quotation).

**DEFAULT RATE.** In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

**INTEREST AND FEE(S) COMPUTATION (ACTUAL/360).** Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the

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**THIS NOTE IS MADE AND EXECUTED OUTSIDE OF THE STATE OF FLORIDA, AND THEREFORE NO FLORIDA DOCUMENTARY STAMP TAX IS DUE AND PAYABLE HEREON.**

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stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

**REPAYMENT TERMS.** This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on June 23, 2005, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on May 23, 2007. Borrower can prepay all or any portion of this Note without penalty.

**APPLICATION OF PAYMENTS.** Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

**DEFINITIONS. Loan Documents.** The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

**LATE CHARGE.** If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 10 or more days.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

**ATTORNEYS' FEES AND OTHER COLLECTION COSTS.** Borrower shall pay all of Bank's reasonable expenses incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

**USURY.** If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

**GRACE/CURE PERIOD.** **Grace Period.** The failure of timely payment of the Obligations shall not be a Default until 5 days after such payment is due. **Cure Period.** Except as provided below, any Default, other than non-payment, may be cured within 30 days after written notice thereof is mailed to Borrower by Bank. Borrower's right to cure shall be applicable only to curable defaults and shall not apply, without limitation, to Defaults based upon False Warranty or Cessation; Bankruptcy. Borrower shall have the right to cure a Default only twice during any 12 month period. Bank shall not exercise its remedies to collect the Obligations except as Bank reasonably deems necessary to protect its interest in collateral securing the Obligations during a cure period.

**DEFAULT.** If any of the following occurs and is not cured within the applicable Cure Period, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Business Alteration.** Without prior written consent of Bank, a material alteration in the kind or type of Borrower's business. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise.

**REMEDIES UPON DEFAULT.** If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's accounts without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

**ANNUAL FINANCIAL STATEMENTS.** Borrower shall deliver to Bank, within 90 days after the close of each fiscal year, reviewed financial statements reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules and in reasonable detail, prepared in conformity with generally accepted accounting principles,

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applied on a basis consistent with that of the preceding year. All such statements shall be reviewed by an independent certified public accountant acceptable to Bank. Such statements shall be certified as to their correctness by a principal financial officer of Borrower.

**TAX RETURNS.** Borrower shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Borrower to be true and complete copies of such returns. In the event an extension is filed, Borrower shall deliver a copy of the extension within 30 days of filing.

**FINANCIAL AND OTHER INFORMATION.** Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition.

**FINANCIAL COVENANTS.** Borrower agrees to the following provisions from the date hereof until final payment in full of the Obligations, unless Bank shall otherwise consent in writing, using the financial information for Borrower, its subsidiaries, affiliates and its holding or parent company, as applicable: **Maximum Leverage.** Borrower's total real estate-related indebtedness (except for purchase money mortgages) shall not exceed 50% of the Borrower's total real estate-related asset value, as determined by Bank in its sole discretion. **Liquidity Requirement.** Borrower shall, at all times, maintain Liquid Assets of not less than \$5,000,000.00. "Liquid Assets" shall mean the sum of all cash, time deposits and properly margined marketable securities.

**WAIVERS AND AMENDMENTS.** No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

**MISCELLANEOUS PROVISIONS.** **Assignment.** This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its

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properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and construed under the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's accounts with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements unless expressly referred to in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7391, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7391, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts.

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**WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

**IN WITNESS WHEREOF,** Borrower, on the day and year first above written, has caused this Note to be executed under seal.

Scoop Real Estate, L.P., a Delaware limited partnership

By: Scoop Capital, LLC, a Florida limited liability company,  
its general partner

By: Arthur Nadel  
Arthur Nadel, its Manager

STATE OF NORTH CAROLINA  
COUNTY OF Henderson

I, RITA J. White, a Notary Public of Henderson County, State of North Carolina, do hereby certify that Arthur Nadel personally came before me this day and acknowledged that he is the Manager of Scoop Capital, LLC, a Florida limited liability company, general partner ("General Partner") of SCOOP REAL ESTATE, L.P., a Delaware limited partnership (the "Partnership"), and that by authority duly given, the foregoing instrument was signed by the General Partner as its act and deed and as the act and deed of the Partnership.

Witness my hand and notarial seal on May 23, 2005.

Rita J. White  
Notary Public

My Commission Expires: 11/24/08

[OFFICIAL SEAL]

**AFFIDAVIT OF RECEIPT AND ACCEPTANCE**

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTHE


Before me this day personally appeared JON R. GOOD (the "Affiant"), who being by me first duly sworn, deposes and says:

1. That Affiant has been designated as a duly authorized agent of Wachovia Bank, National Association ("Lender"), for the purpose of receiving delivery of and accepting on behalf of Lender, that certain Promissory Note in the face amount of \$2,655,000.00, executed by SCOOP REAL ESTATE, L.P. ("Borrower") and made payable to Lender (the "Note") and related other loan documents executed outside of the State of Florida.

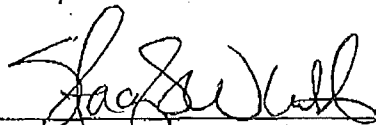
2. On 5/24, 2005, Affiant, acting as a duly authorized agent of Lender, received the Note from Borrower.

FURTHER AFFIANT SAYETH NOT.

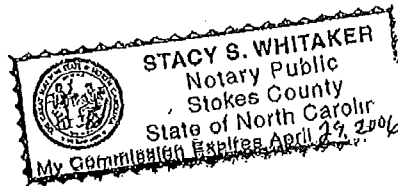
Signature of Lender's Agent:

  
\_\_\_\_\_  
JON R. GOOD

The foregoing affidavit was sworn to before me on 5/24, 2005.

  
\_\_\_\_\_  
Notary Public, State of North Carolina

My Commission Expires:



NOTARY PUBLIC

**OUT-OF-STATE AFFIDAVIT OF EXECUTION AND DELIVERY**

STATE OF NORTH CAROLINA  
COUNTY OF Henderson

BEFORE ME, the undersigned authority, this day personally appeared Arthur Nadel ("Affiant"), who, being by me first duly sworn, deposes on oath and says as follows that:

1. Affiant is the Manager of Scoop Capital, LLC, a Florida limited liability company, the general partner of SCOOP REAL ESTATE, L.P., a Delaware limited partnership ("Borrower"), and is authorized to provide this affidavit on behalf of Borrower.

2. That on the date hereof, Affiant, on behalf of the Borrower executed that certain Promissory Note in the stated principal amount of \$2,655,000.00, made payable by Borrower to WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("Lender").

3. That the Affiant forwarded and delivered the above referenced Promissory Note for delivery and acceptance by JON R. GOOD, in Winston-Salem, North Carolina, for and on behalf of Lender.

Dated: May 23, 2005.

FURTHER AFFIANT SAITH NOT.

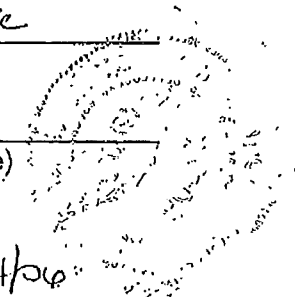
Arthur Nadel  
ARTHUR NADEL

Sworn to and subscribed before me on May 23, 2005, by ARTHUR NADEL, who is personally known to me or who has produced a valid driver's license as identification.

Bita J. White  
Notary Public

Bita J. White  
(Print, Type or Stamp Name)

My Commission Expires:  
11/24/06



RECEIVED



**MODIFICATION NUMBER ONE  
TO PROMISSORY NOTE**

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Scoop Real Estate, L.P.  
1618 Main Street  
Sarasota, Florida 34236  
(Hereinafter referred to as "Borrower")

Wachovia Bank, National Association  
Jacksonville, Florida 32202  
(Hereinafter referred to as "Bank")

THIS AGREEMENT is entered into as of June 8, 2007 by and between Bank and Borrower.

FLORIDA DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$2,450.00 HAS BEEN PAID OR WILL BE PAID DIRECTLY TO THE FLORIDA DEPARTMENT OF REVENUE. CERTIFICATE OF REGISTRATION NO. 26-8000424554-2.

**RECITALS**

Bank is the holder of a term Promissory Note executed and delivered by Borrower, dated May 23, 2005, in the original principal amount of \$2,655,000.00 (the "Note");

Borrower and Bank have agreed to modify the terms of the Note.

In consideration of Bank's continued extension of credit and the agreements contained herein, the parties agree as follows:

**AGREEMENT**

**ACKNOWLEDGMENT OF BALANCE.** The total outstanding unpaid principal balance under the Note as of June 4, 2007 is \$2,655,000.00.

**MODIFICATIONS.**

The Note is hereby modified by deleting the provisions in the Note establishing the repayment terms and substituting the following in their place and stead:

**REPAYMENT TERMS.** The Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on June 23, 2007, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on May 23, 2008.

**ACKNOWLEDGMENTS AND REPRESENTATIONS.** Borrower acknowledges and represents that the Note and other Loan Documents, as amended hereby, are in full force and effect without any defense, counterclaim, right or claim of set-off; that, after giving effect to this Agreement, no default or event that with the passage of time or giving of notice would constitute a default under the Loan Documents has occurred, all representations and warranties contained in the Loan Documents are true and correct as of this date, all necessary action to authorize the execution and delivery of this Agreement has been taken; and this Agreement is a modification of an existing obligation and is not a novation.

**COLLATERAL.** Borrower acknowledges and confirms that there have been no changes in the ownership of any collateral pledged to secure the Obligations (the "Collateral") since the Collateral was originally pledged; Borrower acknowledges and confirms that the Bank has existing, valid first priority security

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interests and liens in the Collateral; and that such security interests and liens shall secure Borrower's Obligations, including any modification of the Note or Loan Agreement, if any, and all future modifications, extensions, renewals and/or replacements of the Loan Documents.

**MISCELLANEOUS.** This Agreement shall be construed in accordance with and governed by the laws of the applicable state as originally provided in the Loan Documents, without reference to that state's conflicts of law principles. This Agreement and the other Loan Documents constitute the sole agreement of the parties with respect to the subject matter thereof and supersede all oral negotiations and prior writings with respect to the subject matter thereof. No amendment of this Agreement, and no waiver of any one or more of the provisions hereof shall be effective unless set forth in writing and signed by the parties hereto. The illegality, unenforceability or inconsistency of any provision of this Agreement shall not in any way affect or impair the legality, enforceability or consistency of the remaining provisions of this Agreement or the other Loan Documents. This Agreement and the other Loan Documents are intended to be consistent. However, in the event of any inconsistencies among this Agreement and any of the Loan Documents, the terms of this Agreement, and then the Note, shall control. This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts. Each such counterpart shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. Terms used in this Agreement which are capitalized and not otherwise defined herein shall have the meanings ascribed to such terms in the Note. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

**DEFINITIONS.** The term "Loan Documents", as used in this Agreement and the other Loan Documents, refers to all documents, agreements, and instruments executed in connection with any of the Obligations (as defined herein), and may include, without limitation, modification agreements, a commitment letter that survives closing, a loan agreement, any note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, letters of credit and any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101). The term "Obligations", as used in this Agreement and the other Loan Documents, refers to any and all indebtedness and other obligations of every kind and description of the Borrower to the Bank or to any Bank affiliate, whether or not under the Loan Documents, and whether such debts or obligations are primary or secondary, direct or indirect, absolute or contingent, sole, joint or several, secured or unsecured, due or to become due, contractual, including, without limitation, swap agreements (as defined in 11 U.S.C. § 101), arising by tort, arising by operation of law, by overdraft or otherwise, or now or hereafter existing, including, without limitation, principal, interest, fees, late fees, expenses, attorneys' fees and costs that have been or may hereafter be contracted or incurred.

**WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE

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EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS AGREEMENT. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

IN WITNESS WHEREOF, the undersigned have duly signed and sealed this Agreement the day and year first above written.

Scoop Real Estate, L.P.

By: Scoop Capital, LLC, General Partner

By: Arthur Nadel (SEAL)  
Arthur Nadel, Manager

Wachovia Bank, National Association

By: Katia S Moore (SEAL)  
Katia Moore, Vice President

Tracking #: 280750  
CAT - Deal # 843552 Facility ID 634674

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**MODIFICATION NUMBER TWO  
TO PROMISSORY NOTE**

Scoop Real Estate, L.P.  
1618 Main Street  
Sarasota, Florida 34236  
(Hereinafter referred to as "Borrower")

Wachovia Bank, National Association  
Jacksonville, Florida 32202  
(Hereinafter referred to as "Bank")

THIS AGREEMENT is entered into as of September 12, 2008 by and between Bank and Borrower.

**RECITALS**

Bank is the holder of a term Promissory Note, as modified by that certain Modification Number One to Promissory Note dated June 8, 2007 and as may be modified from time to time, executed and delivered by Borrower, dated May 23, 2005, in the original principal amount of \$2,655,000.00 (the "Note");

Borrower and Bank have agreed to modify the terms of the Note.

In consideration of Bank's continued extension of credit and the agreements contained herein, the parties agree as follows:

**AGREEMENT**

**ACKNOWLEDGMENT OF BALANCE.** The total outstanding unpaid principal balance under the Note as of September 9, 2008 is \$2,655,000.00.

**MODIFICATIONS.**

The Note is hereby modified by deleting the provisions in the Note establishing the repayment terms and substituting the following in their place and stead:

**REPAYMENT TERMS.** The Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on September 23, 2008, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on May 23, 2009.

**ACKNOWLEDGMENTS AND REPRESENTATIONS.** Borrower acknowledges and represents that the Note and other Loan Documents, as amended hereby, are in full force and effect without any defense, counterclaim, right or claim of set-off; that, after giving effect to this Agreement, no default or event that with the passage of time or giving of notice would constitute a default under the Loan Documents has occurred, all representations and warranties contained in the Loan Documents are true and correct as of this date, all necessary action to authorize the execution and delivery of this Agreement has been taken; and this Agreement is a modification of an existing obligation and is not a novation.

**COLLATERAL.** Borrower acknowledges and confirms that there have been no changes in the ownership of any collateral pledged to secure the Obligations (the "Collateral") since the Collateral was originally pledged; Borrower acknowledges and confirms that the Bank has existing, valid first priority security interests and liens in the Collateral; and that such security interests and liens shall secure Borrower's

IN WITNESS WHEREOF, the undersigned have duly signed and sealed this Agreement the day and year first above written.

Scoop Real Estate, L.P.

By: Scoop Capital, LLC, General Partner

By: Arthur Nadel (SEAL)  
Arthur Nadel, Manager

Wachovia Bank, National Association

By: Katia S Moore (SEAL)  
Katia Moore, Vice President

Tracking #, 711077  
CAT - Deal # 1002689 Facility ID 792491

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This instrument was prepared by and should be returned to: K. Tyler Hill, Esq., of Hill, Ward & Henderson, P.A. P.O. Box 2231 Tampa, Florida 33601



Doc ID: 004110900026 Type: CRP  
Recorded: 05/24/2005 at 02:26:00 PM  
Fee Amt: \$89.00 Page 1 of 26  
Alamance, NC  
DAVID J.P. BARBER REGISTER OF DEEDS  
BK 2247 PG 707-732

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**DEED OF TRUST AND SECURITY AGREEMENT**

THIS DEED OF TRUST AND SECURITY AGREEMENT (the "Deed of Trust") is made and entered as of May 24, 2005, by SCOOP REAL ESTATE, L.P., a Delaware limited partnership ("Grantor"), whose address is 1618 Main Street, Sarasota, Florida 34236, to and in favor of TRSTE, INC., a Virginia corporation ("Trustee"), whose address is 301 South Tryon Street, Charlotte, North Carolina 28202, and for the benefit of the owner and holder of a promissory note, WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("Lender"), whose address is 100 South Ashley Drive, Suite 950, Tampa, Florida 33602.

**WITNESSETH:**

That for diverse good and valuable considerations and to secure (i) the payment of an indebtedness in the aggregate sum of Two Million Six Hundred Fifty-Five Thousand Dollars (\$2,655,000.00), or so much thereof as may be advanced, to be paid in accordance with a Promissory Note dated the date hereof (the "Note") (which Note has a maturity date of on or before May 23, 2007), together with interest thereon and any and all sums due or which may become due from Grantor to Lender under the Loan Documents (as defined in the Note); (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all sums due or that may become due under or in connection with any present or future swap agreements (as defined in 11 U.S.C. §101) between Grantor and Lender; (iv) the repayment of all reimbursement obligations due or that may become due under or in connection with any present or future letters of credit issued by Lender for the account of Grantor; and (v) all other obligations or indebtedness of Grantor to Lender of whatever kind or character and whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees, Grantor does grant, bargain, sell, alien, remise, release, convey and confirm unto Trustee, as trustee for Lender and its successors and assigns, in fee simple, all of that certain tract of land of which Grantor is now seized and possessed and in

**FOR LENDER USE ONLY:**

SATISFACTION: The Liabilities secured by the within Deed of Trust has been satisfied in full, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Signed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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actual possession, situate in the County of Alamance, State of North Carolina, which is more fully described in Exhibit A attached hereto and made a part hereof, together with the buildings and improvements thereon erected or to be erected (hereinafter referred to as the "**Premises**");

TOGETHER with:

(i) all leasehold estate, and all right, title and interest of Grantor in and to all leases or subleases covering the Premises or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Grantor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

(ii) all right, title and interest of Grantor in and to all options to purchase or lease the Premises or any portion thereof or interest therein, and any greater estate in the Premises owned or hereafter acquired;

(iii) all easements, streets, ways, alleys, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights;

(iv) any and all buildings, structures and improvements now or hereafter erected thereon, including, but not limited to the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings, structures and improvements (sometimes hereinafter referred to as the "**Improvements**");

(v) all fixtures, appliances, machinery, equipment, furniture, furnishings and articles of personal property now or hereafter affixed to, placed upon or used in connection with the operation of the Premises, all gas, steam, electric, water and other heating, cooking, refrigerating, lighting, plumbing, ventilating, irrigating and power systems, machines, appliances, fixtures, and appurtenances which are now or may hereafter pertain or be used with, in or on the Premises even though they may be detached or detachable and all building improvement and construction materials, supplies and equipment hereafter delivered to the Premises contemplating installation or use in any construction to be performed thereon and all rights and interests of Grantor in building permits and architectural plans and specifications relating to contemplated construction or Improvements on the Premises and all rights and interests of Grantor in present or future mortgage loan commitments pertaining to any of the Premises or Improvements thereon, except for the personal property of any tenants occupying the Premises (sometimes hereinafter referred to as the "**Personal Property**");

(vi) all awards and proceeds of condemnation for the Premises or any part thereof to which Grantor is entitled for any taking of all or any part of the Premises by condemnation or exercise of the right of eminent domain. All such awards and condemnation proceeds are hereby assigned to Lender and Lender is hereby authorized, subject to the provisions contained in this Deed of Trust, to apply such awards and condemnation proceeds or any part thereof, after deducting therefrom any expenses incurred by Lender in the collection or handling thereof, toward the payment, in full or in part, of the Note, notwithstanding the fact that the amount owing thereon may not then be due and payable;

(vii) all rents, issues and profits of the Premises and all the estate, right, title and interest of every nature whatsoever of the Grantor in and to the same;

(viii) all accounts (including contract rights) and general intangibles pertaining to or arising from or in connection with all or any part of the Property, as hereinafter defined, including without limitation all proceeds and choses in action arising under any insurance policies maintained with respect to all or any part of the Property; and,

(ix) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing items.

All of the foregoing real and personal property, and all rights, privileges and franchises thereto are collectively referred to as the "Property."

TO HAVE AND TO HOLD, all and singular the Property hereby conveyed, and the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of Grantor in and to the same and every part and parcel thereof unto Lender in fee simple, forever.

IN TRUST, PROVIDED ALWAYS, that if Grantor shall pay to Lender any and all indebtedness due by Grantor to Lender (including the indebtedness evidenced by the Note and any and all renewals of the same) and shall perform, comply with and abide by each and every stipulation, agreement, condition, and covenant of the Note and the Loan Documents; and any swap agreements are complied with and abided by, then this Deed of Trust and the estate hereby created shall cease and be null and void, and canceled of record at the request and expense of Grantor, and if Default occurs, Trustee is authorized to foreclose and sell the Property under power of sale or by judicial proceeding according to applicable law and as provided herein.

To protect the security of this Deed of Trust, Grantor further covenants, warrants and agrees with Lender as follows:

#### **ARTICLE I COVENANTS AND AGREEMENTS OF GRANTOR**

**1.1. Payment of Secured Obligations.** Grantor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, and the charges, fees and the principal of, and interest on, any future advances secured by this Deed of Trust and shall otherwise comply with all terms and conditions of the Note and this Deed of Trust.

**1.2. Warranties and Representations.** Grantor hereby covenants with Lender that Grantor is indefeasibly seized of the Property in fee simple; that the Grantor has full power and lawful right to convey the same in fee simple as aforesaid; that it shall be lawful for Grantor at all times peaceably and quietly to enter upon, hold, occupy and enjoy said Property and every



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part thereof; that Grantor will make such further assurances to perfect the lien interest in the Property in Lender, as may reasonably be required; and that, except for the matters described on Schedule B-2 of the Lender Title Insurance Policy issued and delivered in connection with the closing of the loan evidenced by the Note (the "**Permitted Exceptions**"), Grantor does hereby fully warrant the title to the Property and every part thereof and will defend the same against the lawful claims of all persons whomsoever except for the Permitted Exceptions.

Grantor further represents and warrants to Lender that all information, reports, paper, and data given to Lender with respect to Grantor, and to the loan evidenced by the Note and this Deed of Trust are accurate and correct in all material respects and complete insofar as may be necessary to give Lender a true and accurate knowledge of the subject matter.

**1.3. Ground Leases, Leases, Subleases and Easements.** Grantor, at Grantor's sole cost and expense, shall maintain and cause to be performed all of the covenants, agreements, terms, conditions and provisions on its part to be kept, observed and preformed under any ground lease, lease, sublease or easements which may constitute a portion of or an interest in the Property, shall require its tenants or subtenants to keep, observe and perform all the covenants, agreements, terms, conditions and provisions on their part to be kept, observed or performed under any and all ground leases, leases, subleases or easements; and shall not suffer or permit any breach or default to occur with respect to the foregoing; and in default thereof Lender shall have the right to perform or to require performance of any such covenants, agreements, terms, conditions or provisions of any such ground lease, lease, sublease or easements and to add any expense incurred in connection therewith to the debt secured hereby, which such expense shall bear interest from the date of payment to the date of recovery by Lender at the Default Rate as hereinafter defined. Any such payment by Lender with interest thereon shall be immediately due and payable. The Grantor shall not, without the consent of Lender, consent to the modification, amendment, cancellation, termination or surrender of any such ground lease, lease, sublease, or easement.

No release or forbearance of any Grantor's obligation under any such ground lease, lease, or sublease, shall release Grantor from any of its obligations under this Deed of Trust.

**1.4. Required Insurance.** Grantor will, at Grantor's sole cost and expense, maintain or cause to be maintained with respect to the Property, and each part thereof, the following insurance:

(a) Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "all-risk" or "special form" coverage, in an amount not less than the greater of the original amount of the Note or the full replacement cost of the Improvements; and

(b) Single limit comprehensive general liability insurance for not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, \$2,000,000.00 products/completed operations aggregate, and \$1,000,000.00 personal and advertising injury, against any claims and liability therefor to persons or property occurring on the Property; and

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(c) Flood insurance, whenever the same is available and if in the opinion of Lender such protection is necessary; and

(d) Rental loss insurance, if any lease provides for the abatement of rent, and business interruption insurance, if any of the Mortgage Property is or will be occupied by the Grantor (either type of insurance must cover debt service, real estate taxes, and insurance premiums for a period of at least six (6) months); and

(e) Such other insurance, and in such amount, as may from time to time be required by Lender against the same or other hazards.

All policies of insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Grantor.

Grantor may effect for its own account any insurance not required under this Section 1.4, but any such insurance effected by Grantor on the Property, whether or not so required, shall be for the mutual benefit of Grantor and Lender and shall be subject to the other provisions of this Deed of Trust.

**1.5. Delivery of Policies, Payment of Premiums.** All policies of insurance shall be issued by companies and in amounts satisfactory to Lender. All policies of insurance shall name Lender as an additional insured, and shall have attached thereto a Lender's endorsement and a loss payment endorsement for the benefit of Lender in form satisfactory to Lender. Grantor shall furnish Lender with an original policy of all policies of required insurance. If Lender consents to Grantor providing any of the required insurance through blanket policies carried by Grantor and covering more than one location, then Grantor shall furnish to Lender with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date (provided, however, that Lender may grant or withhold its consent to any blanket policy in its sole discretion). At least thirty (30) days prior to the expiration of each such policy, Grantor shall furnish Lender with evidence satisfactory to Lender of the payment of the required premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Lender. In the event Grantor fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Section, Lender may procure such insurance or single-interest insurance for such risks covering Lender's interest, and Grantor will pay all premiums thereon promptly upon demand by Lender, and until such payment is made by Grantor the amount of all such premiums together with interest thereon at the Default Rate.

**1.6. Insurance Proceeds.** After the happening of any casualty to the Property or any part thereof, Grantor shall give prompt written notice thereof to Lender.

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(a) In the event of any damage to or destruction of the Property, Lender shall have the option in its sole discretion of applying or paying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Lender may determine, or (ii) to the restoration of the Improvements, or (iii) to Grantor.

(b) In the event of such loss or damage, all proceeds of insurance shall be payable to Lender, and Grantor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender. Lender is hereby authorized and empowered by Grantor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

(c) Except to the extent that insurance proceeds are received by Lender and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Grantor from repairing or maintaining the Property as provided in this Deed of Trust or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Lender of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

**1.7. Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of the Grantor in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Grantor or the purchaser or grantee of the Property. Grantor hereby appoints Lender its attorney-in-fact to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise.

**1.8. Taxes, Utilities and Impositions.** Grantor will pay, cause to be paid and discharged, on or before the last day on which they may be paid without penalty or interest, all such duties, taxes (including, but not limited to, ad valorem real estate taxes), sewer rents, charges for water, or for setting or repairing of meters, and all other utilities on the Property or any part thereof, and any assessments and payments, usual or unusual, extraordinary or ordinary, which shall be imposed upon or become due and payable or become a lien upon the Mortgage Property or any part thereof and the sidewalks or streets in front thereof and any values therein by virtue of any present or future law of the United States or of the State, County or City wherein the Premises are located (all of the foregoing being herein collectively called "**Impositions**"). In the event of a default in the payment of any such Imposition, Lender may pay the same and the amount so paid by Lender shall, at the Lender's option, become immediately due and payable with interest at the Default Rate and shall be deemed part of the indebtedness secured by this Deed of Trust.

If at any time there shall be assessed or imposed (i) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by Grantor pursuant to this Section or (ii) a license fee, tax or assessment imposed on Lender and measured by or based in whole or part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments

or fees shall be deemed to be included within the term "Impositions" as defined in this Section, and Grantor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Lender, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Grantor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Lender or on the obligations secured hereby.

Grantor will pay all mortgage recording taxes and fees payable with respect to this Deed of Trust or other mortgage or transfer taxes due on account of this Deed of Trust or the Note secured hereby, including but not limited to North Carolina documentary stamps and intangible taxes.

Grantor will exhibit to Lender the original receipts or other reasonably satisfactory proof of the payment of all Impositions which may affect the Property or any part thereof or the lien of the Deed of Trust promptly following the last date on which each Imposition is payable hereunder.

Notwithstanding the foregoing, Grantor shall have the right, after prior written notice to Lender, to contest at its own expense the amount and validity of any imposition affecting the Property by appropriate proceedings conducted in good faith and with due diligence and to postpone or defer payment thereof, if and so long as:

(a) such proceedings shall operate to suspend the collection of such Imposition from Grantor or the Property; or

(b) Neither the Property nor any part thereof would be in immediate danger of being forfeited or lost by reason of such proceedings, postponement or deferment; or

(c) In the case of any Imposition affecting the Property which might be or become a lien, encumbrance or charge upon or result in any forfeiture or loss of the Property or any part thereof, or which might result in loss or damage to Grantor or Lender, Grantor, prior to the date such Imposition would become delinquent, shall have furnished Lender with security satisfactory to Lender, and, in the event that such security is furnished, Lender shall not have the right during the period of the contest to pay, remove or discharge the Imposition.

**1.9. Maintenance, Repairs, Alterations.** Grantor shall keep the Property, or cause the same to be kept, in good condition and repair and fully protected from the elements to the satisfaction of Lender; Grantor shall not commit or permit to be committed waste thereon and shall not do nor permit to be done any act by which the Property shall become less valuable; Grantor will not remove, demolish or structurally alter any of the Improvements (except such alterations as may be required by laws, ordinances or regulations) without the prior written permission of Lender; Grantor shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Premises and promptly restore in like manner any Improvements which may be damaged or destroyed thereon and will pay when due all claims for labor performed and materials furnished therefor; Grantor shall use and operate, and shall require its lessees or licensees to use or operate, the Property in

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compliance with all applicable laws, ordinances, regulations, covenants, conditions and restrictions, and with all applicable requirements of any ground lease, lease or sublease now or hereafter affecting the Premises or any part thereof. Unless required by law or unless Lender has otherwise agreed in writing, Grantor shall not allow changes in the stated use of Property from that which was disclosed to Lender at the time of execution hereof. Grantor shall not initiate or acquiesce to a zoning change of the Property without prior notice to and consent of Lender. Lender and its representatives shall have access to the Property at all reasonable times to determine whether Grantor is complying with its obligations under this Deed of Trust, including, but not limited to, those set out in this Section.

**1.10. Eminent Domain.** Should the Property, or any part thereof or interest therein, be taken or damaged by reason of any public use or improvement or condemnation proceeding, or in any other manner ("**Condemnation**"), or should Grantor receive any notice or other information regarding such Condemnation, Grantor shall give prompt written notice thereof to Lender.

(a) Lender shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation, and shall be entitled, at its option, to commence, appear in and prosecute in its own name any action or proceedings relating thereto. Lender shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Grantor (the "**Proceeds**") are hereby assigned to Lender and Grantor agrees to execute such further assignments of the Proceeds as Lender may require.

(b) In the event any portion of the Property is so taken or damaged, Lender shall have the option in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby, or to apply all such Proceeds, after such deductions, to the restoration of the Property upon such conditions as Lender may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(c) Any amounts received by Lender hereunder (after payment of any costs in connection with obtaining same), shall, if retained by Lender, be applied in payment of any accrued interest and then in reduction of the then outstanding principal sum of the Note, notwithstanding that the same may not then be due and payable. Any amount so applied to principal shall be applied to the payment of installments of principal on the Note in inverse order of their due dates.

**1.11. Actions by Lender to Preserve the Security of this Deed of Trust.** If Grantor fails to make any payment or to do any act as and in the manner provided for in this Deed of Trust or the Note, Lender, in its own discretion, without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation, may make or do the same in such manner and to such extent as Lender may deem necessary to protect the security

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hereof. Grantor will pay upon demand all expenses incurred or paid by Lender (including, but not limited to, attorneys' fees and court costs including those of appellate and bankruptcy proceedings) on account of the exercise of any of the aforesaid rights or privileges or on account of any litigation which may arise in connection with this Deed of Trust or the Note or on account of any attempt, without litigation, to enforce the terms of this Deed of Trust or the Note. In case the Property or any part thereof shall be advertised for foreclosure sale and not sold, Grantor shall pay all costs in connection therewith.

In the event that Lender is called upon to pay any sums of money to protect this Deed of Trust and the Note as aforesaid, all monies advanced or due hereunder shall become immediately due and payable, together with interest at the Default Rate, computed from the date of such advance to the date of the actual receipt of payment thereof by the Lender. All such monies so advanced by Lender shall be deemed to be secured by this Deed of Trust.

**1.12. Cost of Collection.** In the event this Deed of Trust is placed in the hands of an attorney for the collection of any sum payable hereunder, Grantor agrees to pay all costs of collection, including reasonable attorneys' fees (including those in all appellate and bankruptcy proceedings) incurred by Lender, either with or without the institution of any action or proceeding, and in addition to all costs, disbursements and allowances provided by law. All such costs so incurred shall be deemed to be secured by this Deed of Trust.

**1.13. Survival of Warranties.** All representations, warranties and covenants of Grantor contained herein or incorporated by reference shall survive funding of the loan evidenced by the Note and shall remain continuing obligations, warranties and representations of Grantor during any time when any portion of the obligations secured by this Deed of Trust remain outstanding.

**1.14. Additional Security.** In the event Lender at any time holds additional security for any obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, as its option, either before, concurrently herewith or after a sale is made hereunder.

**1.15. Inspections.** Lender, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or on any part of the Mortgage Property for the purpose of inspecting the same, and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust.

**1.16. Liens.** Grantor shall pay and promptly discharge, within the lesser of thirty (30) days after recording thereof or ten (10) days after demand by Lender, at Grantor's cost and expense, all liens, encumbrances and charges upon the Property or any part thereof or interest therein. Notwithstanding the above, Grantor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Grantor shall first deposit with Lender a bond or other security satisfactory to Lender in such amounts as Lender shall reasonably require, and provided further that Grantor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Grantor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Lender, Lender may but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a

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bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any amount so paid by Lender shall, at Lender's option, become immediately due and payable with interest at the Default Rate, and shall be deemed part of the indebtedness secured by this Deed of Trust.

**1.17. Future Advances.** This Deed of Trust is given to secure not only existing indebtedness, but also future advances, whether such advances are obligatory or are to be made at the option of Lender, or otherwise, as are made within fifteen (15) years from the date hereof, to the same extent as if such future advances are made on the date of the execution of this Deed of Trust. The total amount of indebtedness initially secured hereunder is Two Million Six Hundred Fifty-Five Thousand Dollars (\$2,655,000.00), and the total amount of indebtedness that may be so secured may decrease to a zero amount from time to time, or may increase from time to time, but the total unpaid balance so secured at one time may not exceed Ten Million Dollars (\$10,000,000.00), plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Property, with interest on such disbursements at the Default Rate as hereinafter defined.

**1.18. No Limitation of Future Advance Rights.** Grantor covenants and agrees with Lender that:

(a) Grantor waives and agrees not to assert any right to limit future advances under this Deed of Trust, and any such attempted limitation shall be null, void and of no force and effect.

(b) An event of default under this Deed of Trust shall automatically exist (i) if Grantor executes any instrument which purports to have or would have the effect of impairing the priority of or limiting any future advance which might ever be made under the Deed of Trust or (ii) if Grantor takes, suffers, or permits any action or occurrence which would adversely affect the priority of any future advance which might ever be made under the Deed of Trust.

**1.19. Appraisals.** Grantor covenants and agrees that Lender may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency or at such other times as the Lender may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by the Lender. The cost of such appraisal shall be borne by the Grantor. If requested by Lender, the Grantor shall execute an engagement letter addressed to the appraiser selected by the Lender. Grantor's failure or refusal to sign such an engagement letter however shall not impair Lender's right to obtain such an appraisal. Grantor agrees to pay the cost of such appraisal within ten (10) days after receiving an invoice for such appraisal.

**1.20. Escrows.** In order to more fully protect the security of this Deed of Trust and to insure the payment of ad valorem real estate taxes, personal property taxes and insurance premiums for all insurance applicable to the Mortgage Property, Lender may require, at its option, that Grantor pay to Lender (in addition to any other sums due under the Note or this Deed of Trust), together with each installment due under the Note, such amounts as are necessary to enable Lender to pay, at least thirty (30) days before due, all such taxes and insurance premiums.

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In addition, Grantor shall deposit, at least thirty (30) days prior to the due date of any such ad valorem real estate taxes, personal property taxes or insurance premiums, such additional amounts as may be necessary to provide Lender with sufficient funds in its escrow account to pay each such item at least thirty (30) days in advance of the due date thereof.

**1.21. Transfer or Further Encumbrance of the Property.** If Grantor shall sell, convey, lease, assign, exchange, pledge, mortgage, hypothecate or transfer any interest in the Property (it being understood that a transfer of interest in Grantor or a change in the present composition of the partners of Grantor, if Grantor is a partnership, or any change in the stock ownership of Grantor, if Grantor is a corporation, or in any corporate partner shall be and the same is deemed to be a transfer of the Property) without the prior written consent of Lender, which consent may be withheld in the sole and absolute discretion of Lender, the same shall constitute an event of default under this Deed of Trust. In the event of any such sale, conveyance, lease, assignment, exchange, pledge, mortgage, hypothecation or transfer for which the written consent of Lender has not been first obtained, Lender shall have the right to declare all indebtedness secured by this Deed of Trust to be immediately due and payable.

Grantor acknowledges that Lender, in determining whether or not to make the loan secured hereby, examined the qualifications and creditworthiness of Grantor, found them to be acceptable, and relied and will continue to rely upon the same as the means of repayment of the loan. Grantor also acknowledges that Lender evaluated the background and experience of Grantor in owning and operating property such as the Property, found them acceptable and relied and will continue to rely upon the same as the means of maintaining the value of the Property which is Lender's security for the loan. Grantor acknowledges that it is a business person or entity well-experienced in borrowing money and owning and operating property such as the Property, was ably represented by licensed attorneys-at-law in the negotiation and documentation of the loan secured hereby and bargained at arm's length, in good faith, and without duress of any kind for all of the terms and conditions of the Note, this Deed of Trust and the other loan documents, including this Section. Grantor further recognizes that any secondary or junior financing placed upon the Property (a) may divert funds which would otherwise be used to pay the indebtedness secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; and (c) would impair Lender's right to accept a deed in lieu of foreclosure from Grantor, as a foreclosure by Lender would be necessary to clear the title to the Property.

In accordance with the foregoing and for the purposes of (i) protecting Lender's security, both of repayment by Grantor and of the value of the Property; (ii) giving Lender the full benefit of its bargain and contract with Grantor; and (iii) keeping the Property free of subordinate financing liens, Grantor agrees that if anything in this Section be deemed a restraint on alienation, that it is a reasonable one and that except as otherwise herein provided any sale, conveyance, lease, assignment, exchange, pledge, mortgage, hypothecation, further encumbrance or other transfer of title to the Property or any interest therein (whether voluntary or by operation of law) without Lender's prior written consent shall be an event of default hereunder. For the purpose of illustrating, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Property and therefore an event of default hereunder:



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(a) any sale, conveyance, lease, assignment, exchange, pledge, mortgage, hypothecation, further encumbrance or other transfer of, or the grant of a security interest in, all or any part of the Property; or

(b) any sale, conveyance, assignment, exchange, pledge, mortgage, hypothecation, encumbrance or other transfer of, or the grant of a security interest in, any partnership interest of any partner; or

(c) any change in the present composition of Grantor or its partners.

Any waiver by Lender of a default by Grantor under this Section shall not constitute a waiver of any right, remedy or power of Lender upon a subsequent event of default by Grantor under this Section, and any consent to any one sale, conveyance, lease, assignment, exchange, pledge, mortgage, hypothecation, further encumbrance or other transfer as hereinbefore enumerated shall not be deemed a consent to any subsequent such act.

If Grantor sells or transfers any of its interest in the Property without the prior written consent of Lender, Lender or its successors and/or assigns may declare the entire balance secured by this Deed of Trust immediately due and payable or, at its sole option, may increase the Interest Rate (as the term "Interest Rate" is defined in the Note) being charged under the Note up to the prevailing market rate at the time, and may require (i) payment of a reasonable transfer fee and (ii) reimbursement for all expenses, legal and otherwise, incurred by Lender.

For the purpose of the foregoing paragraphs, the term "sell or transfer" shall include, in addition to the common and ordinary meanings of those terms and without limiting their generality, transfers made to a subsidiary or affiliated entity of Grantor, transfers to a reconstituted general or limited partnership, transfers made by a partner to the individual partners or vice-versa, transfers made by a partner to other partners or to third parties, transfers by any corporation or its stockholders or vice-versa, any corporate merger or consolidation and transfers made by any individual to any other individual or any entity, or vice-versa.

Notwithstanding the above, the term "sell, convey, lease, assign, exchange, pledge, mortgage, hypothecate or transfer" the Property shall not include a sale or transfer of any partnership interest of any general partner of the Grantor due to the insolvency, death, mental incapacity or marital separation and settlement of any of the general partners of the Grantor.

It is expressly provided that, anything in this Section to the contrary notwithstanding, that there shall be no secondary financing during the term of this Deed of Trust and no subordinate debt instrument of any kind or other encumbrance without Lender's prior written approval.

**ARTICLE II  
ASSIGNMENT OF LEASES, SUBLEASES  
FRANCHISES, RENTS, ISSUES AND PROFITS**

**2.1. Assignment of Rents.** Grantor hereby collaterally assigns and transfers to Lender all the leases, subleases, franchises, rents, issues and profits of the Property, and hereby gives to and confers upon Lender the right, power and authority to collect such rents, issues and profits as

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herein set forth. Grantor irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender, immediately and without further legal action being necessary, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Grantor or Lender, for all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Grantor shall have the right to collect such rents, issues and profits (but not more than one month in advance) prior to the occurrence of an event of default or at any time there is not ongoing an uncured event of default under this Deed of Trust.

**2.2. Collection Upon Default.** Upon the occurrence of an event of default under this Deed of Trust, Lender may exercise any of the rights granted to it under applicable law and may further, at any time without notice, either in person, by agent or by receiver appoint by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property, or any part thereof, in its own name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Lender may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice default.

**2.3. Restriction on Further Assignments, etc.** Except as hereinafter specifically provided, Grantor shall not, without the prior written consent of the Lender, assign the rents, issues or profits, or any part thereof, from the Property or any part thereof; and shall not consent to the modification, cancellation or surrender of any lease or sublease covering the Property. An action of Grantor in violation of terms of this Section shall be void as against Lender in addition to being a default under this Deed of Trust.

Grantor shall not, without the consent of Lender, consent to the cancellation or surrender or, accept prepayment of rents, issues or profits, other than rent paid at the signing of a lease or sublease, under any lease or sublease now or hereafter covering the Property or any part thereof, nor modify any such lease or sublease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option, and any such purported assignment, cancellation, surrender, prepayment or modification made without the written consent of Lender shall be void as against Lender. Grantor shall, upon demand of Lender, enter into an agreement with Lender with respect to the provisions contained in the preceding provisions regarding any lease or sublease covering said Property or any part thereof, and Grantor hereby appoints Lender attorney-in-fact of Grantor to execute and deliver any such agreement on behalf of Grantor and deliver written notice thereof to the tenant to whose lease such agreement relates.

Grantor agrees to furnish to Lender a copy of any modification of any lease presently in effect and copies of all leases affecting the Property covered by this Deed of Trust, and failure to furnish to Lender a copy of any modification of a lease or a copy of any future lease affecting said Property, shall be deemed a default under this Deed of Trust and the Note, for which the holder of this Deed of Trust may, at its option, declare the entire unpaid balance of this Deed of Trust and the Note to be immediately due and payable.

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All leases or subleases hereafter entered into by Grantor with respect to the Property or any part thereof, shall be subordinate to the lien of this Deed of Trust unless expressly made superior to this Deed of Trust in the manner hereinafter provided. At any time or times Lender may execute and record in the appropriate Office of the County Clerk of the County where the Premises are situated, a Notice of Subordination reciting that the lease or leases therein described shall be superior to the lien of this Deed of Trust. From and after the recordation of such Notice of Subordination, the lease or leases therein described shall be superior to the lien of this Deed of Trust and shall not be extinguished by any foreclosure sale hereunder.

**ARTICLE III  
RESERVED**

**ARTICLE IV  
SECURITY AGREEMENT**

**4.1. Creation of Security Interest.** Grantor hereby grants to Lender a security interest in any and all Personal Property included within the Property located on or at the Premises, including without limitation any and all property of similar type or kind hereafter located on or at the Premises for the purposes of securing all obligations of Grantor set forth in this Deed of Trust. This instrument is a self-operative security agreement with respect to the above described property, but Grantor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Lender may request.

**4.2. Warranties, Representations and Covenants of Grantor.** Grantor hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Grantor shall notify Lender of, and shall defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Grantor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Lender.

(c) The Personal Property is not and shall not be used or bought for personal, family or household purposes.

(d) The Personal Property shall be kept on or at the Premises and Grantor will not remove the Personal Property from the Premises without the prior written consent of Lender, except such portions or items of Personal Property which are consummated or worn out in ordinary usage, all of which shall be promptly replaced by Grantor.

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(e) Grantor maintains a place of business in the State of North Carolina and Grantor shall immediately notify Lender in writing of any change in its place of business as set forth in the beginning of this Deed of Trust.

(f) All covenants and obligations of Grantor contained herein relating to the Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

(g) This Deed of Trust constitutes a "**Security Agreement**" as that term is used in the Uniform Commercial Code of North Carolina.

**4.3. Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the Register of Deeds with respect to any and all Fixtures. The "debtor" is the Grantor and the record owner of the Premises; the "secured party" is the Lender; the collateral is as described in this Deed of Trust; and the addresses of the debtor and secured party are the addresses stated in this Deed of Trust for notices to such parties.

**4.4. Authorization to File.** Grantor irrevocably authorizes Lender to file, in the appropriate locations for filings of financing statements in any jurisdiction(s) that Lender in good faith deems appropriate, such financing statements and amendments thereto as Lender may deem necessary or desirable in order to (i) perfect or continue the security interests granted by Grantor to Lender pursuant to this Deed of Trust, (ii) prevent any filed financing statement from becoming misleading, or (iii) prevent any filed financing statement from losing its perfected status.

## ARTICLE V REMEDIES UPON DEFAULT

**5.1. Events of Default.** Any one or more of the following shall constitute a "**Default**" under this Deed of Trust and the Note hereby secured:

(a) Failure of Grantor to make one or more payments required by the Note on the due date thereof, without notice or demand.

(b) Failure of Grantor to pay the amount of any costs, expenses or fees (including counsel fees) of Lender, with interest thereon, as required by any provision of this Deed of Trust.

(c) Failure of Grantor to comply with or perform any other warranty, covenant or agreement contained herein, in the Note, in the Loan Agreement, if any, in the Commitment Letter dated December 10, 2004 (the "Commitment"), or in any other document executed by Grantor in conjunction with this transaction within thirty (30) days after receipt of written notice thereof by Grantor; provided, however, that (i) if Grantor reasonably cannot perform or comply with any such obligation within such thirty (30) day period and if, in Lender's reasonable judgment, Lender's security will not be impaired, then Grantor may have such additional time to rectify such failure as Grantor

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reasonably may require, provided and for so long as Grantor proceeds with due diligence, and (ii) if, in Lender's reasonable judgment, Lender's security will be impaired if Grantor does not perform or comply with any such obligation in a period of less than thirty (30) days, Grantor will have only such period (if any) following demand in which to rectify such failure as Lender may reasonably specify.

(d) Determination by Lender that any representation or warranty of Grantor contained in this Deed of Trust, the Note, or in any other document or certificate executed by Grantor in connection with this transaction was incorrect or misleading in any material respect as of the date on which the same was made, including, without limitation, any and all financial statements furnished by Grantor to Lender as an inducement to Lender's making the loan evidenced by the Note or otherwise furnished pursuant to any provision of this Deed of Trust, the Commitment, or any related document.

(e) The assertion of any federal, state, or local tax lien, or any claim or lien for labor or materials, or any other lien or encumbrance of any nature whatsoever (including any judgment lien) against Grantor or the Property, and the same is not removed by payment or transferred to substitute security in the manner provided by law within the lesser of thirty (30) days after its recording or ten (10) days after demand by Lender.

(f) The filing by Grantor or any guarantor of a voluntary petition in bankruptcy, or for reorganization or for an arrangement, pursuant to the Federal Bankruptcy Code or any similar law, federal or state, now or hereafter in effect, or the making of an assignment for a benefit of creditors, or the admittance in writing of its inability to pay its debts as they become due, or the suspension of the payment of its obligations, or the taking of any action in furtherance of the foregoing, or the consent of Grantor or any guarantor to the appointment of a receiver, trustee, liquidator, or other similar official for Grantor or any guarantor or for the Property, or any of them.

(g) The filing of a petition or an answer proposing an adjudication of Grantor or any guarantor as a bankrupt, or proposing Grantor's or any guarantor's reorganization pursuant to the Federal Bankruptcy Code or any similar law, federal or state, now or hereafter in effect, and the approval thereof by any court of competent jurisdiction and the entry of an order approving the same, unless such order shall be vacated or stayed within sixty (60) days from entry, or if Grantor or any guarantor shall consent to the filing of any such petition or answer, or fail to deny the material allegations of the same in a timely manner.

(h) Death (in the case of an individual) of Grantor or any guarantor, or the initiation of an action or proceeding for the dissolution, termination or liquidation of Grantor or any guarantor.

(i) The occurrence of an event of default under any other agreement of Grantor whereby Grantor is obligated to repay any indebtedness, whether such agreement obligates Grantor to repay such indebtedness to Lender or any other party.

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(j) A determination by Lender that a material adverse change has occurred in the financial condition of Grantor or any guarantor since the financial condition of Grantor or any guarantor was disclosed to Lender in connection herewith.

**5.2. Default Rate.** The term "Default Rate", as used herein, shall mean the rate of interest after maturity or default provided in the Note or the maximum rate permitted by North Carolina law, whichever is less; provided, however, that at no time shall any interest or charges in the nature of interest be taken, exacted, received or collected which would exceed the maximum rate permitted by law.

**5.3. Acceleration Upon Default, Additional Remedies.** In the event that one or more Defaults as above provided shall occur, the remedies available to Lender shall include, but not necessarily be limited to, any one or more of the following:

(a) Lender shall declare the entire unpaid balance of the Note, together with any amounts outstanding hereunder, immediately due without notice.

(b) Lender may take immediate possession of the Property or any part thereof (which Grantor agrees to surrender to Lender) and manage, control or lease the same to such person or persons and at such rental as it may deem proper and collect all rents, issues and profits, therefrom, including those past due as well as those thereafter accruing, with the right in the Lender to cancel any lease or sublease for any cause which would entitle Grantor to cancel the same; to make such expenditures for maintenance, repairs and costs of operation as it may deem advisable; and after deducting the cost thereof and a commission of five (5%) percent upon the gross amount of rents collected, to apply the residue to the payment of any sums which are unpaid hereunder or under the Note. The taking of possession under this paragraph shall not prevent concurrent or later proceedings for the foreclosure sale of the Property as provided elsewhere herein.

(c) Lender may apply to any court of competent jurisdiction for the appointment of a receiver or similar official to manage and operate the Property, or any part thereof, and to apply the net rents and profits therefrom to the payment of the interest and/or principal of the Note and/or any other obligations of Grantor to Lender hereunder. In event of such application, Grantor agrees to consent to the appointment of such receiver or similar official, and agrees that such receiver or similar official may be appointed without notice to Grantor, with regard to the adequacy of any security for the debts and with regard to the solvency of Grantor or any other person, firm or corporation who or which may be liable for the payment of the Note or any other obligation of Grantor hereunder.

(d) Upon application of Lender, Trustee shall sell the Property and pay the proceeds of sale according to the following terms and conditions: (a) Trustee shall foreclose upon this Deed of Trust and sell the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Trustee's Sale"); (b) Trustee shall provide such notice and shall advertise a Trustee's Sale in the manner required by applicable law; (c) Trustee shall conduct additional Trustee's Sales as may be required until all of the Property is sold or the Liabilities are satisfied; (d) Trustee, may

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receive bids at Trustee's Sale from the Lender and may accept from Lender as successful bidder, credit against the Liabilities as payment of any portion of the purchase price; (e) Trustee may receive a reasonable fee for Trustee's services hereunder, not to exceed the maximum fee allowed by applicable law; and (f) Trustee shall apply the proceeds of Trustee's Sale, first to any permitted Trustee's fee, second to expenses of foreclosure and sale, third to the Liabilities, and any remaining proceeds as required by law.

(e) Lender may realize upon the Personal Property which is collateral heretofore, enforce and exercise all of the Grantor's rights, powers, privileges and remedies in respect of the Personal Property collateral, dispose of or otherwise deal with the Personal Property collateral in such order as Lender may in its discretion determine, and exercise any and all other rights, powers, privileges and remedies afforded to a secured party under the laws of the State of North Carolina, as well as all other rights or remedies available at law or in equity with regard to the Property collateral.

**5.4. Additional Provisions.** Grantor expressly agrees, on behalf of itself, its successors and assigns and any future owner of the Property, or any part thereof or interest therein, as follows:

(a) All remedies available to Lender with respect to this Deed of Trust shall be cumulative and may be pursued concurrently or successively. No delay by Lender in exercising any such remedy shall operate as a waiver thereof or preclude the exercise thereof during the continuance of that or any subsequent default.

(b) The obtaining of a judgment or decree on the Note, whether in the State of North Carolina or elsewhere, shall not in any manner affect the lien of this Deed of Trust upon the Property covered hereby, and any judgment or decree so obtained shall be secured to the same extent as the Note is now secured.

(c) In the event of any foreclosure sale hereunder, all net proceeds shall be available for application to the indebtedness hereby secured whether or not such proceeds may exceed the value of the Property for unpaid taxes, liens, assessments and any other costs relating to the Property.

(d) The only limitation upon the foregoing agreements as to the exercise of Lender's remedies is that there shall be but one full and complete satisfaction of the indebtedness secured hereby.

(e) The Grantor shall duly, promptly and fully perform each and every term and provision of the Commitment, the Loan Agreement (if any), or any other documents which have been executed and delivered by the parties hereto simultaneously with the execution and delivery hereof, the terms of the Commitment and the Loan Agreement (if any), being incorporated herein by reference. The lien of this Deed of Trust secures the payment of all sums payable to Lender and the performance of all covenants and agreements of Grantor under the terms of the Commitment, the Loan Agreement (if any), or any other document delivered herewith.

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**5.5. Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or the Note or under any other agreement or any laws now or hereafter in force, notwithstanding the fact that some or all of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed or trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Lender in such order and manner as Lender may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy contained herein or by law or in equity provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or not or hereafter existing at law or in equity or by statute. Every power or remedy given to Lender or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender and it may pursue inconsistent remedies.

**5.6. WAIVER.** TO THE EXTENT PERMITTED BY LAW, GRANTOR ACKNOWLEDGES THE RIGHTS GIVEN HEREIN TO LENDER TO ACCELERATE THE DEBT SECURED HEREBY AND TO SELL THE PROPERTY AT PUBLIC AUCTION PURSUANT TO THE POWER OF SALE GRANTED HEREIN. GRANTOR WAIVES ANY RIGHTS TO NOTICE AND HEARING PRIOR TO SUCH SALE UNDER POWER, OTHER THAN AS EXPRESSLY PROVIDED IN THE NOTE OR THIS DEED OF TRUST. GRANTOR WAIVES ALL RIGHT OR EQUITY OF REDEMPTION IN THE PROPERTY AFTER A FORECLOSURE SALE.

**ARTICLE VI  
MISCELLANEOUS**

**6.1. Partnership Status.** Grantor represents and warrants to Lender that Grantor is a limited partnership organized and existing under the laws of the State of Delaware and has been duly and validly formed. Grantor further warrants that it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Note, this Deed of Trust, and any other loan documents executed herewith, and that the execution and delivery of the Note, this Deed of Trust and the other loan documents executed herewith and the performance and observance of the provisions thereof have been duly authorized by all necessary partnership action. Grantor covenants and agrees not to do anything that would cause a termination of the Partnership nor in any way adversely affect its good standing within the State of North Carolina. Any and all annual filing reports and any other reports required by the State of Delaware, the State of North Carolina or any other governmental entity shall be filed in a timely manner, and proof of said filing shall be furnished to Lender upon request.

**6.2. Statements by Grantor.** Grantor, within three (3) days after request in person or within ten (10) days after request by mail, will furnish to Lender or any person, firm or corporation designated by Lender, a duly acknowledged written statement setting forth the amount of the debt secured by this Deed of Trust, and stating either that no offsets or defenses



exist against such debt or, if such offsets or defenses are alleged to exist, full information with respect to such alleged offsets and/or defenses.

**6.3. Successors and Assigns.** The provisions hereof shall be binding upon and shall inure to the benefit of Grantor, its successors and assigns, including without limitation subsequent owners of the Property or any part thereof, shall be binding upon and shall inure to the benefit of Lender, its successors and assigns of any future holder of the Note. In the event the ownership of the Property or any leasehold estate that may be covered by this Deed of Trust, becomes vested in a person other than Grantor, Lender may, without notice to Grantor, deal with such successor or successors in interest with reference to this instrument and the Note in the same manner as with Grantor, and may alter the interest rate and/or alter or extend the terms of payment of the Note without notice to Grantor hereunder or under the Note hereby secured or the lien or priority of this Deed of Trust with respect to any part of the Property covered hereby, but nothing herein contained shall serve to relieve Grantor of any liability under the Note or this Deed of Trust (or any other agreement executed in conjunction therewith) unless Lender shall expressly release Grantor in writing. Grantor and any transferee or assignee shall be jointly and severally liable for any documentary stamp or intangible taxes imposed as a result of any transfer or assumption.

**6.4. Notices.** All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee), (i) on hand delivery thereof to the recipient, (ii) seven (7) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as by way of example but not limitation, U.S. Express Mail, Federal Express or Airborne), addressed to the party to whom notice is intended to be given at the address set forth below:

TO GRANTOR:       Scoop Real Estate, L.P.  
                          1618 Main Street  
                          Sarasota, Florida 34236

TO LENDER:        Wachovia Bank, N.A.  
                          100 South Ashley Drive, Suite 950  
                          Tampa, Florida 33602

Any party may change the address to which its notices are sent by giving the other party written notice of any such change in the manner provided in this section, but notice of change of address is effective only upon receipt.

Grantor shall deliver to Lender, promptly upon receipt of same, copies of all notices, certificates, documents and instruments received by it which materially affect any part of the Property covered hereby, including, without limitation, notices from any lessee or sublessee claiming that Grantor is in default under any terms of any lease or sublease.

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**6.5. Modifications in Writing.** This Deed of Trust may not be changed, terminated or modified orally or in any other manner than by an instrument in writing signed by the party against whom enforcement is sought.

**6.6. Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**6.7. Invalidity of Certain Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured portion of the debt shall be completely paid prior to the payments of the secured portion of the debt, and all payments made on the debt, whether voluntary or otherwise, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

**6.8. No Merger.** If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Property pursuant to the provisions hereof, any leases or subleases then existing and created by Grantor shall not be destroyed or terminated by application of the law of merger or as a result of such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any lease or sublease unless Lender or such purchaser shall give written notice thereof to such tenant or subtenant.

**6.9. Governing Law and Construction of Clauses.** This Deed of Trust shall be governed and construed by the laws of the State of North Carolina. No act of the Lender shall be construed as an election to proceed under any one provision of the Deed of Trust or of the applicable statutes of the State of North Carolina to the exclusion of any other such provision, anything herein or otherwise to the contrary notwithstanding.

**6.10. Corrective Documentation.** For and in consideration of the funding or renewal of the indebtedness evidenced by the Note, Grantor further agrees to cooperate with Lender and to reexecute any and all documentation relating to the loan evidenced by the Note and secured by this Deed of Trust which are deemed necessary or desirable in Lender's discretion, in order to correct or adjust any clerical errors or omissions contained in any such document executed in connection with the loan evidenced by the Note and secured by this Deed of Trust.

**6.11. Books and Records.** Grantor will maintain books of accounts and records reflecting Grantor's financial condition and the results of operations of the Property in accordance with generally accepted accounting principles applied on a consistent basis. If any of the Property is rented or leased, a rent schedule of the Property, certified by an accounting officer of Grantor, showing the name of each tenant and the space occupied, the lease expiration date and the rent payable will also be maintained by Grantor. Lender will have the right, from time to time at all times during normal business hours, to examine such books, records and accounts at

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the offices of Grantor or other personal entity maintaining such books, records and accounts and to make such copies as Lender will desire.

**6.12. Financial Statements.** Grantor will within ninety (90) days after the end of each fiscal year, furnish to Lender complete financial statements prepared in accordance with generally accepted accounting principles applied on a consistent basis, including a profit and loss statement, an income and expense statement, a balance sheet, a reconciliation of surplus, Federal tax returns, and any other financial information which may be reasonably required, which statements shall, at Lender's option, be certified without qualification by audit of the certified public accountant regularly serving Grantor and approved by Lender. The cost of such audit shall be paid by Grantor. If any of the Property is rented or leased, Grantor will furnish to Lender together with the financial statements discussed above a rent schedule as described in Section 6.11 above. Grantor shall also furnish to Lender such interim statements as may reasonably be required by Lender from time to time.

**6.13. Other Indebtedness Secured.** This Deed of Trust is also given as security for any and all other sums, indebtedness, obligations and liabilities of any and every kind now or hereafter during the term owing and to become due from Grantor to Lender, however created, incurred, evidenced, acquired or arising, whether under the Note or this Deed of Trust, or any other instrument, obligation, contract, agreement or dealing of any and every kind now or hereafter existing or entered into between Grantor and Lender, or otherwise as amended, modified or supplemented from time to time, and whether direct, indirect, primary, secondary, fixed or contingent, and any and all renewals, modifications or extensions of any or all of the foregoing.

**6.14. Costs.** Grantor shall pay all and singular the costs, charges and expenses, including without limitation attorneys' fees, paralegals' fees, sales tax on such fees or costs, if any (regardless of whether suit is or other proceedings are instituted, and for all arbitration, administrative, bankruptcy and other proceedings) and abstract costs, reasonably incurred or paid at any time by Lender because of the failure of Grantor to perform, comply with, and abide by each and every stipulation, agreement, condition and covenant of the Note, this Deed of Trust or any other document executed herewith.

**6.15. Waiver of Jury Trial.** BY THE EXECUTION HEREOF, GRANTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREES THAT NEITHER GRANTOR NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF GRANTOR SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THE NOTE, THIS DEED OF TRUST, OR ANY OTHER LOAN DOCUMENT EVIDENCING, SECURING, OR RELATING TO THE INDEBTEDNESS SECURED BY THIS DEED OF TRUST OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO. NEITHER GRANTOR NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTION. NEITHER GRANTOR NOR LENDER HAS IN ANY WAY AGREED WITH

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OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THIS TRANSACTION.

**6.16. Right to First Offer.** When Grantor elects to arrange permanent financing with respect to the Property, Lender or its affiliates, including Wachovia Securities and Wachovia Corporation (collectively, "**Wachovia**"), shall have the right of first opportunity to register Wachovia Securities, Principal Capital Real Estate Investors, Deutsche Banc Mortgage Capital and Aegon USA Realty Advisors to provide permanent financing for the subject Property on terms satisfactory to Grantor. Grantor will provide first notification to Wachovia of its intent to obtain permanent financing and will in a timely manner use its best efforts to provide Wachovia with the information necessary to enable it to obtain such financing.

**6.17. State Specific Provisions.** Lender may, at any time and from time to time, without notice, at the Lender's discretion, remove Trustee and appoint a substitute trustee ("**Substitute Trustee**") by filing in the records where this Deed of Trust is recorded an instrument affecting such removal and appointment. A Substitute Trustee shall be vested with title to the Property and with all rights, powers, and duties of the original Trustee herein and all provisions hereof pertaining to the Trustee shall similarly affect any Substitute Trustee. Any oath or bond by the Trustee is hereby waived.

[Signature Page Follows]

IN WITNESS WHEREOF, Grantor has hereunto set hand and seal all done as of the day and year first hereinbefore written.

SCOOP REAL ESTATE, L.P., a Delaware limited partnership

By: SCOOP CAPITAL, LLC, a Florida limited liability company, its general partner

By: [Signature]  
Arthur Nadel, its Manager

WITNESSES:

[Signature]  
Print Name: **GRAIG P. COLBURN JR.**

[Signature]  
Print Name: **KATHRYN F. STAHLER**

STATE OF FLORIDA  
COUNTY OF SARASOTA

I, KATHRYN F. STAHLER, a Notary Public of Sarasota County, State of Florida, do hereby certify that Arthur Nadel personally came before me this day and acknowledged that he is the Manager of Scoop Capital, LLC, a Florida limited liability company, general partner ("General Partner") of SCOOP REAL ESTATE, L.P., a Delaware limited partnership (the "Partnership"), and that by authority duly given, the foregoing instrument was signed by the General Partner as its act and deed and as the act and deed of the Partnership.

Witness my hand and notarial seal on May 18<sup>th</sup>, 2005.

[Signature]  
Notary Public



My Commission Expires: 8-5-2007

[OFFICIAL SEAL]

**CLERK'S CERTIFICATE**

The forgoing certificate(s) of Kathryn F. Stabler <sup>Notary of Sarasota Co, FL</sup> is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

REGISTER OF DEEDS FOR ALAMANCE COUNTY

**DAVID J. P. BARBER**

By: *Deborah Pope*  
Deputy Assistant Register of Deeds

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**EXHIBIT A**

**LEGAL DESCRIPTION**

LYING AND BEING in Graham Township, Alamance County, North Carolina, and more particularly described as follows:

BEGINNING at an existing iron pin (site bench mark with NC Grid coordinates of N: 839,090.546 feet, E: 1,881,775.383 feet, NAVD 88, elev: 593.21 feet, value published by National Geodetic Survey "OPUS" Solution on 09/11/03) on the western margin of the public right-of-way of NC Highway 87 (South Main Street) and in the northeastern corner of the land conveyed to Crescent Center Associates by instrument recorded in Deed Book 503, Page 66, Alamance County Public Registry, and running thence with the northern boundary of the Crescent Center Associates land (now or formerly) S. 84-34-58 W. 242.92 feet to an existing iron pin in the southeastern corner of the land conveyed to ECMM Associates by instrument recorded in Deed Book 789, Page 658, Alamance County Public Registry; thence with the southern boundary of the ECMM Associates land (now or formerly) N. 61-06-52 W. 18.19 feet to an iron rebar set; thence two new lines within the ECMM Associates land (now or formerly) as follows: (1) N. 05-35-11 W. 189.62 feet to an iron rebar set; and (2) N. 84-34-01 E. 15.00 feet to an existing iron pin in the southern margin of the public right-of-way of Crescent Square Drive; thence with the southern margin of the public right-of-way of Crescent Square Drive N. 84-34-01 E. 231.52 feet to an iron rebar set in the western margin of the right-of-way of NC Highway 87 (South Main Street); and thence with the western margin of the right-of-way of NC Highway 87 (South Main Street) three (3) courses and distances as follows: (1) S. 04-50-25 E. 15.86 feet to a nail; (2) S. 49-50-25 E. 19.80 feet to a nail; and (3) S. 04-50-25 E. 169.95 feet to the point and place of BEGINNING, containing 1.18 acres, more or less, all as shown on survey prepared by Clinton B. Osborne, North Carolina Professional Land Surveyor L-3834, of Allied Associates, P.A., Job No. PA030608, Map No. GSDelta.dwg., and dated October 31, 2003, reference to said survey being made in aid of description.

Together with:

Easement rights in favor of the property, as set forth in Cross Access Easement Agreement recorded in Book 2108, Page 530, of the Alamance County Registry.

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This Instrument was Prepared By  
and should be returned to:  
K. Tyler Hill, Esq.  
Hill, Ward & Henderson, P.A.  
Post Office Box 2231  
Tampa, Florida 33601

Doc ID: 004110920008 Type: GRP  
Recorded: 05/24/2005 at 02:26:00 PM  
Fee Amt: \$35.00 Page 1 of 8  
Alamance, NC  
DAVID J.P. BARBER REGISTER OF DEEDS  
BK 2247 PG 733-740

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ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made as of May 24, 2005, by SCOOP REAL ESTATE, L.P., a Delaware limited partnership ("Assignor"), whose address is 1618 Main Street, Sarasota, Florida 34236, to and in favor of WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("Assignee"), whose address is 100 South Ashley Drive, Suite 950, Tampa, Florida 33602.

WITNESSETH:

WHEREAS, Assignor is indebted to Assignee for money borrowed in the aggregate sum of Two Million Six Hundred Fifty-Five Thousand Dollars (\$2,655,000.00) (the "Loan"), as evidenced by that certain Promissory Note dated the date hereof, in the original principal amount of the Loan, made by Assignor to the order of Assignee (the "Note"), which Note is secured, inter alia, by that certain Deed of Trust and Security Agreement dated the date hereof from Assignor to Assignee (the "Deed of Trust") creating a lien on that certain property more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Assignee is willing to make said Loan, provided, among other things, that Assignor assign to Assignee its right, title and interest in and to the rents, issues, profits, revenues, royalties, rights and benefits from the Property; and

WHEREAS, Assignor is willing to make such assignment on the terms and conditions hereof as an inducement to Assignee to make such Loan.

NOW, THEREFORE, in consideration of the premises and of the Loan, the sum of Ten Dollars (\$10.00), and for other good and valuable considerations, the receipt whereof are hereby acknowledged, Assignor hereby agrees as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Assignment. Assignor hereby grants, conveys, transfers and assigns to Assignee all of its right, title and interest in and to (i) the rents, income, issues, profits, revenues, royalties, rights and benefits arising now and hereafter from the Property (collectively the "Rents and Profits"), together with any and all existing and future leases upon all or any part of the Property

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and together with any and all amendments, extensions, guarantees of the tenants' obligations thereunder, and all renewals, modifications and replacements thereof (collectively, the "Leases"), and (ii) any and all monies, awards or other payments made or payable by any and all tenants under the leases either in lieu of rent or on account of or arising from any default by any tenant under any lease, including, but not limited to, any damages (all such monies, award or payments, including but not limited to, damages, are collectively referred to herein as the "Damages").

3. Purpose of Assignment. This Assignment is made for the purpose of securing payment of the indebtedness evidenced by the Note, together with all other sums with interest becoming due and payable to Assignee under the provisions hereof or of the Note and Deed of Trust (including, but not limited to, any future advance under the Deed of Trust) and the performance and discharge of the obligations, covenants and agreements of Assignor contained herein or in the Note, Deed of Trust or any other instrument or agreement now or hereafter executed by Assignor in connection with or as security for the repayment of the Note (collectively, the "Loan Documents").

4. Representations and Warranties. Assignor hereby represents and warrants that:

(a) Assignor has the right, power and capacity to make this Assignment and that no person, firm or corporation or other entity other than Assignor has or will have any right, title or interest in or to the Leases or the Rents and Profits.

(b) With respect to each Lease in effect at the date hereof: (i) the Lease is in full force and effect and is valid, binding and enforceable in accordance with its terms; (ii) the Lease has not been modified or amended in any respect, nor has any provision thereof been waived; (iii) neither the tenant nor lessor thereunder is in default under the terms of the Lease; (iv) no rent has been prepaid under the Lease for more than one month in advance; (v) the tenant thereunder has no deduction, claim, counterclaim, set-off, or defense against the lessor thereunder or against the rents or other sums payable or to be payable thereunder.

5. Covenants.

(a) Assignor shall not, without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed, (i) enter into, or consent to or permit the assignment or subletting of, any Leases; (ii) modify, extend, cancel, consent to any surrender, or in any way alter the terms of the Leases; (iii) alter, modify, change or terminate the terms of any guaranties of the Leases; (iv) create or permit any lien or encumbrance which, upon foreclosure, would be superior to any such Leases or in any other manner impair Assignee's rights and interest with respect to the Rents and Profits; (v) pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents and Profits; or (vi) collect rents more than thirty (30) days prior to their due date.

(b) Assignor shall, at its sole cost and expense, perform and discharge all of the obligations and undertakings of the landlord under the Leases. Assignor shall enforce or secure the performance of each and every obligation and undertaking of the tenants

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under the Leases. Assignor shall give prompt written notice to Assignee of any and all material defaults of any of the tenants under any and all of the Leases, together with a complete copy of any and all notices delivered as a result of such default.

(c) Assignor agrees, from time to time, to execute and deliver, upon demand, all assignments and any and all other writings as Assignee may reasonably deem necessary or desirable to carry out the purpose and intent hereof, or to enable Assignee to enforce any right or rights hereunder.

6. Events of Default. The term "Event of Default" as used herein shall mean the occurrence of any one of the following:

(a) If Assignor shall fail to comply with any of the covenants, duties or obligations of Assignor herein and such default shall continue for fifteen (15) days or more after written notice to Assignor from Assignee specifying the nature of such default;

(b) If a default shall occur under the Note, the Deed of Trust or any Loan Documents and shall not be cured within any applicable curative period as stated therein; or

(c) If any representation or warranty made by Assignor herein was false or misleading in any material respect when made.

7. Revocable License to Collect Rents.

(a) Notwithstanding any provision to the contrary contained elsewhere herein, so long as no Event of Default has occurred and subject to paragraph 6 hereof, Assignor shall have a license to manage the Property; to collect, receive and use all Rents and Profits in accordance with the terms of the Leases; to let the Property and to take all actions which a reasonable and prudent landlord would take in enforcing the provisions of the Leases. From and after the occurrence of an Event of Default (whether or not Assignee shall have exercised Assignee's option to declare the Note immediately due and payable), such license shall be automatically revoked without any action required by Assignee.

(b) Any amounts received by Assignor or its agents in the performance of any acts prohibited by the terms of this Assignment, including but not limited to any amounts received by Assignor as rents, income, issues or profits from the Property from and after the later of the occurrence of an Event of Default under this Assignment, the Note, the Deed of Trust or any of the other Loan Documents, shall be held by Assignor as trustee for Assignee and all such amounts shall be accounted for to Assignee and shall not be commingled with other funds of Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Assignee as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith.

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8. Remedies of Assignee. Upon the occurrence of any Event of Default, Assignee in person or by agent or by court-appointed receiver may, at its option, without any action on its part being required, without in any way waiving such default, with or without the appointment of a receiver, or an application therefor:

(a) take possession of the Property and have, hold, conduct tests of, manage or hire a manager to manage, lease and operate the Property, on such terms and for such period of time as Assignee may deem proper, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Assignee;

(b) immediately and without notice to Assignee, with or without taking possession of the Property, notify tenants under the Leases or any other parties in possession of the Property to pay Rents and Profits directly to Assignee, its agent or a court-appointed receiver, and collect and receive all such Rents and Profits and apply them to the payment of:

(i) all costs and expenses incident to: taking and retaining possession of the Property, management and operation of the Property, keeping the Property properly insured and all alterations, renovations, repairs and replacements to the Property;

(ii) the indebtedness secured hereby; together with all costs and attorney's fees, in such order or priority as to any of such items as Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding.

(c) commence, appear in and/or defend any action or proceedings purporting to affect the interests, rights, powers and/or duties of Assignee hereunder, whether brought by or against Assignor or Assignee;

(d) pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of Assignee may affect or appear to affect the interest of Assignee or the rights, powers and/or duties of Assignee hereunder; and

(e) take any additional actions or exercise any additional powers granted to Assignor by any law.

The receipt by Assignee of any Rents and Profits pursuant to this Assignment after the institution of foreclosure proceedings under the Deed of Trust shall not cure any such Event of Default or affect such proceedings or any sale pursuant thereto.

9. Indemnity and Assignee's Disclaimer. Assignor shall and does hereby agree to indemnify Assignee for and to defend and hold Assignee harmless from any and all liability, loss or damage which Assignee may or might incur under the Leases or under or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on Assignee's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should

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Assignee incur any liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any of such claims or demands, the amount thereof, including costs, expenses and attorney's fees, shall be secured hereby; and Assignor shall reimburse Assignee therefor immediately upon demand, and upon failure of Assignor to do so, Assignee may declare all sums so secured to be immediately due and payable.

This Assignment shall not be deemed or construed to constitute Assignee as mortgagee-in-possession of the Property or to obligate Assignee to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under the Leases and Assignee is not required to take possession of the Property as a condition to the assignment contained herein.

10. Waiver and Discretion. The failure of Assignee to enforce any of the terms, covenants or conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee shall have the full right, power and authority to enforce this Assignment, or any of the terms, covenants or conditions hereof, at any time or times that Assignee shall deem fit.

11. Notices. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if sent in accordance with the terms and conditions of the Deed of Trust.

12. Performance and Release. The full repayment of the indebtedness evidenced by the Note and the performance of all of the obligations set forth in the Deed of Trust and the duly recorded release thereof or reconveyance of the Property described therein shall constitute a reassignment of the Leases hereby assigned to Assignee.

13. Binding Effect. This Assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors and assigns, as well as any subsequent owner of the Property (or any portion thereof) and any agreement creating rights in Assignee other than those created herein shall be deemed incorporated herein by reference and made a part hereof for all purposes.

14. Actions by Assignee. Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness, without prejudice to any of its rights hereunder.

15. No Election of Remedies. Nothing herein contained and no act done or omitted by Assignee pursuant to the powers and rights granted it herein shall be deemed to be a waiver by Assignee of its rights and remedies under the Note and Deed of Trust, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof.

16. Miscellaneous. In this Assignment, whenever the context so requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural.

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Neither this Assignment nor pursuit of any remedy hereunder by Assignee shall cause or constitute a merger of the interests of the tenant and the lessor under any of the Leases such that any of the Leases hereby assigned are no longer valid and binding legal obligations of the parties executing the same. This Assignment shall be governed by and construed under the laws of the state in which the Property is located. The United States District Court for the District in which the Property is located and any court of competent jurisdiction of the State in which the Property is located shall have jurisdiction in any action, suit or other proceeding instituted to enforce the Note, the Deed of Trust, and this Assignment. Assignor hereby waives (a) any objections to the jurisdiction of such courts, (b) any objections to venue and (c) its right to a trial by jury in any action, proceeding or counterclaim brought by Assignee. In the event any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but only to the extent that it is invalid, illegal or unenforceable. This Assignment may not be amended or modified orally, but only by an agreement in writing signed by the party against whom enforcement of any amendment or modification is sought.

(Signature Lines Begin on Following Page)

[SIGNATURE PAGE TO ASSIGNMENT OF RENTS AND LEASES]

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed as of the date first above written.

SCOOP REAL ESTATE, L.P., a Delaware limited partnership

By: SCOOP CAPITAL, LLC, a Florida limited liability company, its general partner:

WITNESSES:

[Signature]  
Print Name: **CRAIG P. COLBURN JR.**

By: [Signature]  
Arthur Nadel, its Manager

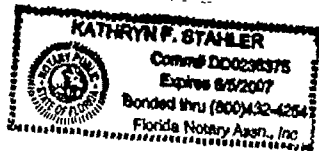
[Signature]  
Print Name: **KATHRYN F. STAHLER**

STATE OF FLORIDA  
COUNTY OF Sarasota

I, KATHRYN F. STAHLER, a Notary Public of Sarasota County, State of Florida, do hereby certify that Arthur Nadel personally came before me this day and acknowledged that he is the Manager of Scoop Capital, LLC, a Florida limited liability company, general partner ("General Partner") of SCOOP REAL ESTATE, L.P., a Delaware limited partnership (the "Partnership"), and that by authority duly given, the foregoing instrument was signed by the General Partner as its act and deed and as the act and deed of the Partnership.

Witness my hand and notarial seal on May 10<sup>th</sup>, 2005.

[Signature]  
Notary Public



My Commission Expires: 8-5-2007

[OFFICIAL SEAL]

State of North Carolina Alamance County  
The foregoing certificate(s) of Kathryn F. Stahler

Notary (Notaries) Public of the Designated Governmental units is (are) certified to be correct.  
This the 29 day of May, 2005  
DAVID J. P. BARBER  
Register of Deeds By [Signature]

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EXHIBIT A

LEGAL DESCRIPTION

LYING AND BEING in Graham Township, Alamance County, North Carolina, and more particularly described as follows:

BEGINNING at an existing iron pin (site bench mark with NC Grid coordinates of N: 839,090.546 feet, E: 1,881,775.383 feet, NAVD 88, elev: 593.21 feet, value published by National Geodetic Survey "OPUS" Solution on 09/11/03) on the western margin of the public right-of-way of NC Highway 87 (South Main Street) and in the northeastern corner of the land conveyed to Crescent Center Associates by instrument recorded in Deed Book 503, Page 66, Alamance County Public Registry, and running thence with the northern boundary of the Crescent Center Associates land (now or formerly) S. 84-34-58 W. 242.92 feet to an existing iron pin in the southeastern corner of the land conveyed to ECMM Associates by instrument recorded in Deed Book 789, Page 658, Alamance County Public Registry; thence with the southern boundary of the ECMM Associates land (now or formerly) N. 61-06-52 W. 18.19 feet to an iron rebar set; thence two new lines within the ECMM Associates land (now or formerly) as follows: (1) N. 05-35-11 W. 189.62 feet to an iron rebar set; and (2) N. 84-34-01 E. 15.00 feet to an existing iron pin in the southern margin of the public right-of-way of Crescent Square Drive; thence with the southern margin of the public right-of-way of Crescent Square Drive N. 84-34-01 E. 231.52 feet to an iron rebar set in the western margin of the right-of-way of NC Highway 87 (South Main Street); and thence with the western margin of the right-of-way of NC Highway 87 (South Main Street) three (3) courses and distances as follows: (1) S. 04-50-25 E. 15.86 feet to a nail; (2) S. 49-50-25 E. 19.80 feet to a nail; and (3) S. 04-50-25 E. 169.95 feet to the point and place of BEGINNING, containing 1.18 acres, more or less, all as shown on survey prepared by Clinton B. Osborne, North Carolina Professional Land Surveyor L-3834, of Allied Associates, P.A., Job No. PA030608, Map No. GSDelta.dwg., and dated October 31, 2003, reference to said survey being made in aid of description.

Together with:

Easement rights in favor of the property, as set forth in Cross Access Easement Agreement recorded in Book 2108, Page 530, of the Alamance County Registry.

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