

Development Authority of Lumpkin County Meeting Minutes  
October 18, 2016  
Conference Room, Lumpkin County Administration Building

Board Members in attendance: Jim Higdon, Jim Curtis, John Gaston, Donna Minnich, , Steven Ferguson, JB Jones

Associate Members/Guests in attendance: Steve Gooch, Joy Edelberg, Sean Phipps, Bill Johnson, Gary McCullough, Tim Osby

Meeting called to order by Chairman Jim Higdon at 9:03 am

Motion to approve agenda: JB Jones. Second: Steven Ferguson. Motion carried.

Motion to approve September 20, 2016 minutes: Steven Ferguson. Second: Jim Curtis. Motion carried.

**Financial Report** – deferred to next month

**Announcement:** Executive Director Steve Gooch announced that Wahoo Docks, a company from Gainesville, has purchased the former Louver Shop building on Chesterra Rd and will be moving their operations by the end of the year.

**Arcadia** – launched a new product last week. Plans to hold ribbon cutting on November 11<sup>th</sup> at 2pm

**Refrigiwear** – sale of 165 Breakstone Dr along with adjacent lot closed on October 7, 2016.

Motion to adjourn to executive session to discuss legal issues involving BM&K Construction: JB Jones. Second: Jim Curtis. Board entered executive session at 9:25am. Member John Gaston recused due to a vendor relationship with BM&K.

Motion to return to regular meeting: Steven Ferguson. Second: Donna Minnich. Board returned to regular meeting at 9:56am.

Motion to authorize Executive Director Steve Gooch and at least two board members to participate in mediation with BM&K Construction and make decision on behalf of the Development Authority: Ayes – JB Jones, Steven Ferguson, Donna Minnich, Jim Curtis. Nays – none

Meeting adjourned at 10:19am.

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Approved



**Development Authority of Lumpkin County**  
**Meeting Agenda**  
**Tuesday, October 18, 2016 9:00am**  
**Lumpkin County Administration Building Conference Room**

1. Welcome, call to order – Jim Higdon
2. Approve agenda
3. Approve September 20, 2016 minutes
4. Associate Members Reports
5. Financial Reports - September financial statements – Kathy Crafton
6. Announcement - new business
7. Arcadia ribbon cutting November 11, 2016 2pm  
Recent launch of new product
8. Refrigiwear/DALC closed on 165 Breakstone Dr on October 7, 2016.
9. Other Business
10. Executive session
11. Adjourn

Development Authority of Lumpkin County Meeting Minutes  
September 20, 2016  
Conference Room, Lumpkin County Administration Building

Board Members in attendance: Jim Higdon, Jim Curtis, John Gaston, Wyman Walden, Donna Minnich, , Steven Ferguson, Beth Dean-Pope, Kathy Crafton

Associate Members/Guests in attendance: Steve Gooch, Joy Edelberg, Sean Phipps, Kathy Papa, Don Becker

Meeting called to order by Chairman Jim Higdon at 9:00 am

Motion to approve agenda: Kathy Crafton. Second: Wyman Walden. Motion carried.

Motion to approve August 16, 2016 minutes: Donna Minnich. Second: Steven Ferguson. Motion carried.

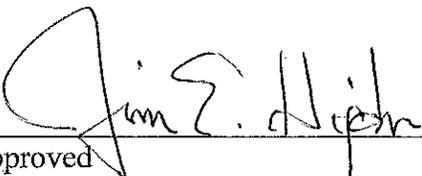
**Financial Report** – Treasurer Kathy Crafton presented reports from June, July and August. She noted nothing unusual in the reports. Motion to accept Financial Reports: Beth Dean-Pope. Second: Donna Minnich. Motion carried.

**Arcadia** – has opened office in California. Planning customer appreciation/ribbon cutting November 11, 2016.

**Refrigiwear** – Resolution to enter into purchase and sale agreement with Refrigiwear for property located at 165 Breakstone Drive and adjacent lot per the option agreement in their lease. Motion to approve resolution: John Gaston. Second: Kathy Crafton. Motion carried.

Directors report: Steve Gooch noted the Authority received a letter of official notice Chestatee Hospital has been sold. Steve reported NGHS has applied for permits to establish an urgent care center near Home Depot. He mentioned the Vision Project is wrapping up.

Motion to adjourn Wyman Walden. Second: Jim Curtis. Meeting adjourned at 9:45.

  
Approved \_\_\_\_\_

6:02 PM

10/13/16

Accrual Basis

**Development Authority of Lumpkin County**  
**Balance Sheet**  
 As of September 30, 2016

	Sep 30, 16
<b>ASSETS</b>	
<b>Current Assets</b>	
Checking/Savings	
10100 · Debt Service Fund	1,900.97
111122 · Operating Account	470,175.66
11250 · Construction Account	192,323.52
<b>Total Checking/Savings</b>	664,400.15
Accounts Receivable	
11000 · Accounts Receivable	-583.00
112700 · Interfund Receivable	68.55
<b>Total Accounts Receivable</b>	-514.45
Other Current Assets	
113801 · Prepaid Insurance	2,513.67
118001 · Issuance Costs	1,790.10
<b>Total Other Current Assets</b>	4,303.77
<b>Total Current Assets</b>	668,189.47
<b>Fixed Assets</b>	
115203 · Land held for resale	203,915.13
115204 · Building held for resale	1,377,227.33
11700 · Machinery & Equipment	1,137.66
11710 · Accumulated Depr. Mach. & Equip	-1,137.66
117410 · Accumulated Depr. Buildings	-334,395.20
117505 · Furniture & Fixtures	14,833.77
117506 · Accumulated Depr. Furn. & Fixt.	-9,641.94
117520 · ACADIA Building	1,941,683.86
<b>Total Fixed Assets</b>	3,193,622.95
<b>TOTAL ASSETS</b>	3,861,812.42
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts Payable	
121100 · Accounts Payable	170,890.00
<b>Total Accounts Payable</b>	170,890.00
Other Current Liabilities	
112450 · Payroll Liabilities	
Federal Taxes (941/944)	1,592.41
Federal Unemployment (940)	84.00
GA Income Tax	331.53
GA Unemployment Tax	1.03
<b>Total 112450 · Payroll Liabilities</b>	2,008.97
121101 · Retainage Payable	175,644.25
122400 · Accrued Interest Payable	2,392.64
122425 · Accrued Salaries	5,222.38
122706 · Notes Payable - Current- Ethan	30,488.32
22050 · Arcadia Project Deposit	10,085.00
25000 · Due to Lumpkin County	73.41
<b>Total Other Current Liabilities</b>	225,914.97
<b>Total Current Liabilities</b>	396,804.97
Long Term Liabilities	
112705 · Notes Payable-Breakstone Drive	1,225,062.36
112706 · Notes Payable Ethan Allen Dr	-17,667.29
125302 · LOC-Ethan Allen Project	1,202,349.62
<b>Total Long Term Liabilities</b>	2,409,744.69
<b>Total Liabilities</b>	2,806,549.66

6:02 PM  
10/13/16  
Accrual Basis

Development Authority of Lumpkin County  
**Balance Sheet**  
As of September 30, 2016

	<u>Sep 30, 16</u>
<b>Equity</b>	
131100 · Net Investment - Capital Asset	434,250.32
134220 · Fund Balance	86,491.44
30000 · Opening Balance Equity	42,936.18
32000 · Retained Earnings	470,408.16
Net Income	21,176.66
<b>Total Equity</b>	<u>1,055,262.76</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>3,861,812.42</u></u>

Development Authority of Lumpkin County  
**Profit & Loss Budget vs. Actual**  
 January through September 2016

	TOTAL			
	Sep 16	Jan - Sep 16	Budget	% of Budget
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
381000 · Rental Income	21,773.00	158,846.00	281,000.00	56.53%
389003 · Misc. Income	0.00	687.05		
<b>Total Income</b>	<b>21,773.00</b>	<b>159,533.05</b>	<b>281,000.00</b>	<b>56.77%</b>
<b>Expense</b>				
<b>Operational Expenses</b>				
521001 · Legal Services	0.00	3,421.00	4,500.00	76.02%
521002 · Audit Services	0.00	5,970.00	5,995.00	99.58%
522205 · R & M 400 Industrial Park	0.00	50.00	700.00	7.14%
523201 · Postage	0.00	13.60	100.00	13.6%
523202 · Telephone	0.00	0.00	250.00	0.0%
523300 · Marketing/Advertising	113.90	712.78	3,500.00	20.37%
523500 · Travel	0.00	0.00	2,000.00	0.0%
523601 · Dues & Subscriptions	0.00	0.00	500.00	0.0%
523700 · Meetings/Training	0.00	795.00	2,000.00	39.75%
531100 · Supplies/Materials	0.00	567.69	2,000.00	28.39%
55220 · Bookkeeping & Payroll Services	250.00	2,328.98	3,500.00	66.54%
55400 · Bank Fees	16.00	32.14	100.00	32.14%
55600 · Insurance	0.00	2,348.00	7,500.00	31.31%
55760 · Minor Equipment Purchases	0.00	0.00	500.00	0.0%
<b>Total Operational Expenses</b>	<b>379.90</b>	<b>16,239.19</b>	<b>33,145.00</b>	<b>48.99%</b>
<b>Rental Commission</b>	<b>1,749.00</b>	<b>1,749.00</b>		
521201 · Intergovernmental Expense	0.00	5,625.00	5,625.00	100.0%
<b>55100 · Payroll Expenses</b>				
511100 · Wages	6,940.90	71,098.10	90,000.00	79.0%
512300 · Medicare Benefits	0.00	0.00	2,500.00	0.0%
512400 · Retirement Benefit	0.00	0.00	6,000.00	0.0%
55102 · Payroll Taxes	531.13	5,530.60	11,100.00	49.83%
<b>Total 55100 · Payroll Expenses</b>	<b>7,472.03</b>	<b>76,628.70</b>	<b>109,600.00</b>	<b>69.92%</b>
<b>Total Expense</b>	<b>9,600.93</b>	<b>100,241.89</b>	<b>148,370.00</b>	<b>67.56%</b>
<b>Net Ordinary Income</b>	<b>12,172.07</b>	<b>59,291.16</b>	<b>132,630.00</b>	<b>44.7%</b>
<b>Other Income/Expense</b>				
<b>Other Income</b>				
361000 · Interest Income	27.63	76.08	100.00	76.08%
<b>Total Other Income</b>	<b>27.63</b>	<b>76.08</b>	<b>100.00</b>	<b>76.08%</b>
<b>Other Expense</b>				
582000 · Interest Expense	2,556.56	38,190.58	70,000.00	54.56%
<b>Total Other Expense</b>	<b>2,556.56</b>	<b>38,190.58</b>	<b>70,000.00</b>	<b>54.56%</b>
<b>Net Other Income</b>	<b>-2,528.93</b>	<b>-38,114.50</b>	<b>-69,900.00</b>	<b>54.53%</b>
<b>Net Income</b>	<b>9,643.14</b>	<b>21,176.66</b>	<b>62,730.00</b>	<b>33.76%</b>

## Dee Harris

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**From:** Joy L. Edelberg <jedelberg@horne-horne.com>  
**Sent:** Friday, October 07, 2016 2:55 PM  
**To:** Dee Harris; Steve Gooch  
**Subject:** FW: Closing Statement: 2-34484 Refrigiwear \*\*\*DISBURSED\*\*\*

**Importance:** High

Wire has been sent.

Joy L. Edelberg  
Horne & Edelberg, P.C.  
PO Box 37  
215 Morrison Moore Pkwy E  
Dahlonega, GA 30533  
706-864-7303 phone  
706-864-8059 fax

Notice: This message is intended solely for the use of the designated recipient(s) and may contain confidential or privileged information. Any use or disclosure, by a person other than the designated recipient(s), of any portion or all of this message is strictly prohibited. If you are not a designated recipient please notify the sender immediately, delete this message from your system, and destroy all hard copies of this message. Messages sent by email may not be secure and may be delayed, retained, undelivered, or read by third parties. For these and other reasons you may choose not to communicate by email.

Horne & Edelberg, P.C., is now using ZixMail to comply with Federal and State privacy laws. Use of ZixMail will protect the privacy and confidentiality of client information and our communication with those outside our firm by fully encrypting email content and attachments. If you already use ZixMail, emails will arrive in your inbox in the customary manner. If you are not an existing ZixMail customer, you will initially receive notice of encrypted email with simple use instructions. The instructions will provide a link directly to the Zix Message Center, where you will be directed through a simple, one-time registration process. After registration, you will be able to view the message and attachments. In the future, you will be able to receive these encrypted emails by simply clicking on an "open message" button in the notification email. After one-time activation, a recipient can respond to and compose new encrypted emails to our firm. If you have questions, please call our office. Thank you.

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**From:** Valerie Copeland [mailto:ValerieC@titlelaw.com]  
**Sent:** Friday, October 07, 2016 2:43 PM  
**To:** Bettis, Cheryle S.; Joy L. Edelberg; Burstiner, Gil; Doug Carper (dcarper@refrigiwear.com); msilberman@refrigiwear.com  
**Cc:** Marcus Calloway; Kyle Levstek; Chris Byers; Kendra Huckabee; Joyce Mach  
**Subject:** Closing Statement: 2-34484 Refrigiwear \*\*\*DISBURSED\*\*\*  
**Importance:** High

All,  
We have disbursed. Fed reference numbers below.  
Congratulations to everyone!  
Thanks and have a great weekend.

161,000.00

IND OUTGOING MT

14:16:18

Fed Ref#: 1007E3QP021C001929  
BB&T Ref# 161007009099  
ABA#/BANK 082907273 BANK OF THE OZARKS  
RCVR:905 3455 DEVELOPMENT AUTHORITY OF LUMPKIN  
COUNTY DAHLONEGA GA MISC:CT#:2-34484; REFRIGIWEAR  
TRNUID: 5480943WTQP  
IND OUTGOING MT

5,500.00

14:15:44

Fed Ref#: 1007E3QP021C001925  
BB&T Ref# 161007009076  
ABA#/BANK 061000104 SUNTRUST BANK  
RCVR:1000092882553 CALLOWAY TITLE AND ESCROW  
RECORDING ATLANTA GA MISC:CT#2-34484 REFRIGIWEAR  
TRNUID: 5480763WTQP  
IND OUTGOING MT

18,500.00

14:16:13

Fed Ref#: 1007E3QP021C001928  
BB&T Ref# 161007009097  
ABA#/BANK 265270413 IBERIABANK  
RCVR:200 012 738 41 HARTMAN SIMONS & WOOD LLP  
-GENERAL ACCOUNT ATLANTA GA MISC:2-34484;  
REFRIGIWEAR  
TRNUID: 5480747WTQP  
IND OUTGOING MT

1,234,816.14

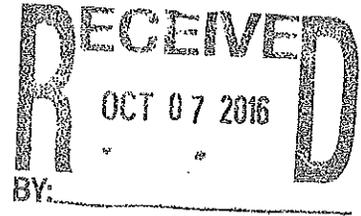
14:35:26

Fed Ref#: 1007E3QP021C002041  
BB&T Ref# 161007009101  
ABA#/BANK 082907273 BANK OF THE OZARKS  
RCVR:1300 41 9997 LOAN SETTLEMENT DAHLONEGA GA  
MISC:PAYOFF LOAN #950000771569; DEVELOPM ENT  
AUTHORITY OF LUMPKIN COUNTYCT # 2-34484;  
REFRIGIWEAR  
TRNUID: 5468655WTQP

Valerie Copeland  
Senior Closing Coordinator  
Calloway Title and Escrow, LLC  
4170 Ashford Dunwoody Road, Suite 525  
Atlanta, GA 30319  
Email: [ValerieC@titlelaw.com](mailto:ValerieC@titlelaw.com)  
Direct Dial: 678-406-8962



Gil Y. Burstiner, Esq.  
Direct Dial: (770) 226-1339  
Direct FAX: (678) 965-1750  
E-MAIL: gil.burstiner@hartmansimons.com



October 6, 2016

**VIA OVERNIGHT DELIVERY**

Marcus Calloway, Esq.  
Calloway Title and Escrow, LLC  
4170 Ashford Dunwoody Road  
2nd Floor, Suite 285  
Atlanta, Georgia 30319-1442

Re: Sale and acquisition by and between Lumpkin County Development Authority ("Seller") and Refrigiwear Support Services LLC ("Purchaser/Borrower") for property known as Lots 13 and 14, Lumpkin County Industrial Park (the "Property") and Loan from Atlantic Capital Bank, N.A. (the "Lender") in the sum of \$1,750,000.00 with Refrigiwear, Inc. as "Guarantor"  
HSW File No. 12627-0002000

Dear Marcus

In connection with the above-referenced transaction, enclosed you will find the following documents executed by the Purchaser ("Purchaser's Documents") which are being delivered to you in escrow subject to satisfaction of all of the conditions set forth herein:

**Sale**

1. One (1) original counterpart of a Sale Closing Statement;
2. Two (2) original counterparts of a Bill of Sale;
3. Two (2) original counterparts of an Assignment & Assumption of Personal Property, Warranties, Guaranties, Plans, Certificates, Licenses, Permits, Authorizations, Service Contracts, Consents and Approvals;
4. One (1) original counterpart of an Agreement to Terminate Lease; and
5. One (1) original Purchaser's Affidavit Regarding Brokers.

You will also be receiving a wire transfer(s) pursuant to the final Closing Statement from Purchaser and Lender (the "Escrow Funds").

You are hereby directed to hold in escrow the Escrow Funds and Purchaser's Documents until such time as telephonic approval for further action is received from the undersigned in accordance with the terms hereof. If approval to release the Escrow Funds and Purchaser's Documents is not received by 5:00 p.m. EST on Friday, October 7, 2016, said Escrow Funds and

Purchaser's Documents are to be returned to the undersigned promptly and the Escrow Funds are to be wired back to the appropriate party. These instructions may be retracted at any time prior to closing and, upon such retraction, all Escrow Funds and Purchaser's Documents shall be returned to the undersigned.

You may not close this transaction and disburse the Escrow Funds until all of the following conditions have been satisfied:

A. You must confirm to the undersigned that the following items have been executed by Seller and/or delivered to you unconditionally:

- (i) One (1) original Closing Statement;
- (ii) One (1) original Agreement to Terminate Lease;
- (iii) One (1) original Affidavit of Title;
- (iv) One (1) original Limited Warranty Deed;
- (v) One (1) original Quitclaim Deed;
- (vi) ~~(2)~~ <sup>(1)</sup> original counterparts of a Bill of Sale;
- (vii) One (1) original Seller's Affidavit Regarding Brokers; and
- (viii) ~~(2)~~ <sup>(1)</sup> original counterparts of an Assignment & Assumption of Personal Property, Warranties, Guaranties, Plans, Certificates, Licenses, Permits, Authorizations, Service Contracts, Consents and Approvals.

The above documents (i) through (viii) above herein referred to as "Seller's Escrow Documents." You should have also received Seller's and Purchaser's authority documents.

Those documents above which are to be recorded are referred to herein as the "Recording Documents".

B. You have reviewed each of the counterparts originals of each of the foregoing documents and have collected and compiled full execution counterparts thereof and have slip-sheeted pages where advised by the undersigned. You have further reviewed the exhibits to each of the Recording Documents, including those documents which set forth the legal description for the real property and verified that each such exhibit has been attached.

C. You have confirmed that Chicago Title Insurance Company is irrevocably committed to cause to issue to Purchaser an Owner's Policy in the amount of \$1,750,000.00 and Lender a Loan Policy in the amount of \$1,750,000.00 (the "Title Policies") in the same form as the Owners and Loan Policy Specimens attached hereto (the "Proformas"). (A signed copy of this letter being evidence of the title company's acknowledgement to issue said policies in the form as attached hereto.)

D. You are prepared to immediately record the Recording Documents.

E. You have delivered or are prepared to deliver to the undersigned the following:

- i. A copy of this letter with your original signature in the space provided below;
- ii. Fully executed originals of all closing documents (with fully executed copies being sent by email prior to disbursement);
- iii. Executed copies of Recording Documents.

At such time the aforesaid conditions are satisfied, you are authorized and directed to do the following:

1. Record in the appropriate office the Recording Documents.
2. Disburse the Funds in accordance with the closing statement signed by the Seller and Purchaser. **You are not authorized to disburse the Escrow Funds unless the title company affirmatively insures the gap period prior to such recordation and has released the Proforma via email to the undersigned.**
3. Upon your receipt of the Recording Documents after recording, please forward the same to my attention.

It is understood and agreed that you shall neither incur individual liability to anyone nor suffer expense or damage for any act or omission of yours so long as you act in good faith in the carrying out of the instructions set forth herein.

If you should have any questions with respect to the contents of this letter or the requirements set forth herein, or if you are unable to comply with the instructions set forth herein, please contact the undersigned immediately.

Very truly yours,



Gil Y. Burstiner

GYB:csb

Enclosures

Cc: Brad Wahl, Esq. (via e-mail: Letter only)

AGREED AND ACCEPTED:

CALLOWAY TITLE AND ESCROW, LLC

By: Chris Byers  
Name: CHRIS BYERS  
Title: SENIOR CLOSER

**ASSIGNMENT & ASSUMPTION OF PERSONAL PROPERTY, WARRANTIES,  
GUARANTIES, PLANS, CERTIFICATES, LICENSES, PERMITS, AUTHORIZATIONS,  
SERVICE CONTRACTS, CONSENTS AND APPROVALS**

**THIS ASSIGNMENT & ASSUMPTION OF PERSONAL PROPERTY, WARRANTIES, GUARANTIES, PLANS, CERTIFICATES, LICENSES, PERMITS, AUTHORIZATIONS, SERVICE CONTRACTS, CONSENTS AND APPROVALS** (this "Assignment") is made and delivered this 7 day of October, 2016, by **DEVELOPMENT AUTHORITY OF LUMPKIN COUNTY**, a Georgia public body politic (hereinafter "Assignor"), and **REFRIGIWEAR SUPPORT SERVICES, LLC**, a Georgia limited liability company (hereinafter "Assignee").

**WITNESSETH:**

**WHEREAS**, Assignor has on the date hereof conveyed unto Assignee certain real property located in Lumpkin County, Georgia and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and the improvements thereon ("Property"); and

**WHEREAS**, in connection with the conveyance of the Property, Assignor and Assignee intend that certain personal property, warranties, guaranties, plans, certificates, licenses, permits, authorizations, services contracts, consents and approvals applicable to the Property be assigned and transferred to Assignee.

**NOW, THEREFORE**, in consideration of the foregoing premises, the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Assignee to Assignor at and before the execution, sealing and delivery hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby sell, assign, transfer and agree as follows:

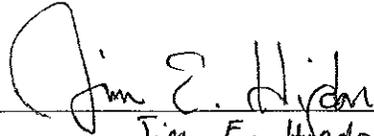
1. **Assignment of Personal Property, Warranties, Guaranties, Plans, Certificates, Licenses, Permits, Authorizations, Service Contracts, Consents and Approvals.** Assignor hereby assigns, sets over and transfers to Assignee all of its right, title and interest in, to and under all personal property, warranties, guaranties, plans, certificates, licenses, permits, authorizations, service contracts, consents and approvals with respect to the use, occupancy, possession and operation of the Property, to the extent assignable, and to the extent the Assignor has a transferable interest therein.
2. **Successors and Assigns.** This Assignment shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective successors in title and interest, legal representatives and assigns.
3. **Governing Law.** This Assignment shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.
4. **Counterparts.** This Assignment may be executed in multiple counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Assignment.

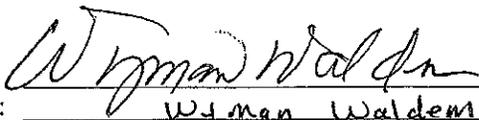
[Signature blocks appear on the following page]

IN WITNESS WHEREOF, the undersigned have executed this Assignment under seal this \_\_\_ day of October, 2016.

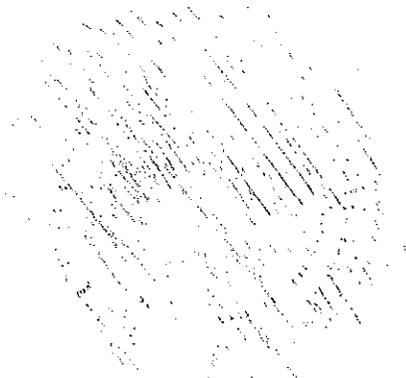
ASSIGNOR:

DEVELOPMENT AUTHORITY OF LUMPKIN COUNTY, a Georgia public body politic

By:   
Name: Jim E. Higdon  
Title: Chairman

By:   
Name: Wyman Waldem  
Title: Secretary

[Signatures Continue on Following Page]



**ASSIGNEE:**

REFRIGIWEAR SUPPORT SERVICES, LLC, a  
Georgia limited liability company

By: Mark Silberman  
Name: MARK SILBERMAN  
Title: MEMBER

**EXHIBIT "A"**

LEGAL DESCRIPTION

All that lot, tract or parcel of land lying, situate and being in land lots 218 and 222 of the 13th District, 1st Section of Lumpkin County, Georgia, and being all of Lot 13 and Lot 14 of Lumpkin County Industrial Park, consisting of 7.17 acres, more or less, as shown on a plat of survey for Industrial Development Authority of Lumpkin County prepared by Michael L. Scupin, Georgia Registered Land Surveyor, February 2, 1987, and recorded in Plat Book 18, Page 99, Lumpkin County Records, which plat is incorporated herein by reference for a more complete description.

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[SPACE ABOVE LINE RESERVED FOR CLERK]

AFTER RECORDING, RETURN TO:  
Calloway Title and Escrow, LLC  
4170 Ashford-Dunwoody Road  
Suite 525  
Atlanta, Georgia 30319

STATE OF GEORGIA

COUNTY OF LUMPKIN

**QUITCLAIM DEED**

THIS QUITCLAIM DEED is made as of the 6<sup>th</sup> day of October, 2016, by and between **DEVELOPMENT AUTHORITY OF LUMPKIN COUNTY**, a Georgia public body politic ("Grantor"), and **REFRIGIWEAR SUPPORT SERVICES, LLC**, a Georgia limited liability company ("Grantee") (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that Grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS in hand paid at and before the sealing and delivery of these presents, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, by these presents does hereby remise, convey and forever QUITCLAIM to Grantee, all those certain tracts or parcels of land lying and being in Lumpkin County, Georgia as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Property").

TO HAVE AND TO HOLD the Property to Grantee, so that neither Grantor, nor any person or persons claiming under Grantor shall at any time, by any means or ways, have, claim or demand any right or title to the Property, or any rights thereof.

Grantor has contemporaneously herewith conveyed the Property to Grantee by virtue of a certain Limited Warranty Deed. The purpose of this Quitclaim Deed is the release of any interest that Grantor may have in the Property as the same is described on Exhibit A attached hereto, which description is derived from a survey obtained by Grantee.

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed and delivered under seal as of the date first written above.

GRANTOR:

DEVELOPMENT AUTHORITY OF LUMPKIN  
COUNTY, a Georgia public body politic

By: Jim E. Higdon (Seal)  
Name: Jim E. Higdon  
Title: Chairman

By: Wyman Walden (Seal)  
Name: Wyman Walden  
Title: Secretary

Signed, sealed and delivered in  
the presence of:

Denelia Darns  
Unofficial Witness

[Signature]  
Notary Public

My Commission expires:  
[Signature]

(Notary Seal)

**EXHIBIT "A"**  
**(SURVEY DESCRIPTION)**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 218 & 222, DISTRICT 13, SECTION 1, LUMPKIN COUNTY, GEORGIA; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE NORTH CORNER OF THE CURVED INTERSECTION OF THE SOUTHEASTERLY RIGHT OF WAY OF ETHAN ALLEN DRIVE (60' R/W) WITH THE NORTH EASTERLY RIGHT OF WAY OF BREAKSTONE DRIVE (60' R/W); THENCE TRAVELING ALONG SAID CURVED INTERSECTION IN A SOUTHERLY DIRECTION FOR AN ARC DISTANCE OF 139.63 FEET TO A POINT; THENCE LEAVING SAID CURVED INTERSECTION AND TRAVELING ALONG THE NORTHEASTERLY RIGHT OF WAY OF BREAKSTONE DRIVE FOR A DISTANCE OF 307.63 FEET TO A 5/8 INCH REBAR FOUND, SAID POINT BEING THE POINT OF BEGINNING;

THENCE LEAVING SAID RIGHT OF WAY NORTH 42 DEGREES 52 MINUTES 56 SECONDS EAST FOR A DISTANCE OF 477.13 FEET TO A 1/2" REBAR FOUND; THENCE SOUTH 36 DEGREES 41 MINUTES 56 SECONDS EAST FOR A DISTANCE OF 878.68 FEET TO A 1/2" REBAR FOUND; THENCE SOUTH 71 DEGREES 07 MINUTES 41 SECONDS WEST FOR A DISTANCE OF 155.27 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY OF BREAKSTONE DRIVE; THENCE TRAVELING ALONG SAID RIGHT OF WAY ALONG A CURVE TO THE RIGHT WITH AN ARC LENGTH OF 396.75 FEET AND A RADIUS OF 361.63 FEET, BEING SUBTENDED BY A CHORD OF NORTH 77 DEGREES 26 MINUTES 31 SECONDS WEST A DISTANCE OF 377.15 FEET TO A POINT; THENCE CONTINUING ALONG SAID RIGHT OF WAY NORTH 46 DEGREES 00 MINUTES 44 SECONDS WEST FOR A DISTANCE OF 465.25 FEET TO THE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 7.183 ACRES AND IS DEPICTED ON THAT CERTAIN ALTA/NSPS PLAT OF SURVEY PREPARED BY LANDPRO SURVEYING AND MAPPING, INC., SEALED AND CERTIFIED BY JAMES H. RADER, GRLS NO. 3033, DATED SEPTEMBER 23, 2016, LAST REVISED SEPTEMBER 27, 2016.

AFTER RECORDING, RETURN TO:  
BRADLEY E. WAHL, ESQ.  
NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.  
201 17th STREET, N.E.  
ATLANTA, GEORGIA 30363

STATE OF GEORGIA

COUNTY OF FULTON

LEASE SUBORDINATION AGREEMENT

THIS LEASE SUBORDINATION AGREEMENT is made as of October 7, 2016, by and among ATLANTIC CAPITAL BANK, N.A. ("Lender"), REFRIGIWEAR, INC. ("Tenant"), and REFRIGIWEAR SUPPORT SERVICES, LLC ("Landlord").

W I T N E S S E T H:

A. Landlord is the owner of those certain premises commonly known as 165 Breakstone Drive, Dahlonega, GA 30533, as more particularly described in Exhibit "A" attached hereto (the "Real Estate");

B. Lender is now the owner and holder of a certain Promissory Note executed by Landlord (the "Note"), dated of even date herewith, and a Deed to Secure Debt, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Security Deed"), dated as of even date herewith, from Landlord to Lender to be recorded in the Lumpkin County, Georgia Records;

C. The Security Deed constitutes a first lien upon the Real Estate and the improvements (the "Improvements") thereon (collectively, the "Property");

D. Under the terms of a certain Commercial Lease, dated October 7, 2016 (as so amended, the "Lease"), Landlord, leased to Tenant all or a portion of the Property, as more particularly described in the Lease; and

E. The parties hereto desire to establish additional rights of quiet and peaceful possession for the benefit of Tenant under the Lease and further to define the terms, covenants and conditions precedent for such additional rights;

NOW, THEREFORE, in consideration of the respective covenants made herein and of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, it is hereby mutually covenanted and agreed as follows:

1. **Subordination**. The Security Deed and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a security title, lien or charge on the Property prior and superior to the Lease. Landlord and Tenant intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease, and Landlord's and Tenant's respective right and interest to the Property thereunder to the security title, lien or charge of the Deed to Secure Debt, and any and all extensions, renewals, modifications or replacements thereof.

2. **No Amendment**. Landlord and Tenant each agree not to amend or modify the Lease without the prior written consent of Lender.

3. **Limitation of Liability**. Notwithstanding anything to the contrary contained herein or in the Lease, in the event of foreclosure of the Security Deed or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided thereunder, the liability of Lender, its successors and assigns, or Purchaser, as the case may be, shall be limited to its interest in the Property; provided, however, that Lender, its successors and assigns, or Purchaser, as the case may be, shall in no event or to any extent:

(1) be liable to Tenant for any past act, omission, or default on the part of the original or any prior landlord under the Lease, and Tenant shall have no right to assert the same or any damages arising therefrom as an offset, defense or deficiency against Lender;

(2) be liable to Tenant for any prepayment of rent or deposit, rental security or any other sums deposited with the original or any prior landlord under the Lease and not delivered to Lender;

(3) be bound by any amendment or modification of the Lease not consented to by Lender;

(4) be bound by any warranty or representation of Landlord under the Lease; or

(5) be liable to Tenant for construction or restoration of the Improvements or the portion thereof leased to Tenant. Notwithstanding the foregoing, Tenant may terminate the Lease if the Improvements are not constructed or restored substantially in accordance with the requirements of the Lease.

4. **Further Documents.** The foregoing provisions shall be self-operative and effective without the execution of any further instrument on the part of any party hereto. Tenant agrees, however, to execute and deliver to Lender, or to any of its successors or transferees, such other instruments as either shall reasonably request in order to effectuate said provisions.

5. **Lease.** Tenant certifies that there are no defaults on the part of the Tenant under the Lease and, to the best of its knowledge, no defaults on the part of Landlord under the Lease; the Lease has not been amended and is a complete statement of the agreement of the parties thereto with respect to the letting of the demised premises, except for those amendments and agreements referenced in the recitals hereto which have been delivered to Lender; and all the agreements and provisions therein contained are in full force and effect on the date of this Agreement.

6. **Reliance.** Landlord and Tenant acknowledge that Bank, in extending credit or continuing to extend credit Landlord secured by the Property is doing so in material reliance on this Agreement.

7. **Notice and Cure.** Tenant agrees that if there occurs a default by Landlord under the Lease:

(a) a copy of each notice given to Landlord pursuant to the Lease shall also be given to Lender, and no such notice shall be effective for any purpose under the Lease unless so given to Lender; and

(b) If Landlord shall fail to cure any default within the time prescribed by the Lease, Tenant shall give further notice of such fact to Lender. Lender shall be allowed such additional time as may be reasonable necessary to cure such default or institute and complete foreclosure proceedings (or otherwise acquire title to the Property), and so long as Lender shall be proceeding diligently to cure the defaults that are reasonably susceptible of cure or proceeding diligently to foreclosure the Security Deed, no such default shall operate or permit Tenant to terminate this Lease.

8. **Options.** Tenant hereby acknowledges and agrees that notwithstanding anything to the contrary herein or in the Lease, any interest of the Tenant in an option to purchase or a right of first refusal with respect to all or a part of the Property, shall not apply to, and may not be exercised or utilized in connection with (a) any sale or other conveyance of the Property in connection with an exercise by Lender of any of Lender's remedies under the Security Deed, including by way of illustration but not limitation, a foreclosure or a deed or conveyance in lieu of foreclosure; or (b) any sale or other conveyance of the Property by Lender or any affiliate or subsidiary of Lender or other party related to Lender, which has taken title to the Property in connection with any action described in Paragraph (a) above, to a third-party.

9. **Notices.** All notices, demands and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given when personally

served, sent by nationally recognized commercial courier, or sent by U.S. registered or certified mail, postage prepaid, addressed as follows:

Lender: ATLANTIC CAPITAL BANK, N.A.  
3280 Peachtree Road, Suite 1600  
Atlanta, Georgia 30305  
Attn: Blair Bond

Tenant: REFRIGIWEAR, INC.  
54 Breakstone Drive  
Dahlonega, GA 30533

Landlord: REFRIGIWEAR SUPPORT SERVICES, LLC  
54 Breakstone Drive  
Dahlonega, GA 30533

10. **Binding Effect.** The terms, covenants, and conditions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

11. **Modification.** This Agreement may not be modified orally or in a manner other than by an agreement signed by the parties hereto or their respective successors in interest.

12. **Conflicts.** In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

13. **Choice of Law.** This Agreement shall be governed by the internal law (and not the law of conflicts) of the State of Georgia.

WITNESS the due execution of this instrument under seal by the parties hereto the day and year first above written.

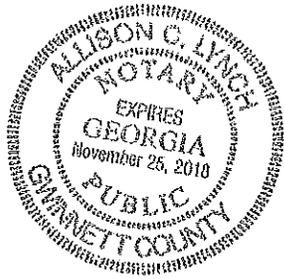
Signed, sealed and delivered in the presence of

Witness

Notary Public

My Commission Expires:

[SEAL]



**"LENDER":**

**ATLANTIC CAPITAL BANK, N.A.**

By: Pam Simon  
Pam Simon, Senior Vice President

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

Signed, sealed and delivered in the presence of

Witness

Notary Public

My Commission Expires:

[SEAL]

"TENANT":

REFRIGIWEAR, INC.

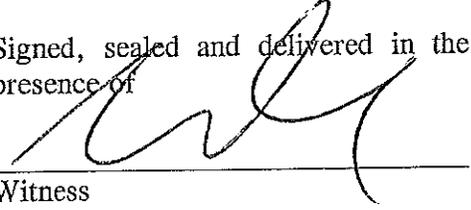
By:

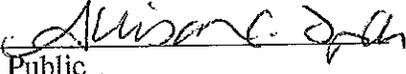
Mark Silberman, its Chief Operating Officer

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

Signed, sealed and delivered in the presence of

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

[SEAL]



"LANDLORD":

**REFRIGIWEAR SUPPORT SERVICES, LLC**

By:   
\_\_\_\_\_  
Mark Silberman, a Member

[SEAL]

**Exhibit A**  
**to**  
**Subordination Non-Disturbance and Attornment Agreement**  
**(Legal Description of Property)**

All that lot, tract or parcel of land lying, situate and being in land lots 218 and 222 of the 13th District, 1st Section of Lumpkin County, Georgia, and being all of Lots 13 and 14 of Lumpkin County Industrial Park as shown on a plat of survey for Industrial Development Authority of Lumpkin County prepared by Michael S. Kelly of Precision Land Services, Georgia registered surveyor, dated June 25, 1997, and described according to said plat as follows:

Beginning at a 5/8" rebar located on the Northeastern right of way of Breakstone Drive (60' right of way) on the line between Lot 13 and Lot 12 of said Industrial Park, thence running along the line between lot 13 and lots 12 and 12-a North 42 degrees 50 minutes 55 seconds East 477.13 feet to a 3/8" rebar found; thence running along the line between Lots 13 and 14 and Lots 10, 9-a-1, and 9 South 36 degrees 44 minutes 17 seconds East 879.55 feet to a 3/8" rebar found on the northwesterly right of way of Breakstone Drive; thence following the right of way of Breakstone Drive South 71 degrees 05 minutes 25 seconds West 155.14 feet to a point; thence following the curve of the right of way North 77 degrees 28 minutes 48 seconds West 396.75 feet, a chord distance of 377.15 feet with a radius of 361.63 feet a 5/8" rebar set on the line between Lot 13 and Lot 14; thence continuing along the right of way of Breakstone drive North 46 degrees 03 minutes 00 seconds West 466.21 feet to the Point Beginning.

MARKED  
PROFORMA  
10-7-16

**ENDORSEMENT NO. 1**

Attached to Policy No. 5011413-0126935e

Issued by

**FIRST AMERICAN TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of:

- (1) damage to an existing building located on the Land, or
- (2) enforced removal or alteration of an existing building located on the Land,

as a result of the exercise of the right of use or maintenance of the easements or encroachments referred to in Exceptions 6, 7, 8, 9, 10, 11, 12, 13(a), 13(b) and 13(c) of Schedule B for the purpose for which it was granted or reserved.

G:\GAI\ORDERS\3412-34484\34484EAS.DOC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

**FIRST AMERICAN TITLE INSURANCE COMPANY**

**SPECIMEN**

BY: \_\_\_\_\_  
CALLOWAY TITLE AND ESCROW, LLC  
AUTHORIZED SIGNATORY

e

**ENDORSEMENT NO. 2**

Attached to Policy No. 5011413-0126935e

Issued by

***FIRST AMERICAN TITLE INSURANCE COMPANY***

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only,
  - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
  - b. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
  - b. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
  - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
  - a. any Covenant contained in an instrument creating a lease;
  - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
  - c. except as provided in Section 3.c., any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

- Continued on Attachment -

**ATTACHMENT**

First American Title Insurance Company  
Endorsement No. 2 to Policy No. 5011413-0126935e  
CT#2-34484/8660.283  
October 3, 2016  
Page 2

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

~~*FIRST AMERICAN TITLE INSURANCE COMPANY*~~

BY: ~~BY: SPECIMEN~~  
\_\_\_\_\_  
CALLOWAY TITLE AND ESCROW, LLC  
AUTHORIZED SIGNATORY

ALTA 9.2-06 Covenants, Conditions and Restrictions - Improved Land - Owner's Policy (4-2-12)

*e*

**ENDORSEMENT NO. 3**

Attached to Policy No. 5011413-0126935e

Issued by

***FIRST AMERICAN TITLE INSURANCE COMPANY***

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey entitled "ALTA/NSPS Land Title Survey Refrigiwear Support Services, LLC; Atlantic Capital Bank, N.A. & First American Title Insurance Company", prepared by LandPro Surveying and Mapping, bearing the seal and certification of James H. Rader, Georgia Registered Land Surveyor No. 3033, dated September 23, 2016, last revised September 27, 2016, being designated as Project No. 20160923.

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This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

***FIRST AMERICAN TITLE INSURANCE COMPANY***

**SPECIMEN**

BY: \_\_\_\_\_  
CALLOWAY TITLE AND ESCROW, LLC  
AUTHORIZED SIGNATORY

**ENDORSEMENT NO. 4**

Attached to Policy No. 5011413-0126935e

Issued by

***FIRST AMERICAN TITLE INSURANCE COMPANY***

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Breakstone Drive (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

G:\GAI\ORDERS\34\2-34484\34484ACC.DOC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

***FIRST AMERICAN TITLE INSURANCE COMPANY***

**SPECIMEN**

BY:

\_\_\_\_\_  
CALLOWAY TITLE AND ESCROW, LLC  
AUTHORIZED SIGNATORY

Endorsement 17-06 (Access and Entry)

@

**ENDORSEMENT NO. 5**

Attached to Policy No. 5011413-0126935e

Issued by

***FIRST AMERICAN TITLE INSURANCE COMPANY***

The Company insures against loss or damage sustained by the Insured by reason of:

1. Those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Tax Identification Numbers:

066 051  
066 050

2. The easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes assessed against the servient estate.

G:\GA\ORDERS\3412-34484\34484TAX.DOC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

***FIRST AMERICAN TITLE INSURANCE COMPANY***

**SPECIMEN**

BY: \_\_\_\_\_

**CALLOWAY TITLE AND ESCROW, LLC  
AUTHORIZED SIGNATORY**

ALTA Endorsement 18.1-06 (Multiple Tax Parcel)

e

10/3/2016-jm-CT#2-34484/8660.283  
REFRIGIWEAR SUPPORT SERVICES, LLC

**ENDORSEMENT NO. 6**

Attached to Policy No. 5011413-0126935e

Issued by

***FIRST AMERICAN TITLE INSURANCE COMPANY***

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States District Court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

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This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

***FIRST AMERICAN TITLE INSURANCE COMPANY***

**SPECIMEN**

BY: \_\_\_\_\_  
CALLOWAY TITLE AND ESCROW, LLC  
AUTHORIZED SIGNATORY

ALTA 8.2.06 Commercial Environmental Lien

@

10/3/2016-jm-CT#2-34484/8660.283  
REFRIGIWEAR SUPPORT SERVICES, LLC

**ENDORSEMENT NO. 7**

Attached to Policy No. 5011413-0126935e

Issued by

***FIRST AMERICAN TITLE INSURANCE COMPANY***

The Company hereby insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

G:\GAI\ORDERS\3412-34484\34484SUB.DOC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

***FIRST AMERICAN TITLE INSURANCE COMPANY***

BY: **SPECIMEN**  
\_\_\_\_\_  
CALLOWAY TITLE AND ESCROW, LLC  
AUTHORIZED SIGNATORY

ALTA Endorsement 26-06 (Subdivision) (10/16/08)

②

10/3/2016-jm-CT#2-34484/8660.283  
REFRIGIWEAR SUPPORT SERVICES, LLC

**ENDORSEMENT NO. 8**

Attached to Policy No. 5011413-0126935e

Issued by

***FIRST AMERICAN TITLE INSURANCE COMPANY***

The Company hereby insures the Insured against loss or damage which the Insured shall sustain by reason of any inaccuracies in the following assurance:

The land described in Schedule A, including the lots or portions of lots described therein, taken as a tract, comprises one contiguous parcel of land with no gaps or gores.

G:\GAI\ORDERS\34\2-34484\34484CON.DOC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

***FIRST AMERICAN TITLE INSURANCE COMPANY***

**SPECIMEN**

BY: \_\_\_\_\_  
CALLOWAY TITLE AND ESCROW, LLC  
AUTHORIZED SIGNATORY

Contiguity Endorsement - Single-Parcel

e

ALTA OWNER'S POLICY FOR TITLE INSURANCE WITH GEORGIA MODIFICATIONS (6/17/06)-  
10/4/16-et-FIRST AMERICAN TITLE INSURANCE COMPANY/CT#2-34484/8660.283

SCHEDULE A

POLICY NO. 5011413-0126935e	DATE OF POLICY: Date and filing time of the deed to be insured
AMOUNT OF INSURANCE: \$1,750,000.00	

1. Name of Insured.  
Refrigiwear Support Services, LLC, a Georgia limited liability company
2. Title to the estate or interest covered by this policy at the date hereof is vested in the Insured.
3. The estate or interest in the land described or referred to in this Schedule covered by this policy is Fee Simple,

and is vested in the Insured by virtue of that certain Warranty Deed from Development Authority of Lumpkin County to Refrigiwear Support Services, LLC, a Georgia limited liability company, dated October \_\_, 2016, filed for record October \_\_, 2016 at \_\_: \_\_ .m., recorded in Deed Book \_\_, Page \_\_, Records of Lumpkin County, Georgia.

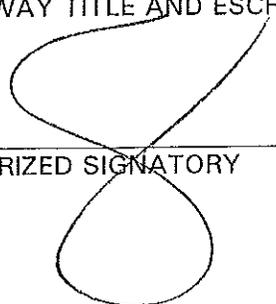
4. The land referred to in this Policy is located in the County of Lumpkin, State of Georgia, and described as follows:

ALL THAT TRACT or parcel of land lying and being in Land Lots 218 and 222 of the 13th District, 1st Section of Lumpkin County, Georgia, being more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein.

~~This is a Pro Forma Policy. It does not reflect the present state of the Title and is not a Commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such Commitment must be an express written undertaking on appropriate forms of the Company.~~

CALLOWAY TITLE AND ESCROW, LLC

\_\_\_\_\_  
AUTHORIZED SIGNATORY



This policy does not insure against loss or damage by reason of the following:

Standard Exceptions:

- ~~(a) — Rights or claims of parties in possession not shown by the public records.~~
- ~~(b) — Easements, or claims of easements, not shown by the public records.~~
- ~~(c) — Eneroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises.~~
- ~~(d) — Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.~~
- ~~(e) — Taxes or special assessments which are not shown as existing liens by the public records.~~

Special Exceptions:

1. All taxes for the year 2016 and subsequent years.
2. This policy of title insurance affords assurance as to the location of the boundary lines of subject property, but does not insure the engineering calculations in computing the exact amount of acreage contained therein.
3. Riparian rights incident to the premises.
4. Unrecorded Lease in favor of Refrigiwear, Inc.; as evidenced by that certain Subordination, Non-Disturbance and Attornment Agreement by and between \_\_\_\_\_ and \_\_\_\_\_, dated October \_\_, 2016, filed for record October \_\_, 2016 at \_\_: \_\_ .m., recorded in Deed Book \_\_\_\_, Page \_\_\_\_, Records of Lumpkin County, Georgia.
5. Deed to Secure Debt, Assignment of Leases and Rents, Security Agreement and Fixture Filing from Refrigiwear Support Services, LLC to Atlantic Capital Bank, N.A., a national banking association, dated as of October \_\_, 2016, filed for record October \_\_, 2016 at \_\_: \_\_ .m., recorded in Deed Book \_\_\_\_, Page \_\_\_\_, aforesaid Records.
6. Easement from Robert Jones to Sawnee Electric Membership Corporation, a corporation, dated December 3, 1968, recorded December 11, 1968, recorded in Deed Book S-2, Page 182, aforesaid Records.

NOTE: By letter dated October 3, 2016, the Sawnee EMC claims no further interest other than the right to own, operate, maintain, rebuild, renew, upgrade and modify the existing facilities located on the tract of land.

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7. Right-of-Way Easement from Robert Jones to Sawnee Electric Membership Corporation, a corporation, dated August 27, 1969, recorded October 22, 1969, recorded in Deed Book T-2, Page 388, aforesaid Records.

NOTE: By letter dated October 3, 2016, the Sawnee EMC claims no further interest other than the right to own, operate, maintain, rebuild, renew, upgrade and modify the existing facilities located on the tract of land.

8. Right-of-Way Easement from Robert Jones to Sawnee Electric Membership Corporation, a corporation, dated June 26, 1971, filed for record August 6, 1971 at 9:00 a.m., recorded in Deed Book X-2, Page 373, aforesaid Records.

NOTE: By letter dated October 3, 2016, the Sawnee EMC claims no further interest other than the right to own, operate, maintain, rebuild, renew, upgrade and modify the existing facilities located on the tract of land.

9. Right-of-Way Easement from Mrs. Robert Jones to Sawnee Electric Membership Corporation, a corporation, dated June 16, 1971, recorded in Deed Book X-2, Page 374, aforesaid Records.

NOTE: By letter dated October 3, 2016, the Sawnee EMC claims no further interest other than the right to own, operate, maintain, rebuild, renew, upgrade and modify the existing facilities located on the tract of land.

10. Right-of-Way Easement from Robert Jones to Sawnee Electric Membership Corporation, a corporation, dated October 4, 1972, filed for record October 13, 1972 at 9:00 a.m., recorded in Deed Book B-3, Page 414, aforesaid Records.

NOTE: By letter dated October 3, 2016, the Sawnee EMC claims no further interest other than the right to own, operate, maintain, rebuild, renew, upgrade and modify the existing facilities located on the tract of land.

11. Right-of-Way Easement from Development Authority of Lumpkin County to Sawnee Electric Membership Corporation, a corporation, dated April 30, 1986, filed for record June 2, 1986 at 8:30 a.m., recorded in Deed Book Q-5, Page 269, aforesaid Records.

NOTE: By letter dated October 3, 2016, the Sawnee EMC claims no further interest other than the right to own, operate, maintain, rebuild, renew, upgrade and modify the existing facilities located on the tract of land.

12. Right-of-Way Easement from Development Authority of Lumpkin County to Sawnee Electric Membership Corporation, dated August 5, 1987, filed for record September 18, 1987 at 12:00 Noon, recorded in Deed Book X-6, Page 238, aforesaid Records.

NOTE: By letter dated October 3, 2016, the Sawnee EMC claims no further interest other than the right to own, operate, maintain, rebuild, renew, upgrade and modify the existing facilities located on the tract of land.

13. Those matters as disclosed by that certain survey entitled "ALTA/NSPS Land Title Survey Refrigiwear Support Services, LLC; Atlantic Capital Bank, N.A. & First American Title Insurance Company", prepared by LandPro Surveying and Mapping, bearing the seal and certification of James H. Rader, Georgia Registered Land Surveyor No. 3033, dated September 23, 2016, last revised September 27, 2016, being designated as Project No. 20160923, as follows:

- (a) Fences crossing the northeasterly boundary line of subject property;
- (b) Sign encroaching onto the Right-of-Way of Breakstone Drive; and
- (c) Parking lot encroaching into the Right-of-Way of Breakstone Drive.

AS A MATTER OF INFORMATION:

- (a) Fifty (50') foot building setback line along the Right-of-Way of Breakstone Drive; and
- (b) Ten (10') foot building setback lines along the northwesterly, northeasterly and easterly boundary lines of subject property.

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 218 & 222, DISTRICT 13, SECTION 1, LUMPKIN COUNTY, GEORGIA; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE NORTH CORNER OF THE CURVED INTERSECTION OF THE SOUTHEASTERLY RIGHT OF WAY OF ETHAN ALLEN DRIVE (60' R/W) WITH THE NORTH EASTERLY RIGHT OF WAY OF BREAKSTONE DRIVE (60' R/W); THENCE TRAVELING ALONG SAID CURVED INTERSECTION IN A SOUTHERLY DIRECTION FOR AN ARC DISTANCE OF 139.63 FEET TO A POINT; THENCE LEAVING SAID CURVED INTERSECTION AND TRAVELING ALONG THE NORTHEASTERLY RIGHT OF WAY OF BREAKSTONE DRIVE FOR A DISTANCE OF 307.63 FEET TO A 5/8 INCH REBAR FOUND, SAID POINT BEING THE POINT OF BEGINNING;

THENCE LEAVING SAID RIGHT OF WAY NORTH 42 DEGREES 52 MINUTES 56 SECONDS EAST FOR A DISTANCE OF 477.13 FEET TO A 1/2" REBAR FOUND; THENCE SOUTH 36 DEGREES 41 MINUTES 56 SECONDS EAST FOR A DISTANCE OF 878.68 FEET TO A 1/2" REBAR FOUND; THENCE SOUTH 71 DEGREES 07 MINUTES 41 SECONDS WEST FOR A DISTANCE OF 155.27 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY OF BREAKSTONE DRIVE; THENCE TRAVELING ALONG SAID RIGHT OF WAY ALONG A CURVE TO THE RIGHT WITH AN ARC LENGTH OF 396.75 FEET AND A RADIUS OF 361.63 FEET, BEING SUBTENDED BY A CHORD OF NORTH 77 DEGREES 26 MINUTES 31 SECONDS WEST A DISTANCE OF 377.15 FEET TO A POINT; THENCE CONTINUING ALONG SAID RIGHT OF WAY NORTH 46 DEGREES 00 MINUTES 44 SECONDS WEST FOR A DISTANCE OF 465.25 FEET TO THE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 7.183 ACRES AND IS DEPICTED ON THAT CERTAIN ALTA/NSPS PLAT OF SURVEY PREPARED BY LANDPRO SURVEYING AND MAPPING, INC., SEALED AND CERTIFIED BY JAMES H. RADER, GRLS NO. 3033, DATED SEPTEMBER 23, 2016.

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NOTE TO TAX COMMISSIONER:

THIS INSTRUMENT SECURES A TERM NOTE IN THE AMOUNT OF \$1,750,000 MATURING OCTOBER 1, 2026. ACCORDINGLY, \$5,250 IN INTANGIBLES RECORDING TAX IS DUE.

NOTICE TO RECORDING CLERK:

This Deed is also a Fixture Filing under the Uniform Commercial Code of the State of Georgia.

Debtor (Grantor) is: REFRIGIWEAR SUPPORT SERVICES, LLC

Secured Party (Lender) is: ATLANTIC CAPITAL BANK, N.A.

Record Owner of Land (as defined herein): Debtor

Debtor's (Grantor's) Organizational Identification Number is: 16077935

Debtor's (Grantor's) and Secured Party's (Lender's) Addresses are set forth below.

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After Recording Please Return To:

Bradley E. Wahl, Esq.

Nelson Mullins Riley & Scarborough

201 17<sup>th</sup> Street, Suite 1700

Atlanta, Georgia 30363

**DEED TO SECURE DEBT,  
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING**

**THIS DEED TO SECURE DEBT, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Deed") executed as of October 7, 2016 by **REFRIGIWEAR SUPPORT SERVICES, LLC** (the "Grantor"), with an address at 54 Breakstone Drive, Dahlonega, GA 30533, in favor of **ATLANTIC CAPITAL BANK, N.A.**, a national banking association (the "Lender"), 3280 Peachtree Road, Suite 1600, Atlanta, Georgia 30305.

**W I T N E S S E T H:**

That for and in consideration of the sum of ONE HUNDRED AND NO/100THS DOLLARS (\$100.00) and other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Grantor hereinafter set forth, Grantor does hereby grant, bargain, sell, convey, assign, transfer and set over unto Lender, its successors and assigns, all of the following described land and interests in land, estates, easements, rights, improvements, personal

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property, fixtures, equipment, furniture, furnishings, appliances and appurtenances (hereinafter collectively referred to as the "Premises"):

(1) All that certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Land").

(2) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all of Grantor's interest in all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to the Premises and all other furnishings, furniture, fixtures, machinery and equipment of every kind and nature whatsoever now or hereafter owned by Grantor and located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Premises, including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, and all the right, title and interest of Grantor in any such fixtures, machinery and equipment subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Grantor or on behalf of Grantor; and all machinery, equipment and fixtures constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Deed. The location of the above described collateral is also the location of the Land.

(3) All of Grantor's interest in all building materials, fixtures, building machinery and building equipment delivered on site to the real estate during the course of, or in connection with, construction of the buildings and improvements.

(4) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof or appurtenant to the title to the Land, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Grantor.

(5) All income, rents, issues, profits, and revenues of the Premises from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by Grantor or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Grantor of, in and to the same.

TOGETHER WITH all and singular the rights, tenements, hereditaments, members and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor, including but not limited to, all rents, profits, issues and revenues of the Premises from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving only the right to the Grantor to collect the same for its own account so long as the Grantor is not in default hereunder.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Lender, its successors and assigns, IN FEE SIMPLE forever; and Grantor covenants that Grantor is lawfully seized and possessed of the Premises and has good right to convey the same, that the same are unencumbered except for those matters (hereinafter referred to as the "Permitted Encumbrances") expressly set forth in Exhibit "B" attached hereto and incorporated herein, and that Grantor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Encumbrances.

This Deed is intended to operate and is to be construed as a deed passing the title to the Premises to Lender and is made under those provisions of the existing laws of the State of Georgia relating to deeds to secure debt, and not as a mortgage, and is given to secure the payment of the following described indebtedness (hereinafter referred to collectively as the "Indebtedness"):

(a) The debt evidenced by that certain term promissory note, dated as of even date herewith, made by Grantor and payable to the order of Lender, in the principal face amount of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$1,750,000), together with any and all renewals, modifications, consolidations and extensions of the indebtedness evidenced thereby (the "Note"), with interest on the outstanding principal at the rates provided for in the Note, with the final payment being due on October 1, 2026 (the "Loan"); and

(b) Any and all advances and disbursements now and hereafter made by Lender or any of its affiliates to or on behalf of Grantor under the terms of the Loan Agreement, as defined herein, regardless of the total amount of such advances and disbursements and regardless of whether such total amount of advances and disbursements should exceed the aggregate face amount of the Note; and

(c) Any and all additional advances made by Lender to protect or preserve the Premises or the security interest created hereby in the Premises, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Grantor's obligations hereunder or for any other purpose provided herein (whether or not the original Grantor remains the owner of the Premises at the time of such advances); and

(d) Any and all indebtedness or other obligations of Borrower to Lender (or any affiliate of Lender) arising out of or relating to (i) deposit and operating account relationships between Borrower and Lender (or any affiliate of Lender) or any cash management services provided to Borrower or any of its subsidiaries, (ii) any rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement rate, floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing or a master agreement for any the foregoing together with all supplements thereto) for the purpose of protecting against or managing exposure to fluctuations in interest or exchange rates, currency valuations or commodity prices (collectively, "Hedge Agreements") with Lender (or any affiliate of Lender), and (iii) other products provided by Lender (or any affiliate of Lender) to Borrower, including merchant card services and ACH transfer services; and

(e) Any and all other obligations and indebtedness now or hereafter owing by Grantor to Lender, howsoever created and howsoever evidenced.

As used herein, the term "Loan Agreement" shall mean that certain Loan Agreement, dated as of even date herewith, by and between Grantor and Lender. The Note, this Deed, the Loan Agreement, and all documents, instruments, deeds and agreements now or hereinafter evidencing, securing, guaranteeing or otherwise relating to the Note, this Deed, the Loan Agreement, any Hedge Agreement or the Indebtedness are collectively hereinafter referred to as the "Loan Documents." The terms "Note," "Deed," and "Loan Agreement" shall mean such agreements, documents and instruments as the same may from time to time be amended, modified, or supplemented by written agreement.

Grantor hereby sells, assigns, sets over and transfers to Lender, and grants to Lender a lien on and a security interest in, Grantor's interest in any and all receivables, room rents, leases, tenant contracts and rental agreements and other contracts, licenses and permits (all of which are sometimes hereinafter referred to as the "Leases") now or hereafter affecting or in any manner relating to the Premises, or any part thereof, together with all of Grantor's rights and powers thereunder to cancel, accept the surrender of or materially modify any of the terms thereof without Lender's prior written consent. Grantor agrees to execute and deliver such other instruments as Lender may require evidencing the assignment of the Leases.

Grantor hereby sells, assigns, sets over and transfers to Lender all of the rents, tenant reimbursements, incomes, issues and profits which shall hereafter become due to or be paid to, Grantor for the use of the Premises or any part thereof, all rents, tenant reimbursements,

incomes, issues and profits arising under the Leases or any thereof, and all unrefunded security and other deposits (hereinafter referred to as the "Deposits") paid to anyone in connection with the occupancy of the Premises or any part thereof (all of which are sometimes hereinafter referred to as the "Rents"), reserving to Grantor a license to collect the Rents and to hold the Deposits which license shall terminate automatically without notice upon the occurrence of an Event of Default, as hereinafter defined, and upon the occurrence of an Event of Default, Lender shall be entitled to the Rents and Deposits without the necessity of Lender's taking any action whatsoever, and the Rents and Deposits shall thereupon be deemed cash collateral for all purposes, including without limitation for purposes of Section 363 of Title 11 of the United States Code, as the same may be amended. Grantor agrees to execute and deliver such other instruments as Lender may require evidencing the assignment of the Rents.

Should the Indebtedness be paid according to the tenor and effect thereof when the same shall become due and payable, and should Grantor perform all covenants herein contained in a timely manner, then this Deed shall be promptly canceled and surrendered.

Grantor hereby further covenants and agrees with Lender as follows:

#### ARTICLE I.

1.01 Payment of Indebtedness. Grantor will pay and perform its obligations under the Note according to the tenor thereof and the remainder of the Indebtedness promptly as the same shall become due.

1.02 Taxes, Liens and Other Charges.

(a) Grantor shall pay, on or before the due date thereof or the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof, all taxes, assessments, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon, the Premises, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as Lender may require, unless such taxes or assessments are properly contested in good faith by Grantor and Grantor establishes appropriate reserves on its books and financial records for the payment of the same.

(b) Grantor shall pay, on or before the due date thereof or the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with the Note, the remainder of the Indebtedness, this Deed or any other Loan Documents, excluding only state and federal taxes on the income earned by Lender. Grantor shall submit to

Lender such evidence of the due and punctual payment of all such taxes, assessments, charges, expenses, costs, and fees as Lender may reasonably require.

(c) Grantor shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Premises, as required pursuant to Section 1.03. Grantor shall submit to Lender such evidence of the due and punctual payment of all such premiums as Lender may reasonably require.

(d) Grantor will cause all debts and liabilities of any character, including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Premises, incurred in the improvement, maintenance, operation and development of the Premises, to be promptly paid, and will not suffer any mechanic's, materialman's, laborer's, statutory or other lien, including, but not limited to, any lien resulting from Grantor's failure to perform under subparagraphs 1.02(a) and (b) above, to be filed of record upon all or any part of the Premises and not released (by payment, bonding or otherwise) within thirty (30) days after Grantor receives actual notice thereof, unless a shorter period for the release of any specific lien is provided elsewhere in this Deed.

#### 1.03 Insurance.

(a) The Grantor will keep its properties continuously insured against such risks as are customarily insured against by businesses of like size and type engaged in the same or similar operations including, without limiting the generality of any other covenant contained herein or in the Loan Agreement:

(i) casualty insurance on its tangible property in an amount not less than the full insurable value thereof, against loss or damage by theft, fire and lightning and other hazards ordinarily included under uniform broad form standard extended coverage policies, limited only as may be provided in the standard broad form of extended coverage endorsement at the time in use in the State of Georgia;

(ii) general comprehensive liability insurance against claims for bodily injury, death or property damage occurring on, in or about its tangible property (such coverage to include provisions waiving subrogation against the Lender) in amounts not less than \$1,000,000 with respect to bodily injury to any one person \$1,000,000 with respect to bodily injury to two or more persons in any one accident and \$1,000,000 with respect to property damage resulting from any one occurrence;

(iii) liability insurance with respect to the operation of its facilities under the workers compensation laws of the State of Georgia;

(iv) business (or rental) interruption insurance in an amount not less than the Grantor's debt service on its Indebtedness, real estate taxes and insurance premiums, each for a period of at least 12 months; and

(v) if at any time the Premises is in an area that has been identified by the Secretary of Housing and Urban Development as having special flood and mud slide hazards, the Grantor shall purchase and maintain a flood insurance policy satisfactory to the Lender; provided, however that the insurance so required may be provided by blanket policies now or hereafter maintained by the Grantor;

(vi) standard fire insurance with extended coverage endorsement including vandalism and malicious mischief coverage, without co-insurance, in an amount equal to at least 100% of the replacement cost of the improvements on the Premises;

(vii) boiler and machinery insurance to cover the sudden and accidental breakdown of specific types of equipment, including but not limited to boilers, heating and ventilating systems, refrigeration equipment, air conditioning units, pumps, compressors, motors, blowers, generators and transformers, located on the Premises;

(viii) comprehensive plate glass insurance in an amount satisfactory to Lender.

(b) (i) Each insurance policy obtained in satisfaction of the requirements of this Section shall meet the following conditions:

1. The Lender shall have the right to approve each and every insurance carrier and policy. All policies shall be in the amounts, form and content (including mortgagee clauses) and issued by such companies as are reasonably acceptable to the Lender. All such companies must be licensed by the Insurance Commissioner of Georgia. Each company must have a rating of A- or better (Excellent or Superior), and Class IX or better, in A.M. Best's Insurance Reports.

2. All such policies shall be in such form and have such provisions (including, without limitation, the loss payable clause, the waiver of subrogation clause, the deductible amount, if any, and, the standard mortgagee endorsement clause), as are generally considered standard provisions for the type of insurance involved and are acceptable in all respects to the Lender and, except for liability insurance, all above-referenced insurance policies shall contain a standard mortgagee clause naming "ATLANTIC CAPITAL BANK, N.A., ITS SUCCESSORS AND/OR ASSIGNS" as first mortgagee, which states that the insurance coverage shall not be affected by any act or neglect of the Grantor or owner of the Premises;

3. All such policies shall prohibit cancellation or substantial modification, termination or lapse in coverage by the insurer without at least 30 days, prior written notice to the Lender;

4. All such policies shall provide that losses thereunder, prior to the occurrence of an Event of Default (or event which, with notice or lapse of time or both would constitute an Event of Default) hereunder shall be adjusted with the insurer by the Grantor at its expense on behalf of the insured parties and the decision of the Grantor as to any adjustment shall be final and conclusive;

5. Without limiting the generality of foregoing, all insurance policies carried on the Premises shall name the Lender and the Grantor as loss payee and a party insured thereunder, as their interests may appear; and

6. All applicable policies must be maintained during the terms of the Loan Agreement. All annual policy renewals must be forwarded to the Lender at the address first above written or such other address as designated by Lender from time to time.

(ii) Prior to expiration of any such policy, the Grantor shall furnish the Lender with evidence satisfactory to the Lender that the policy or certificate has been renewed or replaced or is no longer required by the Loan Agreement.

(iii) Unless insurance premiums are paid by the tenant, the Grantor agrees that the Lender may, at its discretion, require escrows for insurance premiums after any Default or Event of Default.

(c) The Grantor does hereby transfer and assign to the Lender all such insurance policies, and the proceeds thereof, and in the event of a loss, the proceeds collected may, if no Default or Event of Default exists and at the reasonable discretion of Grantor and Lender, be used by Grantor to rebuild the Premises to at least approximately the same condition as prior to the event which caused such loss. If such proceeds are to be used to rebuild the Premises, all of such proceeds shall be held by Lender pending disbursement thereof as cash collateral for the Indebtedness and shall be subject to release only upon and in accordance with such documentation as Lender may reasonably require for the reconstruction of such Premises. Upon and after an Event of Default, any such proceeds may be used by the Lender for application to the Indebtedness in such order and manner as the Lender may elect. With respect to business (rental) interruption insurance relating to the Premises, the net proceeds thereof received by the Lender shall be held and applied by the Lender, in the Lender's sole discretion, to Indebtedness of the Grantor until restoration of the improvements damaged or destroyed shall have been completed satisfactorily to the Lender, at which time, provided that no Default or Event of Default (or any event or condition which after notice, lapse of time or otherwise might become an Event of Default) has

occurred and is continuing and there is no denial of liability to a named insured, the remaining balance of such proceeds shall be paid over to the Grantor. Any proceeds applied to the Indebtedness shall be applied, at the option of the Lender, to the last installment or installments of principal coming due under the Note and, once repaid, to any other Indebtedness in such order as the Lender may elect. The Lender is hereby irrevocably appointed by the Grantor as its attorney in fact to assign any such policy, in the event of the foreclosure of the Premises under the powers granted herein or in the Loan Agreement or a conveyance in lieu of any such foreclosure or sale under power.

1.04 Monthly Deposits. Unless taxes are paid by the tenant, at the option of Lender and upon written notice to Grantor after any Default or Event of Default, and further to secure the payment of the taxes and assessments referred to in Section 1.02 and the premiums on the insurance referred to in Section 1.03, Grantor shall deposit with Lender, on the due date of each installment under the Note, such amounts as in the reasonable estimation of Lender shall be necessary to pay such charges as they become due; said deposits to be held by Lender, with interest, and free of any liens or claims on the part of Grantor or creditors of Grantor and as part of the security of Lender, and to be used by Lender to pay current taxes and assessments and insurance premiums on the Premises as the same accrue and are payable. Payment from said sums for said purposes shall be made by Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Premises. Said deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Lender. If said deposits are insufficient to pay the taxes and assessments in full as the same become payable, Grantor, upon written request of Lender, will deposit with Lender such additional sum or sums as may be required in order for Lender to pay such taxes and assessments in full. Upon any Event of Default or Default under this Deed or the Note, or any other Loan Documents, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Indebtedness in such manner as it may elect.

1.05 Condemnation. If all or any material portion of the Premises shall be damaged or taken through condemnation (which term when used in this Deed shall include any damage or taking by any governmental authority, quasi-governmental authority, or any party having the power of condemnation and any transfer by private sale in lieu thereof), either temporarily or permanently, such that the Premises can no longer be operated for its intended purposes, then the entire Indebtedness shall, at the option of Lender, become immediately due and payable. As used herein, a condemnation shall be deemed material if Lender determines, in its reasonable discretion, that the portion of the Premises remaining after such condemnation is inadequate to secure the Indebtedness (after application of condemnation proceeds). Grantor, promptly upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution, of any action or proceeding for the taking through condemnation of the Premises or any part thereof will notify Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Grantor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Grantor to Lender, and Lender is authorized, at its option, to collect and receive all such compensation,

awards or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including its reasonable attorney's fees, Lender may apply the net proceeds or any part thereof, at its sole option, (a) to the payment of the Indebtedness, whether or not due and in whatever order Lender elects, (b) to the repair and/or restoration of the Premises and/or (c) for any other purposes or objects for which Lender is entitled to advance funds under this Deed, all without affecting the security title of this Deed; and any balance of such monies then remaining shall be paid to Grantor or any other person or entity lawfully entitled thereto. Grantor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may reasonably require. If, prior to the receipt by Lender of such award or proceeds, the Premises shall have been sold on foreclosure of this Deed, or under the power of sale herein granted, Lender shall have the right to receive such award or proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Deed or the Note shall have been sought or recovered, and to the extent of reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award or proceeds.

1.06 Care of Premises.

- (a) Grantor will keep the buildings, parking areas, roads and walkways, common areas, landscaping and all other improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.
- (b) Grantor will not remove, demolish nor materially alter the design or structural character of any building, fixture or other improvement now or hereafter constructed on the Land in any material respect without the prior written consent of Lender.
- (c) If the Premises or any part thereof is damaged by fire or any other cause, Grantor will give immediate written notice thereof to Lender.
- (d) Upon reasonable prior notice to Grantor, Lender or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours, subject to rights of tenants.
- (e) Grantor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof. If Grantor receives notice from any federal, state, or other governmental entity that the Premises fail to comply with any applicable law, ordinance, rule, order or regulation, Grantor will promptly furnish a copy of such notice to Lender.

(f) If all or any part of the Premises shall be damaged by fire or other casualty, Grantor will promptly restore the Premises to the equivalent of its original condition to the extent practical; and if a part of the Premises shall be taken through condemnation, Grantor will promptly restore, repair or alter the remaining portions of the Premises in a manner reasonably satisfactory to Lender. Grantor shall not be obligated to so restore, repair or alter unless in each instance Lender agrees to make available to Grantor (pursuant to procedures satisfactory to Lender) any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration, repair or alteration; provided, however, the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration, repair or alteration shall in no way relieve Grantor of its obligation to restore, repair or alter.

#### 1.07 Leases, Contracts, Etc.

(a) As additional collateral and further security for the Indebtedness, Grantor does hereby assign to Lender Grantor's interest in any and all leases, tenant contracts, rental agreements, franchise agreements, management contracts, construction contracts, and other contracts, licenses and permits now or hereafter affecting the Premises, or any part thereof, and Grantor agrees to execute and deliver to Lender such additional instruments, in form and substance reasonably satisfactory to Lender, as may hereafter from time to time be requested by Lender further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Lender to any lease, tenant contract, rental agreement, franchise agreement, management contract, construction contract, or other contract, license or permit, or to impose upon Lender any obligation with respect thereto.

(b) Grantor shall not execute any further assignment of the income, rents, issues or profits, or any part thereof, from the Premises unless Lender shall first consent in writing to such assignment and unless such assignment shall expressly provide that it is subordinate to the assignment contained in this Deed and any assignment executed pursuant hereto or concerning the Indebtedness.

(c) Grantor shall furnish to Lender, within ten (10) days after a written request by Lender to do so, a certified statement setting forth the name of all lessees and tenants of the Premises, the terms of their respective leases, tenant contracts or rental agreements, the space occupied, and the rentals payable thereunder, and stating, to the best knowledge of Grantor, whether any defaults, off-sets or defenses exist under or in connection with any of said leases, tenant contracts or rental agreements.

(d) As of the date hereof, there exist no leases, tenant contracts or rental agreements with respect to the Premises or any portion thereof except as previously disclosed to Lender.

1.08 Security Agreement. With respect to the machinery, apparatus, equipment, fittings and fixtures referred to or described in this Deed, or in any way connected with the use and enjoyment of the Premises, this Deed is hereby made and declared to be a security agreement, encumbering each and every item of such property included herein, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Georgia and Grantor hereby grants to Lender a lien on and a security interest in all such property (including proceeds thereof). Upon request by Lender, at any time and from time to time, a financing statement or statements reciting this Deed to be a security agreement affecting all of such property shall be appropriately filed, and Grantor authorizes Lender to file any such financing statement. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Grantor and Lender agree that the filing of such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Grantor and Lender that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Deed, is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Deed, or (c) any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (aa) the proceeds of any fire and/or hazard insurance policy, or (bb) any award in eminent domain proceedings for a taking or for loss of value, or (cc) Grantor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this Deed or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect to the foregoing clauses (aa), (bb) or (cc) of this sentence, that notice of Lender's priority of interest to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

**This Deed constitutes a financing statement filed as a fixture filing under the Georgia Uniform Commercial Code, as amended or recodified from time to time, covering any Premises which now is or later may become a fixture attached to the Land or any building located thereon. The Grantor is the "Debtor" and Lender is the "Secured Party", and the addresses for each from which information can be obtained are listed on the first page hereof.**

1.09 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by Lender, Grantor will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such

offices and places as shall be deemed necessary by Lender, any and all such other and further deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as to the Premises as may, in the opinion of Lender, be reasonably necessary in order to effectuate, complete or perfect, or to continue and preserve (i) the obligations of Grantor under the Note, this Deed and the other Loan Documents and (ii) the security interest created by this Deed as a first and prior security interest upon and security title in and to all of the Premises, whether now owned or hereafter acquired by Grantor; provided, that, however, any such other and further deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as to the Premises, shall be in substantially the same form as the Loan Documents and shall not in any material way alter the terms of the Loan or any of the Loan Documents securing the Loan. The security title of this Deed and the security interest created hereby will automatically attach, without further act, to all after acquired property as described herein attached to and/or used in the operation of the Premises or any part thereof.

1.10 Expenses. Grantor will pay or reimburse Lender, upon demand therefor, for all reasonable attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Indebtedness, this Deed or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Deed, any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by Lender shall be added to the Indebtedness and shall be secured by this Deed.

1.11 Estoppel Affidavits. Grantor, upon ten (10) days prior written notice, shall furnish Lender a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness secured hereby and whether or not any offsets or defenses exist against the Indebtedness, or any portion thereof, and, if such offsets or defenses exist, stating in reasonable detail the specific facts relating to each such offset or defense.

1.12 Subrogation. To the full extent of the Indebtedness, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every claim, demand and other encumbrance on the Premises which is paid or satisfied, in whole or in part, out of the proceeds of the Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Lender as additional collateral and further security for the Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Lender, had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that any instrument providing public notice of the same may be satisfied and canceled of record.

1.13 Limit of Validity. If from any circumstances whatsoever fulfillment of any provision of this Deed or of the Note, at the time performance of such provision shall be due, shall involve transcending the limits of validity presently prescribed by any applicable usury

statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section 1.13 shall control every other provision of this Deed and of the Note.

1.14 Conveyance of Premises. Grantor hereby acknowledges to Lender that (i) the identity and expertise of Grantor were and continue to be material circumstances upon which Lender has relied in connection with, and which constitute valuable consideration to Lender for, the extending to Grantor of the indebtedness evidenced by the Note and (ii) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Note granted to Lender by this Deed. Grantor therefore covenants and agrees with Lender, as part of the consideration for the extending to Grantor of the indebtedness evidenced by the Note, that, with the exception of tenant leases entered into in accordance with the terms of the Loan Documents, Grantor shall not further encumber, pledge, convey, transfer, assign or sell any or all of its interest in the Premises without the prior written consent of Lender.

1.15 Use of Premises. Grantor shall not be permitted to alter or change the proposed use of the Premises or to abandon the Premises without the prior written consent of Lender.

1.16 Acquisition of Collateral. Grantor shall not acquire any portion of the personal property covered by this Deed subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title and lien of this Deed.

1.17 Rules, Regulations. Grantor hereby represents and warrants: (i) that Grantor shall, either by itself or through its tenant, comply with all laws, ordinances, rules, regulations, covenants, conditions, and restrictions affecting the Premises and shall not commit or permit any act upon or concerning the Premises in violation of any such laws, ordinances, rules, regulations, covenants, conditions, and restrictions; and (ii) that, to the best of Grantor's actual knowledge, the location, construction, occupancy, operation and actual or intended use of the Premises do not violate any applicable law, ordinance, rule, regulation, covenant, condition or restriction affecting the Premises. Grantor agrees to indemnify and hold Lender harmless from and against and shall reimburse Lender for, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising out of or in connection with the breach of any representation or warranty of Grantor set forth in this Section 1.17 and the failure of Grantor to perform any obligation herein required to be performed by Grantor.

1.18 Hazardous Waste and Substances; Environmental Indemnity.

Grantor warrants and represents to Lender that, except as set forth in any report of provided to Lender with respect to the Loan: (a) the Premises is now, and at all times during Grantor's period of ownership will continue to be, in full compliance with all federal, state and local

environmental laws, rules and regulations, as the same may be amended from time to time (the "Environmental Laws"), including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 *et seq.*, and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499, 100 Stat. 1613; (b) (i) there are no hazardous materials, substances, or wastes (as such terms are defined under any Environmental Laws), including without limitation, any materials containing asbestos (collectively "Hazardous Substances") located on, in or under the Premises or used in connection therewith, or (ii) Grantor has fully disclosed to Lender in writing the existence, extent and nature of any such Hazardous Substances which Grantor is legally authorized and empowered to maintain on, in or under the Premises or use in connection therewith, and Grantor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and are in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals; and (c) no governmental authority or administrative agency has notified Grantor of any violation of the Environmental Laws. Grantor further warrants, represents and agrees that it will transmit to Lender copies of any citations, orders, notices or other material governmental or other communication received with respect to any Hazardous Substances affecting the Property and of all responses by Grantor to such notices. Grantor further warrants, represents and agrees that it will promptly notify Lender of any change in the nature or extent of any Hazardous Substances maintained on, in or under the Premises or used in connection therewith, and allow no change in the use or operation of the Premises that would materially increase the risk of violation of the Environmental Laws without the express prior written approval of Lender.

Grantor shall indemnify and hold Lender, its officers, directors, agents, employees, affiliates and representatives (individually an "Indemnified Party and individually and collectively the "Indemnified Parties") harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up and response costs), judgments, and expenses (including attorneys', consultants', or experts' fees and expenses) of every kind and nature suffered by or asserted against Lender as a direct or indirect result of any warranty or representation made by Grantor in the preceding paragraph being or becoming false or untrue in any material respect or as a result of any requirement under any Environmental Laws which requires the elimination or removal of any Hazardous Substances or other substances regulated pursuant to any environmental laws, rules, or regulations of any governmental authority or agency having jurisdiction of the Premises. Any payments required to be made hereunder shall become due on demand.

## ARTICLE II.

2.01 Defaults. The terms "Event of Default" or "Events of Defaults", wherever used in this Deed, shall mean any one or more of the following events (and the terms "Default" and "Defaults" shall mean any event(s) or condition(s) which, with the passage of time or the giving of notice, or both, shall constitute an Event of Default or Events of Default):

(a) Failure by Grantor to pay the Indebtedness within five (5) days of the date when due and payable; or

(b) Failure by Grantor to duly and timely observe or perform any other term, covenant, condition or agreement in this Deed, and the failure is not cured to Lender's satisfaction within fifteen (15) days after the sooner to occur of any Senior Officer's receipt of notice of such breach from Lender or the date on which such failure or neglect first becomes known to any Senior Officer; provided, however, that such notice and opportunity to cure shall not apply in the case of any failure to perform, keep or observe any covenant, condition or agreement that is not capable of being cured at all or within such fifteen (15)-day period or which is a willful and knowing breach by Grantor; or

(c) The occurrence of an "Event of Default" under (and as defined in) the Loan Agreement or any of the other Loan Documents or any Hedge Agreement after expiration of any applicable notice or grace periods provided therein, if any; or

(d) Any warranty or representation of Grantor contained in this Deed proves to be untrue or misleading in any material respect and is not corrected within ten (10) days of its submission to Lender (unless Lender relied on such untrue or misleading warranty or representation to its detriment prior to Grantor's correction thereof).

## 2.02 Acceleration of Maturity.

If an Event of Default shall have occurred then the entire Indebtedness shall, at the option of Lender, immediately become due and payable without notice, except as specifically provided herein and in the Loan Documents, time being of the essence of this Deed; and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

## 2.03 Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Grantor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Premises and if, and to the extent, permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all the Premises without the appointment of a receiver, or an application therefor, and may exclude Grantor and its agents and employees wholly therefrom, and may have joint access with Grantor to the books, papers and accounts of Grantor relating to the Premises.

(b) Subject to the terms and conditions of Section 2.03(a) herein, if Grantor shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Grantor to deliver immediate possession of the Premises to Lender, and Grantor hereby specifically covenants and agrees that

Grantor will not oppose, contest or otherwise hinder or delay Lender in any action or proceeding by Lender to obtain such judgment or decree. Grantor will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including Lender's attorneys' fees and expenses of Lender's agents; and all such expenses and compensation shall, until paid, become part of the Indebtedness and shall be secured by this Deed.

(c) Subject to the terms and conditions of Section 2.03(a) herein, upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control and maintain the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personal property and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all the rights and power of Grantor to the same extent as Grantor could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the income, rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and Lender may apply any money and proceeds received by Lender, in whatever order or priority Lender in its sole discretion may determine, to the payment of (i) all expenses of taking, holding, managing and operating the Premises (including reasonable compensation for the services of all persons employed for such purposes); (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (iii) the cost of such insurance; (iv) such taxes, assessments and other similar charges as Lender may at its option pay; (v) other proper charges upon the Premises or any part thereof; (vi) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender; (vii) accrued interest; (viii) deposits required in Section 1.04 and other sums required to be paid under this Deed; and (ix) overdue installments of principal. Anything in this Section 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by Lender of its rights under this Deed, nor shall Lender be responsible or liable for any waste committed on the Premises by any tenant or other person or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises (except for any gross negligence on Lender's part) resulting in any loss, injury or death to any tenant, licensee, employee, or stranger, and Lender shall be liable to account only for the rents, incomes, issues, profits and revenues actually received by Lender.

(d) For the purpose of carrying out the provisions of this Section 2.03, the Grantor hereby constitutes and appoints the Lender the true and lawful attorney in fact of the Grantor to do and perform, from time to time, any and all actions necessary and

incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact.

(e) In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Deed shall be paid and all Events of Defaults shall be cured, and as a result thereof Lender surrenders possession of the Premises to Grantor, the same right of taking possession shall continue to exist if any subsequent Event of Default shall occur.

2.04 Performance by Lender. If Grantor shall default in the payment, performance or observance of any term, covenant or condition of this Deed and after the expiration of any applicable notice and cure period, if any, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, upon demand, immediately repaid by Grantor to Lender with interest thereon at the default rate provided in the Note. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Grantor or any person in possession holding under Grantor.

2.05 Receiver. If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the adequacy or value of any security for the indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all the rights and powers permitted under the laws of the State of Georgia. Grantor will pay to Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.05; and any such amounts paid by Lender shall be added to the Indebtedness and shall be secured by this Deed.

2.06 Enforcement.

(a) When the Indebtedness shall become due, whether by acceleration or at maturity and Grantor fails to pay the Indebtedness in full at maturity, Lender, at its option, may sell the Premises or any part of the Premises at public sale or sales before the door of the courthouse of the county in which the Premises or any part of the Premises is situated, to the highest bidder for cash, in order to pay the Indebtedness and all expenses of the sale and of all proceedings in connection therewith, including reasonable attorneys' fees and expenses, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which Sheriff's sales are advertised in said county. At any such public sale, Lender may execute and deliver to the purchaser a conveyance of the Premises or any part of the Premises in fee simple, with full

warranties of title, and to this end, Grantor hereby constitutes and appoints Lender the agent and attorney-in-fact of Grantor to make such sale and conveyance, and thereby to divest Grantor of all right, title or equity that Grantor may have in and to the Premises and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Grantor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative of the other remedies provided hereby or by law for collection of the Indebtedness and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the Indebtedness. In the event of any sale under this Deed by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Premises may be sold as an entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect, and if Lender so elects, Lender may sell the personal property covered by this Deed at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State of Georgia, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Premises are sold or the Indebtedness is paid in full. If the 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 exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Lender may determine.

(b) If an Event of Default shall have occurred and be continuing, Lender may, in addition to and not in abrogation of the rights covered under subsection (a) of this Section 2.06, either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term, covenant, condition or agreement of this Deed or any other right under the Loan Documents, and (ii) to pursue any other remedy available to it, all as Lender shall determine most effectual for such purposes.

2.07 Purchase by Lender. Upon any foreclosure sale or sales of all or any portion of the Premises under the power herein granted, Lender may bid and purchase at such sale or sales and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

2.08 Application of Proceeds of Sale. In the event of a foreclosure or a sale of all or any portion of the Premises under the power herein granted, the proceeds of said sale shall be applied, in whatever order Lender in its sole discretion may decide, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorney's fees, to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender, to costs incurred by Lender in connection with any environmental surveys and testing of the Premises, to all other advances made by Lender pursuant to this Deed, to

payment of the outstanding principal balance of the Indebtedness, and to the accrued interest on all of the foregoing; and the remainder, if any, shall be paid to Grantor, or to the person or entity lawfully entitled thereto.

2.09 Grantor as Tenant Holding Over. In the event of any such foreclosure sale or sales under the power herein granted, Grantor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

2.10 Waiver of Appraisalment, Valuation, Etc. Grantor agrees to the full extent permitted by law, that in case of a default on the part of Grantor hereunder and after expiration of any applicable cure period, if any, neither Grantor nor anyone claiming through or under Grantor shall or will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisalment, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed, or the absolute sale of the Premises, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Grantor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Deed marshaled upon any foreclosure or sale under the power herein granted

2.11 Waiver of Homestead. Grantor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Premises as against the collection of the Indebtedness, or any part thereof.

2.12 Leases. Lender, at its option, is authorized to foreclose this Deed subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Grantor, a defense to any proceedings instituted by Lender to collect the Indebtedness.

2.13 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Deed by foreclosure, entry or otherwise or in the event Lender commences advertising of the intended exercise of power of sale, entry or otherwise, and such proceeding or advertisement shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case (i) Grantor and Lender shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken, (iii) each and every Event of Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment and not cured shall be a continuing Event of Default, and (iv) neither this Deed, nor the Note, nor the Indebtedness, nor any other instrument concerned therewith, shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and Grantor hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

2.14 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Deed is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.15 Waiver.

(a) No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any Default or Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default or Event of Default, or acquiescence therein; and every right, power and remedy given by this Deed to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, expressed or implied, by Lender to or of any Default or Event of Default by Grantor in the performance of the obligations thereof hereunder shall be deemed or construed to be a consent or waiver to or of any other Default or Event of Default in the performance of the same or any other obligations of Grantor hereunder. Failure on the part of Lender to complain of any act or failure to act or to declare any Default or Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder, except as expressly provided in any of the Loan Documents or in any instrument or instruments executed by Lender. Acceptance by Lender or by any holder of the Note of any sum or payment from or on behalf of Grantor that is less than the then currently outstanding amount due under the Note or any of the other Loan Documents, including, but not limited to, late charges, default interest, additional interest charges, accrued interest, escrow delinquencies, or payments on principal, or any combination thereof, shall not be construed to be a waiver of any of Lender's or such holder's rights, powers or remedies under any of the Loan Documents to collect or to enforce payment of any such delinquent amount which remains due and owing after application of such lesser amount to the then current balance as provided in the Loan Documents.

(b) No act or omission by Lender shall release, discharge, modify, change or affect the original liability under the Note, this Deed or any other obligation of Grantor or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any Default or Event of Default then made or of any subsequent Default or Event of Default, or alter the security title, security interest or lien of this Deed except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Indebtedness; (ii) take other or additional security for the payment of the Indebtedness; (iii) waive or fail to exercise any right granted herein, in the Note; (iv) release any part of the Premises from the security interest or lien of this

Deed or otherwise agree with Grantor to change any of the terms, covenants, conditions or agreements of the Note or this Deed; (v) consent to the filing of any map, plat or replat affecting the Premises; (vi) consent to the granting by Grantor of any easement or other right affecting the Premises; (vii) make or consent to any agreement subordinating the security title, security interest or lien hereof; or (viii) take or omit to take any action whatsoever with respect to the Note, this Deed, the Premises or any document or instrument evidencing, securing or in any way relating to the Indebtedness; all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the security title, security interest or lien of this Deed except as expressly provided in any of the Loan Documents or in any instrument or instruments executed by Lender. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing and/or discharging any liabilities, obligations or undertakings.

2.16 Suits to Protect the Premises. Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (i) to prevent any impairment of the Premises by any acts which may be unlawful or constitute a Default or Event of Default under this Deed, (ii) to preserve or protect its interest in the Premises and in the income, rents, issues, profits and revenues arising therefrom, and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

2.17 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Grantor, its creditors, its property, or any endorser or guarantor of the Indebtedness, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount of the Indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Grantor hereunder after such date.

2.18 WAIVER OF GRANTOR'S RIGHTS. BY EXECUTION OF THIS DEED AND BY INITIALING THIS SECTION 2.18, GRANTOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF LENDER TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND ANY OTHER INDEBTEDNESS AND THE POWER OF ATTORNEY GIVEN HEREIN TO LENDER TO SELL THE PREMISES BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF

