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KATHY HILL
SKAGIT COUNTY CLERK

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RECORDED
REQUEST OF

ATTENTION: Kenneth W. McCarthy, Jr.
T & W FINANCIAL CORPORATION
P. O. Box 3028
Federal Way, WA 98063

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ISLAND TITLE COMPANY
SB-11713 ✓ DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT

Reference number(s) of document(s) assigned or released (if applicable):

Grantor/Borrower(s): Sicklesteel Cranes, Inc.

Grantee/Assignee/Beneficiary(s): T&W Funding Company VI, L.L.C.

Grantee/Trustee: Island Title Company

Legal description (abbreviated): Lot D of SKAGIT SHORT PLAT NO. 1-86 as approved March 7, 1986, and recorded March 7, 1986, in Volume 7 of Short Plats, page 76, under Auditor's File No. 8603070013, Records of Skagit County, Washington.

Assessor's Tax Parcel Number(s): 340432-0-007-0316

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT ("Deed of Trust") is made this 25 day of November, 1997, by Grantor, SICKLESTEEL CRANES, INC., a Washington corporation ("Borrower"), whose mailing address is 1727 Sicklesteel Lane, Mt. Vernon, Washington 98273-3627. The Trustee is ISLAND TITLE COMPANY, whose mailing address is P.O. Box 670, Burlington, Washington 98233 ("Trustee"). The Beneficiary is T&W FUNDING COMPANY VI, L.L.C., a Delaware limited liability company ("Lender"), whose mailing address is P.O. Box 3028, Federal Way, Washington 98063. For purposes of Article 9 of the Uniform Commercial Code (RCW 62A.9), this Deed of Trust constitutes a Security Agreement and Financing Statement with the Borrower being the Debtor and the Lender being the Secured Party. This Deed of Trust shall also constitute a Financing Statement filed as a fixture filing pursuant to Article 9 of the Uniform Commercial Code (RCW 62A.9-402(6)). Parts of the Property (defined below) are

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or are to become fixtures on the Realty (defined below) or Improvements (defined below).

In consideration of the Lease described below, Borrower hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, all of Borrower's present and future estate, right, title, claim, and interest, either in law or in equity, in and to the following property ("Property"):

- (a) The real property and all rights to the alleys, streets and roads adjoining or abutting the real property described on Exhibit A attached hereto ("Realty");
- (b) All easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, royalties, water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in any way appertaining to the Realty;
- (c) All buildings, structures and improvements now or hereafter located on the Realty ("Improvements");
- (d) All fixtures and articles of property now or hereafter attached to, or used or adapted for use in the ownership, development, operation or maintenance of the Realty or Improvements (whether such items are leased, owned, or subject to any title-retaining or security instrument), including without limitation all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposers, refrigerators and other appliances; all escalators and elevators, baths, sinks, cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash; all carpeting, underpadding, floor covering, panelling, and draperies; all furnishings of public spaces, halls and lobbies; and all shrubbery and plants. All such items shall be deemed part of the Realty and not severable wholly or in part without material injury to the freehold;
- (e) All of the rents, revenues, issues, profits and income of the Realty and Improvements, and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty or Improvements, including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guarantees of tenants' or occupants' performance under such leases and agreements;
- (f) All tangible personal property ("Personal Property") used or useful in connection with the ownership, development, operation or maintenance of the Realty or the Improvements, including without limitation all furniture, furnishings, equipment, and supplies;
- (g) All intangible personal property used in connection with or related in any way to the ownership, development, operation or maintenance of the Realty, Improvements, or

Personal Property, including without limitation, all permits, licenses and franchises, the exclusive right to use of any trade names, all contract rights (including without limitation architectural, engineering, consulting, and management contracts), all accounts, accounts receivable, escrow accounts, reserves and reserve accounts, insurance policies, deposits, instruments, chattel paper, documents of title, general intangibles, and business books and records, and all claims and causes of action related in any way to the Realty, Improvements or Personal Property including rights and claims under any insurance policy;

(h) All materials, supplies, and other goods, wherever located, whether in the possession of Borrower, warehousemen, bailees, or any other person, purchased for use in or related in any way to any construction or remodeling or furnishing of the Improvements, together with all documents, contract rights, and general intangibles relating thereto;

(i) All site plans, plats, architectural plans, specifications, working drawings, surveys, engineering reports, test borings, market surveys, and other work products relating to the Realty or Improvements;

(j) Any contracts for or in connection with any construction or services to be performed in connection with the Realty or any Improvements, together with all performance, payment, completion or other surety bonds issued in connection with or related to such contracts, insofar as the same may be transferred by Borrower without breach of any such bond; and

(k) All additions to, replacements of, substitutions for, products of, proceeds and all proceeds of such proceeds (including but not limited to goods, accounts, general intangibles, chattel paper, documents, instruments, money and the proceeds thereof) of any of the foregoing items and all rights to encumber any of the foregoing for debt.

TO SECURE THE FOLLOWING ("Secured Obligations"):

(a) Payment of all sums due according to the terms and provisions of an Equipment Lease Agreement (the "Lease") of even date, made by Borrower (as lessee) and payable to Lender (as lessor), including any and all modifications, extensions, renewals, restatements and replacements thereof.

(b) Payment of all sums advanced to protect the security of this Deed of Trust, together with interest thereon as herein provided;

(c) Payment of all other sums which are or which may become owing under the Lease and any documents executed in connection therewith (the "Lease Documents");

(d) Performance of all of Borrower's other obligations under the Lease Documents.

As used herein, the term "Lease Documents" means the Lease, this Deed of Trust, and

all related documents and instruments, and any and all modifications, extensions, renewals, restatements and replacements thereof. The indebtedness secured by this Deed of Trust may be indexed, adjusted, renewed or renegotiated.

BORROWER HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I
TITLE AND USE

1.1 **Warranty of Title.** Borrower covenants and agrees that: (i) Borrower is lawfully seized of the estate hereby conveyed and has full right and power to grant, convey and assign the Property, (ii) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the permitted exceptions ("Permitted Exceptions") listed on Exhibit B, (iii) no other liens or encumbrances, whether superior or inferior to this Deed of Trust, will be created or suffered to be created by Borrower without the prior written consent of Lender, (iv) no default on the part of Borrower or any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification, (v) complete and current copies of the Permitted Exceptions have been furnished to Lender, and none of them have been or will be modified by Borrower without Lender's prior written consent, (vi) Borrower shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Lender a copy of all notices delivered or received by Borrower in connection with the Permitted Exceptions, (vii) Lender has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Borrower shall, from time to time, at the request of Lender, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Lender may request, and (viii) Borrower shall forever warrant and defend the Property unto Lender against all claims and demands of any other person whatsoever, subject only to non-delinquent taxes and assessments and the Permitted Exceptions.

1.2 **Non-Agricultural Use.** The Property is not used principally for agricultural or farming purposes, and Borrower so represents and warrants to Lender.

1.3 **Hazardous Substances.**

(a) **Representations and Warranties.** Borrower represents and warrants to Lender, to the best of its knowledge after due and diligent inquiry and inspection, that (i) no asbestos has ever been used in the construction, repair or maintenance of any Improvements; (ii) no Hazardous Substance is currently being generated, processed, stored, transported, handled or disposed of, on, under or in the Property or any property adjoining the Property, except in accordance with all applicable laws, (iii) neither Borrower nor any other person or entity has ever caused or permitted any Hazardous Substance to be generated, processed, stored, transported, handled or disposed of, on, under or in the Property, except in compliance with all applicable laws, (iv) there is no actual or alleged violation with respect to the Property

of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, (v) there is no action or proceeding pending before or appealable from any court, quasi-judicial body or administrative agency relating to Hazardous Substances affecting or alleged to be affecting the Property, and (vi) there are not now and never have been any underground or above-ground storage tanks on the Property.

(b) Covenant. Borrower covenants and agrees that Hazardous Substances will not be generated, processed, stored, transported, handled or disposed of on the Property by any person or entity, except in accordance with all applicable laws.

(c) Definition. "Hazardous Substance" means petroleum, petroleum product, natural or synthetic gas, asbestos, urea formaldehyde, radon gas, polychlorinated biphenyls, and any substances or material which may be hazardous to the health or safety of any person, including any substance which now or hereafter becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law relating to environmental protection, contamination or cleanup.

(d) Notification; Cleanup. Borrower shall immediately notify Lender if Borrower becomes aware of (i) any Hazardous Substance problem or liability with respect to the Property, (ii) any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, or (iii) any lien or action with respect to any of the foregoing. Borrower shall, at its sole expense, take all actions as may be necessary or advisable for the cleanup of Hazardous Substances with respect to the Property, including without limitation, all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Lender, and shall further pay or cause to be paid all cleanup, administrative and enforcement costs of governmental agencies if obligated to do so by contract or by law.

(e) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times, and after reasonable notice, for the purpose of inspecting the Property to determine Borrower's compliance with this paragraph.

1.4 Building Laws.

(a) Representations and Warranties. Borrower represents and warrants to Lender that (i) the construction, repair, maintenance, and use of all Improvements comply with all Building Laws, have been approved by all necessary governmental authorities, and that all certificates and permits required for the occupancy and use of the Improvements have been obtained and are in full force and effect, (ii) there is no actual or alleged violation of any Building Laws applicable to the Property and (iii) there is no action or proceeding pending before or appealable from any court, quasi judicial body or administrative agency relating to a violation or an alleged violation of Building Laws with respect to the Property.

(b) Covenant. Borrower covenants and agrees that the Property will at all

times comply with all Building Laws.

(c) Definition. "Building Laws" means all federal, state and local laws, regulations, ordinances and requirements applicable to the use, development and operation of the Property.

(d) Notification; Repair. Borrower shall immediately notify Lender if Borrower becomes aware of any actual or alleged violation of any Building Law. Borrower shall, at its sole expense, take all actions as may be necessary or advisable to bring the Property into compliance with Building Laws, including alterations, repairs, and replacements of any Improvements.

(e) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property to determine Borrower's compliance with this paragraph.

ARTICLE II BORROWER'S COVENANTS

II.1 Payment and Performance of Secured Obligations. Borrower shall pay when due all sums which are now or which may become owing under the Lease, and shall pay and perform all other Secured Obligations in accordance with their terms.

II.2 Payment of Taxes, Utilities, Liens and Charges.

(a) Taxes and Assessments. Except as the same may otherwise be paid under Article III, Borrower shall pay when due directly to the proper payee all taxes and assessments (including without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Borrower shall promptly furnish to Lender all notices of amounts due under this subparagraph and all receipts evidencing such payments.

(b) Utilities. Borrower shall pay when due all utility charges and assessments for services furnished the Property.

(c) Labor and Materials. Borrower shall pay when due the claims of all persons supplying labor or materials to or in connection with the Property.

(d) Liens and Charges. Borrower shall promptly discharge any lien, encumbrance, or other charge, whether superior or inferior to this Deed of Trust, which may be claimed against the Property; provided that Borrower shall have the right to contest the amount or validity in whole or in part of any lien, encumbrance or other charge against the Property by appropriate proceedings conducted in good faith and with due diligence, in which event

Borrower, upon prior written notice to Lender, may postpone or defer payment of such lien, encumbrance or other charge so long as (i) such proceedings shall operate to prevent the collection of the lien, encumbrance or other charge; (ii) neither the Property nor any part thereof will, by reason of such postponement or deferment, be in danger of being forfeited or lost; and (iii) Borrower, before the date such lien, encumbrance or other charge becomes delinquent, gives such reasonable security as may be requested by Lender to ensure payment thereof and prevent any forfeiture or loss of the Property or any part thereof.

II.3 Insurance.

(a) Coverages Required. Borrower shall keep the following insurance coverages in effect with respect to the Property:

(1) Insurance against loss by fire and the hazards now or hereafter embraced by the "All Risk" or special form of insurance, in an amount equal at all times to 100% of the replacement value of the Improvements. All such insurance coverage shall contain a "replacement cost endorsement" without reduction for depreciation, and shall also contain loss of rents and/or business interruption insurance coverage satisfactory to Lender, a fluctuating value endorsement with a waiver of the co-insurance clause (or an agreed amount endorsement with an inflation guard endorsement), and such other endorsements as Lender may reasonably request. All such endorsements shall be in form and substance satisfactory to Lender.

(2) Comprehensive public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property in amounts and on terms acceptable to the Lender. Lender shall be an additional insured on such liability policies.

(3) Flood insurance in an amount satisfactory to Lender and on terms satisfactory to Lender if the Property is located in a designated flood hazard area, and such insurance is available pursuant to the provisions of the Flood Disaster Protection Act of 1973 or other applicable legislation.

(4) Insurance against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts as Lender may from time to time reasonably require.

(b) Policies. Each insurance policy shall be from a company and in a form acceptable to Lender. Each hazard insurance policy will include a Form 438BFU or equivalent mortgagee endorsement in favor of and in form acceptable to Lender. All required policies will provide for at least thirty (30) days' written notice to Lender prior to the effective date of any cancellation or material change, which includes any reduction in the scope or limits of coverage. Borrower shall furnish to Lender the original of each required insurance policy, or a certified copy thereof together with a certificate of insurance setting forth the coverage, the

limits of liability, the carrier, the policy number and the expiration date. As security for the Secured Obligations, Borrower hereby assigns to Lender all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation. All insurance policies shall be evaluated and adjusted as required by Lender on an annual basis. Borrower assumes all risk of insufficient coverage of risks or amounts and acknowledges that Lender's requirements are not intended to indicate what Borrower should, in its exercise of its prudent and reasonable judgment, obtain.

(c) Payment; Renewals. Borrower shall promptly furnish to Lender all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Article III, Borrower shall pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Borrower shall furnish to Lender a renewal policy in a form acceptable to Lender, together with evidence that the renewal premium has been paid.

(d) Application of Insurance Proceeds. In the event of any loss, Borrower shall give prompt written notice thereof to the insurance carrier and Lender. Borrower hereby authorizes Lender as Borrower's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Lender's or Borrower's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Lender shall have no obligation to do so. Lender shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

(1) The payment of the Secured Obligations, whether then due and payable or not; or

(2) The reimbursement of Borrower, under Lender's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Lender may, at its option, condition the reimbursement on Lender's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Lender may reasonably require.

(e) Transfer of Title. If the Property is sold pursuant to Article VII or if Lender otherwise acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in

and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

II.4 Preservation and Maintenance of Property; Right of Entry.

(a) Preservation and Maintenance. Borrower shall (i) not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) not abandon the Property, (iii) restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and replace fixtures, equipment, machinery and appliances which are part of the Property when necessary to keep such items in good condition and repair, and (v) generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. None of the Improvements shall be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property be removed at any time without such consent unless actually replaced by an article of equal suitability which is owned by Borrower free and clear of any lien or security interest.

(c) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property to determine Borrower's compliance with this paragraph.

II.5 Use of Property. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions applicable to the Property, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent. Without Lender's prior written consent, Borrower shall not (a) seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances, (b) modify, amend or supplement any easement, reservation, restriction, covenant, condition, or encumbrance pertaining to the Property, (c) impose or consent to any restrictive covenant or encumbrance upon the Property, execute or file any subdivision or parcel map affecting the Property, or consent to the annexation of the Property to any municipality, or (d) permit or suffer the Property to be used by the public or any person in such a manner as

might make possible a claim of adverse use or possession or of implied dedication or easement.

II.6 Condemnation.

(a) **Proceedings.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking (including without limitation any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Lender, and all proceeds of any such awards, payments, damages or claims shall be paid to Lender.

(b) **Application of Condemnation Proceeds.** Lender shall apply any such proceeds in the manner and upon the terms and conditions set forth in paragraph II.3(d) relating to the application of insurance proceeds.

II.7 Protection of Lender's Security. Borrower shall give notice to Lender of and shall appear in and defend any action or proceeding that may affect the Property, the interests of Lender or Trustee therein, or the rights or remedies of Lender or Trustee under the Lease Documents. If any such action or proceeding is commenced, or Borrower fails to perform any obligation under any of the Lease Documents, Lender or Trustee may, at their option, make any appearances, disburse any sums, make any entries upon the Property, and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Deed of Trust, (ii) remedy Borrower's failure to perform its obligations under the Lease Documents (without waiving such default by Borrower), or (iii) otherwise protect Lender's or Trustee's interests. Borrower shall pay all losses, damages, fees, costs, and expenses incurred by Lender and Trustee in taking such actions, including without limitation reasonable legal fees.

II.8 Reimbursement of Lender's and Trustee's Expenses. All amounts disbursed by Lender or Trustee pursuant to paragraph II.6 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. All such amounts shall be immediately due and payable and bear interest from the date of disbursement at the lesser of the Default Rate under the Lease, or the maximum rate permitted by law.

**ARTICLE III
RESTRICTIONS ON TRANSFER OR ENCUMBRANCE**

Neither the Property nor any part thereof or interest therein shall be encumbered, sold (by contract or otherwise), conveyed, or otherwise transferred by Borrower; nor shall there be

any change in (i) the ownership or control of any of Borrower's stock if Borrower is a corporation, (ii) the ownership or control of any general partnership interest in Borrower if Borrower is a Partnership, (iii) the ownership or control of any beneficial interests in Borrower if Borrower is not otherwise a natural person or persons, and (iv) the ownership or control of any stock, any general partnership interest, or any other beneficial interest in any corporation, partnership or other entity that has an ownership interest in Borrower. Any such action without Lender's prior written consent shall be deemed to increase the risk of Lender, and shall constitute an Event of Default. Lender may, in its sole discretion, consent to any such action subject to such terms and conditions as Lender may require.

ARTICLE IV
UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

IV.1 **Grant to Lender.** This Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code with respect to:

- (a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust; and
- (b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Deed of Trust);

and Borrower hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Borrower and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Deed of Trust, is and at all times shall be regarded as part of the Realty. Lender may file copies or reproductions of this instrument as a financing statement.

IV.2 **Lender's Rights and Remedies.** With respect to the property subject to the foregoing security interest, Lender shall have all of the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default hereunder, Borrower will assemble any items of personal property and make them available to Lender at the Property. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as

permitted by applicable law.

ARTICLE V
ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY
APPOINTMENT OF RECEIVER; LENDER IN POSSESSION

V.1 **Assignment of Rents and Leases.** As part of the consideration for the Secured Obligations, and as additional security therefor, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all right, title and interest of Borrower in and to: (a) any and all present and future leases, subleases, and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof ("Assigned Leases"); (b) all cash or security deposits, advance rentals and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases, and (d) all rents, issues, profits and revenues ("Rents") now due or which may become due or to which Borrower may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Assigned Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages.

V.2 **Collection of Rents.** Prior to any Event of Default hereunder, Borrower shall have a license to, and shall, collect and receive all Rents of the Property as trustee for the benefit of Lender and Borrower, apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust, third to the costs of discharging any obligation or liability of Borrower under the Assigned Leases, and fourth to the Secured Obligations, with the balance, if any, to the account of Borrower provided there is no Event of Default. Upon delivery of written notice by Lender to Borrower of an Event of Default hereunder and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only. Upon delivery of such written notice by Lender, Borrower hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Lender on Lender's written demand therefor, without any liability on the part of said tenant or occupant to inquire further as to the existence of a default by Borrower. Borrower hereby authorizes Lender as Borrower's attorney-on-fact to make such direction to tenants and occupants upon Borrower's failure to do so as required herein. Payments made to Lender by tenants or occupants shall, as to such tenants and occupants, discharge the payors' obligations to Borrower. Lender may exercise, in Lender's or Borrower's name, all rights and remedies available to Borrower with respect to collection of Rents. Nothing herein contained shall be construed as obligating Lender to perform any of Borrower's obligations under any of the Assigned Leases.

V.3 **Borrower's Representations and Warranties.** Borrower hereby represents and

warrants to Lender that Borrower has not executed and will not execute any other assignment of said Assigned Leases or Rents, that Borrower has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Lender from exercising its rights under this Article V, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the Rents of the Property for more than one (1) month prior to the due dates thereof. Borrower further represents and warrants to Lender that all existing Assigned Leases are in good standing and there is no default thereunder, whether by Borrower or lessee, and that, to Borrower's knowledge, there is no event or condition which, with notice or the passage of time or both, would be a default thereunder. Borrower shall execute and deliver to Lender such further assignments of rents and leases of the Property as Lender may from time to time request.

V.4 Leases of the Property. Borrower shall comply with and observe Borrower's obligations as landlord under all Assigned Leases and will do all that is necessary to preserve all Assigned Leases in force and free from any right of counterclaim, defense or setoff.

V.5 Lender in Possession; Appointment of Receiver. Upon any Event of Default hereunder, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Borrower could do the same, including without limitation the execution, enforcement, cancellation and modification of Assigned Leases, the collection of Rents, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect the security of this Deed of Trust. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof, such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default hereunder, Lender shall be entitled (regardless of the adequacy of Lender's security) to the appointment of a receiver, Borrower hereby consenting to the appointment of such receiver. Said receiver may serve without bond and may be Lender or an employee of Lender. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Lender in this Article V. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

V.6 Application of Rents. All Rents collected subsequent to delivery of written notice by Lender to Borrower of an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower under the Assigned Leases, and then to the Secured Obligations. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be

liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Article.

V.7 Deficiencies. To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Borrower under the Assigned Leases exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Deed of Trust. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the lesser of the default rate under the Lease, or the maximum rate permitted by law.

V.8 Lender Not Mortgagee in Possession. Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

V.9 Enforcement. Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the Secured Obligations.

ARTICLE VI EVENTS OF DEFAULT

VI.1 Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

(a) The failure to make any payment required under the Lease, this Deed of Trust, or any of the other Lease Documents when due, including, without limitation, payments of taxes, utilities, liens and insurance premiums.

(b) The failure to perform any other covenant, agreement or obligation under this Deed of Trust or any of the other Lease Documents, if not cured within the time allowed. If no cure period is otherwise specified for such default, the cure period shall be within thirty (30) days after Lender's delivery of written demand to Borrower, or if such cure cannot in Lender's opinion be completed within such thirty (30) day period, and Borrower commences the required cure within such thirty (30) day period and thereafter continues the cure with diligence, the cure period shall be ninety (90) days after Lender's delivery of such written demand. No written demand and no cure period shall be required if, during the prior twelve (12) months, Lender has already sent a written demand to Borrower concerning default in the same obligation.

(c) The occurrence of an Event of Default under any of the other Lease Documents.

(d) Borrower or any guarantor or any trustee of Borrower or any guarantor files a petition in bankruptcy for an arrangement, reorganization or any other form of debtor

relief; or such a petition is filed against Borrower or any guarantor or any trustee of Borrower or any guarantor and the petition is not dismissed within forty-five (45) days after filing.

(e) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Borrower or any guarantor or Borrower's or any guarantor's property, and such decree or order is not vacated within forty-five (45) days after the date of entry.

(f) Borrower or any guarantor commences any proceeding for dissolution or liquidation; or any such proceeding is commenced against Borrower or any guarantor and the proceeding is not dismissed within forty-five (45) days after the date of commencement.

(g) Borrower or any guarantor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.

(h) There is an attachment, execution or other judicial seizure of any portion of Borrower's or any guarantor's assets and such seizure is not discharged within thirty (30) days.

(i) Any representation or disclosure made to Lender by Borrower or any guarantor in connection with the Lease proves to be materially false or misleading when made, whether or not that representation or disclosure is expressly set forth in the Lease Documents.

(j) A default occurs with respect to any other indebtedness now or hereafter owing to Lender on which Borrower or any guarantor is a maker or a guarantor, and such default is not cured within the applicable cure period, if any, under the instruments evidencing and securing such indebtedness.

VI.2 Inapplicability of Cure Period. All cure periods provided in this Deed of Trust or the other Lease Documents shall be inapplicable if, in Lender's reasonable judgment, the default is not capable of being cured within the time allowed, or a delay in Lender's enforcement of its rights and remedies may result in a material impairment of its security.

VI.3 Form of Notice. At Lender's option, any written notice of default given to Borrower under paragraph VI.1 may be given in the form of a statutory notice of default under the Washington Deed of Trust Act or any other form as Lender may elect.

ARTICLE IIIII REMEDIES

VII.1 Acceleration Upon Default; Additional Remedies. Upon any Event of Default, Lender may, at its option and without notice to or demand upon Borrower, exercise any one or more of the following actions:

(a) Declare all the Secured Obligations immediately due and payable.

- (b)** Bring a court action to enforce the provisions of this Deed of Trust or the Lease or any of the other Lease Documents.
- (c)** Foreclose this Deed of Trust as a mortgage.
- (d)** Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.
- (e)** Elect to exercise its rights with respect to the Assigned Leases and the Rents.
- (f)** Exercise any or all of the other rights and remedies under this Deed of Trust and the other Lease Documents.
- (g)** Exercise any other right or remedy available under law or in equity.

VII.2 Exercise of Power of Sale. For any sale under the power of sale granted by this Deed of Trust, Lender or Trustee shall record and give all notices required by law and, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by Lender and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place noticed for the sale. If the Property includes several lots or parcels, Lender in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by the Trustee is personal property, then Trustee shall be acting as the agent of the Lender in selling such Property. Any person permitted by law to do so may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

VII.3 Application of Sale Proceeds. The proceeds of any sale under this Deed of Trust will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including without limitation Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the lesser of the default rate under the Lease or the maximum rate permitted by law.

SECOND: Payment of all sums expended by Lender under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the lesser of the default rate under the Lease, or the maximum rate permitted

by law.

THIRD: Payment of all other Secured Obligations in any order that the Lender chooses.

FOURTH: The remainder, if any, to the person or persons legally entitled to it.

VII.4 Waiver of Order of Sale and Marshalling. Lender shall have the right to determine the order in which any or all portions of the secured indebtedness are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Borrower, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waives any and all right to require marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust.

VII.5 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, 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.

VII.6 Expenses During Redemption Period. If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the Purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the lesser of the default rate under the Lease, or the maximum rate permitted by law, shall be added to and become a part of the amount required to be paid for redemption from such sale.

VII.7 Foreclosure Subject to Tenancies. Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

VII.8 Remedies Cumulative. To the extent permitted by law, every right and remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity or any other agreement between Lender and Borrower, and may be exercised concurrently, independently or successively, in any order whatsoever. Lender may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

VII.9 Lender's and Trustee's Expenses. Borrower shall pay all of Lender's and Trustee's costs and expenses (including reasonable legal fees) incurred in any efforts to enforce any provision of this Deed of Trust or any of the other Lease Documents, in protecting or realizing on any of the collateral, or in otherwise protecting or enforcing Lender's rights under this Deed

of Trust or any of the other Lease Documents. Such fees, costs and expenses shall include those incurred with or without filing a lawsuit, and in any appeal, any petition for review, any federal or state insolvency, bankruptcy or receivership proceedings, any post-judgment collection proceedings, any probate proceedings, and in connection with all negotiations, documentation, and other actions relating to any workout, compromise, settlement or satisfaction of any of the Secured Obligations or any other obligations of Borrower under any of the Lease Documents. All such costs, expenses and fees shall be payable on demand, shall bear interest from the date of disbursement at the lesser of the Default Rate under the Lease, or the maximum rate permitted by law, and shall be secured by this Deed of Trust.

ARTICLE VIII
GENERAL

VIII.1 No Offset. Borrower's obligation to timely pay and perform all obligations under the Lease, this Deed of Trust, and the other Lease Documents shall be absolute and unconditional and shall not be affected by any event or circumstance including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Borrower or any guarantor may have or claim against Lender or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against Lender or any other person or entity, provided that Borrower shall maintain a separate action thereon.

VIII.2 Application of Payments. Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Lender shall be applied to payment of the following, in such order as Lender, at its option, may determine: (a) Lender's and Trustee's fees, costs and expenses described above; (b) interest payable on advances made to protect the security of this Deed of Trust; (c) principal of such advances; (d) payments and late charges payable under the Lease; and (e) any other Secured Obligations.

VIII.3 Reconveyances. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all documents evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Lender's and Trustee's reasonable costs and expenses incurred in so reconveying the Property.

VIII.4 Subrogation. Lender shall be subrogated for further security to the line, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Lease or any other indebtedness secured hereby.

VIII.5 Indemnification. Borrower agrees to indemnify and hold harmless Trustee and Lender from and against any and all losses, liabilities, suits, obligations, fines, damages,

judgments, penalties, claims, charges, costs and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred or paid by, or asserted against Trustee and/or Lender by reason or on account of, or in connection with: (a) any willful misconduct of Borrower or any default by Borrower hereunder or under any of the other Lease Documents, (b) Trustee's and/or Lender's good faith and commercially reasonable exercise of any their rights and remedies or their performance of any of their duties hereunder or under any of the other Lease Documents, (c) the construction, reconstruction, or alteration of the Property, (d) any negligence of Borrower, or any negligence or willful misconduct of any tenant or occupant of the Property, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees, or (e) any accident, injury, death or damage to any person or property occurring in, on or about the Property or any street, sidewalk or passageway adjacent thereto, except for the willful misconduct or the extent caused by the negligence of the indemnified person. Any amounts payable to Trustee or Lender shall be due and payable on demand, and shall bear interest from the date of demand at the lesser of the default rate under the Lease or the maximum rate permitted by law until paid in full by Borrower. Borrower's obligations under this paragraph shall not be affected by the absence or unavailability of insurance covering the same, or by the failure or refusal of any insurance carrier to perform any obligation on its part under any policy of insurance. If any claim, action or proceeding is made or brought against Borrower and/or Lender which is subject to the indemnity set forth in this paragraph, Borrower shall resist or defend the same by attorneys for Borrower's insurance carrier (if the same is covered by insurance) or otherwise by attorneys approved by Lender. Trustee and Lender, in their reasonable discretion, may engage their own attorneys to resist or defend, or assist therein, and Borrower shall pay or, on demand, shall reimburse Trustee and/or Lender for the payment of the reasonable fees and disbursements of such attorneys.

VIII.6 Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default shall constitute a waiver of any other default or of any similar default in the future.

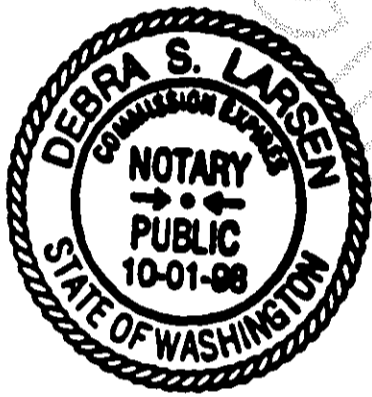
VIII.7 Modifications and Waivers. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

VIII.8 Notice. Notices under this Deed of Trust shall be in writing and shall be sent as registered or certified mail, postage prepaid, directed to such party at the address noted above, or such other address as the party may indicate by written notice to the other pursuant to this section. Such notices shall be deemed effective on the earlier of (a) the actual date of delivery of the notice to the address of the party, and not a named person, as evidenced by the certified or registered mail return receipt, or (b) the third business day after the date of mailing.

VIII.9 Governing Law; Severability; Captions. This Deed of Trust shall be governed by the laws of the State of Washington. If any provisions or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can

voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Debra S. Larsen
Printed Name: Debra S. Larsen
NOTARY PUBLIC in and for the State of
Washington, residing at Mount Vernon
My commission expires: 10/1/98

EXHIBIT A

Legal Description of Realty

Lot D of SKAGIT SHORT PLAT NO. 1-86 as approved March 7, 1986, and recorded March 7, 1986, in Volume 7 of Short Plats, page 76 , under Auditor's File No. 8603070013, records of Skagit County, Washington; being a portion of the Northeast Quarter of the Southwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian;

EXCEPT that portion conveyed to Schenk Packing Company in deed recorded on August 7, 1990 under Auditor's File No. 9008070008, records of Skagit County, Washington.

Situated in Skagit County, Washington.

EXHIBIT B

Permitted Exceptions

1. Deed of Trust dated January 3, 1986, and recorded January 3, 1986 under Auditor's File No. 8601030074.
2. Deed of Trust dated November 14, 1994, and recorded December 6, 1994 under Auditor's File No. 9412060051.