

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

American Commercial Capital LLC
5963 La Place Court, Suite 300
Carlsbad, CA 92008
Attention: James Kendrick Noble III



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ISLAND TITLE CO.
SB-14913 ✓

LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

Grantor #1 (Debtor): Belcher and Belcher, Inc., a Washington corporation

Grantee #1 (Trustee): Island Title Company

Grantee #3 (Beneficiary): American Commercial Capital, LLC, a Delaware limited liability company

Legal Description (abbreviated): Ptn. NW SE, Sec. 18, T34N, R4E W.M., being Tract B of Survey in Vol. 5, pg. 5; additional legal on Exhibit A

Assessor's Tax Parcel ID No.: 340418-4-010-0006

Reference Nos. of Documents Released or Assigned: None

Loan No.: 99 0472 001
Unit No.: 1116
Property: 1616 Freeway Dr., Mt. Vernon, Washington

LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of July 23, 1999, by BELCHER AND BELCHER, INC., a Washington corporation, as grantor (the "Debtor"), to Island Title Company, a Washington corporation, with an address at 1616 Cornwall Ave., Suite 111, Bellingham, Washington 98227-0276, for the benefit of AMERICAN COMMERCIAL CAPITAL LLC, a Delaware limited liability company, having an office at 5963 La Place Court, Carlsbad, California 92008, as beneficiary ("Secured Party").

Terms used herein and not otherwise defined have the meanings accorded to such terms in the paragraph above and in the DEFINITIONS SCHEDULE attached hereto. Terms used herein and not otherwise defined have the meaning accorded to such terms in the UCC.

The Obligations secured by this Deed of Trust are comprised of the following:

(i) the full and punctual payment when due of (a) an indebtedness in the Initial Principal Amount (as defined below), in lawful money of the United States of America, to be paid with interest and periodic charges (said indebtedness, interest, periodic charges, prepayment premium amount, and all other sums which may or shall become due hereunder being hereinafter collectively referred to as the "Debt") according to the Secured Promissory Note, dated concurrently herewith executed by Borrower in favor of Secured Party in the original principal amount of \$383,000.00 (the "Initial Principal Amount");

(ii) the full and punctual payment and performance of all amounts payable under this Deed of Trust, the Security Agreement and all other Loan Documents, including without limitation, indemnification and expense reimbursement obligations; and

(iii) the timely and full payment and performance and observance of each other Obligation, however and whenever incurred, due or to become due, and whether Debtor is obligated alone, or with others on a joint, several or solidary basis, as a principal obligor or as a surety (including any interest, prepayment premium, costs, fees and expenses which at any time accrue or otherwise payable on or with respect to the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of the Debtor), and each other term, covenant, agreement, requirement, condition and other provision under or in connection with any Loan Document, except any Obligation under any Environmental Liabilities Agreement.

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GRANTING CLAUSE

NOW THEREFORE, in consideration of the premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, for the purpose of securing the due and punctual payment, performance and observance of the Obligations and intending to be bound hereby, Debtor has Granted, Bargained, Sold, and Conveyed and by these presents does hereby Grant, Bargain, Sell, and Convey, unto Trustee IN TRUST forever, for the purposes and on the terms and conditions hereinafter set forth, WITH POWER OF SALE and right of entry and possession, all right, title, interest and estate of Debtor now owned or existing, or hereafter acquired or arising, in and to the following property, rights and interests, wheresoever located, subject however to the Permitted Encumbrances, (such property, rights and interests being hereinafter collectively referred to as the "Mortgaged Property"):

- (1) All right, title and interest of Debtor in, to, under or derived from or related to the lease described in Exhibit A (the "Lease") affecting the real property described in Exhibit A attached hereto and all buildings and other improvements ("Improvements") now or here after located thereon (collectively, the "Premises") ("Leasehold Estate"), together with all modifications, amendments, supplements, extensions, consolidations, restatements, replacements of the Lease, now or hereafter entered into, together with all other, further, additional or greater estate, right, title and interest of Debtor in, to or under or derived from or related to the Premises, the Leasehold Estate and the Improvements, now or hereafter located thereon, which may at any time be acquired by Debtor by the terms of the Lease, by reason of the exercise of any option or otherwise;
- (2) All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, riparian, littoral, and water rights and powers, air rights, access rights, development rights, and parking rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof;
- (3) All machinery, furnishings, appliances, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature (hereinafter collectively called the "Equipment"), whether tangible or intangible, whatsoever owned by Debtor, or in which Debtor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Debtor, or in which Debtor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant

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thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements, including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Debtor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code superior in lien to the lien of this Deed of Trust;

- (4) All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or Condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;
- (5) All leases, subleases and other agreements (including, without limitation, any and all security interests, contractual Liens and security deposits thereunder) affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore and hereafter entered into (the "Leases") and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness and other Obligations of Debtor to Secured Party;
- (6) All Loss Proceeds and other awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or Condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and the Improvements;
- (7) All Insurance Proceeds and other proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;
- (8) The right, in the name and on behalf of Debtor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Secured Party in the Mortgaged Property;
- (9) All accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, all Contractual Obligations, and all other contract rights, franchises, books, records, plans, specifications, maps, surveys, permits, and licenses (to the extent assignable), approvals, actions, and causes of action, trade, service and business marks and names which now or



hereafter relate to, are derived from or are used in connection with the Premises, or the use, operation, maintenance, occupancy or employment thereof or the conduct of any business or activities thereon (hereinafter collectively called the "Intangibles");

- (10) All Consents and Other Action and all other permits, and licenses (including alcoholic beverage licenses, to the extent assignable by Debtor), agreements (including all license, operating, management, service, supply and maintenance agreements), and any other agreements, permits or contracts of any nature whatsoever now or hereafter obtained or entered into by Debtor with respect to the ownership, operation maintenance and administration of the Mortgaged Property, including without limitation those documents and agreements described in that certain Assignment of Licenses, Permits and Contracts dated concurrently herewith executed by Debtor in favor of Secured Party; and
- (11) Any and all proceeds and products of any of the foregoing and any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Obligations, including the performance of Debtor's obligations under the Loan Documents.

TO HAVE AND TO HOLD the Mortgaged Property and Debtor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Secured Party, its successors and assigns, under and subject to the terms and conditions of this Deed of Trust, and for security and enforcement of the prompt and complete payment and performance when due of all Obligations.

PROVIDED that Secured Party may from time to time release all or a portion of the Mortgaged Property, in accordance with the terms and conditions of the Security Agreement and applicable Law.

DEBTOR ADDITIONALLY COVENANTS AND AGREES WITH AND REPRESENTS AND WARRANTS TO SECURED PARTY AS FOLLOWS:

1. Payment of Debt; Continued Effectiveness. Debtor shall pay the Debt at the time and in the manner provided for its payment in the Note, the Security Agreement and in this Deed of Trust and Debtor shall pay, perform and observe the other Obligations in accordance with their terms. Debtor shall cause the representations and warranties of Debtor in this Deed of Trust and the Loan Documents to continue to be true in each and every respect at all times prior to the termination of this Deed of Trust.

2. Warranty of Title and Lien; Lease.

- (a) Debtor represents and warrants that Debtor is the owner of a valid and subsisting leasehold interest in the Premises and the Improvements and other Mortgaged Property free of Liens, except to the extent of Permitted Encumbrances, if any. The Lease creates and



constitutes in the tenant thereunder a valid and subsisting leasehold interest in the Leasehold Estate. No action has been commenced or is pending to terminate, restate or replace the Lease. Debtor has the right to Grant the Lien to Secured Party hereunder without any Consent or Other Action. The Lien created by this Deed of Trust constitutes a valid, binding and enforceable Lien on the Mortgaged Property.

(b) Debtor represents and warrants that (i) Exhibit A contains an accurate description of the Lease; (ii) Debtor has furnished to Secured Party a copy of the Lease certified as true and correct by Debtor; (iii) except as described in Exhibit A, the Lease has not been modified, amended, assigned by Debtor or, to the knowledge of Debtor, assigned by the landlord thereunder; (iv) the Lease is in full force and effect and, to the knowledge of Debtor, there is no default, or existing condition which with the giving of notice or passage of time or both would cause a default under the Lease, and all rents due under the Lease have been timely paid in full; and (v) the execution, delivery and performance of this Deed of Trust do not require any consent under, and will not contravene any provision of or cause a default under, the Lease.

(c) Debtor (i) shall duly and punctually pay, perform and observe all of its obligations under the Lease; (ii) shall do all things reasonably necessary or appropriate to enforce, preserve and keep unimpaired the rights of Secured Party; (iii) shall not enter into any amendment or other agreement or take any other action or fail to take any action that would modify or terminate any rights or obligations of Debtor or of the landlord under the Lease or subordinate any right of Debtor under the Lease to any Lien; (iv) shall notify Secured Party in writing not later than ninety (90) days prior to the last date on which Debtor can exercise (A) any right to extend the term of the Lease or (B) any option to purchase or otherwise acquire the interest of the landlord under the Lease; (v) to the extent the current term of the Lease does not extend beyond the maturity date of the Loan, shall exercise (not later than thirty (30) days prior to the last date on which Debtor may timely do so) each right or option of Debtor under the Lease to extend the term thereof; (vi) shall notify Secured Party (promptly after receipt or contemporaneously when given, as the case may be) of the receipt or giving by Debtor of any notice of default under, or any notice of the possible or actual termination of, the Lease, accompanied by a copy of such notice (the failure of Debtor to comply with this subclause (vi) shall constitute an Event of Default hereunder); and (vii) shall promptly notify Secured Party, upon Debtor's acquisition of knowledge thereof, of the occurrence of any event or condition which with the passage of time or giving of notice would constitute a default under the Lease. Secured Party is hereby irrevocably appointed the true and lawful attorney of Debtor and any subsequent owner of the Mortgaged Property to exercise, in its own name and stead or in the name of Debtor, each right or option of Debtor under the Lease to extend the term thereof or to purchase or otherwise acquire the interest of the landlord under the Lease, and for that purpose Secured Party may execute all necessary documents and instruments to exercise each right or option and may substitute Persons with like power and Debtor or any subsequent owner of the Leasehold Estate hereby ratifies and confirms all that said attorney or such substitutes shall lawfully do by virtue hereof. Nevertheless, Debtor or any subsequent owner of the Leasehold Estate, if so requested in writing by Secured Party shall ratify and confirm the exercise of any such right or option by



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executing and delivering to Secured Party or to such purchasers any instrument which, in the Discretion of Secured Party, is suitable or appropriate therefor. Debtor acknowledges and agrees (i) that this power of attorney is given to Secured Party in consideration for Secured Party's (A) making of the Loan and (B) not requiring Debtor to exercise the option to extend the term of the Lease or exercise any purchase option before the maturity date of the Note; (ii) that it is reasonable for Secured Party to require the leasehold term to extend beyond the maturity of the Note; (iii) that (a) Secured Party shall be under no obligation to act or to refrain from acting under this power of attorney and (b) if any option is exercised by Secured Party or any other action is taken by Secured Party under this power of attorney or in furtherance thereof, Debtor agrees that Debtor is and shall remain solely liable with respect thereto as tenant under the Lease and releases Secured Party from any and all liability with respect thereto or claims relating thereto.

(d) The Lease or a memorandum thereof has been or will be duly recorded; the Lease permits the interest of the landlord thereunder to be encumbered by this Deed of Trust; and there has been no material change in the terms of such Lease since its recordation, with the exception of written instruments which have been delivered to Secured Party or which have been executed in connection with this Deed of Trust.

(e) Except as may be indicated in the title insurance policy insuring the lien of this Deed of Trust, such Lease is not subject to any liens or encumbrances superior to, or of equal priority with, this Deed of Trust, other than the related fee interest.

(f) Upon foreclosure of this Deed of Trust or assignment of Debtor's interest in such Lease in lieu thereof, Secured Party is entitled to become the owner of such interest upon notice to, but without the consent of, the landlord under the Lease and, in the event that Secured Party becomes the owner of such interest, such interest is further assignable by Secured Party and its successors and assigns upon notice to Landlord under the Lease, but without a need to obtain the consent of Landlord under the Lease.

(g) The Lease has an original term which extends beyond the stated maturity date of the loan evidenced by the Note and the Loan Documents.

(h) Any insurance proceeds other than in respect of a total or substantially total loss or taking, will be applied to the repair or restoration of all or part of the Mortgaged Property, with either Secured Party or landlord under the Lease acting as trustee to hold and disburse such proceeds as the repair or restoration progresses.

(i) The Lease does not impose any restrictions on subletting which would be viewed as commercially unreasonable; and such Lease contains a covenant that landlord under the Lease is not permitted, in the absence of an uncured default, to disturb the possession, interest or quiet enjoyment of any lessee in the portion of the Mortgaged Property subject to such Lease for any



reason, or in any manner which would materially adversely affect the security provided by this Deed of Trust.

(j) In the event (i) of any default by Debtor in the performance of any of its obligations under the Lease, and/or (ii) of the giving of any notice of the failure of Debtor to perform any such obligations and the failure of Debtor to cure such failure at least ten (10) days prior to the expiration of any applicable grace and/or notice period set forth in the Lease (including, without limitation, any default in the payment of rent and other charges and impositions made payable by the tenant thereunder), then, in either event and in each and every case, Secured Party may, at its option, except in the case of an emergency, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Debtor under the Lease in the name of and on behalf of Debtor. Debtor shall, on demand, reimburse Secured Party for all advances made and expenses incurred by Secured Party in curing any such default (including, without limitation, reasonable attorneys' fees), together with interest thereon computed at the Default Rate specified in the Note, to and including the date the same is paid, and all such sums shall become part of the Debt and shall be secured by this Deed of Trust and the other Loan Documents. Debtor hereby appoints Secured Party its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of Debtor, following an Event of Default and the expiration of any applicable notice period. This power, being coupled with an interest, shall be irrevocable as long as the Debt remains unpaid. A default by Debtor in the performance of any of the terms, covenants or conditions contained in the Lease shall constitute an Event of Default under this Deed of Trust and the other Loan Documents.

(k) If the Lease is canceled or terminated by proper lawful proceedings, and if Secured Party or its nominee shall acquire an interest in any new lease of the property demised thereby, Debtor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease; provided, however, the foregoing shall in no way constitute a waiver of any rights Debtor may have under the Lease.

(l) Notwithstanding anything to the contrary contained herein, this Deed of Trust shall not constitute an absolute assignment of the Lease and Secured Party shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust. Secured Party shall be liable for the obligations of the tenant arising under the Lease for only that period of time which Secured Party is in actual possession of the premises therein described or has acquired, by foreclosure or otherwise, and is holding all of Debtor's right, title and interest therein;

(m) So long as any portion of the Obligations shall remain unpaid, unless Secured Party shall otherwise consent, the fee title to the Premises and the Leasehold Estate therein created pursuant to the provisions of the Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estate in Debtor, the owner, or in any other person by purchase, operation of law or otherwise. Secured Party reserves the right, at any time, to release portions of the Mortgaged Property, including, but not limited to, the Leasehold Estate created by the Lease,



with or without consideration, at Secured Party's election, without waiving or affecting any of its rights hereunder or under the Loan Documents and any such release shall not affect Secured Party's rights in connection with the portion of the Mortgaged Property not so released.

(n) So long as any portion of the Obligations shall remain unpaid, if Debtor shall become the owner and holder of the fee title to the Premises, the Lien of this Deed of Trust shall be spread to cover Debtor's fee title to the Premises and said fee title shall be deemed to be included in the Mortgaged Property. Debtor agrees to execute any and all documents or instruments necessary to subject its fee title to the Premises to the Lien of this Deed of Trust, in form and substance satisfactory to the Secured Party.

(o) Debtor hereby unconditionally assigns, transfers and sets over to Secured Party all of Debtor's claims and rights to the payment of damages arising from any rejection by the owner of the Lease under the Bankruptcy Code. Secured Party shall have the right to proceed in its own name or in the name of Debtor in respect of any claim, suit, action or proceeding relating to the rejection of the Lease, including, without limitation, the right to file and prosecute, to the exclusion of Debtor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the owner under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Any amounts received by Secured Party as damages arising out of the rejection of the Lease as aforesaid shall be applied first to all costs and expenses of Secured Party (including, without limitation, attorneys' fees and disbursements) incurred in connection with the exercise of any of its rights or remedies hereunder.

(p) Debtor shall not, without Secured Party's prior written consent, elect to treat the Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Secured Party's prior written consent shall be void.

(q) If pursuant to Section 365 (h)(1) of the Bankruptcy Code, Debtor seeks to offset against the Rent reserved in the Lease the amount of any damages caused by the non-performance by the owner of any of the owner's obligations under the Lease after the rejection by the owner of the Lease under the Bankruptcy Code, Debtor shall, prior to effecting such offset, notify Secured Party of its intention to do so, setting forth the amounts proposed to be so offset, and the basis therefor. Secured Party shall have the right, within (10) days after receipt of such notice from Debtor, to reasonably object to all or any part of such offset, and, in the event of such reasonable objection, Debtor shall not effect any offset of the amounts so objected to by Secured Party for a period of thirty (30) days after Secured Party has delivered its objection notice to Debtor during which time Secured Party shall have the right to bring its objection to the attention of any court supervising the bankruptcy of the owner of the Lease and both Secured Party and Debtor agree to abide by the decision of any such court. If (A) Secured Party has failed to object as aforesaid within ten (10) days after notice from Debtor or (B) the court fails to render its decision within the above-



mentioned thirty (30) days period, Debtor may proceed to effect such offset in the amounts set forth in Debtor's notice. Neither Secured Party's failure to object as aforesaid nor any objection or other communication between Secured Party and Debtor relating to such offset shall constitute an approval of any such offset by Secured Party.

(r) If any action, proceeding, motion or notice shall be commenced or filed in respect of Debtor or the Mortgaged Property in connection with any case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Debtor), Secured Party shall have the option, (but not the obligation), exercisable upon notice from Secured Party to Debtor, to conduct and control (to the exclusion of Debtor) any such litigation with counsel of Secured Party's choice. Secured Party may proceed in its own name or in the name of Debtor in connection with any such litigation, and Debtor agrees to execute any and all powers, authorizations, consents and other documents required by Secured Party in connection therewith. Debtor shall pay Secured Party all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred by Secured Party in connection with the prosecution or conduct of any such proceedings within five (5) days after notice from Secured Party setting forth such costs and expenses in reasonable detail. Any such costs or expenses not paid by Debtor as aforesaid shall be secured by the Lien of this Deed of Trust and shall be added to the principal amount of the Indebtedness secured hereby. Debtor shall not commence any action, suit, proceeding or case or file any application or make any motion, in respect of the Lease in any such case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Debtor) without the prior written consent of Secured Party, which consent shall not be unreasonably withheld.

(s) Debtor shall promptly, after obtaining knowledge thereof, notify Secured Party of any filing by or against the owner of the Premises of a petition under the Bankruptcy Code, setting forth any information available to Debtor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Debtor shall promptly deliver to Secured Party following receipt any and all notices, summonses, pleadings, applications and other documents received by Debtor in connection with any such petition and any proceedings relating thereto.

(t) If there shall be filed by or against Debtor a petition under the Bankruptcy Code, and Debtor, as the tenant under the Lease, shall determine to reject the Lease pursuant to Section 365 (a) of the Bankruptcy Code, then Debtor shall give Secured Party not less than ten (10) days prior notice of the date on which Debtor shall apply to the bankruptcy court for authority to reject the Lease. Secured Party shall have the right, but not the obligation, to serve upon Debtor within such 10-day period a notice stating that (i) Secured Party demands that Debtor assume and assign the Lease to Secured Party pursuant to Section 365 of the Bankruptcy Code and (ii) Secured Party covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance of Debtor's obligations under the Lease. If Secured Party serves upon Debtor the notice described in the preceding sentence, Debtor shall not seek to reject the Lease and shall seek court approval to comply with the demand provided for in clause (i) of the



preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Secured Party of the covenant provided for in clause (ii) of the preceding sentence.

(u) Effective upon the entry of an order for relief in respect of Debtor under the Bankruptcy Code, Debtor hereby assigns and transfers to Secured Party a non-exclusive right to apply to the bankruptcy court under Section 365 (d)(4) of the Bankruptcy Code for an order extending the period during which the Lease may be rejected or assumed.]

3. Insurance. Debtor shall keep the Mortgaged Property insured in accordance with the provisions of the Security Agreement. Sums paid to Secured Party by any insurer may be retained and applied by Secured Party toward payment of the Debt and other Obligations whether or not then due and payable in such order, priority and proportions as Secured Party in its Sole Discretion shall deem proper or, at the Sole Discretion of Secured Party, the same may be paid, either in whole or in part, to Debtor for such purposes as Secured Party shall designate. If Secured Party shall receive and retain such Insurance Proceeds, the Lien of this Deed of Trust shall be reduced only by the amount thereof received and retained by Secured Party and actually applied by Secured Party in reduction of the Debt and other Obligations.

3A. Non-Agricultural Use. **THE MORTGAGED PROPERTY IS NOT USED PRINCIPALLY FOR AGRICULTURAL PURPOSES.**

4. Payment of Taxes, etc. Debtor shall pay all Taxes and Other Charges, now or hereafter levied or assessed against the Mortgaged Property prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Law for the nonpayment thereof. Debtor shall deliver to Secured Party, upon request, receipted bills, cancelled checks and other evidence satisfactory to Secured Party evidencing the payment of the Taxes and Other Charges prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Law for the nonpayment thereof. At Secured Party's option and upon its demand and except where prohibited by Law, Debtor shall, until all Obligations have been paid in full, pay to Secured Party each month an amount estimated by Secured Party in its Sole Discretion to be an amount approximately equal to (a) the Taxes and Other Charges, (b) all payments under the Lease, (c) all payments and premiums with respect to Insurance Requirements, and (d) any payments required under Permitted Encumbrances, if any, (collectively, the "Required Payments"). Except to the extent required to satisfy the Requirements of Law or otherwise determined by Secured Party in its Sole Discretion, amounts so paid shall not bear interest. Amounts so paid shall be additions to Collateral and subject to the terms of the Security Agreement and, prior to the occurrence of an Event of Default may be applied by Secured Party in its Discretion to the payment of the Required Payments or released to Debtor for application to and payment of the Required Payments.

5. Condemnation. Notwithstanding any Condemnation, Debtor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, the Security Agreement and this Deed of Trust and the Debt shall not be reduced until any award or payment therefor shall

have been actually received and applied by Secured Party to the discharge of the Debt. Subject to the Security Agreement, Secured Party may apply the entire amount of any such award or payment to the discharge of the Debt or other Obligations whether or not then due and payable in such order, priority and proportions as Secured Party in its Discretion shall deem proper. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Secured Party of such award or payment, Secured Party shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt and other Obligations, whichever is less. Debtor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Secured Party in accordance with the Security Agreement. Debtor hereby irrevocably authorizes and empowers Secured Party and Trustee, in the name of Debtor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, Debtor shall, upon demand of Secured Party and Trustee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Secured Party and Trustee, free and clear of any Lien of any kind or nature whatsoever.

6. Leases and Rents. Debtor acknowledges and confirms that it has executed and delivered to Secured Party an Assignment of Leases and Rents of even date (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Assignment of Leases and Rents"), intending that such instrument create a present, absolute assignment to Secured Party of the Leases and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Rents and Leases, Debtor hereby assigns to Secured Party, as further security for the Debt and the Obligations, the Leases and Rents. While any Event of Default exists, Secured Party and Trustee shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and Rents and in this Deed of Trust, including, without limitation, the right to have a receiver appointed (to the extent permitted by applicable law). Subject to the terms of this paragraph, Secured Party and Trustee waive the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grant Debtor the right to collect the Rents. Debtor shall hold the Rents, or an amount sufficient to cover the payment of all operating expenses of the Mortgaged Property and to discharge all current sums due on the Debt, in trust for use in payment of such current operating expenses and current sums due on the Debt. The right of Debtor to collect the Rents may be revoked by Secured Party or Trustee upon any Event of Default by giving notice of such revocation to Debtor. Following such notice Secured Party or Trustee may retain and apply the Rents toward payment of the Debt or other Obligations in such order, priority and proportions as Secured Party, in its Discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, and irrespective of whether Secured Party or Trustee shall have commenced a foreclosure of this Deed of Trust or a sale of the Mortgaged Property pursuant to the provisions of this Deed of Trust or shall have applied or arranged for the appointment of a receiver. Debtor shall not, without the consent of Secured Party, make, or suffer to be made, any Leases or modify or cancel any Leases or accept prepayments of installments of the Rents for a period of more



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than one (1) month in advance or further assign the whole or any part of the Rents. Debtor shall (a) fulfill or perform each and every provision of the Leases on the part of Debtor to be fulfilled or performed, (b) promptly send copies of all notices of default which Debtor shall send or receive under the Leases to Secured Party, and (c) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. In addition to the other rights which Secured Party may have herein, in the event of any default under this Deed of Trust, Secured Party, at its option, may require Debtor to pay monthly in advance to Secured Party, Trustee or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Debtor. Upon default in any such payment, Debtor will vacate and surrender possession of the Mortgaged Property to Secured Party, Trustee or to such receiver and, in default thereof, Debtor may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on Secured Party or Trustee any of the obligations of the lessor under the Leases. Nothing in this paragraph 6 is intended to affect adversely in any way any rights of Secured Party pursuant to the Assignment of Leases and Rents, and in the event of any conflict between the provisions of this paragraph 6 and the provisions of the Assignment of Leases and Rents, the provisions of the Assignment of Leases and Rents shall control.

7. Maintenance of the Mortgaged Property. Debtor, at its sole cost and expense, shall cause the Mortgaged Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal repairs and replacement of the Equipment in accordance with the Security Agreement), without the consent of Secured Party. Debtor shall promptly comply with all existing and future Requirements of Law affecting the Mortgaged Property, or any portion thereof or the use thereof. Debtor shall promptly repair, replace or rebuild all or any part of the Mortgaged Property which have suffered any Loss, whether by casualty or Condemnation or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. Debtor shall not, without obtaining the prior consent of Secured Party, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Mortgaged Property or any part thereof. Debtor shall promptly notify Secured Party of the receipt by Debtor of notice (or of Debtor's knowledge) of any Conflict under any Requirement of Law, or of any Conflict or threatened or actual termination of any Contractual Obligations or Consent or Other Action relating to the Premises.

8. Estoppel Certificates. Debtor, within ten (10) days after request by Secured Party and at Debtor's expense, will furnish Secured Party with a statement, duly acknowledged and certified, setting forth the amount of the Debt and the offsets or defenses thereto, if any.

9. Transfer or Encumbrance of the Mortgaged Property. No part of the Mortgaged Property subject to the terms of the Security Agreement nor any interest of any nature whatsoever therein nor any interest of any nature whatsoever in Debtor (whether partnership, stock, equity,



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15. Performance of Other Agreements. Debtor shall observe and perform each and every term to be observed or performed by Debtor pursuant to the terms of any Contractual Obligation (including any recorded instrument) affecting or pertaining to the Mortgaged Property.

16. Events of Default. The Debt shall become due at the option of Secured Party upon the occurrence of any one or more of the following events (herein collectively referred to as "Events of Default"):

- (a) if an Event of Default, as defined in the Security Agreement, shall occur;
- (b) if Debtor shall fail to pay within twenty (20) days of written notice and demand by Secured Party, any installment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a Lien on the Mortgaged Property, notwithstanding the fact that such installment may not be due and payable at the time of such notice and demand;
- (c) if without the consent of Secured Party any Leases are made, cancelled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;
- (d) if Debtor or other Person shall be in default under any deed of trust or mortgage covering any part of the Mortgaged Property whether superior or inferior in Lien to this Deed of Trust, and including, without limitation, any such deed of trust or mortgage now or hereafter held by Secured Party;
- (e) if the Mortgaged Property shall become subject (i) to any tax Lien, other than a Lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's Lien, mechanic's or materialman's Lien or other Lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of Secured Party by the title company insuring the Lien of this Deed of Trust within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in Lien or other priority to the Lien of this Deed of Trust and irrespective of whether the same constitutes a perfected or inchoate Lien or encumbrance on the Mortgaged Property or is only a matter of record or notice; or
- (f) if an Event of Default shall occur under any deed of trust or mortgage now or hereafter entered into by Debtor or an Affiliate of Debtor in favor of Secured Party.



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17. Remedies. Upon the occurrence of an Event of Default and subject to any applicable cure period, Secured Party may, at Secured Party's option, and by or through Trustee, by Secured Party itself, or through any Person or otherwise, do any one or more of the following:

(a) Right to Perform Debtor's Covenants. If Debtor has failed to keep or perform any covenant whatsoever contained in this Deed of Trust or the other Loan Documents, Secured Party may, but shall not be obligated to any Person to do so, perform or attempt to perform said covenant; and any payment made or expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Secured Party that is chargeable to Debtor or subject to reimbursement by Debtor under the Loan Documents, shall be and become a part of the Debt, and Debtor promises, upon demand, to pay to Secured Party, at the place where the Note is payable, all sums so incurred, paid or expended by Secured Party, with interest from the date when paid, incurred or expended by Secured Party at the Default Rate as specified in the Note.

(b) Right of Entry. Secured Party may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Debtor and to deduct from such Rents all costs, expenses, and liabilities of every character incurred by the Secured Party in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property and to apply the remainder of such Rents on the Debt in such manner as Secured Party may elect. All such costs, expenses, and liabilities incurred by the Secured Party in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a future advance owed and a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Default Rate as specified in the Note, all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, the Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Secured Party pursuant to this subparagraph, the Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of the Secured Party in managing the Mortgaged Property unless such loss is caused by the willful misconduct of the Secured Party, nor shall the Secured Party be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. Debtor shall and does hereby agree to indemnify the Secured Party for, and to hold the Secured Party harmless from, any and all liability, loss, or damage, which may or might be incurred by the Secured Party under any such Lease or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against the Secured Party by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms,



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covenants, or agreements contained in any such Lease. Should the Secured Party incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate as specified in the Note, shall be secured hereby, and Debtor shall reimburse the Secured Party therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon the Secured Party for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make the Secured Party responsible or liable for any waste committed on the Mortgaged Property, or for any hazardous substances or environmental conditions on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Debtor hereby assents to, ratifies, and confirms any and all actions of the Secured Party with respect to the Mortgaged Property taken under this subparagraph.

(c) Right to Accelerate. Secured Party may without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Debtor and all other parties obligated in any manner whatsoever on the Debt, declare the entire unpaid balance of the Debt immediately due and payable, and upon such declaration, the entire unpaid balance of the Debt shall be immediately due and payable.

(d) Foreclosure-Power of Sale. Secured Party or Trustee may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or otherwise, for the complete or partial foreclosure of this Deed of Trust or the complete or partial sale of the Mortgaged Property under the power of sale contained herein or under any applicable provision of Law. Secured Party or Trustee may sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Debtor therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, and at such time and place and upon such terms as it may deem expedient, or as may be required by applicable Law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Deed of Trust shall continue as a Lien and security interest on the remaining portion of the Mortgaged Property.

(e) Rights Pertaining to Sales. Subject to the requirements of applicable Law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of subsection (d) above, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(i) Should Secured Party elect to foreclose by exercise of the power of sale herein contained, Secured Party shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of



expenditures made and secured hereby as Trustee may require. Upon receipt of such notice from Secured Party, the Trustee shall, at the request of Secured Party, proceed to sell the Mortgaged Property as one parcel in its entirety or any part thereof, either in mass or in parcels, at public vendue, to the highest bidder for cash, at the at the door of the courthouse in the county or city where the Mortgaged Property is located or such location as then customarily employed for that purpose, first giving notice of the time and place of sale, and a description of the Mortgaged Property to be sold by advertisement, published as is provided by the laws of the State where the Mortgaged Property is located then in effect, and upon sale, shall execute and deliver a deed of conveyance of all property sold to the purchaser or purchasers thereof, and any statement or recital of fact in such deed, in relation to the non-payment of the money hereby secured to be paid, existence of the indebtedness so secured, notice of advertisement, sale and receipt of the money shall be presumptive evidence of the truth of such statement or recital. Any Person, including, without limitation, Debtor, Trustee or Secured Party, may purchase at such sale and Debtor hereby covenants to warrant and defend the title of such purchaser or purchasers. After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (A) first, the cost and expenses of executing this trust, including compensation to the Trustee and to any attorneys employed by him or Secured Party for their services and for the costs of title commitment and other title expenses involved in executing this trust; (B), second, all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Rate; (C) third all other sums then secured hereby; and (D) the remainder, if any, to the person or persons legally entitled thereto. Trustee or Secured Party may conduct any number of sales from time to time. The power of sale set forth above shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Secured Party's opinion, until the Debt shall have been paid in full.

In the event of foreclosure of this Deed of Trust, the Mortgaged Property shall be sold to satisfy the amount declared due and to pay the same together with costs, expenses and allowances. In case of partial foreclosure of this Deed of Trust, the Mortgaged Property shall be sold subject to the continuing lien of this Deed of Trust for the amount of the debt not yet due and remaining unpaid. In such case, the provisions of this section and of all other sections hereof may again be availed of thereafter from time to time by Secured Party. If, after default, the Mortgaged Property shall be sold under any decree or judgment in any suit to foreclose or enforce this Deed of Trust or the debt secured hereby, the Mortgaged Property may, at the instance of Secured Party, be sold in one parcel, any provision of law to the contrary notwithstanding.



ii) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice.

iii) After each sale, Secured Party, Trustee or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Debtor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as specified in the Note. Each of Trustee and Secured Party is hereby appointed the true and Lawful attorney-in-fact of Debtor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Debtor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, Debtor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall Lawfully do by virtue thereof. Nevertheless, Debtor, if requested by Trustee or Secured Party, shall ratify and confirm any such sale or sales by executing and delivering to Trustee, Secured Party or such purchaser or purchasers all such instruments as may be advisable, in Trustee's or Secured Party's judgment, for the purposes as may be designated in such request.

iv) Any and all statements of fact or other recitals made in any of the instruments referred to in subparagraph (iii) of this subsection (e) given by Trustee or Secured Party shall be taken as conclusive and binding against all Persons as to evidence of the truth of the facts so stated and recited.

v) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Debtor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Debtor and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Debtor to the fullest extent permitted by applicable Law.

vi) Upon any such sale or sales, Secured Party may bid for and acquire the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Debt and/or other Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Trustee or Secured Party is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.



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vii) Upon any such sale, it shall not be necessary for Trustee, Secured Party or any public officer acting under execution or order of court to have present or constructively in its possession any of the Mortgaged Property.

(f) Secured Party's Judicial Remedies. Secured Party, or Trustee upon written request of Secured Party, may proceed by suit or suits, at law or in equity, to enforce the payment of the Debt or other Obligations to foreclose the Lien of this Deed of Trust as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to the Secured Party under this Deed of Trust or the other Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of the Secured Party.

(g) Secured Party's Right to Appointment of Receiver. As a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt and without notice to Debtor, (ii) without any showing of insolvency, fraud, or mismanagement on the part of Debtor, (iii) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (iv) without regard to the then value of the Mortgaged Property, Secured Party shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Mortgaged Property, including the power to collect the Rents. Debtor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(h) Secured Party's Uniform Commercial Code Remedies. The Secured Party may exercise its rights of enforcement under the Uniform Commercial Code in effect in the state in which the Mortgaged Property is located.

(i) Other Rights. Secured Party (i) may surrender the insurance policies maintained pursuant to the Insurance Requirements, and upon receipt shall apply the unearned premiums as a credit on the Debt and other Obligations, and, in connection therewith, Debtor hereby appoints Secured Party as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Debtor to collect such premiums; and (ii) may apply any funds held by Secured Party toward payment of the Debt and other Obligations; and (iii) shall have and may exercise any and all other rights and remedies which Secured Party may have at law or in equity, or by virtue of any of the Loan Documents, or otherwise.

(j) Discontinuance of Remedies. In case Secured Party shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Secured Party shall have the unqualified right so to do and, in such event, Debtor and Secured Party shall be restored to their former positions with respect to the Debt and other Obligations, the Loan Documents, the Mortgaged Property or



otherwise, and the rights, remedies, recourses and powers of Secured Party shall continue as if same had never been invoked.

(k) Remedies Cumulative. All rights, remedies, and recourses of Secured Party granted in the Note, this Deed of Trust and the other Loan Documents, any other pledge of collateral, or otherwise available at Law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Debtor, the Mortgaged Property, or any one or more of them, at the Sole Discretion of Secured Party; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Debtor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Secured Party exercising or pursuing any remedy in relation to the Mortgaged Property prior to Secured Party bringing suit to recover the Debt or other Obligations; and (vi) in the event Secured Party elects to bring suit on the Debt or other Obligations and obtains a judgment against Debtor prior to exercising any remedies in relation to the Mortgaged Property, all security interests and other Liens, including the Lien of this Deed of Trust, shall remain in full force and effect and may be exercised thereafter at Secured Party's option.

(l) Election of Remedies. Secured Party may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the Lien evidenced by this Deed of Trust or the other Loan Documents or affecting the obligations of Debtor or any other party to pay the Debt or other Obligations. For payment of the Debt or other Obligations, Secured Party may resort to any collateral securing the payment of the Debt or other Obligations in such order and manner as Secured Party may elect. No collateral taken by Secured Party shall in any manner impair or affect the Lien given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(m) Waivers. Debtor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Debtor by virtue of any present or future Law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) except as expressly provided herein, all notices of any Event of Default or of Secured Party's or Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshalling of assets, a sale in inverse order of alienation or any other right to direct, in any manner, the order of sale of any of the Mortgaged Property.

(n) Statute of Limitations. To the extent permitted by applicable Law, Secured Party's rights hereunder shall continue even to the extent that a suit for collection of the Debt, or part thereof, is barred by a statute of limitations. Debtor hereby expressly waives and releases to the fullest extent permitted by Law, the pleading of any statute of limitations as a defense to payment of the Debt or other Obligations.



(o) Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the U.S. Bankruptcy Code (the "Bankruptcy Code") by or against Debtor (other than an involuntary petition filed by or joined in by Secured Party), the Debtor shall not assert, or request any other party to assert, that the automatic stay under Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Deed of Trust, or any other rights that Secured Party has, whether now or hereafter acquired, against any guarantor of the Debt. Further, Debtor shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to Section 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Deed of Trust against any guarantor of the Debt or other Obligations. The waivers contained in this paragraph are a material inducement to Secured Party's willingness to enter into this Deed of Trust and Debtor acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Secured Party of Secured Party's rights and remedies against Debtor or any guarantor of the Debt or other Obligations.

(p) Bankruptcy Acknowledgment. In the event that the Mortgaged Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Secured Party shall immediately become entitled, in addition to all other relief to which Secured Party may be entitled under this Deed of Trust, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so to permit Secured Party to pursue its rights and remedies against Debtor as provided under this Deed of Trust and all other rights and remedies of Secured Party at law and in equity under applicable Law, and (ii) an order from the Bankruptcy Court prohibiting Debtor's use of all "cash collateral" as defined under Section 363 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Debtor shall not contend or allege in any pleading or petition filed in any court proceeding that Secured Party does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by the Debtor to stay, condition, or inhibit Secured Party from exercising its remedies are hereby admitted by Debtor to be in bad faith and Debtor further admits that Secured Party would have just cause for relief from the automatic stay in order to take such actions authorized under Law.

(q) Application of Proceeds. The proceeds from any sale, lease, or other Disposition made pursuant to this Deed of Trust, or the Insurance Proceeds (including proceeds from the surrender of any insurance policies pursuant hereto), or any Rents collected by Secured Party from the Mortgaged Property, and any other amounts received pursuant to the Loan Documents, shall be applied by Trustee or Secured Party (or the receiver, if one is appointed), as the case may be, to the Debt or other Obligations in the following order and priority: (1) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other sums including reasonable attorneys' fees and reasonable fees or commissions (including a reasonable fee or commission to Trustee); (2) to the satisfaction of the Debt and other Obligations, in whole or in part (whether or not



due), in such order as Secured Party may, in its Sole Discretion elect; (3) to the holder or beneficiary of any inferior Liens covering the Mortgaged Property, if any, in order of the priority of such inferior Liens (Secured Party and Trustee shall hereby be entitled to rely exclusively on a commitment for title insurance issued to determine such priority) or as otherwise provided in the Security Agreement; and (4) lastly, the cash balance, if any, to the Debtor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Debt or other Obligations like any other payment. The balance of the Debt or other Obligations remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note and the other Loan Documents.

(r) Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Debtor or Debtor's representatives, successors or assigns, or any other persons claiming any interest in the Mortgaged Property by, through or under Debtor (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Mortgaged Property, or any part thereof, then, to the extent not prohibited by applicable Law, each and all shall, at the option of Secured Party or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Mortgaged Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable Law, in the event the tenant fails to surrender possession of the Mortgaged Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Mortgaged Property in the appropriate court of the county in which the Premises are located.

(s) Notice to Account Debtors. Secured Party may, at any time after a default hereunder, which default is not cured within any applicable grace or cure period, notify the account debtors and obligors of any accounts, chattel paper, or general intangibles, or negotiable instruments or other evidences of Indebtedness to Debtor included in the Mortgaged Property to pay Secured Party directly. Debtor shall at any time or from time to time upon the request of Secured Party provide to Secured Party a current list of all such account debtors and obligors and their addresses.

(t) Payment of Expenses. Debtor shall pay on demand all of Secured Party's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, legal fees and disbursements, foreclosure costs (including Trustee fees and expenses) and title charges, together with interest thereon from and after the date incurred by Secured Party until actually paid by Debtor at the Default Rate, and the same shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the Indebtedness evidenced by the Note or other Obligations.

18. Non-Waiver. The failure of Secured Party or Trustee to insist upon strict performance of any term of this Deed of Trust shall not be deemed to be a waiver of any term of this



Deed of Trust. Debtor shall not be relieved of Debtor's obligation to pay the Debt or other Obligations at the time and in the manner provided for its payment in the Note, the Security Agreement, this Deed of Trust, or the other Loan Documents by reason of (i) failure of Secured Party or Trustee to comply with any request of Debtor to take any action to foreclose this Deed of Trust or sell the Mortgaged Property pursuant to the provisions of this Deed of Trust or otherwise enforce any of the provisions hereof or of the Note or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or other Obligations, or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt or other Obligations, or (iii) any agreement or stipulation between Secured Party or Trustee and any subsequent owner or owners of the Mortgaged Property or other Person extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Security Agreement, this Deed of Trust, or other Loan Documents or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or other Obligations or any portion thereof, without first having obtained the consent of Debtor, and in the latter event, Debtor shall continue to be obligated to pay the Debt and other Obligations at the time and in the manner provided in the Note, the Security Agreement, this Deed of Trust, and other Loan Documents, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by Secured Party in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien, encumbrance, right, title or interest in or to the Mortgaged Property, Secured Party may release any Person at any time liable for the payment of the Debt or other Obligations or any portion thereof or any part of the security held for the Debt or other Obligations and may extend the time of payment or otherwise modify the terms of the Note, the Security Agreement, this Deed of Trust, or other Loan Documents, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Deed of Trust or the Lien thereof or the priority of this Deed of Trust, as so extended and modified, as security for the Debt and other Obligations over any such subordinate Lien, right, title or interest. Secured Party may resort for the payment of the Debt or other Obligations to any other security held by Secured Party in such order and manner as Secured Party, in its Discretion, may elect. Secured Party or Trustee may take action to recover the Debt or other Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Secured Party or Trustee thereafter to foreclose this Deed of Trust or to effect a sale of the Mortgaged Property in accordance with the provisions of this Deed of Trust. Secured Party and Trustee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by any Loan Document or Law. The rights of Secured Party and Trustee under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the execution of the others. No act of Secured Party or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

19. Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by Law, or to perform any act which would involve



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Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Deed of Trust, covenants to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fees and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Debtor and to Secured Party. Secured Party may in its Sole Discretion and with or without cause remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its Sole Discretion for any reason whatsoever Secured Party may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded whenever this Deed of Trust is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required to do so by Secured Party.

20. Trustee's Fees. Debtor shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

21. Further Acts, etc. Debtor will, at the cost of Debtor, and without expense to Secured Party or Trustee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Secured Party or Trustee shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Secured Party, as the case may be, the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Debtor may be or may hereafter become bound to convey or assign to Secured Party or Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust and, on demand, will execute and deliver and hereby authorizes Secured Party or Trustee to execute in the name of Debtor to the extent Secured Party and Trustee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the Lien hereof upon the Mortgaged Property.

22. Performance and Subrogation. If Debtor shall fail to pay or perform any of its Obligations under any Loan Documents (including, without limitation, any payment of expenses), Secured Party without notice to or consent of Debtor may, from time to time, but need not, pay or perform (or cause to be paid or performed) any such Obligation, in any form or manner Secured Party may determine in its Discretion, and any amount so paid or expended, with interest at the Default Rate, shall be added to the Obligations and shall be paid by Debtor on demand. No such action (or in action) of Secured Party shall be considered as a waiver of default or Event of Default or any right accruing to Secured Party on account of the occurrence of any default on the party of



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Debtor under this Deed of Trust or any Loan Document. To the extent that Secured Party pays any sum due from Debtor or in respect of the Premises under any Law or Contractual Obligation, Secured Party shall be subrogated to and shall receive and enjoy all rights and benefits (including any Liens) possessed, held or enjoyed by any payee or other Person with respect thereto, and the same shall remain in existence for the benefit of Secured Party and shall secure the amount expended by Secured Party and other Obligations.

23. Headings, etc. The headings, titles and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

24. Filing of Deed of Trust, etc. Debtor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust, and any security instrument creating a Lien or evidencing the Lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future Law in order to publish notice of and fully to protect, preserve and perfect the Lien hereof upon, and the interest of Secured Party and Trustee in, the Mortgaged Property. Debtor will pay all filing, registration and recording fees and taxes, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. Debtor shall hold harmless and indemnify Secured Party, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Deed of Trust. Debtor agrees that this Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to RCW 6A.9-402(6) with respect to any and all fixtures and all goods or other personal property that may now or hereafter become fixtures on the Mortgaged Property.

25. Intentionally Deleted.

26. Duplicate Originals. This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

27. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust shall be used interchangeably in singular or plural form and the word "Debtor" shall mean each Debtor and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein; the word "Secured Party" shall mean Secured Party or any subsequent holder of the Note; the word "Note" shall mean the Secured Promissory Note or any other evidence of indebtedness secured by



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this Deed of Trust; the words "Security Agreement" shall mean the Security Agreement; the word "Guarantor" shall mean each person guaranteeing payment of the Debt or other Obligations or any portion thereof or performance by Debtor of any of the terms of this Deed of Trust and their respective heirs, executors, administrators, legal representatives, successors and assigns; the words "Mortgaged Property" shall include any portion of the Mortgaged Property and "default" shall include any default by Debtor or other Person in the observance or performance of any of the terms, covenants or provisions of this Deed of Trust, the Note, the Security Agreement or any other Loan Documents on the part of Debtor or such other Person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Deed of Trust. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

28. Waiver of Notice. Debtor shall not be entitled to any notices of any nature whatsoever from Secured Party or Trustee except with respect to matters for which this Deed of Trust specifically and expressly provides for the giving of notice by Secured Party or Trustee to Debtor, and Debtor hereby expressly waives the right to receive any notice from Secured Party or Trustee with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by Secured Party or Trustee to Debtor.

29. Waiver of Statutory Rights. Debtor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption Laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such Laws to the full extent that Debtor may do so under applicable Law. Debtor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the Lien of this Deed of Trust and agrees that any court having jurisdiction to foreclose such Lien may order the Mortgaged Property sold as an entirety. Debtor hereby waives for itself and all who may claim through or under it, and to the full extent Debtor may do so under applicable Law, any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust or granted under any Law now existing or hereafter enacted.

30. Waiver of Counterclaims. Debtor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature with respect to this Deed of Trust or the obligations of Debtor under this Deed of Trust in any action or proceeding brought by Secured Party to collect the Debt or other Obligations, or any portion thereof, or to enforce the obligations of the Debtor under this Deed of Trust.

31. Superior Lien. If Debtor fails to pay any installment of principal or interest or any other sum due under any deed of trust or mortgage or other Lien superior in lien to the Lien of this Deed of Trust, as the same becomes due and payable, Secured Party may, at its option, pay the same, and Debtor shall upon demand reimburse Secured Party for all sums so expended by Secured Party,



with interest at a rate per annum equal to the Default Rate. All such sums expended by Secured Party, with interest, shall be secured by this Deed of Trust.

32. Security Agreement. Unless specifically provided to the contrary, all of the terms and provisions of the Security Agreement are hereby incorporated and shall become a part of this Deed of Trust.

33. Solvency, Binding Effect and Enforceability. The Debtor is (and, after giving effect to this Deed of Trust, will be) solvent. This Deed of Trust is the legal, valid and binding obligation of the Debtor enforceable in accordance with its terms.

34. Governing Law; Consent to Jurisdiction.

(a) WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THIS DEED OF TRUST, THIS DEED OF TRUST SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF WASHINGTON, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS RELATING TO THIS DEED OF TRUST AND ALL OF THE INDEBTEDNESS AND OBLIGATIONS DESCRIBED HEREIN.

35. WAIVER OF TRIAL BY JURY. DEBTOR BY EXECUTION AND DELIVERY HEREOF AND SECURED PARTY BY ACCEPTANCE HEREOF, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT OF ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED OF TRUST AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

[Signature Page Follow]



ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, Debtor has duly executed this Deed of Trust the date first above written.

DEBTOR:

BELCHER AND BELCHER, INC., a
Washington corporation

By: *[Signature]*
Donald L. Belcher
President

STATE OF WASHINGTON §
 §
COUNTY OF KING §

On this 16th day of July, 1999, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared DONALD L. BELCHER, to me known to be the President of BELCHER AND BELCHER, INC., a Washington corporation, the corporation which executed the within and foregoing instrument and acknowledged the same to be the true and voluntary act and deed for said corporation and he was authorized to execute the same on behalf of said corporation.

DATED: _____

[Signature]
Printed Name: PEBBY McLEAN
NOTARY PUBLIC for the State of Washington
residing at Lynnwood

My appointment expires: 11-20-99



Exhibit A
Legal Description

That certain leasehold estate created by the Sublease Agreement dated July 23, 1999 between Q Lube, Inc., a Delaware corporation as landlord, and Belcher and Belcher, Inc., a Washington corporation as tenant, as amended from time to time, and as evidenced by Memorandum of Lease recorded or to be recorded in the real property records where the underlying property subject of the herein described lease is located, covering the following described property:

PARCEL A

That portion of the North Half of the Northwest Quarter of the Southeast Quarter of Section 18, Township 34 North, Range 4 East of the Willamette Meridian, lying North of that certain fence line designated in the last paragraph of that certain judgment entered April 28, 1961, in Skagit County Superior Court Case No. 25671, records of Skagit County, Washington; lying West of both Parcel "A" as described in Stipulated Judgment and Decree of Appropriation as to Item No. 1, filed April 21, 1975, in Skagit County Superior Court Case No. 34431, records of Skagit County, Washington, and Parcel "A" as described in Stipulated Judgment and Decree of Appropriation, filed April 24, 1974, in Skagit County Superior Court Cause No. 34117, records of Skagit County, Washington; and lying East of Line 2 as described in said Stipulated Judgment and Decree of Appropriation, in said Skagit County Superior Court Cause No. 34431, records of Skagit County, Washington;

EXCEPT the North 165 feet thereof.

(Also known as Tract B of that certain survey recorded April 22, 1983 in Volume 5 of Surveys, page 5, under Auditor's File No. 8304220009, records of Skagit County, Washington).

Situated in Skagit County, Washington.

PARCEL B

An easement to erect a sign on the East 20 feet of the following described property to wit:

The North 165 feet of that portion of the North Half of the North Half of the Northwest Quarter of the Southeast Quarter of Section 18, Township 34 North, Range 4 East of the Willamette Meridian, lying West of Parcel "A" as described in Stipulated Judgment and Decree of Appropriation, filed April 24, 1974, in Skagit County Superior Court Cause No. 34117, records of Skagit County, Washington, and lying East of Line 2 as described in Stipulated Judgment and Decree of Appropriation as to Item No. 1 filed April 21, 1975, in Skagit County Superior Court Cause No. 4431, records of Skagit County, Washington:

EXCEPT the North 50 feet thereof as described in said Stipulated Judgment and Decree of Appropriation as Parcel "B" in said Skagit County Superior Court Cause No. 34117, records of Skagit County, Washington.

ALL situated in Skagit County, Washington.



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**DEFINITIONS SCHEDULE
[Deed Of Trust]**

"Account" or **"Accounts"** shall have the meaning accorded to such term in the UCC.

"Affiliate" or **"Affiliates"** shall mean, with respect to any Person, (i) any Person who controls, is controlled by, or is under common control with such Person, (ii) any Person who is a manager, director or officer of, partner in, trustee of, or blood or legal relative, guardian or representative of the specified Person, or any Person who acts or serves in a similar capacity with respect to the specified Person, (iii) any Person of which or whom the specified Person is a manager, director or officer, partner, trustee, or blood or legal relative, guardian or representative, or with respect to which or whom, the specified Person acts or serves in a similar capacity; (iv) any Person, who, directly or indirectly, is the legal or beneficial owner of or controls 10% or more of any class of equity securities of the specified Person, and (v) any Person who is an Affiliate as defined in clauses (i), (ii), (iii) or (iv) of an Affiliate of the specified Person.

"Business" shall mean the business of operating a Unit in accordance with the Principal Agreements.

"Business Day" shall mean any date other than a Saturday, Sunday or legal holiday or date on which banking institutions in Delaware, New York, or California are authorized or required to close.

"Capital Stock" shall mean any common stock, partnership interest, membership interest or other equity interest.

"Change in Control" any act or event (including any assignment, sale, disposition or issuance) which results in (or with the passage of time will result in) the Control Persons owning of record and beneficially less than 80% of the Capital Stock of Debtor.

"Chattel Paper" shall have the meaning accorded to such term in the UCC.

"Collateral" shall mean all Goods (including Equipment and Inventory), General Intangibles (including Principal Agreements, Accounts, Certificates of Title, Fixtures, Money, Instruments, Investment Property, Documents, Chattel Paper, Deposit Accounts, Letters of Credit, (as all of such terms are defined in the UCC or otherwise in this schedule or the Loan Documents), credit balances, deposits, bankers' acceptances, guaranties, credits, claims, choses in action, demands, liens, security interests, rights, insurance, awards, compensation, remedies, title and interest in, to and in respect of other Collateral, and all Collateral Revenues and all other personal property, now or hereafter owned, acquired, existing, arising, held, sold, used or consumed in connection with the Business or each of the Units and any other property, rights, and interests which at any time relate to, arise out of or in connection with the foregoing or which come into the possession, custody or control of Secured Party or any of its agents, representatives, associates or correspondents, for any purpose.



"Collateral Revenues" shall mean with respect to any Collateral all interest, income, dividends, distributions, rents, revenues, profits and earnings thereon or other monies or revenues derived therefrom, including any such property received in connection with any disposition of any Principal Agreement and all moneys which may become payable or received under any policy insuring the Collateral or otherwise required to be maintained under the Security Agreement (including return of unearned premium.)

"Condemnation" shall mean any taking by any Governmental Authority or other Person.

"Conflict" or **"Conflicting"** shall mean, with respect to any Contractual Obligation, Organizational Document, Requirement of Law, Consent or Other Action or any other item, any conflict with, breach of, default under, any triggering of rights, benefits, or obligations under or in connection with such item.

"Consent or Consents and Other Action" shall mean any consent, authorization, Judgment, directive, approval, license, certificate, registration, permit, exception, exemption, filing, notice, declaration or other action by, with or to any Person.

"Contractual Obligation" shall include any obligation under or in connection with any Instrument, Document, General Intangible.

"Control Persons" shall have the meaning as set forth in the Security Agreement.

"Debtor" shall mean each Debtor and any Person executing any Affiliate Guarantee, Security Agreement, Deed of Trust, or other Contractual Obligation securing or evidencing the Loan to Secured Party, and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein.

"Debtor's Use" shall include Debtor's acquiring, obtaining, making, manufacturing, producing, operating, holding, possessing, maintaining, selling, transferring, granting, pledging, leasing, disposing or using.

"Default" shall include any default by Debtor or other Person in observance or performance of any of the terms, covenants or provisions of this Deed of Trust, the Note, the Security Agreement or any other Loan Document on the part of Debtor or such other Person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Deed of Trust.

"Default Rate" shall have the meaning accorded to such term in the Note.

"Discretion" shall mean Sole Discretion.

"Dispose" or **"Disposing"** or **"Disposed"** or **"Disposition"** shall include, with respect to any property, assets, obligations or other items, any sale, assignment, conveyance, pledge, Grant, encumbrance, lease, gift, abandonment or other disposition.

DEFINITION SCHEDULE/DEFEASANCE [DEED OF TRUST]
AMERICAN COMMERCIAL CAPITAL/Belcher
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"Document" shall have the meaning accorded to such term in the UCC.

"Equipment" shall have the meaning accorded to such term in the UCC.

"Financing Statements" shall mean financing statements on form UCC-1 naming Debtor as debtor and Secured Party as secured party and describing the Collateral as the collateral.

"Fixtures" shall have the meaning accorded to such term in the UCC.

"GAAP" shall mean the generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

"General Intangible" or **"General Intangibles"** shall have the meaning accorded to such term in the UCC.

"Governmental Authority" shall mean any public office, court, arbitration or mediation panel, or office, administrative agency, regulatory authority, government, self-regulatory agency or authority or any subdivision thereof.

"Grant" or **"Grants"** or **"Granting"** shall include to grant, assign, transfer, convey, set over and dispose.

"Indebtedness" shall mean and include (i) with respect to any Person, (a) all items of indebtedness and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of the balance sheet of such Person, (b) all indebtedness and liabilities of other Persons assumed or guaranteed by such Person or in respect to which such Person is secondarily or contingently liable whether by any agreement to acquire indebtedness and liabilities or to supply or advance funds or otherwise, and (c) all indebtedness and liabilities of other Persons secured by any Lien in any property of such Person; and (ii) with respect to a Unit, (a) all items of indebtedness and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of the balance sheet of a Unit, (b) to the extent such indebtedness or liability specifically relates to the Unit or depends on cash flow of the Unit for repayment (as provided in an assumption of debt, guaranty or other agreement), all indebtedness and liabilities of other Persons assumed or guaranteed by any Person or in respect of which such Person is secondarily or contingently liable whether by any agreement to acquire indebtedness and liabilities or to supply or advance funds or otherwise and (c) all indebtedness and liabilities secured by any Lien on any property used in the operation of each of a Unit, to the extent not included pursuant to clauses (a) and (b) of this definition.

"Instrument" shall have the meaning accorded to such term in the UCC.

"Insurance Proceeds" means, at any time, all insurance proceeds or payments to which Debtor may be or become entitled by reason of any casualty under the insurance policies with respect to any Unit



required to be maintained pursuant to the Security Agreement plus (i) the amounts of any deductibles under such insurance policies; (ii) if Debtor fails to maintain any of the insurance policies required under the Security Agreement, the amounts which would have been available with respect to such casualty had Debtor maintained such insurance policies; and (iii) all insurance proceeds and payments to which Debtor may be or become entitled, including, without limitation, pursuant to title insurance or by reason of any casualty under any other insurance policies coverage maintained by Debtor with respect to any Unit.

"Insurance Requirements" shall have the meaning accorded to such terms in the Security Agreement.

"Interest Rate" shall have the meaning accorded do such term in the Note.

"Inventory" shall have the meaning accorded to such term in the UCC.

"Judgment" shall mean any order, decision, decree, award, injunction of any Governmental Authority.

"Key Individuals" shall have the meaning as set forth in the Security Agreement.

"Late Payment Charge" shall have the meaning accorded do such term in paragraph 4 of the Note.

"Law" or **"Laws"** shall mean any statute, law, code, rule, regulation, ordinance.

"License" or **"Licenses"** shall mean any license, permit, directive, authorization, approval or stipulation required to operate the Business at the Property.

"Lien" or **"Liens"** shall mean any pledge, security, title, security interest, encumbrance, right of set off or offset, rights of others, benefits, claims or other liens (including federal or state tax liens).

"Litigation" shall mean any action, proceeding, litigation, investigation, arbitration, mediation, claim, Judgment.

"Loan" or **"Loans"** shall mean the indebtedness of Debtor to Secured Party as evidenced by the Loan Documents.

"Loan Document" or **"Loan Documents"** shall mean the Note, the Security Agreement, and any other note, security agreement, mortgage, deed of trust, deed to secure debt, collateral assignments, and other contractual Obligations, filings (including financing statements) and recordings executed, delivered or filed, including any amendments, supplements, renewals, extensions replacements thereof, executed between Debtor and Secured Party or by Debtor for the benefit of Secured Party.

"Loss" shall have the meaning accorded do such term in Section 2.22 of the Security Agreement.



"Loss Proceeds" shall have the meaning accorded to such term in Section 2.22 of the Security Agreement.

"Material Adverse Effect" shall mean any material adverse affect on the Debtor, or any Scheduled Affiliate, its financial condition or property, the Business or the Mortgaged Property.

"Maturity Date" shall have the meaning accorded to such term in the Note.

"Money" shall have the meaning accorded to such term in the UCC.

"Mortgaged Property" shall have the meaning as defined in the Deed of Trust.

"Note" shall mean the Secured Promissory Note made by Debtor payable to Secured Party evidencing the Loan.

"Obligations" shall mean all of Debtor's Indebtedness, obligations and liabilities to Secured Party evidenced by, arising under or in connection with the Note (including, without limitation, indebtedness, obligations and liabilities in respect of principal, interest, and Prepayment Premium Amount), the Security Agreement, or any of the other Loan Documents (executed between Debtor and Secured Party or by Debtor for the benefit of Secured Party), and any future advances thereon, renewals, extensions, modifications, amendments, substitutions and consolidations thereof, or any other agreement with Secured Party under or in connection with the Loan, including Debtor's obligations to pay (or reimburse Secured Party for) all costs and expenses (including attorneys fees and disbursements) incurred by Secured Party in obtaining, maintaining, protecting and preserving its interest in the Collateral or its security interest therein, foreclosing, retaking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral or in exercising its rights hereunder or as secured party under the UCC, any other applicable Law or Loan Document, and all other indebtedness, obligations and liabilities of any kind of Debtor to Secured Party now or hereafter existing (including future advances whether or not pursuant to commitment), arising directly between Debtor and Secured Party or acquired outright, conditionally or as collateral security from another, absolute or contingent, joint and/or several, secured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, or direct or indirect, including Debtor's liabilities to Secured Party as a member, partner or equity owner of any Person or group, and whether incurred by Debtor as principal, surety, indorser, guarantor, accommodation party or otherwise, including all amounts which would be payable or owing to Secured Party but for the fact they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Debtor or any Person.

"Obligors" shall have the meaning accorded to such term in Section 7 of the Note.

"Permitted Encumbrance" or **"Permitted Encumbrances"** shall have the meaning accorded to such term in Section 2.16 of the Security Agreement.



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"Person" or **"Persons"** shall mean any natural person, corporation, partnership, limited liability company, trust, association, firm, entity or Governmental Authority.

"Personal Property Lease" shall mean any lease of Equipment or other personal property deemed an operating lease under GAAP.

"Prepayment Premium Amount" shall have the meaning accorded to such term in the Note.

"Principal Agreement" or **"Principal Agreements"** shall have the meaning as set forth in the Security Agreement.

"Principal Amount" shall have the meaning accorded to such term in the Note.

"Proceeds" shall include Insurance Proceeds, Loss Proceeds and "proceeds" within the meaning accorded to such term in the UCC.

"Property" or **"Properties"** shall mean the real property (whether one or more) upon which the Debtor operates the Business as more particularly described in Exhibit A of the Security Agreement and in the other Loan Documents.

"Records" shall mean any books, records, writings (including any electronic data) pertaining to the Business, a Unit and the Collateral.

"Requirement of Law" or **"Requirements of Law"** shall mean any requirement, direction, policy or procedure of any Law or License, Judgment, or Consent or Other Action.

"Scheduled Affiliate" or **"Scheduled Affiliates"** shall have the meaning accorded to such term in Section 2.4 of the Security Agreement.

"Secured Party" shall mean Secured Party or any subsequent holder of the Note.

"Sole Discretion" shall mean with respect to any decision or action (including granting of any consent or approval) the discretion to make or take or fail to take or make any decision or action with or without any reason, taking into account such factors, if any, as the decision maker or action taker determines (including self interest), and any decision or action may be subject to any such conditions or no conditions as the decision maker or action taker determines and shall be final and conclusive.

"Security Agreement" shall mean the Security Agreement between Debtor and Secured Party, relating to the Loan and, among other things, Granting the Secured Party a Lien on the Collateral.

"Target Debtor FCCR" shall have the meaning accorded to such term in the Security Agreement.



"Target CU FCCR" shall have the meaning accorded to such term in the Security Agreement.

"Taxes and Other Charges" shall mean all taxes, assessments and other governmental charges, ground rents, or other rents, rates and charges, excises, levies, fees and other charges (public or private) which may be assessed, levied, confirmed or imposed on, or in respect of or be a lien upon the Collateral, the Unit or the Business or any part thereof or any interest therein.

"UCC" shall mean the Uniform Commercial Code as adopted in the State where the Properties are located.

"Unit" or **"Units"** shall collectively mean the Business, Collateral and Mortgaged Property and other property and assets related to the Business or located at the Mortgaged Property.

"Waivers" shall have the meaning accorded to such term in the Note.

The foregoing terms contained in this Definitions Schedule as applicable to the Deed of Trust to which this schedule is attached, executed by the undersigned Debtor for the benefit of American Commercial Capital, LLC, a Delaware limited liability company, are approved and agreed to by the undersigned.

[Signature Page Follows]



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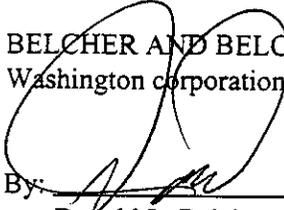
Kathy Hill, Skagit County Auditor

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UNOFFICIAL DOCUMENT

DEBTOR:

BELCHER AND BELCHER, INC., a
Washington corporation

By: 
Donald L. Belcher
President

DEFINITION SCHEDULE/DEFEASANCE [DEED OF TRUST]
AMERICAN COMMERCIAL CAPITAL/Belcher
DAL02:193067.1



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Kathy Hill, Skagit County Auditor