

File for Record at Request of:
Law Offices of Jack R. Wallace
P.O. Box 372
Burlington, WA 98233

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax
PAID

9607240076

JUL 24 1996

MORTGAGE

(For Security Purposes Only)

Amount Paid \$ 0
By: Skagit County Treasurer
Deputy

KATHY HILL
SKAGIT COUNTY AUDITOR

JUL 24 P3:33

FILED
REQUEST OF

RECHARD H. SMITH and PATRICIA ANN SMITH, husband and wife, (collectively the "Mortgagors"), mortgage to ROBERT E. BURKLAND and PAMELA K. BURKLAND, husband and wife (collectively the "Mortgagees"), the following described real estate, situate in the Skagit County, Washington: See Exhibit "A," attached hereto and incorporated herein by this reference (the "Premises"), to secure the payment of (i) the sum of \$200,000, with interest thereon, according to the terms of a promissory note (the "Note #1") bearing even date herewith made by Mortgagors' son, BRAD SMITH, payable to Mortgagees, and (ii) the sum of \$731,000, with interest thereon, according to the terms of a promissory note (the "Note #2") bearing even date herewith made by Mortgagors' Company payable to Mortgagees, together with any and all modifications, extensions, renewals, and replacements thereof, plus costs and other charges as provided in such note, plus all sums advanced to protect the security of this mortgage, together with interest thereon. The Mortgagors further represent, warrant, covenant and agree as follows:

1. **Insurance.** Mortgagors will keep all improvements on the Premises insured for the protection of Mortgagees for their full replacement cost with such company or companies as Mortgagees may from time to time approve, and to keep the policies therefore properly endorsed on deposit with Mortgagees. Such policy or policies of insurance shall name Mortgagees as additional insureds and first loss payees, and Mortgagors shall provide Mortgagees with certificates of insurance indicating that coverage shall not be changed or cancelled without 30 days prior written notice to Mortgagees. Unless Mortgagors and Mortgagees otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the damaged property, if the restoration or repair is economically feasible and the Mortgagees' security is not lessened. If the restoration or repair is not economically feasible or the Mortgagees' security would be lessened, the insurance proceeds shall be applied to the sums secured by the Mortgage, whether or not then due, with any excess paid to the Mortgagors.

2. **Taxes and Assessments.** Mortgagors promise and agree to pay before delinquency, directly to the payee thereof, all taxes, assessments, and other public charges levied, assessed or charged against the Premises.

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3. **Waste/Hazardous Substances.** Mortgagors will farm, cultivate, and care for said Premises in a proper farmlike manner, and will not cause, permit, or suffer waste on the Premises. Notwithstanding any provision of this Mortgage to the contrary, Mortgagors shall not, during the term of this Mortgage, permit the release of any hazardous substance (defined as any hazardous, dangerous, or toxic substance which is regulated under any federal, state, or local statute, ordinance, rule, or regulation now or hereafter in effect) into the environment; provided, however, Mortgagors may use appropriate farm chemicals according to all applicable laws, regulations, and manufacturer's label instructions. Mortgagors will defend, hold harmless and indemnify Mortgagees from and against claims, demands, penalties, fees, liens, damages, losses, expenses, or liabilities resulting from any breach of the foregoing, any cost or expense incurred as a result of hazardous substances being found on the Premises, and any cleanup costs. This indemnity shall survive satisfaction of the Mortgage through foreclosure or otherwise.

4. **Indebtedness/Promissory Note.** In the event Mortgagors shall fail to pay any installment of principal or interest secured hereby when due or to keep or perform any covenant or agreement contained herein or in the Note, then the whole indebtedness hereby secured shall forthwith become due and payable, at the election of the Mortgagees, all in accordance with the terms and conditions of this Mortgage and the Note.

5. **Due on Sale Clause.** If all or any part of the subject property or an interest therein is sold or transferred by Mortgagors without Mortgagees prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to their mortgage; (b) the creation of a purchase money security interest for household appliances or fixtures; and (c) a transfer by devise, descent, or by operation of law upon the death of a joint tenant, then Mortgagees may, at their option, declare all sums secured by this Mortgage to be immediately due and payable.

6. **Nonwaiver of Defaults.** The entering upon and taking possession of the Premises, the collection of the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Premises, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7. **Remedies Cumulative.** To the extent permitted by law, every right and remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage, or afforded by law or equity, or any other agreement between Mortgagees and Mortgagors, and may be exercised concurrently, independently, or successively, in any order whatsoever. Mortgagees may exercise any of their rights and remedies at their option without regard to the adequacy of their security.

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8. **Mortgagees' Expenses.** Mortgagors will pay all of Mortgagees reasonable expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any suit is filed including, without limitation, reasonable legal fees and disbursements, foreclosure costs, and title charges. All such sums, with interest thereon, shall be additional indebtedness of Mortgagors secured by this Mortgage. Such sums shall be immediately due and payable, and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Mortgagors under applicable law if that is less.

9. **Application of Payments.** Except as applicable law or this Mortgage may otherwise provide, all payments received by Mortgagees under the Note or this Mortgage shall be applied by Mortgagees in the following order of priority: (a) Mortgagees' expenses incurred in any efforts to enforce any terms of this Mortgage; (b) interest payable on advances made to protect the security of this Mortgage; (c) principal of such advances; (d) interest and late charges payable on the Note; (e) principal of the Note; and (f) any other sums secured by this Mortgage in such order as Mortgagees, at their option, may determine; provided, however, that Mortgagees may, at their option, apply any such payments received to interest on or principal of the Note prior to applying such payments to interest on and principal of advances made to protect the security of this Mortgage.

10. **No Violation of Usury Laws.** Interest, fees and charges collected or to be collected in connection with the indebtedness secured hereby shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Mortgagors are entitled to the benefit of such law, then: (a) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and (b) any sums already paid to Mortgagees which exceeded the permitted maximum will be refunded. Mortgagees may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the person(s) entitled thereto. No prepayment premium shall be assessed on prepayments under this paragraph. The provisions of this paragraph shall control over any inconsistent provision of this Mortgage or the Note.

11. **Notice.** Except as applicable law may otherwise require, all notices and other communications shall be in writing and shall be deemed given when delivered by personal service, or when mailed, certified or registered mail, postage prepaid, addressed to the address specified below, three (3) days after such mailing. Any party may at any time change their address for such purposes by delivering or mailing to the other parties hereto as aforesaid a notice of such change.

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Mortgagors' Address: Richard H. Smith/Patricia Ann Smith
1849 Dike Road
Mount Vernon, WA 98273

Mortgagees' Address: Robert E. Burkland/Pamela K. Burkland
1751 Britt Road
Mount Vernon, WA 98273

12. Time. Time is of the essence in connection with all obligations of Mortgagors herein.

DATED this 15th day of July, 1996.

Richard H. Smith
Richard H. Smith

Patricia Ann Smith
Patricia Ann Smith

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Richard H. Smith and Patricia Ann Smith, husband and wife, are the persons who appeared before me and that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: July 15, 1996.

Barbara A. Schildt

NOTARY PUBLIC
BARBARA A. SCHILDT

(Print or Type Name of Notary)

My Appointment Expires 2/19/2000

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EXHIBIT A

(Selix Property - Milltown)

PARCEL "A":

The South 908.6 feet of the Southeast 1/4 of the Southeast 1/4 and the South 908.6 feet of that portion of Government Lot 13, lying East of State Highway right of way; All in Section 30; Township 33 North, Range 4 East W.M., EXCEPT road and drainage ditch rights of way.

PARCEL "B":

The South 1/2 of the following described tract of land: The South 1/2 of Government Lot 8, the South 1/2 of the Northeast 1/4 of the Southeast 1/4 and also all that portion of Government Lot 13 and of the Southeast 1/4 of the Southeast 1/4, lying North of a line 908.6 feet North from the South line of Section 30, and running parallel to said Section line, EXCEPTING therefrom the right of way of the Great Northern Railway Company and County roads, and dike right of way; All in Section 30, Township 33 North, Range 4 East W.M.;

EXCEPTING from all of the above described property the State Highway.

(Erickson Property - 40 acres)

The Northeast 1/4 of the Northwest 1/4 of Section 16, Township 33 North, Range 3 East, W.M., EXCEPT County Road rights-of-way along the West and North lines thereof and ALSO EXCEPT mineral rights as reserved by the State of Washington in deed recorded January 14, 1965, in Volume 343 of Deeds, page 366, records of Skagit County. SUBJECT TO: (1) Easement of Public Utility District No. 1 dated 2-12-65 and recorded 2-18-65, under Auditor's File No. 662316; (2) Reclassification for tax purposes, 1-23-73 and 3-4-74 and recorded 1-24-73 and 9-10-74 under Auditor's File Nos. 779769 and 807011; (3) ditch rights-of-way, if any, as disclosed by application for classification as farm and agricultural land dated 3-4-74 and recorded 9-10-74 under Auditor's File No. 807011.

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Exhibit A - Continued

(Stender Property - 125 acres Fir Island)

The Northwest $\frac{1}{4}$ of Section 15, EXCEPT the South $\frac{1}{4}$ of the South $\frac{1}{4}$ thereof; and also that portion of the Northeast $\frac{1}{4}$ of Section 16 lying East of the Fir Island Road as conveyed to Skagit County by deed recorded May 21, 1927 in Volume 143 of Deeds, page 331, records of Skagit County and North of a line drawn West from a point on the East line of said Northeast $\frac{1}{4}$ that is 30 and 18/100 chains South of the Northeast corner thereof; EXCEPT road, ditch and dike rights of way;
ALL in Township 33 North, Range 3 East W.M.

Situate in the County of Skagit, State of Washington.

(Fohn Property - 40 acres Fir Island)

The Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 16, Township 33 North, Range 3 East, W.M., EXCEPT County Road right-of-ways along the West line thereof, and ALSO EXCEPT mineral rights as reserved by the State of Washington in Deed recorded April 16, 1956 under Auditor's File No. 534546, records of Skagit County, Washington.