IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

No. 34714-8-II

WACHOVIA SBA LENDING, INC., d/b/a WACHOVIA SMALL BUSINESS CAPITAL, a Washington corporation,

Plaintiff/Respondent

vs.

DEANNA D. KRAFT, individually,

Defendant/Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

BRIEF OF APPELLANT

DOUGLAS N. KIGER, WSBA#26211
Attorney for Appellant

BLADO, STRATTON & KIGER, P.S.
ATTORNEYS AT LAW
Bank of America Building, 2nd Floor
3408 South 23rd Street
Tacoma, WA 98405
Tel (253) 272-2997

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I. ASSIGNMENT OF ERROR

A. Assignment of Error

1. The trial court erred by denying Deanna Kraft an opportunity to request an award of her attorney fees and costs as the prevailing party following Wachovia's voluntary dismissal of their claims against her. CP 108-109; RP 1-13.

B. Issues Pertaining to Assignment of Error

1. Was it error for the trial court to deny Deanna Kraft the opportunity to request an award of attorney fees and costs as the prevailing party following Wachovia's voluntary dismissal of all its claims against her on the morning of trial? (Assignment of Error 1).

II. STATEMENT OF THE CASE

In June of 1997, Deanna Kraft's husband at the time (now her former husband) took out a Small Business Administration loan from The Money Store to purchase a home and veterinary business, which were located on the same premises. CP 4-5, 11, 30, 56. The home and business were located in North Carolina. CP 56. Ms. Kraft's former husband, Randolph Kraft (hereinafter, "Dr. Kraft"), signed a Note in the amount of $172,000 and a Deed of Trust that attached to the home. CP 30-41. Deanna Kraft did not sign the Note. CP 30-33, 56. She did sign a Personal Guaranty and the Deed

of Trust (which attached to her home). CP 34-44; 56. Wachovia alleges it is the holder of the obligations signed by the Krafts to The Money Store. CP 5.

The Krafts were divorced in 1998. CP 59-64. Pursuant to the Kraft's Separation Agreement Dr. Kraft was made responsible for the obligations to The Money Store. *Id.* In 2003, Dr. Kraft filed for Chapter 7 bankruptcy protection. CP 5, 11. In approximately 2004, after getting relief from the bankruptcy stay, The Money Store's deed of trust was foreclosed in North Carolina. CP 5, 11, 25-29, 95. On September 19, 2005, Wachovia brought suit against Deanna Kraft alleging it is the holder of the The Money Store obligations, that a deficiency of almost $80,000 remained after the foreclosure, and that Deanna Kraft is liable for the deficiency. CP 2-6. A trial on Wachovia's claims was set for March 20, 2006. CP 1.

In January of 2006, Wachovia filed a motion for summary judgment, which included a request that Ms. Kraft be held liable for Wachovia's attorney fees and costs pursuant to the deed of trust and guaranty signed by Ms. Kraft. CP 14-18. Wachovia's motion for summary judgment was denied on March 3, 2006. CP 104-107.

Seventeen days later, on the day set for trial, Wachovia presented to the court a motion for voluntary dismissal without prejudice and without an award of fees or costs pursuant to CR 41(a)(1)(B). CP 108-109; RP 4. Ms.

Kraft opposed the dismissal being without prejudice and without an award of fees or costs. RP 6. At the hearing, the following discussions took place:

> [MR. KIGER]: And then we're also asking that the Court just reserve jurisdiction to award attorneys' fees, with defendant as a prevailing party.
>
> I attached a case, *Marassi v. Lau*, which basically says that when a plaintiff dismisses a case voluntarily, either with or without prejudice, the Court does retain jurisdiction to consider an award of fees. And if the Court would just reserve that issue, I can talk to my client about bringing a motion at a later time for that, as long as the Court reserves jurisdiction.

RP 6-7.

> MR. KIGER: Could we reserve the issue of costs? The other case I submitted said that the defendant is automatically a prevailing party. We would have to brief the Court on the issue of whether -- you know, what types of fees and costs are awarded. But we just want to reserve that issue, your Honor.
>
> I believe their proposed order says without fees or costs, and we just want to reserve that issue.
>
> That's the *Marassi v. Lau* case.

RP 11.

> THE COURT: Anything further, Mr. Kiger?
>
> MR. KIGER: Just to reiterate we're not asking for a decision today; we're just asking that the issue be reserved.
>
> THE COURT: The problem I have with reserving this is that it will be hanging out there. And it may hang out there for eternity if the parties do decide to settle and go away and never inform this Court of that issue.

> I believe the civil rule does give the defendant the opportunity to ask for those fees if Wachovia files suit again, under the Civil Rule 41.
>
> MR. KIGER: The rule only allows costs, it doesn't allow fees, is my reading of it.
>
> For what it's worth, I can assure the Court that I will probably file a motion within the week if I could -- Ms. Kraft has other attorneys advise her, you know, a North Carolina attorney on this issue. And it may take a little while for me to get their cost bill. And we could certainly let the Court know too if for some reason Ms. Kraft decides not to file a motion.
>
> MR. KLEINBERG: Your Honor, from what I recall too under CR 41 and the applicable case law, the Court does have the discretion as to whether or not it will reserve or even decide this issue. And again, I'd like to reiterate this is the first time plaintiff has filed suit and dismissed the case. It's not a case where we have had two or three filings here.
>
> So we would ask that the Court deny the request here of defendant's counsel and allow each party to bear its own fees and costs, which seems appropriate. Frankly, in this case it's a matter of equity, especially given that the statute of limitations issue was raised today for the first time.
>
> THE COURT: I am going to dismiss this case without prejudice and without costs.

RP 11-13. The order entered by the court denied an award of costs to either party.[1] CP 109, 112. Ms. Kraft appeals the denial of her request for fees and costs as the prevailing party. CP 110-112.

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[1] Technically the written order only denies an award of costs, but the discussion between counsel and the Court at the hearing made it clear the Court was also denying Ms. Kraft's desire to present a request for attorney fees. RP 11-13.

III. ARGUMENT

A. IT WAS ERROR FOR THE TRIAL COURT TO DENY MS. KRAFT THE OPPORTUNITY TO REQUEST AN AWARD OF ATTORNEY FEES FOLLOWING A VOLUNTARY DISMISSAL BY WACHOVIA OF ITS CLAIMS AGAINST HER BECAUSE MS. KRAFT WAS THE PREVAILING PARTY AT THAT POINT AND THE AGREEMENTS BETWEEN THE PARTIES PROVIDED FOR AN AWARD OF FEES AND COSTS TO THE PREVAILING PARTY.

Ms. Kraft should have been permitted to request an award of attorney fees and costs as the prevailing party when Wachovia dismissed its claims against her on the morning of trial. If a Plaintiff takes a voluntary non-suit pursuant to CR 41, the Defendant is considered a prevailing party for purposes of an attorney fee or cost award. *Allayari v. Carter Subaru*, 78 Wn. App. 518, 897 P.2d 413 (1995); *Gilman v. MacDonald*, 74 Wn. App. 733, 875 P.2d 697 (1994); *Marassi v. Lau*, 71 Wn. App. 912, 918-919, 859 P.2d 605 (1993); *In re the Marriage of Fow*, 44 Wn. App. 6, 720 P.2d 850 (1986). In a civil case, even if dismissal is without prejudice, it is error for a trial court to refuse to hear a request for an award of attorney fees and costs by the prevailing party. *Id.*; *In the Matter of the Guardianship of Freitas*, 58 Wn.2d 400, 363 P.2d 385 (1961). Not even the cost award provisions of CR 41(d) address this problem because the rule talks about costs, not fees. *Hall v. Stolte*, 24 Wn. App. 423, 601 P.2d 967 (1979).

Wachovia's claim against Ms. Kraft was for a deficiency judgment following foreclosure of a deed of trust. CP 5, 20, 46. At a minimum Ms. Kraft should be allowed statutory costs and attorney fees as the prevailing party under RCW 4.84.010, RCW 4.84.060, and RCW 4.84.080. However, Ms. Kraft, and her husband at the time, Dr. Randolph Kraft, signed a deed of trust that provided for an award of reasonable attorney fees. Page 6 of the Deed of Trust provides:

> If Lender institutes any suit or action to enforce any terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal.... Expenses covered by this paragraph include...Lender's reasonable attorneys' fees.... Grantor will also pay any court costs, in addition to all other sums provided by law.

CP 39.

Ms. Kraft also signed a Guaranty that provided, "[Ms. Kraft] hereby unconditionally guarantees to Lender...all other sums payable, or stated to be payable, with respect to the note of the Debtor...." CP 42. The "note of the debtor," which was signed by Dr. Randolph Kraft, provides:

> The undersigned shall pay all expenses of any nature... including but not limited to reasonable attorney's fees and costs, which Holder may deem necessary or proper in connection with the satisfaction of the indebtedness.

CP 32. Although each of these attorney's fee clauses refers to the lender or holder's attorney's fees, these clauses are deemed to be reciprocal under Washington law. RCW 4.84.330.

Because Ms. Kraft was a party to the deed of trust and because this was an action for a deficiency following a foreclosure of that deed of trust, Ms. Kraft should be awarded her fees under that deed of trust. *See Conrad v. Smith*, 42 Wn. App. 559, 712 P.2d 866 (1986) (attorney fees awarded to lender pursuant to deed of trust where borrower tried to set aside foreclosure). Also, Ms. Kraft should be permitted her reasonable attorney fees and costs under the guaranty and note. *See Grant v. Auvil*, 39 Wn.2d 722, at 724-25, 238 P.2d 393 (1951) (for a discussion of incorporation by reference in the context of a statute of frauds case). The guaranty provided that she would be responsible for all sums payable under the note. The note provided for attorney fees. Wachovia likely will not dispute that reasonable attorney fees are payable to the prevailing party in this case since it already requested them on that basis at summary judgment. In fact, Wachovia asked not only for the fees incurred in its claim against Ms. Kraft, it also asked that she be responsible for the fees it incurred in its bankruptcy litigation against her former husband. CP 14-18.

B. MS. KRAFT SHOULD BE AWARDED HER ATTORNEY FEES ON APPEAL PURSUANT TO THE GUARANTY, NOTE, DEED OF TRUST, AND RAP 18.1.

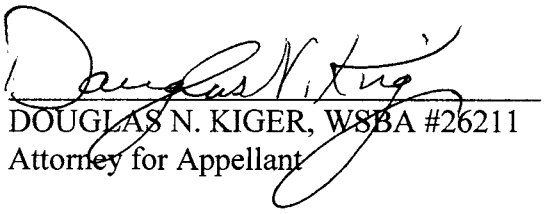
Attorney fees on appeal can be awarded if applicable law permits an award of fees. RAP 18.1(a). At a minimum Ms. Kraft should be allowed her statutory costs and attorney fees pursuant to RCW 4.84.010, RCW 4.84.060, and RCW 4.84.080. Because the note and deed of trust in this case permits an award of fees, Ms. Kraft also asks for an award of fees and costs on appeal pursuant RAP 18.1 should she prevail. In that event the Ms. Kraft intends to submit an affidavit of fees and expenses as authorized by RAP 18.1(d).

IV. CONCLUSION

Ms. Kraft respectfully requests that the trial court's denial of her request to present a request for an award of attorney fees and costs be reversed, that Ms. Kraft be awarded her attorney fees and costs on appeal, and that the matter be remanded for entry of judgment in Ms. Kraft's favor for the attorney fees and costs she has incurred in this matter.

DATED this 19th day of July, 2006.

BLADO, STRATTON & KIGER, P.S.



DOUGLAS N. KIGER, WSBA #26211
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 19th day of July, 2006, she placed with ABC Legal Messengers, Inc. an original and one copy of Brief of Appellant and Certificate of Service for filing with the Court of Appeals, Division II, and true and correct copies of the same for delivery to the following party and its counsel of record:

RESPONDENT	ATTORNEY FOR RESPONDENT
Wachovia SBA Lending, Inc., d/b/a Wachovia Small Business Capital	Alexander S. Kleinberg EISENHOWER & CARLSON, PLLC 1200 Wells Fargo Plaza 1201 Pacific Avenue Tacoma, WA 98402

DATED this 19th day of July, 2006, at Tacoma, Washington.

BLADO, STRATTON & KIGER, P.S.

Kristina Chin

Kristina Chin, Paralegal

FILED
COURT OF APPEALS
06 JUL 20 PM 1:49
STATE OF WASHINGTON
BY DEPUTY

APPENDIX A

GUARANTY

OMB Approval No. 3245-0201
Expiration Date: 11-30-90

SBA LOAN NUMBER
PLP-1055574004

SMALL BUSINESS ADMINISTRATION (SBA)

GUARANTY

In order to induce The Money Store Investment Corporation, (hereinafter called "Lender") to make a loan or loans, or renewal or extension thereof, to Randolph S. Kraft (hereinafter called "Debtor"), the Undersigned hereby unconditionally guarantees to Lender, its successors and assigns, the due and punctual payment when due, whether by acceleration or otherwise, in accordance with the terms thereof, of the principal of and interest on and all other sums payable, or stated to be payable, with respect to the note of the Debtor, made by the Debtor to Lender, dated June 30, 1997 in the principal amount of $172,000.00, with interest at the rate of (initial) 10.750 percent per annum (Prime plus 2.500 percent). Such note, and the interest thereon and all other sums payable with respect thereto are hereinafter collectively called "Liabilities." As security for the performance of this guaranty the Undersigned hereby mortgages, pledges, assigns, transfers, and delivers to Lender certain collateral (if any), listed in the schedule at the end hereof. The term "collateral" as used herein shall mean any funds, guaranties, agreements, or other property or rights or interests of any nature whatsoever, or the proceeds thereof, which may have been, are, or hereafter may be, mortgaged, pledged, assigned, transferred or delivered directly or indirectly by or on behalf of the Debtor or the Undersigned or any other party to Lender or to the holder of the aforesaid note of the Debtor, or which may have been, are, or hereafter may be held by any party as trustee or otherwise, as security, whether immediate or underlying, for the performance of this guaranty or the payment of the Liabilities or any of them or any security therefor.

The Undersigned waives any notice of the incurring by the Debtor at any time of any of the Liabilities, and waives any and all presentment, demand, protest, or notice of dishonor, nonpayment, or other default with respect to any of the Liabilities and any obligation of any party at any time comprised in the collateral. The Undersigned hereby grants to Lender full power, in its uncontrolled discretion and without notice to the Undersigned, but subject to the provisions of any agreement between the Debtor or any other party and Lender at the time in force, to deal in any manner with the Liabilities and the collateral, including, but without limiting the generality of the foregoing, the following powers:

(a) To modify or otherwise change any terms of all or any part of the Liabilities or the rate of interest thereon (but not to increase the principal amount of the note of the Debtor to Lender), to grant any extension or renewal thereof and any other indulgence with respect thereto, and to effect any release, compromise, or settlement with respect thereto;

(b) To enter into any agreement of forbearance with respect to all or any part of the Liabilities, or with respect to all or any part of the collateral, and to change the terms of any such agreement;

(c) To forbear from calling for additional collateral to secure any of the Liabilities or to secure any obligation comprised in the collateral;

(d) To consent to the substitution, exchange, or release of all or any part of the collateral, whether or not the collateral, if any, received by Lender upon any such substitution, exchange, or release shall be of the same or of a different character or value than the collateral surrendered by Lender;

(e) In the event of the nonpayment when due, whether by acceleration or otherwise, of any of the Liabilities, or in the event of default in the performance of any obligation comprised in the collateral, to realize on the collateral or any part thereof, as a whole or in such parcels or subdivided interests as Lender may elect, at any public or private sale or sales, for cash or on credit or for future delivery, without demand, advertisement, or notice of the time or place of sale or any adjournment thereof (the Undersigned hereby waiving any such demand, advertisement and notice to the extent permitted by law), or by foreclosure or otherwise, or to forbear from realizing thereon, all as Lender in its uncontrolled discretion may deem proper, and to puchase all or any part of the collateral for its own account at any such sale or foreclosure, such powers to be exercised only to the extent permitted by law.

The obligations of the Undersigned hereunder shall not be released, discharged or in any way affected, nor shall the Undersigned have any rights or recourse against Lender, by reason of any action Lender may take or omit to take under the foregoing powers.

In case the Debtor shall fail to pay all or any part of the Liabilities when due, whether by acceleration or otherwise, according to the terms of said note, the Undersigned, immediately upon the written demand of Lender, will pay to Lender the amount due and unpaid by the Debtor as aforesaid, in like manner as if such amount constituted the direct and primary obligation of the Undersigned. Lender shall not be required, prior to any such demand on, or payment by, the Undersigned, to make any demand upon or pursue or exhaust any of its rights or remedies against the Debtor or others with respect to the payment of any of the Liabilities, or to pursue or exhaust any of its rights or remedies with respect to any part of the collateral. The Undersigned shall have no right of subrogation whatsoever with respect to the Liabilities or the collateral unless and until Lender shall have received full payment of all the Liabilities.

EXHIBIT C

The obligations of the Undersigned hereunder, and the rights of Lender in the collateral, shall not be released, discharged, or in any way affected, nor shall the Undersigned have any rights against Lender: by reason of the fact that any of the collateral may be in default at the time of acceptance thereof by Lender or later; nor by reason of the fact that a valid lien in any of the collateral may not be conveyed to, or created in favor of, Lender; nor by reason of the fact that any of the collateral may be subject to equities or defenses or claims in favor of others or may be invalid or defective in any way; nor by reason of the fact that any of the Liabilities may be invalid for any reason whatsoever; nor by reason of the fact that the value of any of the collateral, or the financial condition of the Debtor or of any obligor under or guarantor of any of the collateral, may not have been correctly estimated or may have changed or may hereafter change; nor by reason of any deterioration, waste, or loss by fire, theft, or otherwise of any of the collateral, unless such deterioration, waste, or loss be caused by the willful act or willful failure to act of Lender.

The Undersigned agrees to furnish Lender, or the holder of the aforesaid note of the Debtor, upon demand, but not more often than semiannually, so long as any part of the indebtedness under such note remains unpaid, a financial statement setting forth, in reasonable detail, the assets, liabilities, and net worth of the Undersigned.

The Undersigned acknowledges and understands that if the Small Business Administration (SBA) enters into, has entered into, or will enter into, a Guaranty Agreement, with Lender or any other lending institution, guaranteeing a portion of Debtor's Liabilities, the Undersigned agrees that it is not a coguarantor with SBA and shall have no right of contribution against SBA. The Undersigned further agrees that all liability hereunder shall continue notwithstanding payment by SBA under its Guaranty Agreement to the other lending institution.

The term "Undersigned" as used in this agreement shall mean the signer or signers of this agreement, and such signers, if more than one, shall be jointly and severally liable hereunder. The Undersigned further agrees that all liability hereunder shall continue notwithstanding the incapacity, lack of authority, death, or disability of any one or more of the Undersigned, and that any failure by Lender or its assigns to file or enforce a claim against the estate of any of the Undersigned shall not operate to release any other of the Undersigned from liability hereunder. The failure of any other person to sign this guaranty shall not release or affect the liability of any signer hereof.

THIS GUARANTY IS DATED 6/30/97.

GUARANTOR:

x Deanna D Kraft (SEAL)
Deanna D. Kraft

Signed, acknowledged and delivered in the presence of:

x C Weller
Witness

x Wilma T. Reynolds
Witness

NOTE.—Corporate guarantors must execute guaranty in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership guarantors must execute guaranty in firm name, together with signature of a general partner. Formally executed guaranty is to be delivered at the time of disbursement of loan.

(LIST COLLATERAL SECURING THE GUARANTY)

Guaranty of Deanna D. Kraft secured by Deed of Trust of FIRST priority on borrower's property located at 65 Beverly Road, Asheville, NC 28805.

See attached EXHIBIT A for legal description.

EXHIBIT A TO SBA GUARANTY

BEGINNING at a point said point being in the Southern margin of Beverly Road and being the most Northern point in Lenoir B. Moore, Jr. property as described in the Buncombe County Registry Deed Book 1369, Page 374; thence from said established beginning point the next three calls being along the Southern margin of Beverly Road: North 43 degrees 19 minutes 0 seconds West 27.88 feet, North 50 degrees 17 minutes 0 seconds West 38.09 feet, North 54 degrees 50 minutes 0 seconds West 209.48 feet; thence South 38 degrees 41 minutes 30 seconds West 39.73 feet to a an iron pipe set in the Southern margin of a 10 foot soil drive; thence South 52 degrees 26 minutes 40 seconds East 144.37 feet to an iron pipe set; thence South 36 degrees 9 minutes 40 seconds East 99.0 feet to a point in the Northwest margin of Lenoir B. Moore, Jr. property as described in Deed Book 1369, Page 374; thence North 53 degrees 35 minutes 40 seconds East 135.62 feet to the point and place of BEGINNING.

APPENDIX B

NOTE

OMB Approval No. 3245-0201

U.S. Small Business Administration

NOTE

SBA LOAN NUMBER
PLP-1055574004

Asheville, NC
(City and State)

$172,000.00

(Date) June 30, 19 97

For value received, the undersigned promises to pay to the order of: ********************************

********************** The Money Store Investment Corporation ***********************
(Payee)

at its office in the city of Sacramento, State of California

or at holder's option, at such other place as may be designated from time to time by the holder **************

****One Hundred Seventy-Two Thousand Dollars and No Cents ($172,000.00)****
(Write out amount)

with interest on unpaid principal computed from the date of each advance to the undersigned at the rate of Prime +2.500 percent per annum, payment to be made in installments as follows:

One installment of interest only will be payable on the first day of the month following date of Note. Then, equal monthly installments of principal and interest in the amount of $1,723.00 will be due on the first day of the second month following date of Note and on the first day of each and every month thereafter, unless the amount of any installment changes pursuant hereto. The balance of principal and accrued interest shall be payable on or before Twenty-One (21) years from date of Note. The initial interest rate shall be Ten and Three-Quarters Percent (10.750%) per annum. Each payment shall be applied first to the interest accrued to the date of receipt of said payment, and the balance, if any, to principal. The interest rate shall not exceed the rate allowable under Federal or State Usury laws, whichever is applicable.

This is a variable interest rate loan in which the interest rate will fluctuate in accordance with the Prime Rate published in the Wall Street Journal. The interest rate (spread) to be added to the Prime Rate at the beginning of each adjustment period will be Two and One-Half Percent (2.500%). Each adjustment period will be three months beginning on the first business day of the calendar quarter following date of first disbursement. Adjustment periods and calendar quarters shall commence on the first business day of January, April, July and October.

The interest rate on this Note shall increase or decrease by adding the interest rate spread to the Prime Rate as of the beginning of each adjustment period.

Upon any change in the note interest rate, the above monthly principal and interest payment shall be adjusted to amortize the remaining loan balance in equal monthly payments of principal and interest over the remaining term of the loan.

Lender shall give written notice to Borrower of each increase or decrease in the interest rate within thirty (30) days after the effective date of each rate adjustment; however, the fluctuation of the interest rate is not contingent on whether the notice is given.

EXHIBIT 1

If Borrower shall be in default in payment due on the indebtedness herein and the Small Business Administration (SBA) purchases its guaranteed portion of said indebtedness, the rate of interest on both the guaranteed and unguaranteed portions herein shall be fixed at the rate in effect as of the first date of uncured default. If the Borrower shall not be in default in payment when SBA purchases its guaranteed portion, the rate of interest on both the guaranteed and unguaranteed portion herein shall be fixed at the rate in effect as of the date of purchase by SBA.

Borrower agrees to pay a late charge equal to 4% of the payment amount due if such payment is not received within 15 DAYS of the due date. Funds received from the Borrower will be applied first to interest to the date of receipt, then to principal and then to the late fee.

If this Note contains a fluctuating interest rate, the notice provision is not a pre-condition for fluctuation (which shall take place regardless of notice). Payment of any installment of principal or interest owing on this Note may be made prior to the maturity date thereof without penalty. Borrower shall provide lender with written notice of intent to prepay part or all of this loan at least three (3) weeks prior to the anticipated prepayment date. A prepayment is any payment made ahead of schedule that exceeds twenty (20) percent of the then outstanding principal balance. If borrower makes a prepayment and fails to give at least three weeks advance notice of intent to prepay, then, notwithstanding any other provision to the contrary in this note or other document, borrower shall be required to pay lender three weeks interest on the unpaid principal as of the date preceding such prepayment.

The term "Indebtedness" as used herein shall mean the indebtedness evidenced by this Note, including principal, interest, and expenses, whether contingent, now due or hereafter to become due and whether heretofore or contemporaneously herewith or hereafter contracted. The term "Collateral" as used in this Note shall mean any funds, guaranties, or other property or rights therein of any nature whatsoever or the proceeds thereof which may have been, are, or hereafter may be, hypothecated, directly or indirectly by the undersigned or others, in connection with, or as security for, the indebtedness or any part thereof. The Collateral, and each part thereof, shall secure the indebtedness and each part thereof. The covenants and conditions set forth or referred to in any and all instruments of hypothecation constituting the Collateral are hereby incorporated in this Note as covenants and conditions of the undersigned with the same force and effect as though such covenants and conditions were fully set forth herein.

The indebtedness shall immediately become due and payable, without notice or demand, upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the undersigned or for any of its property, or upon the filing of a petition by or against the undersigned under the provisions of any State insolvency law or under the provisions of the Bankruptcy Reform Act of 1978, as amended, or upon the making by the undersigned of an assignment for the benefit of its creditors. Holder is authorized to declare all or any part of the indebtedness due and payable upon the happening of any of the following events: (1) Failure to pay any part of the indebtedness when due; (2) nonperformance by the undersigned of any agreement with, or any condition imposed by, Holder or Small Business Administration (hereinafter called "SBA"), with respect to the indebtedness; (3) Holder's discovery of the undersigned's failure in any application of the undersigned to Holder or SBA to disclose any fact deemed by Holder to be material or of the making therein or in any of the said agreements, or in any affidavit or other documents submitted in connection with said application or the indebtedness, of any misrepresentation by, on behalf of, or for the benefit of the undersigned; (4) the reorganization (other than a reorganization pursuant to any of the provisions of the Bankruptcy Reform Act of 1978, as amended) or merger or consolidation of the undersigned (or the making of any agreement therefor) without the prior written consent of Holder; (5) the undersigned's failure duly to account, to Holder's satisfaction, at such time or times as Holder may require, for any of the Collateral, or proceeds thereof, coming into the control of the undersigned; or (6) the institution of any suit affecting the undersigned deemed by Holder to affect adversely its interest hereunder in the Collateral or otherwise. Holder's failure to exercise its rights under this paragraph shall not constitute a waiver thereof.

Upon the nonpayment of indebtedness, or any part thereof, when due, whether by acceleration or otherwise. Holder is empowered to sell, assign, and deliver the whole or any part of the Collateral at public or private sale, without demand, advertisement or notice of the time or place of sale or of any adjournment thereof, which are hereby expressly waived. After deducting all expenses incidental to or arising from such sale or sales, Holder may apply the residue of the proceeds thereof to the payment of the indebtedness, as it shall deem proper, returning the excess, if any, to the undersigned. The undersigned hereby waives all right of redemption or appraisement whether before or after sale.

Holder is further empowered to collect or cause to be collected or otherwise to be converted into money all or any part of the Collateral, by suit or otherwise, and to surrender, compromise, release, renew, extend, exchange, or substitute any item of the Collateral in transactions with the undersigned or any third party, irrespective of any assignment thereof by the undersigned, and without prior notice to or consent of the undersigned or any assignee. Whenever any item of the Collateral shall not be paid when due, or otherwise shall be in default, whether or not the indebtedness, or any part thereof, has become due, Holder shall have the same rights and powers with respect to such item of the Collateral as are granted in this paragraph in case of nonpayment of the indebtedness, or any part thereof, when due. None of the rights, remedies, privileges, or powers of Holder expressly provided for herein shall be exclusive, but each of them shall be cumulative with and in addition to every other right, remedy, privilege, and power now or hereafter existing in favor of Holder, whether at law or equity, by statute or otherwise.

The undersigned agrees to take all necessary steps to administer, supervise, preserve, and protect the Collateral; and regardless of any action taken by Holder, there shall be no duty upon Holder in this respect. The undersigned shall pay all expenses of any nature, whether incurred in or out of court, and whether incurred before or after this Note shall become due at its maturity date or otherwise, including but not limited to reasonable attorney's fees and costs, which Holder may deem necessary or proper in connection with the satisfaction of the indebtedness or the administration, supervision, preservation, protection of (including, but not limited to, the maintenance of adequate insurance) or the realization upon the Collateral. Holder is authorized to pay at any time and from time to time any or all of such expenses, add the amount of such payment to the amount of the indebtedness, and charge interest thereon at the rate specified herein with respect to the principal amount of this Note.

The security rights of Holder and its assigns hereunder shall not be impaired by Holder's sale, hypothecation or rehypothecation of any note of the undersigned or any item of the Collateral, or by any indulgence, including but not limited to (a) any renewal, extension, or modification which Holder may grant with respect to the indebtedness or any part thereof, or (b) any surrender, compromise, release, renewal, extension, exchange, or substitution which Holder may grant in respect of the Collateral, or (c) any indulgence granted in respect of any endorser, guarantor, or surety. The purchaser, assignee, transferee, or pledgee of this Note, the Collateral, and guaranty, and any other document (or any of them), sold assigned, transferred, pledged, or repledged, shall forthwith become vested with and entitled to exercise all the powers and rights given by this Note and all applications of the undersigned to Holder or SBA, as if said purchaser, assignee, transferee, or pledgee were originally named as Payee in this Note and in said application or applications.

This promissory note is given to secure a loan which SBA is making or in which it is participating and, pursuant to Part 101 of the Rules and Regulations of SBA (13 C.F.R. 101.1(d)), this instrument is to be construed and (when SBA is the Holder or a party in interest) enforced in accordance with applicable Federal law.

This Note is secured by real property and the Deed(s) of Trust and/or Mortgage(s) securing same contain the following:

In the event the herein described property or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, transferred, disposed of, further encumbered, or alienated by Mortgagor or by the operation of law or otherwise without the written consent of Mortgagee first obtained, all obligations secured by this instrument, irrespective of the maturity dates expressed herein, at the option of the holder Mortgagee, and without demand or notice, shall immediately become due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

Randolph S. Kraft

Note: Corporate applicants must execute Note, in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership applicants must execute Note in firm name, together with signature of a general partner.

APPENDIX C

DEED OF TRUST

BK 1834 PG 571

11-026300 1
1997-1
REGISTERED

97 JUL -1 A11:19

REG OF DEEDS
BUNCOMBE CO.

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

RECORDATION REQUESTED BY:

The Money Store Investment Corporation
P.O. Box 162247
Sacramento, CA 95816-2247

WHEN RECORDED MAIL TO: Van Winkle (CWE)

TMSI CTMSCMI
P.O. Box 15143
Sacramento, CA 95851

This Deed of Trust prepared by: x Cindy Eller
The Money Store Investment Corporation

DEED OF TRUST

THIS DEED OF TRUST IS DATED 30 June 1997, among Randolph S. Kraft and Deanna D. Kraft, whose address is 65 Beverly Road, Asheville, NC 28805 (referred to below as "Grantor"); The Money Store Investment Corporation, whose address is P.O. Box 162247, Sacramento, CA 95816-2247 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Paul Finnican, a resident of Charlotte, NC & Dave White, a resident of Raleigh, NC (referred to below as "Trustee").

CONVEYANCE AND GRANT. NOW, THEREFORE, as security for the indebtedness, advancements and other sums expended by the Beneficiary pursuant to this Deed of Trust and costs of collection (including attorneys' fees as provided in the Note) and other valuable consideration, the receipt of which is hereby acknowledged, Grantor has bargained, sold, given, granted and conveyed and does by these presents bargain, sell, give, grant and convey to Trustee, and Trustee's heirs or successors and assigns, for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, **located in Buncombe County, State of North Carolina (the "Real Property"):**

See Exhibit "A", attached hereto and incorporated herein by this reference.

To have and to hold said Real Property with all privileges and appurtenances thereunto belonging, to the Trustee, his heirs, successors and assigns forever, upon the trusts, terms and conditions and for the uses hereinafter set forth.

The Real Property or its address is commonly known as 65 Beverly Road, Asheville, NC 28805. The Real Property tax identification number is 9658.08-88-6028.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants Lender a Uniform Commercial Code security interest in the Rents and the Personal Property defined below.

DEFINITIONS. The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Beneficiary. The word "Beneficiary" means The Money Store Investment Corporation, its successors and assigns. The Money Store Investment Corporation also is referred to as "Lender" in this Deed of Trust.

Borrower. The word "Borrower" means each and every person or entity signing the Note, including without limitation Randolph S. Kraft.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Grantor. The word "Grantor" means any and all persons and entities executing this Deed of Trust, including without limitation Randolph S. Kraft and Deanna D. Kraft. Any Grantor who signs this Deed of Trust, but does not sign the Note, is signing this Deed of Trust only to grant and convey that Grantor's interest in the Real Property and to grant a security interest in Grantor's interest in the Rents and Personal Property to Lender and is not personally liable under the Note except as otherwise provided by contract or law.

Guarantor. The word "Guarantor" means and includes without limitation any and all guarantors, sureties, and accommodation parties in connection with the indebtedness.

Improvements. The word "Improvements" means and includes without limitation all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Trustee or Lender to enforce obligations of Grantor under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

000019 EXHIBIT 2

Lender. The word "Lender" means The Money Store Investment Corporation, its successors and assigns.

Note. The word "Note" means the Note dated June 30, 1997 in the principal amount of $172,000.00 from Borrower to Lender,

together with all renewals, extensions, modifications, refinancings, and substitutions for the Note. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the property, interests and rights described above in the "Conveyance and Grant" section.

Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means Paul Finnican, a resident of Charlotte, NC & Dave White, a resident of Raleigh, NC and any substitute or successor trustees.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) this Deed of Trust is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (c) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale. Grantor expressly waives, to the extent permitted by North Carolina law, all of Grantor's rights under (a) N.C. Gen. Stat. Sections 26-7 through 9 (1986) to require Lender to take action, (b) N.C. Gen. Stat. Section 25-3-606 (1985 and Supplement 1985) relating to the impairment of the collateral, and (c) N.C. Gen. Stat. Section 25-9-501 (1986) with respect to the "commercial reasonableness" of any sale of collateral.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Grantor shall strictly perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor and Borrower agree that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (a) remain in possession and control of the Property, (b) use, operate or manage the Property, and (c) collect any Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Hazardous Substances. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Grantor represents and warrants to Lender that: (a) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without the prior written consent of

Lender. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE – CONSENT BY LENDER. Lender may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by North Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are a part of this Deed of Trust.

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right To Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance for the full unpaid principal balance of the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at its election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

EXPENDITURES BY LENDER. If Grantor fails to comply with any provision of this Deed of Trust, or if any action or proceeding is commenced that

would materially affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will bear interest at the rate provided for in the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Deed of Trust also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust.

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities, including without limitation all applicable environmental laws, ordinances, and regulations, unless otherwise specifically excepted in the environmental agreement executed by Grantor and Lender relating to the Property.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. *The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:*

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, *together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation* all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (c) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (d) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust.

Security Agreement. This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust.

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor and Borrower under the Note, this Deed of Trust, and the Related Documents, and (b) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. The lien of this Deed of Trust and the security interest granted hereby will automatically attach, without further act, to all after-acquired property attached to and or used in the operation of the Property or any part thereof. Unless prohibited by law or agreed to the contrary by Lender in writing, *Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.*

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of

Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Borrower pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

DEFAULT. Each of the following, at the option of Lender, shall constitute an event of default ("Event of Default") under this Deed of Trust:

Default on Indebtedness. Failure of Borrower to make any payment when due on the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Compliance Default. Failure of Grantor or Borrower to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor or Borrower under this Deed of Trust, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Grantor or Borrower or the dissolution or termination of Grantor or Borrower's existence as a going business, the insolvency of Grantor or Borrower, the appointment of a receiver for any part of Grantor or Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor or Borrower.

Foreclosure, Forfeiture, etc. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure or forfeiture proceeding, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender.

Breach of Other Agreement. Any breach by Grantor or Borrower under the terms of any other agreement between Grantor or Borrower and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor or Borrower to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith deems itself insecure.

Right to Cure. If such a failure is curable and if Grantor or Borrower has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor or Borrower, after Lender sends written notice demanding cure of such failure: (a) cures the failure within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor or Borrower to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

Express Power of Sale Provision. Upon the application or request of Lender, it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered, to expose to sale and to sell the Property at public auction for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust or such other sales appropriate under the circumstances; and upon any such sale, the Trustee shall convey title to the purchaser in fee simple. In the event of any sale under this Deed of Trust by virtue of the exercise of the powers granted in this Deed of Trust, or pursuant to any order and any judicial proceeding or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect. Trustee shall be authorized to hold a sale pursuant to North Carolina General Statute Chapter 45. If Trustee so elects, Trustee may sell the Property covered by this Deed of Trust at one or more separate sales in any manner permitted by applicable North Carolina law, and any exercise of the powers granted in this Deed of Trust shall not extinguish or exhaust such powers, until the entire Property is sold or the Indebtedness is paid in full. If such Indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Lender may at its option exercise the remedies granted under any of the security agreements either concurrently or independently and in such order as Lender may determine.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor or Borrower, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in

response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (a) pay a reasonable rental for the use of the Property, or (b) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor and Borrower hereby waive any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy provided in this Deed of Trust, the Note, in any Related Document, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor or Borrower under this Deed of Trust after failure of Grantor or Borrower to perform shall not affect Lender's right to declare a default and to exercise any of its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender which in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees whether or not there is a lawsuit, including reasonable attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust.

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Trustee's Fees. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale for a completed foreclosure. In the event foreclosure is commenced, but not completed, Grantor shall pay all expenses incurred by Trustee and partial commission computed on five percent (5%) of the outstanding Indebtedness, according to the following schedule: one-fourth of the commission before Trustee issues a notice of hearing on the right to foreclosure; one-half of the commission after issuance of notice of hearing; three-fourths of the commission after a hearing; and the full commission after the initial sale.

Express Power to Substitute a Trustee. Lender shall have the irrevocable right to remove at any time and from time to time without limit the Trustee named in this Deed of Trust without notice or cause and to appoint a successor by an instrument in writing, duly acknowledged, in such a form as to entitle such written instrument to be recorded in the State of North Carolina; and, in the event of the death or resignation of the Trustee named in this Deed of Trust, Lender shall have the right to appoint a successor by such written instrument, and any Trustee so appointed shall be vested with the title to the Property, and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though the successor trustee were named in this Deed of Trust as Trustee.

NOTICES TO GRANTOR AND OTHER PARTIES. Any notice under this Deed of Trust shall be in writing, may be sent by telefacsimile, and shall be effective when actually delivered, or when deposited with a nationally recognized overnight courier, or, if mailed, shall be deemed effective when deposited in the United States mail first class, certified or registered mail, postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender and Trustee informed at all times of Grantor's current address.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Applicable Law. This Deed of Trust has been delivered to Lender and accepted by Lender in the State of North Carolina. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of North Carolina.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Multiple Parties. All obligations of Grantor and Borrower under this Deed of Trust shall be joint and several, and all references to Borrower shall mean each and every Borrower, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Deed of Trust.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust in all other respects shall remain valid and enforceable.

Successors and Assigns. Subject to the limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waivers and Consents. Lender shall not be deemed to have waived any rights under this Deed of Trust (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor or Borrower, shall constitute a waiver of any of Lender's rights or any of Grantor or Borrower's obligations as to any future transactions. Whenever consent by Lender is required in this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

IN WITNESS WHEREOF ON THE DATE SHOWN AT THE BEGINNING OF THIS DEED OF TRUST.

GRANTOR:

X Randolph S. Kraft (SEAL)

X Deanna D. Kraft (SEAL)

Signed, acknowledged and delivered in the presence of:

X _____
Witness

X _____
Witness

INDIVIDUAL ACKNOWLEDGMENT

STATE OF North Carolina)
) SS
COUNTY OF Buncombe)

I, Wilma T. Reynolds, a Notary Public for said County and State, certify that Randolph S. Kraft and Deanna D. Kraft personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial Seal this the 30th day of June, 19 97.

Wilma T. Reynolds
Notary Public

My Commission Expires:
May 27, 2002

(Affix Notarial Seal Here)

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State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of Wilma T. Reynolds

a notary or Notaries public of the State and County designated is hereby certified to be correct.

Filed for registration on this the 1 day of July, 19 97 at 11:19 A M.

OTTO W. DeBRUHL
Register of Deeds, Buncombe County

By: Asst./Deputy Register of Deeds

EXHIBIT A TO DEED OF TRUST

BEGINNING at a point said point being in the Southern margin of Beverly Road and being the most Northern point in Lenoir B. Moore, Jr. property as described in the Buncombe County Registry Deed Book 1369, Page 374; thence from said established beginning point the next three calls being along the Southern margin of Beverly Road: North 43 degrees 19 minutes 0 seconds West 27.88 feet, North 50 degrees 17 minutes 0 seconds West 38.09 feet, North 54 degrees 50 minutes 0 seconds West 209.48 feet; thence South 38 degrees 41 minutes 30 seconds West 39.73 feet to a an iron pipe set in the Southern margin of a 10 foot soil drive; thence South 52 degrees 26 minutes 40 seconds East 144.37 feet to an iron pipe set; thence South 36 degrees 9 minutes 40 seconds East 39.0 feet to a point in the Northwest margin of Lenoir B. Moore, Jr. property as described in Deed Book 1369, Page 374; thence North 53 degrees 35 minutes 40 seconds East 135.62 feet to the point and place of BEGINNING.