



200111290003

Skagit County Auditor

11/29/2001 Page 1 of 10 9:20AM

AFTER RECORDING RETURN TO:

BANK OF AMERICA, N.A.
 Northwest CLSC Real Estate
 800 Fifth Avenue, 37th Floor
 Seattle, WA 98104
 Attention: Linda Lukenbill

WASHINGTON STATE COUNTY AUDITOR'S/RECORDER'S INFORMATION (RCW 65.04):

GRANTOR: BCG NORTHWEST, L.L.C.

FIRST AMERICAN TITLE CO.

GRANTEE: BANK OF AMERICA, N.A.

66340-1

LEGAL DESCRIPTION:

ABBREVIATED:

PORTION OF LOT 111, SKAGIT REGIONAL AIRPORT BINDING
 SITE PLAN, PHASE 1

[FOR THE FULL LEGAL DESCRIPTION SEE EXHIBIT "A" TO THIS DOCUMENT]

ASSESSOR'S PROPERTY TAX

PARCEL ACCOUNT NUMBER(S): 8012-000-111-0100 L 105860

Loan No. 3134327

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

THIS DEED OF TRUST is granted as of October 31, 2001 by **BCG NORTHWEST, L.L.C.** ("Grantor") whose address is 11367 Higgins Airport Way, Burlington, WA 98233, to PRLAP, Inc. ("Trustee"), whose address is 800 Fifth Avenue, 19th Floor, Seattle, WA 98104, in trust for **BANK OF AMERICA, N.A.** ("Bank") whose address is 333 S. Beaudry Street, 26th Floor, Los Angeles, CA 90017, Attention: Commercial Mortgage Loan Servicing Manager and is made with reference to the Borrowing Agreement of even date herewith between Grantor and Bank (the "Agreement"). Grantor agrees as follows:

1. **CONVEYANCE.** Grantor hereby irrevocably grants, bargains, sells and conveys to Trustee, in trust, with power of sale, all of Grantor's right, title and interest in the real property legally described in **Exhibit A** attached ("**Property**"), whether now owned or later acquired by Grantor, together with all buildings, structures, improvements, equipment, fixtures and articles of property, now or later attached to, or used or adapted for use in the ownership, operation or maintenance of, the Property; all tenements, hereditaments and appurtenances, now or later in any way appertaining to the Property; and all leasehold interests, both as lessee and as lessor, rents,

payments, issues and profits derived from or in any way connected with the Property. This Deed of Trust also constitutes a security agreement under the Uniform Commercial Code (as adopted in the State of Washington) granting to Bank a security interest in the property, both tangible and intangible, described in this paragraph, to the extent such property shall be deemed to be personal property or fixtures. Grantor represents and warrants to Bank that **THE REAL PROPERTY CONVEYED BY THIS DEED OF TRUST IS NOT USED PRINCIPALLY FOR AGRICULTURAL PURPOSES.**

2. ASSIGNMENT OF RENTS.

(a) Assignment. Grantor further assigns to Bank all of Grantor's interest in all existing and future leases, licenses and other agreements for the use or occupancy of the Property ("**Contracts**"), including both rights of a lessee under the "Airport Lease," as defined below, and rights as a sublessor, including the immediate and continuing right to collect, in either Grantor's or Bank's name, all rents, receipts, income, accounts and other payments due or to become due under the Contracts ("**Payments**"). As long as there is no default under the Agreement or this Deed of Trust, or under any such lease, Grantor is granted a license to collect the Payments, but such license shall not constitute Bank's consent to Grantor's use of the Payments in any bankruptcy proceeding.

(b) Disclaimer. Nothing contained in this Deed of Trust shall be construed as obligating Bank or any receiver to take any action to enforce any provision of the Contracts, expend any money, incur any expense or perform any obligation under the Contracts. Bank's duties are expressly limited to giving of proper credit for all Payments received by it.

3. SECURED OBLIGATIONS. This Deed of Trust secures performance of (i) each agreement of Grantor contained in the Agreement and/or this Deed of Trust (but does not secure the independent Hazardous Substances and Building Law Compliance indemnities in the Agreement), (ii) payment of the sum of \$184,000.00 with interest thereon according to the terms of the Agreement, (iii) payment and performance obligations of Grantor (or of the obligor under the Agreement, if different from Grantor) under any one or more interest rate swap transactions, forward rate transactions, interest rate cap, floor, or collar transactions, swaptions, bond and bond price swaps, options or forwards, treasury locks, any similar transaction, any option to enter into any of the foregoing and any combination of the foregoing, with Bank, whether now existing or hereafter entered into including, without limitation, any master agreement relating to or governing any or all of the foregoing and any related schedules or confirmations, and in which this Deed of Trust is expressly referenced as a credit support document (each, a "**Swap Contract**") and (iv) all other existing and future obligations of Grantor to Bank if the existing or future obligation by its terms states that it is secured by this Deed of Trust (collectively the "**Secured Obligations**"), including all renewals, modifications and extensions thereof and substitutions therefor, it being the express intent of Grantor and Bank that this Deed of Trust and the estate held by Trustee hereunder shall continue in effect notwithstanding that from time-to-time no Secured Obligations of Grantor to Bank may exist, and shall survive as security for all new or additional Secured Obligations of Grantor to Bank from time-to-time arising. Nothing contained in this Deed of Trust shall be construed as obligating Bank to make any future advance to Grantor. THE AGREEMENT MAY CONTAIN PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE, PAYMENT TERMS OR BALANCE DUE TO BE INDEXED, ADJUSTED, RENEWED OR RENEGOTIATED.

4. AFFIRMATIVE COVENANTS. Grantor shall, unless waived in writing by Bank:

(a) Maintenance of Property and Title. Maintain and preserve the Property in good condition and repair, and not commit or permit any waste thereof; complete any



improvement which may be constructed on the Property; restore any improvement which may be damaged or destroyed; and maintain the Property free and clear of all liens and encumbrances other than the encumbrance of this Deed of Trust, the fee title interest of the Port of Skagit County, which leases the Property to Grantor under the Lease Agreement dated as of July 13, 1998 entered into with regard to the Property (the "Airport Lease"), a prior deed of trust in favor of Bank, and any lien for taxes or assessments not delinquent. Failure to maintain and preserve the Property in good condition and repair shall constitute "waste" by the Grantor as that term is used in RCW §61.24.100.

(b) Compliance with Laws. Comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property;

(c) Real Estate Interests. Perform all obligations to be performed by Grantor under the Contracts and under the Airport Lease;

(d) Payment of Debts and Taxes. Pay promptly all obligations secured by the Property; all taxes, assessments and governmental liens or charges levied against the Property; and all claims for labor, materials, supplies or otherwise which, if unpaid, might become a lien or charge upon the Property. If required by Bank and at the time of making each payment to Bank under the Agreement, Grantor shall deposit into a non-interest-bearing reserve account with Bank, hereby pledged to Bank as security for the Secured Obligations, a sum estimated by Bank sufficient to pay when due taxes and assessments on the Property and premiums on required insurance;

(e) Insurance.

(i) Casualty. Insure continuously with premiums prepaid, with financially sound and reputable insurers acceptable to Bank, all improvements on the Property against all risks, casualties and losses through standard fire and extended coverage insurance or otherwise, including, without limitation, insurance against fire, theft, casualty, vandalism, loss of rents and business interruption and any other risk Bank may reasonably request. The insurance policies shall be in an aggregate amount of not less than the full replacement cost of all improvements on the Property, including the cost of demolition and removal of debris, and shall name Bank as loss payee under a lender-loss payable endorsement in form satisfactory to Bank. All deductibles shall be in amounts acceptable to Bank. The amounts collected under the insurance policies may be applied to the Secured Obligations in any manner as Bank determines, and such application shall not cause discontinuance of any proceeding to foreclose upon this Deed of Trust. In the event of foreclosure, all of Grantor's rights in the insurance policies shall pass to purchaser at the foreclosure sale;

(ii) Flood. Obtain flood insurance if the Property is located in a designated flood hazard area (as determined by Bank, with such determination to be made at Grantor's expense) and where federally subsidized flood insurance is available.

(iii) Liability. Maintain comprehensive general public liability insurance insuring against liability from risks associated with the use, ownership and operation of the property.

(iv) Title. Provide to Bank an A.L.T.A. (1992 form) form of lender's extended coverage title insurance for the full amount of Bank's commitment under



the Agreement insuring the second-lien priority leasehold interest of this Deed of Trust. Such policy shall be issued by a title company acceptable to Bank. The policy shall contain such endorsements as Bank may reasonably request.

(f) Hazardous Waste. Notify Bank within 24 hours of any release of a reportable quantity of any Hazardous Substance, or of the receipt by Grantor of any notice, order or communication from any governmental authority which relates to the existence or potential for environmental pollution of any kind existing on the Property, or results from the use of the Property or any surrounding property. Grantor shall indemnify, defend and hold Bank and its successors and assigns harmless from and against any and all claims, demands, penalties, fees, liens, damages, losses, expenses, and liabilities arising out of or in any way connected with any alleged or actual past or future presence on or under the Property of any Hazardous Substance from any cause whatsoever; it being intended that Grantor shall be strictly and absolutely liable to Bank without regard to any fault by Grantor; provided that this indemnification shall not apply to any Hazardous Substances which originated on or under the Property after the date Bank or any third party acquires fee title to the Property by foreclosure or deed in lieu of foreclosure. "Hazardous Substances" shall mean any substance or material which may be hazardous to the health or safety of any person; including without limitation any substance or material which is now or hereafter becomes regulated under any federal, state, or local statute, ordinance, rule, regulation or other law relating to environmental protection, contamination or cleanup; and

(g) Site Visits, Observation and Testing. Permit Bank and its agents and representatives, at any reasonable time, to enter and visit the Property for the purpose of performing appraisals and/or inspecting the Property, taking and removing soil, groundwater and other samples, and conducting tests on any part of the Property. Grantor agrees that Bank neither has nor undertakes any duty or obligation to examine or inspect the Property, and that any inspection by Bank is solely for the purpose of protecting its security and its rights under this Deed of Trust. If Bank believes it has an obligation to disclose any report or findings made as a result of its inspection of the Property, then Bank may make such disclosure.

(h) Costs and Expenses. Pay, reimburse and indemnify Bank for all of Bank's reasonable costs and expenses incurred in connection with the enforcement of Bank's rights and Grantor's obligations under this Deed of Trust, foreclosing upon this Deed of Trust, defending any action or proceeding purporting to affect the rights or duties of Bank or Trustee under this Deed of Trust, or managing the Property and collecting the Payments, including, without limitation, all reasonable attorneys' fees and value of the services of staff counsel, legal expenses, collection costs, costs of title search, and trustee's and receiver's fees.

5. **NEGATIVE COVENANTS.** Grantor shall not, without Bank's prior written consent:

(a) Payments. Accept or collect Payments more than one month in advance of the due date;

(b) Contracts. Terminate, modify or amend any provision of the Contracts or the Airport Lease, or enter into a Contract with a term, including options or renewal rights, of more than 3 years and/or containing an option to purchase;

(c) Use. Change the present use or intended use of the Property, or scope of the development or improvements of the Property, or permit or consent to any restriction



that would prevent or otherwise impair the use or development of the Property, or permit thereon the generation, processing, storage or disposal of any Hazardous Substance; or

(d) Restrictions on Conveyances. Cause, permit or allow the transfer, conveyance or encumbrance of the Property or of any interest in the Property, or the transfer of any interest in the Grantor, whether voluntary, involuntary or by operation of law.

6. **EMINENT DOMAIN.** In the event any portion of the Property is taken through eminent domain, the amount of the award to which Grantor is entitled shall be applied to the Secured Obligations.

7. **PROTECTION OF BANK'S INTEREST.** If Grantor shall fail to pay any amounts which may become a lien on the Property, pursuant to Section 4.(d), or fail to maintain adequate insurance on the Property, as required by Section 4.(e), Bank may at its sole option pay such obligations and/or obtain such insurance.

8. **ADDITIONS TO SECURED OBLIGATIONS.** Any payments required under Sections 4.(d), 4.(e), 4.(f), 4.(g) or 4.(h), but not made when demanded, shall immediately be deemed added to the Secured Obligations, and shall accrue interest at the highest rate of interest accruing from time to time under the Secured Obligations.

9. **RECONVEYANCE.** Trustee shall reconvey such portion of the Property to the person entitled thereto upon written request of Bank, or upon satisfaction of the Secured Obligations and written request for reconveyance made by Bank or any person interested in the Property, accompanied by Trustee's standard reconveyance fee, which fee shall be Grantor's obligation.

10. **SUCCESSOR TRUSTEE.** In the event of death, incapacity, disability, dissolution, resignation or refusal to act by the Trustee, Bank may appoint a successor trustee and, upon the recording of such appointment in the records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original Trustee.

11. **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, at Bank's option, and at any time without regard to any previous knowledge on Bank's part, constitute a default under the terms of this Deed of Trust, the Agreement, the Secured Obligations, and all related loan documents:

(a) Non-payment of Principal or Interest. Any payment of principal or interest on the Secured Obligations is not made when due; or

(b) Failure to Perform. Any tax, assessment, insurance premium, lien, encumbrance or other charge against the Property is not paid when due; or any other term, covenant or agreement of Grantor contained in this Deed of Trust, the Agreement, or in any other document with Bank, or in which Grantor grants a security interest in the Property, is not promptly performed or satisfied.

12. **REMEDIES UPON DEFAULT.** If any default occurs and is continuing, and subject to any applicable notice and cure period provided for in the Agreement, Bank may, at its option:

(a) Terminate Commitment. Terminate any outstanding and unfulfilled commitment to Grantor;

(b) Accelerate. Declare any or all of the Secured Obligations, together with all accrued interest, to be immediately due and payable without presentment, demand, protest or notice of any kind, all of which are expressly waived by Grantor;



(c) **Payments.** Pay such sums as may be necessary to obtain a current appraisal, to inspect and test the Property, and to pay any tax, assessment, insurance premium, lien, encumbrance or other charge against the Property, including the Airport Lease, all without prejudice to Bank's right to accelerate the Secured Obligations and foreclose upon this Deed of Trust. Grantor shall reimburse Bank upon demand, for all such amounts paid by Bank, with interest thereon from the date of such payment at the highest rate that is, from time to time, applicable on any of the Secured Obligations. All unreimbursed amounts shall be added to and become a part of the Secured Obligations;

(d) **Collection of Payments.** Terminate the license granted to Grantor to collect the Payments; take possession of, manage and operate the Property under the terms of the Contracts; and demand and collect all Payments, including endorsing in the name of Grantor any check, draft or other instrument given as payment, either by itself or through an agent or judicially-appointed receiver. The Payments shall be applied first to payment of the costs of managing the Property and collecting the Payments, and then to the Secured Obligations;

(e) **Trustee's Sale.** Direct the Trustee, upon written request, to sell the Property and apply the sale proceeds in accordance with Washington's Deed of Trust Act (RCW §61.24.010, et seq.). Any person, except Trustee, may bid at the Trustee's sale; and

(f) **Other Remedies.** Pursue all other available legal and equitable remedies, including, without limitation, foreclosing upon this Deed of Trust as a mortgage.

Grantor expressly waives any defense or right, in any action or proceeding in connection with the Secured Obligations, that Bank must first resort to any other security or person.

13. **FIXTURE FILING.** This Deed of Trust also constitutes a fixture filing financing statement pursuant to the Uniform Commercial Code of the State of Washington and RCW 62A.9A-502(c). The Grantor is the Debtor, the Bank is the Secured Party, and their respective addresses for the purpose of this fixture filing and the giving of any notice under or in connection with this Deed of Trust is as first stated above. The mailing address of the Bank is as shown at the top of this Deed of Trust. Grantor's Organizational Number is #601871785. This fixture financing statement covers items of property which are or are to become fixtures with respect to the real property described in Exhibit A hereto.

14. **WAIVER.** No waiver by Bank of any deviation by Grantor from full performance of this Deed of Trust or the Secured Obligations, as the case may be, shall constitute a waiver of Bank's right to require prompt payment or to assert any other right or remedy provided for in this Deed of Trust or the Secured Obligations on the basis of the same or similar failure to perform.

15. **SUCCESSORS/APPLICABLE LAW.** This Deed of Trust shall be binding upon the Grantor and the Grantor's successors and assigns. If there is more than one Grantor, then the obligations of each Grantor shall be joint and several. The enforcement of this Deed of Trust and Bank's rights hereunder shall be governed by and construed in accordance with the laws of the State of Washington.



BCG NORTHWEST, L.L.C.

By:

Wayne G. Basler
WAYNE G. BASLER, Member

By:

James A. Cress
JAMES A. CRESS, Member

By:

GARWOOD INTERESTS, L.P., a Texas
limited partnership, Member

By:

Gary G. Miller
Gary G. Miller, President

STATE OF

Tennessee

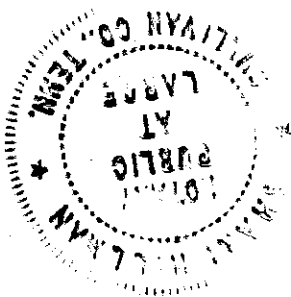
COUNTY OF

Sullivan

I certify that I know or have satisfactory evidence that WAYNE G. BASLER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as a Member of BCG Northwest, L.L.C., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:

11-14-01



(seal)

Shari Hillman

(Print Notary Name)

Shari Hillman

Notary Public in and for the State of

TN

residing at

Kingsport, TN

My appointment expires

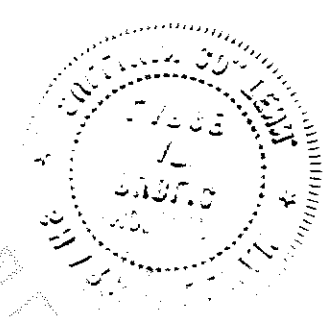
June 22, 2002



200111290003
Skagit County Auditor

11/29/2001 Page 7 of 10 9:20AM

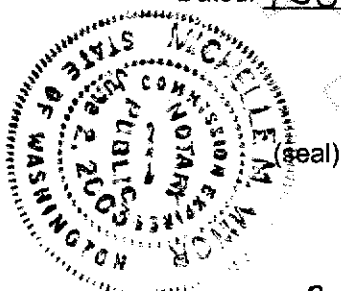
UNOFFICIAL DOCUMENT



STATE OF Washington)
COUNTY OF Skagit)§

I certify that I know or have satisfactory evidence that JAMES A. CRESS is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as a Member of BCG Northwest, L.L.C., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: November 6, 2001

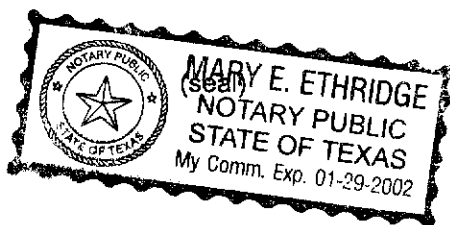


Michelle M. Minor
(Print Notary Name) Michelle M. Minor
Notary Public in and for the State of Washington
residing at Burlington
My appointment expires June 2, 2003

STATE OF Texas)
COUNTY OF Tarrant)§

I certify that I know or have satisfactory evidence that GARY G. MILLER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as President of Garwood, Inc., a Texas corporation, in its capacity as general partner of Garwood Interests, L.P., a Texas limited partnership (the "LP"), in the LP's capacity as a Member of BCG Northwest, L.L.C., a Texas limited liability company (the "LLC"), to be the free and voluntary act of the LLC for the uses and purposes mentioned in the instrument.

Dated: 11-15-01



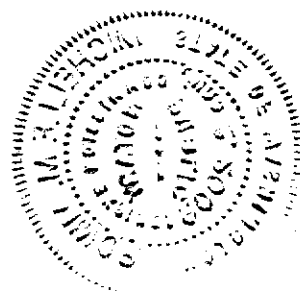
Mary E. Ethridge
(Print Notary Name) MARY ELIZABETH ETHRIDGE
Notary Public in and for the State of TEXAS
residing at FORT WORTH
My appointment expires 1/02



200111290003
Skagit County Auditor

11/29/2001 Page 8 of 10 9:20AM

UNOFFICIAL DOCUMENT



REQUEST FOR FULL RECONVEYANCE

To be used only when all obligations have been paid
under the Borrowing Agreement and this Deed of Trust

TO TRUSTEE:

The undersigned is the legal owner and holder of the Borrowing Agreement and the obligations secured by this Deed of Trust. All obligations under the Borrowing Agreement and this Deed of Trust have been paid or otherwise satisfied and you are hereby requested and directed to reconvey, without warranty, to the person or persons entitled thereto, all of the estate now held by you hereunder.

Dated _____, _____.

Mail reconveyance to: _____



200111290003

Skagit County Auditor

11/29/2001 Page 9 of 10 9:20AM

EXHIBIT A

EXHIBIT A ATTACHED TO AND FORMING A PART OF THAT DEED OF TRUST DATED OCTOBER 31, 2001 GIVEN BY BCG NORTHWEST, L.L.C., AS GRANTOR.

LEGAL DESCRIPTION:

That portion of Lot 111, "Skagit Regional Airport Binding Site Plan, Phase 1", approved August 22, 1986, and recorded August 25, 1986, in Book 7 of Short Plats at pages 111 through 120, inclusive, records of Skagit County, Washington, under Auditor's File No. 8608250002, described as follows:

Beginning at the Northeast corner of said Lot 111;
thence South 1°01'59" West 557.86 feet to a point 65.58 feet north of Steele Road;
thence North 89°33'47" West 27.83 feet;
thence South 1°01'59" 65.58 feet to the north line of Steele Road;
thence West along said the North line of Steele Road 69.08 feet;
thence North 1°01'59" East 33.01 feet;
thence North 89°33'47" West 33.11 feet;
thence South 1°01'59" West 33.01 feet to the North line of Steele Road;
thence Westerly along the North line of said Steele Road 215.38 feet;
thence North 22°42'04" West 80.48 feet;
thence North 55°10'44" West 100.25 feet;
thence North 89°43'45" West 44.03 feet to the West line of said Lot 111;
thence Northerly along the West line of said Lot 111, 151.87 feet to a point lying 346.36 feet South of the Northwest corner of said Lot 111;
thence North 89°02'24" East 155.08 feet;
thence North 53°17'36" East 207.71 feet;
thence North 25°32'52" East 143.48 feet;
thence North 6°41'17" East 83.67 feet to a point along the North line of said Lot 111, said point lying North 88°58'01" West of the Northeast corner of said Lot 111;
thence South 88°58'01" East 120.12 feet to the point of beginning.

(Said described portion of said Lot 111 also shown of record as Exhibit "A" of instrument recorded September 12, 1994, under Auditor's File No. 9409120068 and depicted on Survey filed in Volume 17 of Surveys, page 67, recorded July 7, 1995 under Auditor's File No. 9507070004).



200111290003
Skagit County Auditor

11/29/2001 Page 10 of 10

9:20AM