

After recording, return to:

Lane Powell Spears Lubersky LLP  
520 S.W. Yamhill, Suite 800  
Portland, Oregon 97204-1383  
Attn.: Bryan E. Powell

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KATHY HILL  
SKAGIT COUNTY AUDITOR

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**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND FIXTURE FILING**

FIRST AMERICAN TITLE CO  
SS 361-2

Reference number of related document: Auditor's File No. 9805150005

Grantor(s): WASHINGTON ALDER, LLC, a Washington limited liability company

Grantee(s): CAPITAL CONSULTANTS, INC., an Oregon corporation, as investment advisor  
and agent for certain participant lenders

Legal Description: A LEASEHOLD INTEREST IN THE FOLLOWING:

The South 966.00 feet of Lot 3 Skagit County Short Plat No. 7-89, approved March 1, 1989, and recorded March 2, 1989 in Volume 8 of Short Plats, pages 112 and 113, records of Skagit County, Washington, being a portion of the Southwest ¼ of the Northwest ¼ of Section 9, township 34 North, Range 3 East, W.M.

EXCEPT the East 210.00 feet thereof;

AND EXCEPT any portion thereof lying Northeasterly of a line drawn parallel with and 25 feet Southwesterly of the Southwesterly bank of the existing drainage ditch maintained by Drainage District No. 19, running along the toe of the hill.

SUBJECT TO AND TOGETHER WITH easements, reservations, restrictions, covenants, liens and other instruments of record.

Situated in the County of Skagit, State of Washington.

Assessor's Property Tax Parcel Account Number(s): 340309-2-005-0009.

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EK 1833700125

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND FIXTURE FILING**

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING ("Deed of Trust") is made and entered into as of June 25, 1998, by WASHINGTON ALDER, LLC, a Washington limited liability company ("Grantor"), whose address is 504 East Fairhaven, Suite 210-20, Burlington, Washington 98233, FIRST AMERICAN TITLE INSURANCE COMPANY OF SKAGIT COUNTY, whose address is 1301-B Riverside Drive, Mount Vernon, Washington 98273 ("Trustee"), and CAPITAL CONSULTANTS, INC., an Oregon corporation, as investment advisor and agent for certain participant lenders ("Beneficiary"), whose address is 2300 S.W. First Avenue, Portland, Oregon 97201.

**GRANT IN TRUST**

Grantor hereby grants, bargains, sells, and conveys to the Trustee, IN TRUST, WITH POWER OF SALE and right of entry and possession, all of Grantor's right, title, and interest in and to the real property located in the County of Skagit, State of Washington (the "Real Property"), described in Exhibit A attached hereto and made a part of this Deed of Trust by this reference.

TOGETHER WITH all rents, issues, profits, payments, royalties, income, and other benefits from the Real Property (collectively the "Rents");

TOGETHER WITH all leasehold estate, right, title, and interest of Grantor (as lessor or lessee) in and to all leases, subleases, or rental agreements covering the Real Property or any portion thereof now or hereafter existing or entered into including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature (the "Leases");

TOGETHER WITH all right, title, and interest of Grantor in and to all options, agreements, and contracts for the purchase and sale of all or any part or parts of the Real Property or interests therein;

TOGETHER WITH all easements, rights-of-way, and rights used in connection with the Real Property or as a means of access thereto, and all tenements, hereditaments, and appurtenances thereof and thereto, and all water and water rights (whether riparian, appropriative, or otherwise and whether or not appurtenant) and all water service contracts and licenses now or hereafter relating to or used in connection therewith, all ditch rights, and all shares of stock evidencing any such water or ditch rights;

TOGETHER WITH any and all buildings and improvements now or hereafter erected on the Real Property, including all fixtures attached or appurtenant to the Real Property or any such buildings or improvements (together called the "Improvements"), and all materials intended for construction, reconstruction, alteration, and repair of the Improvements, all of which materials

shall be deemed to be included within the Real Property immediately upon the delivery thereof to the Real Property;

TOGETHER WITH all the estate, interest, right, title, or other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Grantor now has or may hereafter acquire in the Trust Property (as hereinafter defined), and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Trust Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The foregoing property is herein referred to as the "Property."

#### FIXTURE FILING AND SECURITY AGREEMENT

Grantor, as debtor, grants a security interest in the Personal Property (defined below) to Beneficiary, as secured party, on the terms and conditions contained herein. As used herein the term "Personal Property" shall mean any of the following property in which Grantor has an interest: (1) the Property to the extent the same is not encumbered by this Deed of Trust as a first priority real estate lien, (2) all personal property that is used or will be used in the construction of any buildings or improvements on the Real Property; (3) all Equipment (defined below) that is or will be placed on or in the Real Property or Improvements; (4) all bonds, permits, licenses, causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, refunds of insurance premiums, and proceeds of insurance policies, to the extent the same arise from or in connection with the Real Property or Improvements; and (5) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of the foregoing. This Deed of Trust shall also constitute a security agreement with respect to the Personal Property and a "fixture filing" for purposes of the Uniform Commercial Code. "Equipment" for purposes herein shall mean all now existing or hereafter acquired equipment, machinery, furniture, furnishings, and trade fixtures in which Debtor now has or hereafter acquires any right, and all other goods and tangible personal property (other than inventory), including, machinery, tools, parts and supplies, automobiles, trucks, tractors and other vehicles, computer and other electronic data processing equipment and other office equipment, computer programs and related data processing software and all additions, substitutions, replacements, parts, accessories, and accessions to and for the foregoing, now owned or hereafter acquired.

#### SCOPE OF GRANT AND OBLIGATIONS SECURED

The entire estate and all Property and Personal Property interests hereby conveyed, transferred, or assigned to Trustee may be referred to herein as the "Trust Property." Until the occurrence of an Event of Default (as defined in Section 12), Grantor may remain in possession and control of and operate and manage the Trust Property and collect and enjoy the rents, revenues, income, issues, and profits therefrom.

The foregoing grant in trust and grant of security interest is made for the purpose of securing the following obligations, each of which Grantor covenants to pay or perform promptly in accordance with its terms:

1. Payment and Performance.

1.1 The Note and Other Obligations. This Deed of Trust is given to secure all indebtedness evidenced by and arising under that certain promissory note given by Washington Alder, LLC, a Washington limited liability company, as Borrower ("Borrower") to Beneficiary, dated as of June 25, 1998 in the original principal amount of TEN MILLION and 00/100 dollars (\$10,000,000.00) with a maturity date of June 30, 2003, subject to any extensions or renewals ("Note"), and all other amounts, payment of which is secured by this Trust Deed including, without limitation, amounts payable by Grantor pursuant to the terms hereof.

This Deed of Trust also secures the interest that accrues on the Note, additional advances under the Note, and late payment charges and prepayment premiums payable following default and at the time of a judicial or nonjudicial foreclosure sale under the Note. Any modifications, extensions, or renewals of the Note including, without limitation, (i) modifications of the required principal and/or interest payment dates, deferring or accelerating said payment dates in whole or in part, and/or (ii) modifications, extensions, or renewals at a different rate of interest, shall be secured by this Deed of Trust whether or not any such modification, extension, or renewal is evidenced by a new or additional promissory note or notes.

1.2 Other Obligations. Grantor shall perform each agreement of the Grantor herein contained, or contained in the Contract, or contained in the Loan Agreement of the same date herewith Borrower and Beneficiary (the "Loan Agreement") and/or in each of the other Loan Documents (as such term is defined in the Loan Agreement), and Borrower and Grantor shall pay each fee, and all costs and expenses payable by Borrower or Grantor as herein or therein set forth.

2. Maintenance and Preservation of the Property and Personal Property.

Grantor shall:

2.1 Keep the Property and the Personal Property in good condition and repair;

2.2 Not remove or demolish the Improvements or the Personal Property, provided, however, that Grantor may replace Personal Property that is worn out if Grantor first obtains Beneficiary's written consent to the replacement, which consent shall be given if the replacement is of equal value and utility and Beneficiary receives a first lien or perfected first security interest, as the case may be, in such replacement Personal Property;

2.3 Complete, restore, or replace (collectively the "Restoration") promptly and in good and workmanlike manner, the Improvements or Personal Property that may be damaged or destroyed, such Restoration to be made in accordance with the provisions of Section 2;

2.4 Not commit or permit waste on or of the Property or Personal Property;

2.5 Do all other acts that from the character or use of the Property or the Personal Property may be reasonably necessary to maintain and preserve its value; and

2.6 Perform all obligations required to be performed in the Loan Documents and all other obligations of Grantor pertaining to the Property and/or the Personal Property including, without limitation, any and all leases or subleases under which Grantor is or becomes the lessor.

3. Compliance with Governmental and Other Requirements.

Grantor shall promptly comply with, and shall not suffer violations of, any of the following to the extent that it affects or pertains to the Property or the Personal Property, or acts committed or conditions existing thereon: (a) all laws, ordinances, regulations, governmental standards, and permits; (b) all covenants, conditions, restrictions, and equitable servitudes, whether public or private, of every kind and character, and (c) all requirements of insurance companies and any bureau or agency that establishes standards of insurability.

4. Taxes and Liens.

4.1 Payment. Grantor shall pay when due all taxes, assessments, levies, and charges levied against or imposed on account of the Property, including without limitation any form of assessment, possessory interest tax, commercial rental tax, business license fee, business license tax, levy, charge, penalty, or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state, or federal government, or any school, agricultural, lighting, drainage, or other improvement or special assessment district thereof, as against any legal or equitable interest of Grantor in the Property. Grantor shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property and Personal Property free of any liens, except for the lien of taxes and assessments not due and except as otherwise provided in Section 4.2

4.2 Right to Contest. Grantor may withhold payment of any tax, assessment, levy, charge, or claim in connection with a good faith dispute over obligation to pay, so long as Beneficiary's interest in the Property is not jeopardized. If, as the result of any such contest, the Property is subject to a lien that is not discharged within fifteen (15) days from the date it attached, Grantor shall deposit with Beneficiary cash, a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale under the lien. In any contested proceedings, Grantor will defend itself and Beneficiary and will name



Beneficiary as an additional obligee under any surety bond, and Grantor shall satisfy any final adverse judgment promptly, but in any case before enforcement against the Property.

4.3 Evidence of Payment. Grantor shall promptly furnish evidence of payment of taxes, assessments, levies, charges, and claims to Beneficiary on Beneficiary's demand and shall authorize the appropriate county official to deliver to Beneficiary at any time a written statement of the taxes and assessments against the Property.

5. Representations, Warranties and Covenants of Grantor.

Grantor represents, warrants and covenants as follows:

5.1 Title. Grantor holds a leasehold interest in and to the Property under that certain Lease dated December 17, 1997, between the Dahlstedt Family Properties, L.L.C., a Washington limited liability company, as Landlord, and Borrower, as Tenant (the "Lease"), which interest is free of all encumbrances other than those set forth in the attached Exhibit B (the "Permitted Encumbrances").

5.2 Warranty and Defense of Title. Grantor represents and warrants that the landlord under the Lease either is lawfully seized and possessed of good and merchantable fee simple title to the Property, or is lawfully seized of a possessory interest in the Property of a duration equal to or longer than the remaining term of the Lease applicable thereto, and that Grantor is lawfully seized of a leasehold estate in the property, free and clear of all liens and encumbrances, and that this Trust Deed will be a first lien on the Trust Property. Subject to the Permitted Encumbrances, Grantor will forever defend the title against the lawful claims of all persons. If any action or proceeding is commenced that questions Grantor's title or the interest of Beneficiary under this Deed of Trust, Grantor shall defend the action at its expense. For so long as any portion of the Note remains unpaid, unless Beneficiary shall otherwise consent, fee title to the Premises and the leasehold estate therein created by the provisions of the Ground Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Grantor, Beneficiary, or in any other person by purchase, operation of law, or otherwise. Beneficiary reserves the right, at any time, to release portions of the Trust Property, including, but not limited to, the leasehold estate created by the Ground Lease, with or without consideration, at Beneficiary's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents, and any such release shall not affect Beneficiary's rights in connection with the portion of the Trust Property not so released.

5.3 Hazardous Substances.

5.3.1 Grantor's Representations and Warranties. Except as disclosed to Beneficiary in writing before the date of this Deed of Trust, to the best of Grantor's knowledge: (a) no asbestos has ever been used in the construction, repair, or maintenance of any building, structure, or improvement now or heretofore located on the Property, and there is not now, nor

has there ever been, any underground storage tank or tanks located on the Property; (b) no Hazardous Substance (as defined below) is currently being generated, processed, stored, transported, handled, or disposed of on, under, in, or from the Property or the groundwater of the Property, except in the normal course of business conducted on the Real Property, in a quantity, concentration, and manner permitted by applicable local, state, and federal laws; (c) neither Grantor 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, in, or from the Property or the groundwater of the Property except in the normal course of business conducted on the Real Property, in a quantity, concentration, and manner permitted by applicable local, state, and federal laws; (d) Grantor has not received any notice of, nor is Grantor aware of, any actual or alleged violation with respect to the Property or the groundwater of the Property, of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances; (e) there is no action or proceeding pending or threatened before, or appealable from, any court, quasi-judicial body or administrative agency relating to Hazardous Substances affecting or alleged to be affecting the Property or the groundwater of the Property, (f) Grantor will not itself, and will not suffer or permit, the generation, processing, storage, transportation, handling, or disposal of, on, under, in, or from the Property or the groundwater of the Property of any Hazardous Substance, except in the normal course of business conducted on the Real Property, in a quantity, concentration, and manner permitted by applicable local, state, and federal laws; and (g) Grantor will at all times take all necessary action to insure that the Property and the groundwater of the Property comply with all federal, state, and local environmental laws and regulations (including, without limitation, those pertaining to underground storage tanks and to asbestos).

5.3.2 Notification. Grantor shall immediately notify Beneficiary should Grantor (a) become aware of the existence of any Hazardous Substance on the Property or in the groundwaters of the Property, except in the normal course of business conducted on the Real Property, used in a quantity, concentration, and manner permitted by applicable local, state, and federal laws, (b) receive any notice of, or become aware of, 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, (c) become aware of any lien or action with respect to any of the foregoing. Grantor shall deliver to Beneficiary, promptly upon receipt, (i) copies of any documents received from the United States Environmental Protection Agency ("EPA") and/or any state, county, or municipal environmental or health agency concerning Grantor's ownership, use, or operations upon or in connection with the Property; and (ii) copies of any documents submitted by Grantor to the EPA and/or any state, county, or municipal environmental or health agency concerning the Property.

5.3.3 Inspection and Remedial Action. Beneficiary 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 ascertain the accuracy of all representations and warranties, and the compliance with all covenants, made in this Section 5.3. Upon Beneficiary's written request (a) Grantor, through professional engineers approved by Beneficiary and at Grantor's cost, shall thoroughly investigate suspected Hazardous Substances

contamination of the Property or the ground water of the Property, and (b) Grantor shall forthwith take such remedial action as may be necessary to ensure that there is no Hazardous Substance present on the Property or in the groundwater of the Property in quantities or concentrations that exceed amounts allowed by applicable law, and that the Property and activities conducted thereon otherwise comply with all federal, state, and local environmental laws and regulations (including, without limitation, those pertaining to underground storage tanks and to asbestos), in either case, whether or not Grantor was responsible for the existence of the Hazardous Substance on or in the Property or the groundwater of the Property, or for such noncompliance. Grantor's obligations under this Section 5.3 shall arise upon Beneficiary's demand as provided herein, regardless of whether the EPA or any other federal, state, or local agency or governmental authority has taken or threatened any action in connection with the presence of any Hazardous Substance on, or release of any Hazardous Substance from, the Property or the groundwater of the Property. If Grantor shall fail promptly to discharge its obligations under this Section 5.3, Beneficiary may, at its election, but without the obligation to do so, cause such investigation to be made or remedial action to be taken and/or take any and all other actions that Beneficiary may deem necessary or advisable to protect its security for the Loan or to avoid or minimize its liability for the existence of Hazardous Substances on the Property, or in the groundwater of the Property, or for a release thereof from the Property or the groundwater of the Property. All amounts expended by Beneficiary under this Section 5.3 shall be payable by Grantor to Beneficiary upon demand, and shall accrue interest at the rate specified in the Note.

5.3.4 Definition of Hazardous Substance(s). The term "Hazardous Substance" shall mean:

- (a) "Hazardous substances," as defined by 40 CFR Part 302;
  - (b) "Extremely hazardous substance," as defined by 40 CFR Part 355;
  - (c) "Toxic chemicals," as defined by 40 CFR Part 372;
  - (d) "Hazardous chemical," as defined by 29 CFR § 1910.120, to the extent it is included in the employer's written Hazard Communication Program or in Material Safety Data Sheets that are located on site;
  - (e) "Hazardous waste", "hazardous materials" or "hazardous substances," as defined under Washington law, rules and regulations;
  - (f) Petroleum, including crude oil and any fraction thereof;
  - (g) Any material that contains more than one percent (1%) of asbestos;
- and
- (h) Radon.



5.3.5 Grantor's Personal Liability; Indemnity. Beneficiary has agreed to advance sums under and pursuant to the Note in reliance upon Grantor's representations, warranties, and covenants set forth in this Section 5.3.5. Notwithstanding any other provision of this Deed of Trust, the Loan Documents or applicable law to the contrary, including any such provision purporting to limit Grantor's personal liability thereunder to Grantor's interest in the Property, Grantor, jointly and severally, shall be personally liable for, and shall defend, indemnify, and hold Beneficiary harmless from and against, any and all claims, demands, penalties, fees, liens, damages, losses, expenses, or liabilities (including, without limitation, all reasonable attorney's and expert fees and costs incurred by Beneficiary in connection with any of the foregoing, whether incurred before any action is filed, at trial, or on any appeal or petition for review therefrom) (a) resulting from any breach of the representations, warranties, or covenants contained in this Section 5.3.5, or (b) incurred or payable by Beneficiary in connection with the removal of or remedial action concerning any Hazardous Substance on the Property or in the groundwater or the Property, or the release thereof from the Property or the groundwater of the Property (including any such removal or remedial action performed by any governmental authority). Without limiting the generality of the foregoing, the provisions of this Section 5.3.5 shall apply to any such claim, demand, penalty, fee, lien, damage, loss, expense, or liability incurred in connection with or arising from (a) the existence of any Hazardous Substance on the Property, and (b) the existence on any other property of any Hazardous Substance attributable to activities or contamination on the Property. Grantor's obligations and liability under this Section 5.3.5 shall survive repayment of this Note and shall extend to sums in excess of the amount advanced pursuant to the Note.

5.3.6 Survival. Grantor's representations, warranties, indemnity and covenants set forth at this Section 5.3.6 shall survive any foreclosure or deed of trust sale, the repayment of the Note, and/or the release of the lien of this Deed of Trust from the Property and the Grantor's transfer of any or all right, title, and interest in and to the Property to any party.

5.4 Execution, Delivery, and Effect of Loan Documents. The Loan Documents have each been duly authorized, executed, and delivered by Borrower and Grantor, and each is a legal, valid, and binding obligation of Borrower and/or Grantor, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency, or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity.

5.5 Other Obligations. Grantor is not in material violation of any term or provision of any document governing its organization or existence or in default under any material instruments or obligations relating to Grantor's business, Grantor's assets, or the Property. No party has asserted any material claim or default relating to any of Grantor's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any material breach of, or constitute a material default under, any contract, agreement, document, or other instrument to which Grantor is a party or by which Grantor may be bound or affected, and do not and will not violate or contravene any laws to which Grantor is subject; nor do any such instruments impose or contemplate any obligations

that are or will be materially inconsistent with the Loan Documents. Grantor has filed all federal, state, county, and municipal income tax returns required to have been filed by Grantor and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Grantor. Grantor does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state, or municipal or other governmental commission, board, or agency or other governmental authority is necessary in connection with the authorization, execution, and delivery of the Loan Documents.

5.6 Legal Actions. There are no material actions, suits, or proceedings including, without limitation, any condemnation, insolvency, or bankruptcy proceedings pending or, to the best of Grantor's knowledge and belief, threatened, against or affecting Grantor, its business or the Property; or investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Grantor's knowledge and belief, threatened against or affecting Grantor, Grantor's business or the Property, except actions, suits, and proceedings fully covered by insurance and heretofore fully disclosed in writing to Beneficiary or that if resolved adversely to Grantor would not have a material, adverse effect on Grantor or the Property. Grantor is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority affecting Grantor or the Property. Furthermore, to the best knowledge and belief of Grantor, there is no basis for any unfavorable decision, ruling, or finding by any court or governmental authority which would in any material respect adversely affect the validity or enforceability of the Loan Documents, or the condition (financial or otherwise) or ability of Grantor to meet Grantor's obligations under the Loan Documents.

5.7 Financial Statements. All statements, financial or otherwise, submitted by Grantor to Beneficiary in connection with the making of the loan evidenced by the Note are true, correct, and complete in all material respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices permitted by Beneficiary) and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof. Since the date thereof, neither Grantor nor any such party or entity has experienced any material, adverse change in its finances, business, operations, affairs, or prospects.

5.8 Adverse Change to Property. No event or series of events has or have intervened or occurred since the date of Grantor's submission of its application for the loan evidenced by the Note that would, either individually or collectively, materially, adversely affect the Property.

5.9 Compliance With Laws and Private Covenants. The Property complies in all material respects with all applicable laws. Grantor has examined and is familiar with the Permitted Encumbrances and there now exists no material violation thereof. Grantor has no notice that any of the Improvements are inconsistent with any easement over the Real Property or encroach upon adjacent property.

5.10 Independence of the Property. The Property is a separate and distinct legal parcel for tax purposes and is not subject to property taxes and a similar charge against any other land.

Grantor has not, by act or omission, permitted any building or other improvements on property not covered by this Deed of Trust to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building, or improvement; and no improvement on the Property relies on any property not covered by this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Grantor has not by act or omission impaired the integrity of the property as a single, separate, subdivided zoning lot separate and apart from all other property.

5.11 Statutory Representation. The Property is not used primarily for agricultural or farming purposes.

5.12 Construction and Completion of Improvements. Any Improvement existing as of the date hereof has been completed and installed in a good and workmanlike manner, and in compliance with all applicable laws, or are under construction pursuant to engineered plans or permits approved by appropriate governmental authorities. The Improvements are served by electricity, gas, sewer, water, telephone, and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, utility lines, and off-site improvements which provide access to the property or are necessary for its present and contemplated uses have been completed, are serviceable, and have been accepted or approved by appropriate governmental bodies.

5.13 Covenants Regarding Lease.

5.13.1 If Grantor shall, at any time before payment in full of the indebtedness secured hereby, acquire fee title or any other greater estate to the premises demised by the Lease, the lien of this Deed of Trust shall attach, extend to, cover and be a lien upon such fee title or other greater estate.

5.13.2 Grantor will not surrender its leasehold estate and interest in the Lease, nor terminate or cancel the Lease, and will not, without the express written consent of Beneficiary modify, change, supplement, alter or amend the Lease, either orally or in writing, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants herein and in the Lease contained, Grantor hereby assigns to Beneficiary all of its rights, privileges and prerogatives as tenant under the Lease to terminate, cancel, modify, change, supplement, alter or amend the Lease, and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Lease without the prior written consent thereto by Beneficiary shall be void and of no force and effect. Grantor shall furnish to Beneficiary, simultaneously with the giving thereof as hereinafter provided in this sentence, copies of any notices of default by the landlord under the Lease that Grantor may give to the landlord. So long as there is no breach of or default under any of the covenants or agreements herein contained to be performed by Grantor, or in the performance by Grantor of any of the terms, covenants and conditions in the Lease contained, Beneficiary shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Lease. Beneficiary shall have the right to declare a default in this Deed of Trust in the event of default in the performance by Grantor, as

tenant under the Lease, of any of the material terms, covenants or conditions contained in the Lease.

5.13.3 No release or forbearance of any of Grantor's obligations under the Lease, pursuant to the Lease or otherwise, shall release Grantor from any of its obligations under this Deed of Trust, including its obligations with respect to the payment of rent as provided for in the Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Lease, to be kept, performed and complied with by the tenant therein.

5.13.4 Grantor will at all times fully perform and comply with all agreements, covenants, terms and conditions imposed upon or assumed by it as tenant under the Lease, and if Grantor shall fail so to do, Beneficiary may (but shall not be obligated to) take any action Beneficiary deems necessary or desirable to prevent or to cure any default by Grantor in the performance of or compliance with any of the tenant's covenants or obligations under the Lease. Grantor shall furnish to Beneficiary immediately upon receipt thereof, copies of any notices of default by the tenant under the Lease, received by Grantor from the landlord under the Lease, whether or not the landlord is required under such Lease to give any such notices to Beneficiary, and if any such notice is given to Grantor orally by the landlord, Grantor shall immediately furnish full particulars thereof to Beneficiary in writing. Upon receipt by Beneficiary from the landlord under the Lease, or upon receipt from Grantor, as aforesaid, of any such notice of default under the Lease, Beneficiary may rely thereon and take any action to cure such default even though the existence or nature of such default shall be questioned or denied by Grantor or by any party on behalf of Grantor. Beneficiary shall have the absolute and immediate right to enter into and upon the Property or any part thereof to such extent and as often as Beneficiary, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Grantor. Beneficiary may pay and expend such sums of money as Beneficiary in its sole discretion deems necessary for any such purpose, and Grantor shall pay to Beneficiary, immediately and without demand, all such sums so paid and expended by Beneficiary, together with interest thereon from the date of each such payment at the rate of fifteen percent (15%) per annum payable on demand. All sums so paid and expended by Beneficiary, and the interest thereon, shall be added to and be secured by the lien of this Deed of Trust.

5.13.5 All rents, additional rents, and other sums due and payable under Ground Lease have been paid in full to the extent they were payable before the date of this Deed of Trust, and there are no defaults under the Ground Lease, and no event has occurred, that, with the giving of notice, the passage of time, or both, would constitute a default under the Ground Lease

6. Insurance, Condemnation.

6.1 Maintenance of Insurance. Unless otherwise stated in this Section 6.1, no later than the date funds are advanced under the Note, Grantor shall procure and maintain policies of insurance in form and substance satisfactory to Beneficiary as follows:



(a) casualty insurance insuring against loss by fire, hazards included within the term "extended coverage," rent loss, and such other hazards and casualties as Beneficiary may reasonably consider necessary, on a replacement cost basis, covering all improvements now or hereafter comprising part of the Trust Property in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Beneficiary; provided, that Grantor's obligation to carry and maintain such insurance shall commence only when Grantor first commences to place an improvement in the Property if later than the date funds are advanced under the Note.

(b) Comprehensive broad form general liability insurance, including liability assumed under contract, with coverage satisfactory to Beneficiary, and with aggregate limits for personal injury and property damage of not less than \$3,000,000. Such insurance shall cover all risks arising directly or indirectly out of Grantor's activities on, or any condition of, the Property, shall name Beneficiary as a co-insured and shall protect Grantor and Beneficiary against claims of third persons.

(c) Business interruption insurance insuring against losses for a period of not less than twelve (12) months.

(d) Flood hazard insurance if the Property is located in a 100-year flood plain, covering all Improvements now or hereafter comprising part of the Trust Property.

(e) Earthquake insurance as may be available and as required from time to time by Beneficiary.

6.2 Insurance Forms and Terms. All policies shall be written in amounts, in form, on terms, and with companies satisfactory to Beneficiary and shall name Beneficiary as a loss payee. Grantor shall deliver to Beneficiary the insurance policies from each insurer or certificates of coverage and certified copies of the policies, if approved by Beneficiary. Each policy shall contain a stipulation that coverage will not be canceled, diminished, or substantially altered without a minimum of thirty (30) days' written notice to Beneficiary. At least thirty (30) days before the expiration date of each policy, Grantor shall deliver to Beneficiary a renewal policy in form satisfactory to Beneficiary.

6.3 Grantor's Report on Insurance. Within sixty (60) days after the close of its fiscal year, Grantor shall furnish to Beneficiary a report on each existing policy of insurance showing:

- (a) The name of the insurer;
- (b) The risks insured;
- (c) The amount of the policy;



(d) The property insured, the then current replacement cost of the property (if applicable), and the manner of determining that cost; and

(e) The expiration date of the policy.

Upon request, Grantor shall have the appraiser of the insurance company determine the replacement cost of the Trust Property.

6.4 Application of Proceeds. Grantor shall promptly notify Beneficiary of any loss or damage to the Trust Property. Beneficiary may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Trust Property shall be paid directly to Beneficiary. Beneficiary shall release such proceeds to Grantor for the repair or replacement of the damaged Trust Property in the manner in which the proceeds of a construction loan are customarily disbursed. Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Beneficiary. Upon satisfactory proof of expenditure, Beneficiary will pay or reimburse Grantor from the net insurance proceeds for the reasonable cost of repair or restoration. Any proceeds that have not been paid out within one hundred eighty (180) days after their receipt or that have not been committed to the repair or restoration of the Trust Property may, at Beneficiary's election, be applied to the indebtedness secured hereby. Unless Grantor and Beneficiary otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of installments due under the Note.

6.5 Condemnation.

6.5.1 Taking. Grantor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking of the Trust Property or any part thereof or any interest therein. Beneficiary shall be entitled, at its option, to commence, appear in, and prosecute in its own name, any action or proceeding, or to make any compromise or settlement in connection with, any eminent domain claim. Unless otherwise directed in writing by Beneficiary, however, Grantor shall appear in and prosecute diligently any such proceeding or action. All condemnation proceeds or damages paid in connection with any condemnation or other taking with respect to the Trust Property (or consideration paid for conveyances in lieu of condemnation) are hereby assigned to Beneficiary.

6.5.2 Application of Condemnation Proceeds. If all or any part of the Property is condemned, all net proceeds resulting from such condemnation shall be paid to Beneficiary. Grantor shall execute such further evidence of assignment of any awards, proceeds, damages, or claims arising in connection with such condemnation or taking as Beneficiary may require. The term "net proceeds" shall mean the total amount available after payment of all reasonable costs, expenses, and attorneys' fees necessarily paid or incurred by Grantor and Beneficiary in connection with the taking by condemnation. If the entire Property is acquired by eminent domain the indebtedness secured hereby shall be due and payable at the time of entry of the final judgment. All proceeds from an eminent domain claim shall be applied by Beneficiary as follows: first, to cure any monetary default by Grantor under the Loan Documents; second, to reduce the

indebtedness secured hereby to the extent necessary so that the loan-to-value ratio existing immediately before the taking shall be maintained; and third, the balance, if any, to Grantor. Beneficiary is authorized, at the expense of Grantor, to retain and pay the reasonable costs of professional engineers, appraisers, and other experts (including attorneys) to determine the extent to which its security is impaired following any taking. Beneficiary may pay the engineers, appraisers, and experts from the monies resulting from the eminent domain claim. Sale of all or any part of the Property to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power shall be treated as a taking by condemnation to which this Section shall apply.

7. Transfer by Grantor.

Grantor shall not Transfer all or any portion of Grantor's right, title, and interest in the Trust Property to a third party without Beneficiary's prior written consent, which Beneficiary may give or withhold in its sole discretion. The term "Transfer" includes (a) the encumbrance (excluding the Permitted Encumbrances listed in the attached Exhibit B), sale, conveyance, or other transfer (excluding, where applicable, transfers and changes in ownership by devise or descent) of the Property or the Personal Property or any part thereof, or any interest therein, including any leasehold interest or the grant of any mortgage, deed of trust, or other security interest covering all or any part of the Property (provided, however, Grantor may replace Personal Property which is worn out if Grantor first obtains Beneficiary's written consent to the replacement, which consent shall be given if the replacement is of equal value and utility and Beneficiary receives a first lien or perfected first security interest, as the case may be, in such replacement Personal Property), (b) the divestiture of all or any part of Grantor's title to the Property or Personal Property, or any interest therein, (c) the sale, conveyance, or other transfer of any stock in Grantor, if Grantor is a corporation, or of any partnership or membership interest in Grantor, if Grantor is, as applicable, a partnership or limited liability company, (d) any material change in the allocation of income, profits, or losses between the partners or members of Grantor, if Grantor is, as applicable, a partnership or limited liability company, (e) the mortgage, pledge, or other hypothecation of any stock, partnership or membership interest in Grantor, (f) the merger or consolidation of Grantor into another corporation or the reorganization of Grantor, if Grantor is a corporation, (g) creation of any partnership or membership interests in Grantor, and (h) any agreement of Grantor, of any stockholder, officer, or director of Grantor, if Grantor is a corporation, or of any partner of Grantor if Grantor is a partnership, to do any of the things specified in clauses (a) through (g), above. Any Transfer (whether to a person with respect to whom consent to Transfer is hereafter given or otherwise) shall be subject to this Deed of Trust and, where appropriate, any transferee shall, upon Beneficiary's request, assume, by a recordable instrument delivered to and satisfactory to Beneficiary, all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Grantor or any maker or guarantor of the Note from any liability thereunder or hereunder. Grantor acknowledges that the Loan secured by this instrument is personal to Grantor and that in making it Beneficiary has relied on Grantor's credit, development, leasing, and management capabilities, Grantor's interest in the Trust Property and financial market conditions at the time the Loan was made. If Grantor engages in a Transfer without complying with the requirements of this

Section 7, then all the indebtedness and obligations secured by this Deed of Trust will become immediately due and payable.

8. Release On Full Performance.

Upon payment of all of the indebtedness due pursuant to the Note and performance of all of the obligations imposed upon Grantor under this Deed of Trust and the other Loan Documents, Beneficiary shall, if requested, execute and deliver to Trustee a suitable reconveyance of this Deed of Trust and suitable statements of termination of any financing statements on file. Upon written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Deed of Trust and the Note to Trustee for cancellation and retention, and payment of its fees, Trustee shall reconvey, without warranty, the Trust Property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

9. Reports.

9.1 Default. Grantor will furnish to Beneficiary notice of any default on Grantor's part under any agreement, license, permit, lease, or contract affecting the Trust Property or any portion thereof.

9.2 Certificates of Lessee(s). Upon request of Beneficiary, and not more often than annually, Grantor will furnish to Beneficiary a certificate from each lessee (if any) of any portion of the Trust Property stating, if true, that the landlord (Grantor) is not in default under such lease, and that rental is current and has not been paid more than thirty (30) days in advance.

9.3 Leases. Grantor will furnish to Beneficiary, upon request, copies of all leases and sale contracts covering or pertaining to any portion of the Trust Property and entered into after the date hereof.

9.4 Inspection Reports. Grantor will furnish to Beneficiary, upon request, copies of all inspection reports prepared by consultants, engineers, or other third parties pertaining to the Trust Property.

9.5 Other Documents. Grantor will furnish to Beneficiary, upon request, copies of all plat/parcel map filings and other documents pertaining to the Trust Property and entered into after the date hereof.

10. Reserves.

If Grantor has failed promptly to perform its obligations under Section 4 or Section 6 of this Deed of Trust, Beneficiary may require Grantor to maintain with Beneficiary reserves for payment of taxes, assessments, and insurance premiums. The reserve shall be created by monthly

payments of a sum estimated by Beneficiary to be sufficient to produce, at least fifteen (15) days before due, an amount equal to the taxes, assessments and insurance premiums. If fifteen (15) days before payment is due the reserve is insufficient, Grantor shall pay any deficiency to Beneficiary upon demand. The reserve shall be held by Beneficiary as a general deposit from Grantor and shall constitute a non-interest-bearing debt from Beneficiary to Grantor which Beneficiary may satisfy by payment of the taxes, assessments, and/or insurance premiums. Beneficiary shall not hold the reserve in trust for Grantor, and Beneficiary shall not be the agent of Grantor for payment of the taxes, assessments, and insurance premiums required to be paid by Grantor.

11. Assignment of Leases, Rents, Issues and Profits.

As part of the consideration for the making of the loan hereby secured, Grantor hereby assigns, transfers, and sets over to Beneficiary all leases of any part of the Trust Property, now in effect or hereafter made, and hereby assigns and transfers to Beneficiary all the right of Grantor in and to sale contracts to or affecting any part of or interest in the Property, whether now in effect or hereafter made, and hereby further assigns to Beneficiary all of Grantor's right to receive the rents, issues, profits, and sale proceeds (the "Income") reserved or provided by such leases or sale contracts, or paid or payable to Grantor upon a sale, transfer, or other disposition of the Property, or any portion thereof or interest therein; provided, however, that until Grantor shall commit or permit some act of default under the Note, this Deed of Trust or any other instrument securing the Note, Grantor may receive, collect, and receipt for said Income, not exceeding, however, more than thirty (30) days in advance, paying over to Beneficiary only so much thereof as is required to comply with the obligations resting upon Grantor under and by the terms hereof and of the Note, but in the event that Grantor shall commit or permit any act of default hereunder, then and in that event, and from that time on, said lessees and/or any other party to any such sale agreement are authorized, required, and directed to pay the Income thereafter falling due under and by the terms of said agreements or instruments directly to Beneficiary, and Beneficiary is authorized to demand, collect, receive, and receipt for such income and apply the moneys so collected, in its discretion, to any or all of the following purposes:

(a) To the payment of any taxes assessed upon the Trust Property, whether or not the same be delinquent;

(b) To the payment of any assessments or other governmental charges assessed against the Trust Property, whether or not the same be delinquent;

(c) To the payment of any insurance premiums paid or incurred by the Beneficiary, or any expenditure which, in the judgment of the Beneficiary, is proper for the care of the Trust Property;

(d) To the payment of any interest accrued on the Note secured by this Deed of Trust;

(e) To the payment, on account of the principal, of the Note secured by this Deed of Trust, whether or not there be any payments on account of principal due at the time and whether or not the Beneficiary has exercised the right secured by this Deed of Trust to declare the entire principal due by reason of any default hereunder; and

(f) To all other amounts or obligations secured by this Deed of Trust;

and that upon notice and demand Grantor will further transfer and assign to Beneficiary, in form satisfactory to Beneficiary, Grantor's interest in any lease or sale agreement now or hereafter affecting the whole or any part of the Property. Grantor will not assign the whole or any part of the rents, income, or profits arising from the Trust Property without the written consent of the Beneficiary and any assignment thereof without such consent shall be void.

12. Events of Default.

The following shall constitute Events of Default:

12.1 Nonpayment. If for any payment due under the Note or any amount due under this Deed of Trust, the entire amount due (including principal, interest, and any applicable premiums and late charges) is not paid within seven (7) days of the date upon which notice of default in the making of such payment was given to Grantor.

12.2 Other Events of Default. If an Event of Default shall occur under any other Loan Document as the term Event of Default is defined in such Loan Document.

12.3 Breach of Other Covenant. Grantor fails to perform any other obligation contained in this Deed of Trust, or in the Contract, or any of the Loan Documents within thirty (30) days after notice from Beneficiary (or Beneficiary's representative) specifying the nature of the default or, if the default cannot be cured within thirty (30) days, failure within such time to commence and pursue with reasonable diligence curative action. No notice of default and opportunity to cure shall be required or given if during the preceding twelve (12) calendar months Beneficiary has already sent a notice to Grantor concerning default in performance of the same obligation.

12.4 Misinformation. Falsity in any material respect of the representations and warranties given in Section 5 or of any representation, warranty, or information furnished to Beneficiary in connection with the Note, this Deed of Trust, or any Loan Document.

12.5 Sale or Transfer of Title. Occurrence of a Transfer in any manner except as permitted by Section 7.



12.6 Bankruptcy. The occurrence of any of the following without any action or notice by Beneficiary: (a) a Party in Interest (defined below) becomes insolvent, makes a transfer in fraud to, or an assignment for the benefit of, creditors, or admits in writing its inability, or is unable, to pay debts as they become due; or (b) a receiver, custodian, liquidator, or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and such appointment is not promptly contested or is not dismissed or discharged within one hundred twenty (120) days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (c) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or (d) a petition against a Party in Interest is filed commencing an involuntary case under any present or future federal or state bankruptcy or similar law and such petition is not dismissed or discharged within one hundred twenty (120) days after the filing thereof; or (e) any composition, rearrangement, liquidation, extension, reorganization, or other relief of debtors now or hereafter existing is requested by a Party in Interest. "Party in Interest" means Grantor, any guarantor of all or a portion of the obligations secured hereby, any general partner or member in any partnership or limited liability company in which Grantor is also a general partner or member, any such partnership or limited liability company, and, if Grantor is itself a partnership, any general partner in Grantor.

12.7 Adverse Court Action. A court of competent jurisdiction enters a stay order with respect to, assumes custody of, or sequesters all or a substantial part of the Property, or the Property is taken on execution or by other process of law, and such order, custody, sequestration, execution, or other process is not dismissed or discharged within thirty (30) days after its occurrence.

12.8 Certain Taxes. This subsection shall apply to the following state taxes:

- (a) A specific tax on mortgages, deeds of trust, secured indebtedness, or any part of the indebtedness secured by this Deed of Trust.
- (b) A specific tax on the Grantor of property subject to a deed of trust which the taxpayer is authorized or required to deduct from payments on the deed of trust.
- (c) A tax on property chargeable against the beneficiary or trustee under a deed of trust or holder of the note secured thereby.
- (d) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

If any state tax to which this subsection applies is enacted after the date of this Deed of Trust, an Event of Default shall occur when such tax becomes due and payable unless Grantor lawfully pays the tax or charge imposed by the state tax on or before such date without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee.

12.9 Default Under Leases or Other Agreements. Default by Grantor under any agreement, license, permit, or lease affecting any portion of the Trust Property or under any loan agreement, mortgage, or deed of trust relating to the Property between Grantor and, or given by Grantor to, another person.

13. Remedies in Case of Default.

If an Event of Default shall occur, Beneficiary or Trustee, as the case may be, may exercise any of the following rights and remedies, in addition to any other remedies which may be available at law, in equity, or otherwise:

13.1 Acceleration. Beneficiary may declare the entire principal amount of the Note together with all interest and prepayment premiums to be immediately due and payable.

13.2 Books and Records. Beneficiary may examine all books, records, and contracts of Grantor pertaining to the Trust Property and make such memoranda thereof as may be desired.

13.3 Receiver. Beneficiary may have a receiver of the Trust Property appointed. Beneficiary (or a Trustee) shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the secured indebtedness. Any receiver appointed may serve without bond. Employment by Trustee or Beneficiary shall not disqualify a person from serving as receiver. Grantor waives all defenses and consents to the appointment of a receiver at Beneficiary's option.

13.4 Possession. Beneficiary may, either through a receiver or as a lender-in-possession, take possession of all or any part of the Trust Property, and Grantor shall peaceably surrender the same.

13.5 Rents and Revenues. Beneficiary may revoke Grantor's right to collect the income from the Trust Property, and may, either itself or through a receiver, collect the same. To facilitate collection, Beneficiary may notify Grantor's tenants or the other parties to any contract or instrument affecting the Trust Property to pay income directly to it. Beneficiary shall not be deemed to be in possession of the Trust Property solely by reason of exercise of the rights contained in this Section 13.5. If income is collected by Beneficiary under this Section 13.5, Grantor hereby irrevocably designates Beneficiary as Grantor's attorney-in-fact to endorse instruments received in payment of income due, in respect of any part of the Trust Property, in the name of Grantor and to negotiate such instruments and collect the proceeds thereof.

13.6 Foreclosure. Beneficiary may foreclose Grantor's interest in all or any part of the Trust Property by judicial or nonjudicial procedure.

13.7 Fixtures and Personal Property. With respect to any fixtures or personal property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the rights and remedies of a secured party under the UCC.

13.8 Abandon Security. Beneficiary may abandon any security afforded by this Deed of Trust or any other Loan Document by notifying Grantor of Beneficiary's election to do so.

13.9 Power of Sale. Beneficiary may direct Trustee to, and Trustee shall be empowered to, foreclose the Trust Property by advertisement and exercise of the power of sale under applicable law.

13.10 Sale of Personal Property; Bid at Public Sale. In exercising its rights and remedies, Beneficiary shall be free to sell all or any part of the Personal Property together or separately, or to sell certain portions of the Personal Property and refrain from selling other portions. Beneficiary shall be entitled to bid at any public sale of all or any portion of the Personal Property.

13.11 Cumulative Remedies. Election to pursue one remedy shall not exclude resort to any other remedy and, unless the context otherwise requires, all remedies under this Deed of Trust are cumulative and not exclusive. In addition to the specific remedies provided herein, Beneficiary shall have all rights and remedies provided by the law of the state in which the Trust Property is located. An election to cure under Section 16.6 shall neither prejudice the right to declare a default nor constitute a waiver of the breached term or of any of the remedies provided herein. No delay or omission in exercising any right or remedy shall impair that or any other right or remedy or shall be construed to be a waiver of the default.

13.12 Rejection of the Ground Lease

13.12.1 If the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the United States Bankruptcy Code, 11 U.S.C. §101 et seq., as the same may be amended (the "Code") or any other law affecting creditor's rights:

(a) Grantor, immediately after obtaining notice thereof, shall give notice thereof to Beneficiary;

(b) Grantor, without the prior written consent of Beneficiary, shall not elect to treat the Ground Lease as terminated pursuant to section 365(h) of the Code or any comparable federal or state statute or law, and any election by Grantor made without such consent shall be void; and

(c) This Deed of Trust and all the liens, terms, covenants, and conditions of this Deed of Trust shall extend to and cover Grantor's possessory rights under section 365(h) of the Code and to any claim for damages due to the rejection of the Ground Lease or other termination of the Ground Lease. In addition, Grantor hereby assigns irrevocably to Beneficiary,

Grantor's rights to treat the Ground Lease as terminated under section 365(h) of the Code and to offset rents under the Ground in the event that any case, proceeding or other action is commenced by or against Grantor under the Code or any comparable federal or state statute or law, provided that Beneficiary shall not exercise such right, and shall permit Grantor to exercise such rights with the written consent of Beneficiary, not to be unreasonably withheld delayed, unless an Event of Default shall have occurred and be continuing.

13.12.2 Grantor hereby assigns to Beneficiary, Grantor's right to reject the Ground Lease under section 365 of the Code or any comparable federal or state statute or law with respect to any case, proceeding, or other action commenced by or against Grantor under the Code or comparable federal or state statute or law, provided that Beneficiary shall exercise such right, and shall permit Grantor to exercise such right with the prior written consent of Beneficiary, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Grantor shall desire to so reject the Ground Lease, at Beneficiary's request, Grantor shall assign its interest in the Ground Lease to Beneficiary in lieu of rejecting the Ground Lease: as described above.

13.12.3 Grantor hereby assigns to Beneficiary, Grantor's right to seek an extension of the 60-day period within which Grantor must accept or reject the Ground Lease under section 365 of the Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Grantor under the Code or comparable federal or state statute or law, provided that Beneficiary shall not exercise such right, and shall permit Grantor to exercise such right with the prior written consent of Beneficiary, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Grantor shall desire to so reject the Ground Lease, at Beneficiary's request, Grantor shall assign its interest in the Ground Lease to Beneficiary in lieu of rejecting the Ground Lease as described above.

13.12.4 Grantor hereby agrees that if the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease under the Code or any other law affecting creditor's rights, any property not removed by Grantor as permitted or required by the Ground Lease, shall at the option of Beneficiary be deemed abandoned by Grantor, provided that Beneficiary may remove any such property required to be removed by Grantor within five (5) days of receipt by Grantor of an invoice for the costs and expenses associated with such removal.

14. Receiver or Trustee-in-Possession.

Upon taking possession of all or any part of the Trust Property, a receiver or Trustee or Beneficiary or Beneficiary's representative may:

14.i Management. Use, operate, manage, control, and conduct business on the Trust Property and make expenditures for such purposes and for maintenance and improvements as in its judgment are necessary.

14.2 Rents and Revenues. Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the expenses of use, operation, management, maintenance, and improvement.

14.3 Work in Progress or Construction. At its option, complete any work in progress or construction in progress on the Trust Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in scope, plans, and specifications as it deems appropriate.

14.4 Additional Indebtedness. If the revenues produced by the Trust Property are insufficient to pay expenses, including, without limitation, any disbursements made by Beneficiary or Trustee pursuant to this Section 14.4, a receiver may borrow, or Beneficiary or Trustee may advance, such sums upon such terms as it deems necessary for the purposes stated in this Section, and repayment of such sums shall be secured by this Deed of Trust. Amounts borrowed or advanced shall bear interest at a rate equal to the lesser of fifteen percent (15%) per year or the highest rate permitted by applicable law. Amounts borrowed or advanced and interest thereon shall be payable by Grantor to Beneficiary or Trustee on demand.

15. Application of Proceeds.

All proceeds realized from the exercise of the rights and remedies under Sections 13 and 14 shall be applied as follows:

15.1 Costs and Expenses. To pay the costs of exercising such rights and remedies, including the costs of any sale, the costs and expenses of any receiver or lender-in-possession, and the costs and expenses provided for in Section 16.5.

15.2 Indebtedness. To pay all other amounts owed by Grantor, payment of which is secured by this Deed of Trust.

15.3 Surplus. The surplus, if any, shall be paid to the clerk of the court in the case of a foreclosure by judicial or nonjudicial proceeding, otherwise to the person or persons legally entitled thereto.

16. General Provisions.

16.1 Substitute Trustee. In the event of dissolution or resignation of the Trustee, Beneficiary may substitute a trustee(s) to execute the trust hereby created, and the new trustee(s) shall succeed to all of the powers and duties of prior trustee(s). Any new trustee shall be a title insurance company licensed to do business in Washington or as otherwise permitted by law.

16.2 Deed of Trust Binding on Successors and Assigns. This Deed of Trust shall be binding on and inure to the benefit of the successors and assigns of Grantor, Trustee and



Beneficiary. If ownership of Grantor's interest in the Trust Property becomes vested in a person other than Grantor, Beneficiary, without notice to Grantor, may deal with Grantor's successor with reference to this Deed of Trust and the Note by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Note.

16.3 Indemnity. Grantor shall hold Beneficiary and Trustee harmless from any and all loss and expense, including but not limited to attorneys' fees and court costs, in any suit, action, or proceeding brought against Trustee or Beneficiary by a third party resulting from or attributable to (a) Grantor's ownership of the Trust Property, (b) Grantor's failure to perform any obligation hereunder, under the Note or under any other loan document, (c) Grantor's breach of any representation, warranty, or covenant contained herein or in the Note or any Loan Document, (d) Beneficiary's ownership of the Note or (e) Trustee's interest under this Deed of Trust, except suits, actions, and proceedings based upon a claim that Beneficiary or Trustee improperly entered into the Deed of Trust or Note or loaned money thereunder.

16.4 Notice. Any notice required or permitted to be given under this Deed of Trust shall be in writing. Any notice to be given or document to be delivered under this Deed of Trust shall be effective when either delivered in person or deposited as registered or certified mail, postage prepaid, addressed to the party at the address first stated in this Deed of Trust. Any party may by notice to the others designate a different address. Notwithstanding the notice provisions of this Section 16.4, any notice pursuant to exercise of the Trustee's power of sale in the event of default shall be sufficient if such notice complies with all provisions of applicable law pertaining to exercise of such powers of sale.

16.5 Expenses and Attorneys' Fees. If Beneficiary or Trustee shall take any action, judicial or otherwise, to enforce the Note or any provision of this Deed of Trust or if Beneficiary or Trustee shall be required to appear in any proceeding to protect and maintain the priority of title to the Trust Property (including, without limitation, in any proceeding before a U.S. Bankruptcy Court), Trustee or Beneficiary (or both) shall be entitled to recover from Grantor all expenses which it or they may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports and surveyors' reports, and attorneys' fees, whether incurred in a suit or action or any appeals from a judgment or decree therein or in connection with nonjudicial action. Grantor shall reimburse Beneficiary or Trustee (or both) for expenses so incurred on demand with interest, at a rate equal to the lesser of fifteen percent (15%) per annum or the highest rate permitted by applicable law, from the date of expenditure until repaid.

16.6 Beneficiary's Right to Cure. If Grantor fails to perform any obligation required of it under this Deed of Trust, Beneficiary may, without notice, take any steps necessary to remedy such failure. Grantor shall reimburse Beneficiary for all amounts expended in so doing on demand with interest, at a rate equal to the lesser of fifteen percent (15%) per annum or the highest rate permitted by applicable law, from the date of expenditure until repaid. Such action by Beneficiary shall not constitute a waiver of the default or any other right or remedy which Beneficiary may have on account of Grantor's default.

16.7 Applicable Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the state of Washington, except to the extent the validity or perfection of the security interest hereunder, or the remedies hereunder, in respect of any collateral are governed by the laws of a jurisdiction other than Washington.

16.8 Financial Statements. Grantor will furnish to the Beneficiary on or before ninety (90) days following the end of each fiscal year the current annual fiscal year unaudited balance sheet and statements of income and surplus of Grantor prepared in a manner acceptable to Beneficiary which fairly represents the financial condition of Grantor. Grantor also will furnish to Beneficiary such interim financial statements as Beneficiary may reasonably request.

16.9 Time of Essence. Time is of the essence of this Deed of Trust.

16.10 Headings. The headings to the sections and paragraphs of this Deed of Trust are included only for the convenience of the parties and shall not have the effect of defining, diminishing or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Deed of Trust.

16.11 Severability. If any provision of this Deed of Trust shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein. If Grantor consists of two or more persons, all of the obligations, covenants and representations herein contained shall be considered joint and several obligations of them.

16.12 Entire Agreement. This Deed of Trust, the Note, and the Loan Documents contain the entire agreement of the parties with respect to the matters covered, and no other previous agreement, statement or promise made by any party to this Deed of Trust that is not contained in its terms or in the terms of the Note shall be binding or valid.

IN WITNESS WHEREOF, this Deed of Trust has been duly executed by Grantor the day and year first above written.

“GRANTOR”

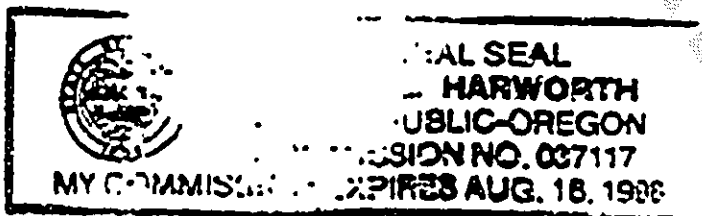
WASHINGTON ALDER, LLC, a Washington limited liability company

By: 

Michael L. Knobel, President

*012900*  
STATE OF WASHINGTON)  
County of *multnomah*) ss.

On this 25 day of June, 1998, personally appeared Michael L. Knobel, President of Washington Alder, LLC, a Washington limited liability company and acknowledged the foregoing instrument, on behalf of such company, as its voluntary act and deed.



Donna A. Harworth  
Notary Public for 012900  
My commission expires: 8/16/98

**EXHIBIT A**

**Real Property Description**

Legal Description: A leasehold interest in the following:

The South 966.00 feet of Lot 3 Skagit County Short Plat No. 7-89, approved March 1, 1989, and recorded March 2, 1989 in Volume 8 of Short Plats, pages 112 and 113, records of Skagit County, Washington, being a portion of the Southwest ¼ of the Northwest ¼ of Section 9, township 34 North, Range 3 East, W.M.

EXCEPT the East 210.00 feet thereof,

AND EXCEPT any portion thereof lying Northeasterly of a line drawn parallel with and 25 feet Southwesterly of the Southwesterly bank of the existing drainage ditch maintained by Drainage District No. 19, running along the toe of the hill.

SUBJECT TO AND TOGETHER WITH easements, reservations, restrictions, covenants, liens and other instruments of record.

Situated in the County of Skagit, State of Washington.

Assessor's Property Tax Parcel Account Number(s): 340309-2-005-0009

**9806230067**

341333-2-001-001

## **EXHIBIT B**

### **Permitted Encumbrances**

1. Liens for taxes not yet due or payable.
2. Ground Lease evidenced by a Memorandum of Lease recorded May 15, 1998, with Auditor No. 9805150005.
3. A subordinated interest held by State of Washington Department of Community, Trade and Economic Development to secure a \$780,000 indebtedness, and collateral related thereto.

**9806230067**

**BK1833PGU152**