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Skagit County Auditor

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AFTER RECORDING RETURN TO:

Milbank, Tweed, Hadley & McCloy LLP  
601 South Figueroa, 30<sup>th</sup> Floor  
Los Angeles, CA 90017  
Attention: Gregory A. Bray, Esq.

FIRST AMERICAN TITLE CO.

60249

Document Title(s) (or transactions contained therein):	
1.	<b>Leasehold Deed of Trust, Security Agreement and Fixture Filing</b>
Reference Number(s) of Documents assigned or released:	
Grantor(s) (Last name first, then first name and initials)	
1.	Brown & Cole Stores, LLC
2.	<input type="checkbox"/> Additional names on page ___ of document.
Grantee(s) (Last name first, then first name and initials)	
1.	General Electric Capital Corporation
2.	<input type="checkbox"/> Additional names on page ___ of document.
Legal description (abbreviated: i.e. lot, block, plat or section, township, range)	
<b>Portion of Government Lots 1 and 2, Section 19, Township 35 N, Range 2 E, WM, Situated in Skagit County, Washington.</b>	
<input checked="" type="checkbox"/> Additional legal as set forth on Exhibits A1 through A6 attached hereto.	
Assessor's Property Tax Parcel/Account Number(s):	
See EXHIBIT B	
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

JAN 22 2002

Amount Paid \$  
Skagit Co. Treasurer  
By *[Signature]* Deputy

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

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BROWN & COLE STORES, LLC, a Washington limited liability company, as Grantor

to

FIRST AMERICAN TITLE INSURANCE COMPANY, as Trustee

for the benefit of

GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation,  
for itself and as Collateral Agent for the benefit of the Lender Group  
(as defined in the Credit Agreement) and the Subordinated Lenders  
(as defined below), together with its successors or affiliates in such capacity,  
as Beneficiary

Dated: January 17, 2002

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THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made this 17<sup>th</sup> day of January, 2002, by BROWN & COLE STORES, LLC, Washington limited liability company, whose address is 1331 Commercial Avenue, Bellingham, Washington 98225, as "Grantor", the owner of the leasehold estate in the Mortgaged Property (as defined below) to FIRST AMERICAN TITLE INSURANCE COMPANY, whose address is 2021 Fourth Avenue, Suite 800, Seattle, Washington 98121, as "Trustee", for the benefit of GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation, for itself and as Collateral Agent, for the benefit of the Lender Group (as defined in the Credit Agreement) and the Subordinated Lenders (as defined below), whose address is General Electric Capital Corporation, 201 Mission Street, 27<sup>th</sup> Floor, San Francisco, California 94105, as "Beneficiary."

#### COUNTERPART NOTICE

This Deed of Trust encumbers real property situated in the following twelve counties within the State of Washington: Benton, Cowlitz, Franklin, Grant, Skagit, Snohomish, Whatcom, Okanogan, Douglas, Chelan, Island and Yakima. In order to facilitate recording in each of the twelve counties at the same time, this Deed of Trust has been prepared in twelve counterparts, each of which is identical to this counterpart, except that Exhibits A1 through A6 of this counterpart describes only the portion of the Mortgaged Property situated in the county in which this counterpart is recorded. Grantor and Beneficiary intend and agree that the twelve counterparts constitute one and the same deed of trust, that the lien thereof shall attach to all property encumbered thereby on execution of delivery of any one of the counterparts, and that to the extent permitted by law, foreclosure thereof may be accomplished in a single judicial or nonjudicial proceeding in any county in which any of the Mortgaged Property is located.

#### RECITALS

A. Pursuant to that certain Credit Agreement dated as of the date hereof by and among Grantor, the other Credit Parties from time to time signatory thereto, the Lenders from time to time signatory thereto, Harris Trust and Savings Bank ("Harris Bank"), in its capacities as Administrative Agent and Revolver Agent, GE Capital, in its capacities as Collateral Agent and Documentation Agent, and GE Capital Markets Group, Inc., a Delaware corporation, as Lead Arranger and Syndication Agent (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Credit Agreement"), Lender Group has agreed to make the Loans to Grantor subject to, and in accordance with, the terms and conditions of the Credit Agreement and the other Loan Documents.

B. In order to induce Lender Group to enter into the Credit Agreement and the other Loan Documents and to induce Lender Group to make the Loans to Grantor as provided for in the Credit Agreement, Grantor has agreed to grant a continuing Lien on the Mortgaged Property (as hereinafter defined) to secure the Obligations.

C. It is a requirement under the Credit Agreement and a condition precedent to the making of the Loans that Grantor shall have executed and delivered this Security Instrument.

D. Grantor, Brown & Cole, Inc. ("B&C Inc."), Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank International", New York Branch ("Rabobank"), Ennen Food Stores, Inc. ("EFS"), Gerald W. Christensen ("Christensen"), Edward H. Johnson ("Johnson"), R. Kirk Wilson ("Wilson") and John C. Ennen and David A. Ennen are parties to that certain Subordinated Debt Restructure Agreement dated as of the date hereof (together with all exhibits related thereto as from time to time amended, restated, supplemented or otherwise modified, the "Subordinated Debt Agreement"). (Rabobank, in its capacity as holder of the Rabobank Subordinated Note (as defined below), Christensen and Johnson are referred to herein, collectively, as the "Subordinated Lenders").

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E. In connection with the Subordinated Debt Agreement, and the transactions contemplated thereby, Grantor executed (i) that certain Subordinated Secured Promissory Note, dated as of the date hereof, in the principal amount of \$14,413,500 in favor of Rabobank (the "Rabobank Subordinated Note"); (ii) that certain Subordinated Secured Promissory Note, dated as of the date hereof, in the principal amount of \$1,562,640 in favor of Christensen (the "Christensen Subordinated Note"); and (iii) that certain Subordinated Secured Promissory Note, dated as of the date hereof, in the principal amount of \$1,562,640 in favor of Johnson (the "Johnson Subordinated Note"). (The Rabobank Subordinated Note, the Christensen Subordinated Note and the Johnson Subordinated Note are referred to herein, collectively, as the "Subordinated Notes", and all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Grantor to the Subordinated Lenders under or in connection with the Subordinated Notes, including all principal, interest, fees, charges, expenses, attorneys' fees and any other sum chargeable to Grantor under the Subordinated Notes are referred to herein, collectively, as the "Subordinated Obligations".)

F. The respective rights, priorities and remedies of Lender Group and the Subordinated Lenders are set forth in that certain Intercreditor and Subordination Agreement, dated as of the date hereof, by and among Harris Bank, in its capacity as Administrative Agent for Lender Group, and the Subordinated Lenders (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Subordination Agreement").

G. Pursuant to that certain Collateral Agency Agreement dated as of the date hereof, by and among Grantor, Harris Bank, in its capacity as Administrative Agent for the Lenders, GE Capital, in its capacity as Collateral Agent for the Secured Parties, and the Subordinated Lenders (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Collateral Agency Agreement"), the Subordinated Lenders irrevocably designated and appointed GE Capital to act as the Collateral Agent under the Shared Collateral Documents (as defined in the Collateral Agency Agreement).

H. Grantor is the owner of the leasehold estate in the Mortgaged Property covered by this Security Instrument.

I. Grantor owns and may hereafter acquire certain fixtures located on or about the Mortgaged Property.

J. Grantor, for good and valuable consideration received, has agreed to absolutely assign the rents, issues and profits of the Mortgaged Property to Beneficiary, for the benefit of Lenders and Subordinated Lenders.

K. Grantor, for good and valuable consideration received, has agreed to execute and deliver this Security Instrument to secure the obligations of Grantor as hereinafter set forth.

L. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Credit Agreement.

NOW, THEREFORE:

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid, the receipt of which hereby is acknowledged, and the further consideration, uses, purposes and trusts herein set forth and declared, has granted, bargained, transferred, assigned, set-over and conveyed and by these presents does grant, bargain, transfer, assign, set over and convey unto Trustee, and unto his or its successors in the trust hereby created and his or its assigns, forever, all of the Grantor's right, title and interest in and to the following:

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A. The interest of Grantor as lessee or sublessee under the leases and subleases set forth on Schedule I hereto (each being a "Lease" and collectively the "Leases") concerning certain premises located on the real property described in Exhibits A1 through A6 hereto and made a part hereof (the "Land"), or a portion thereof as set forth in the Lease (that portion of the Land which is the subject to the Grantor's leasehold interest under the Leases is hereinafter referred to as the "Mortgaged Property"); and

B. All present and future structures, buildings and improvements of any kind on the Mortgaged Property; and all fixtures, chattels, machinery, electronic machines, equipment, motor vehicles, building materials, appliances, general intangibles, fittings and articles of personal property of every kind and nature whatsoever, all appurtenances and additions thereto and substitutions or replacements thereof, and goods of every nature whatsoever now or hereafter owned by Grantor and located in or on, or attached or affixed to, or used or intended to be used in connection with, the Mortgaged Property, including, but not limited to, all heating, lighting, laundry, incinerating, boilers, gas, electric and power equipment, engines, pipes, pumps, tanks, dynamos, motors, generating equipment, conduits, switchboards, plumbing and piping fixtures, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, air cooling and air conditioning apparatus, elevators and escalators and related machinery and equipment, shades, awnings, blinds, curtains, drapes, attached floor coverings, including rugs and carpeting, television, radio and music cable antennae and systems, screens, storm doors and windows, stoves, refrigerators, dishwashers, ranges, cooking apparatus, mechanical kitchen equipment, freezers and other installed appliances, attached cabinets, partitions, ducts and compressors, and trees, plants and other items of landscaping; all supplies, equipment, furniture, furnishings and apparatus used in the operation of the building(s) located on the Mortgaged Property, including, but not limited to, communication systems, sprinkling and vacuum cleaning systems, visual and electronic surveillance systems, beds, dressers, cabinets, tables, chairs, mirrors, desks, wall coverings, clocks, televisions, radios, intercoms, blankets, linen, towels, pillows and bedspreads; all kitchen, cafeteria and restaurant equipment, including, but not limited to, menus, dishes, silverware, cooking utensils, tables, refrigerating units, stoves, microwave equipment, ovens and timers used in connection with the Mortgaged Property; all cocktail lounge supplies, including, but not limited to, inventory, bars, glassware, bottles and tables used in connection with the Mortgaged Property; all chaise lounges, swimming pool heaters and equipment, recreational equipment and maintenance supplies used in connection with the Mortgaged Property; and all books and records of any business located on the Mortgaged Property, including all interest of Grantor in any of the above items now or hereafter at any time acquired under lease, conditional sale contract, chattel, mortgage, or other title retaining or security instrument, all of the foregoing of which, including replacements and additions thereto, shall, to the fullest extent permitted by law and for the purposes of this Security Instrument, be deemed to be part and parcel of, and appropriated to the use of, the Mortgaged Property and, whether affixed or annexed thereto or not, be deemed conclusively to be part of the Mortgaged Property and conveyed by this Security Instrument, and Grantor shall execute and deliver, from time to time, such further instruments and documents as may be required by Beneficiary to confirm the lien of this Security Instrument on any of the foregoing (hereafter the "Improvements").

C. All appurtenances of the Mortgaged Property and all rights of Grantor in and to any streets, roads or public places, easements or rights of way relating to the Mortgaged Property.

D. All fixed, minimum, percentage and other rents, expense pass-through payments, parking fees, rental and business interruption insurance payments, liability insurance payments, temporary condemnation proceeds, casualty insurance proceeds and other condemnation proceeds, all receipts from licenses, concessions and other sources, all recoveries of Grantor in any litigation respecting the Mortgaged Property or based upon any third party warranties or guarantees or otherwise based upon or respecting the construction, physical condition or value of the Mortgaged Property, including payments in settlement thereof, payments in consideration of the early termination or modification of any lease or other agreement affecting the Mortgaged Property, and all income and revenue of a non-rental nature attributable to the Mortgaged Property, including, but not limited to, any of the foregoing insurance or other sources of income or recovery respecting the Mortgaged Property that are maintained or obtained at the election of Grantor above or in addition to requi



E. All proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Mortgaged Property, or any part thereof, or for conveyance in lieu of condemnation, and all causes of action, whether accrued before or after the date of this Security Instrument, of all types for damages or injury to the Mortgaged Property or any part thereof, or in connection with any transaction financed by funds loaned to Grantor by Lenders or Subordinated Lenders, and secured hereby, or in connection with or affecting the Mortgaged Property or any part thereof, including, without limitation, causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact.

F. All leases, subleases, contracts for hire or rental agreements pertaining to the use or occupancy or covering the Mortgaged Property or any portion thereof now or hereafter existing or entered into at any time by Grantor or any predecessor to Grantor, as landlord, lessor or sublessor, and any other party, as tenant, lessee or sublessee (a "Tenant Lease"),

G. All of the rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property, arising from the use or enjoyment of all or any portion thereof or services provided in connection therewith, including, but not limited to, the Mortgaged Property, or from any Tenant Lease or agreement pertaining thereto, whether now due, past due, or to become due, and including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature ("Rents").

H. All options to purchase, lease or sublease or otherwise acquire:

(i) the Mortgaged Property or any portion thereof or interest therein, any greater estate in the Mortgaged Property now owned or hereafter acquired or

(ii) any other property of any kind adjacent to or used or to be used in connection with any of the Mortgaged Property.

I. All interests, estate or other claims, both in law and in equity, in the Mortgaged Property.

J. All easements, rights-of-way or other rights, and all tenements, hereditaments and appurtenances thereof and thereto, held or used in connection with:

(i) the Mortgaged Property as a means of access to the Mortgaged Property, or

(ii) any of the Mortgaged Property for any purpose.

K. All causes of action, claims, compensation, proceeds and recoveries for any damage or injury to or condemnation or taking of the Mortgaged Property or any Improvements thereon or any part thereof or for any loss or diminution in the value of the Mortgaged Property or any Improvements and all rights of Grantor in or to any fund, program or trust monies and any reimbursement therefrom directly or indirectly established, maintained or administered by any governmental authority or any other individual or entity which is designed to or has the effect of providing funds (whether directly or indirectly or as reimbursement) for the repair or replacement of storage tanks (whether above or below ground) located on the Mortgaged Property or the remediation or cleanup of any spill, leakage or contamination from any such tank or resulting from the ownership, use or maintenance of any such tank or to compensate third parties for any personal injury or property damage with respect thereto.

L. All existing and future goods located on the Mortgaged Property which are now owned or in the future will be owned by Grantor and used in the operation or occupancy of the Mortgaged Property or in any construction on the Mortgaged Property but which are not effectively made Mortgaged Property under Clause B



above, including, but not limited to, any such items constituting appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment.

M. All general intangibles relating to the development or use or operation of the Mortgaged Property, including, but not limited to, all governmental licenses (to the extent permitted by the terms of such licenses), permits, variances, approvals and authorizations relating to construction on the Mortgaged Property or relating to the use or operation of the Mortgaged Property, and all management contracts, and all other contracts, contract rights, administrative records, agreements, commitments, undertakings and arrangements relating to the use or operation of the Mortgaged Property, all warranties, guaranties, covenants, commitments and purchase orders, and all trademarks and trade names specifically relating to the Mortgaged Property.

N. All plans and specifications prepared for construction or renovation of improvements on the Mortgaged Property or operations to be conducted on the Mortgaged Property and all studies, data and drawings related thereto; and also all contracts and agreements of Grantor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the construction or renovation of improvements on the Mortgaged Property.

O. All reserves, deferred payments, deposits, refunds, including awards or refunds by any governmental authority to any present or subsequent owners of the Mortgaged Property on account of excess taxes paid thereupon, the exercise of the right of eminent domain, alteration of the grade of any street, or any other injury to or decrease of value of the Mortgaged Property, all cost savings and payments of any kind relating to the Mortgaged Property or construction or operations thereupon, all present and future accounts and other rights of Grantor to the payment of money, no matter how evidenced, which arise from the use or operation of the Mortgaged Property, and all writings evidencing such accounts and other rights.

P. To the extent permitted by law, all inventories of any kind and nature, now owned or hereafter acquired, and used in the occupation or operation of the Mortgaged Property.

Q. Any contract right, option or right of first refusal, now owned or hereafter acquired by Grantor, to purchase or otherwise acquire the interest of the lessor or sublessor (a "Lessor") under any Lease or any other estate, title or interest in or to the property subject to the Lease.

R. Any right of Grantor to reject or terminate, or to agree to or acquiesce in any rejection or termination of the Lease, whether made with respect to any election under Section 365(b) of the Bankruptcy Code (or any successor provision) or under any similar law or right of any nature, or otherwise.

S. All other rights and privileges (including but not limited to any credit, security, deposit and offset) of the Grantor as lessee under the Lease and all rights, privileges and prerogatives to terminate, cancel, modify, change, supplement, alter, amend or renew the Lease.

T. All proceeds of the property described in clauses A through S above. For purposes of this Security Instrument, the term "proceeds" includes all rents, royalties, issues, income, payments and profits from the property referred to above and whatever is receivable or received when the property referred to above or proceeds are sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes, without limitation, all insurance and condemnation proceeds and products of any and all of the foregoing and all rights to payment, including return premiums with respect to any insurance relating thereto (whether or not Grantor is required to carry such insurance by Lenders or Subordinated Lenders hereunder), and any and all right, title, interest that Grantor may hereafter acquire in and to any of the foregoing.

Grantor also hereby grants to Beneficiary, for the benefit of Lenders and the Subordinated Lenders, a security interest in all of the foregoing described property, whether now or hereafter existing, and in which Grantor now has or hereafter obtains any right, title, estate or interest.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary, for the benefit of Lenders and Subordinated Lenders, subject to the Subordination Agreement and Collateral Agency Agreement, may elect the prompt and complete payment, performance and observance of:

(a) all the Obligations as defined in the Credit Agreement; and

(b) subject to the Subordination Agreement, all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Grantor to the Subordinated Lenders under the Subordinated Credit Agreements and the Subordinated Notes, including all principal, interest, fees, charges, expenses, attorneys' fees and any other sum chargeable to Grantor under the Subordinated Credit Agreements or the Subordinated Notes (collectively, the "Subordinated Obligations").

This Security Instrument constitutes a Loan Document as defined in the Credit Agreement. This Security Instrument is not intended to, and does not and shall not, secure any of B&C Inc.'s obligations or indebtedness to any or all of the Subordinated Lenders.

#### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto Trustee, as trustee for the benefit of Beneficiary, to its successors in the trust created by this Security Instrument and to its or their respective assigns, forever, in trust, upon the terms and conditions set forth herein;

IN TRUST, WITH THE POWER OF SALE, to secure payment to Beneficiary and the Lenders of the Obligations and to the Subordinated Lenders of the Subordinated Obligations at the time and in the manner provided for its payment in the Loan Documents, and, subject to the Subordination Agreement, in the Subordinated Credit Agreements and Subordinated Notes;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to Lenders the Obligations and to Subordinated Lenders the Subordinated Obligations at the time and in the manner provided in the Loan Documents, the Subordinated Credit Agreements and the Subordinated Notes, and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents, and the Subordinated Credit Agreements and the Subordinated Notes, these presents and the estate hereby granted, and the assignment of Rents provided for hereby, shall cease, terminate and be void.

ARTICLE I

COVENANTS OF GRANTOR

To protect the security of this Security Instrument, and to effect the foregoing assignment of proceeds, Grantor covenants and agrees as follows:

1.1. Performance of Obligations Secured.

A. Grantor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Obligations, the principal of and interest on any advance of funds by Lenders for the benefit of Grantor and any loan fees provided for in the Obligations, and shall further perform fully and in a timely manner all Obligations.

B. Subject to the Subordination Agreement, Grantor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Subordinated Obligations, the principal of and interest on any advance of funds by Subordinated Lenders for the benefit of Grantor and any loan fees provided for in the Subordinated Obligations, and shall further perform fully and in a timely manner all Subordinated Obligations.

1.2 Insurance.

A. Grantor will, at its sole cost and expense, maintain or cause to be maintained all insurance policies with respect to the Mortgaged Property of such type, in such amounts and with such insurers as required pursuant to and in accordance with Section 5.4 of the Credit Agreement. Grantor shall deliver to Beneficiary, for the benefit of Lenders and the Subordinated Lenders, the original (or certified copy) of each policy of insurance and evidence of payment of all premiums therefor. Such policies of insurance shall contain an endorsement, in form and substance acceptable to Beneficiary, showing loss payable to Beneficiary, for the benefit of Lenders and the Subordinated Lenders, and all losses under said insurance shall be applied in the manner provided in Section 1.3 hereof. Such endorsement, or an independent instrument furnished to Beneficiary, shall provide that the insurance companies will give Beneficiary at least thirty (30) days' prior written notice before any such policy or policies of insurance shall be altered or canceled and that no act or default of Grantor or any other Person shall affect the right of Beneficiary, for the benefit of Lenders, to recover under such policy or policies of insurance in case of loss or damage, and Beneficiary shall be included as an additional insured on all liability policies. Grantor will, upon request of Beneficiary, furnish to Beneficiary at reasonable intervals a certificate of an authorized officer of Grantor setting forth the nature and extent of all insurance maintained by Grantor in accordance with this Section.

B. In the event of the foreclosure of this Security Instrument or other transfer of title to the Mortgaged Property in extinguishment, in whole or in part, of the Obligations or Subordinated Obligations secured hereby, all right, title and interest of Grantor in and to any insurance policy (including without limitation any policies, types of insurance or coverage amounts that Grantor may obtain in addition to or in excess of that required under the Loan Documents and Subordinated Loan Documents), or premiums or payments in satisfaction of claims or any other rights thereunder then in force, shall pass to the purchaser or grantee notwithstanding the amount of any bid at such foreclosure sale.

C. All renewal and replacement policies shall be delivered to Beneficiary at least fifteen (15) days before the expiration of the expiring policies. Beneficiary shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for, or with respect to, the amount of insurance carried, the form or legal sufficiency of any policy.



insurance companies, or payment or defense of lawsuits, and Grantor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

1.3 Condemnation and Insurance Proceeds.

A. Grantor, immediately upon obtaining knowledge of the institution of any proceedings relating to condemnation or other taking of or damage or injury to the Mortgaged Property or any portion thereof, or knowledge of any casualty damage to the Mortgaged Property or damage in any other manner, will immediately notify Beneficiary in writing. Beneficiary, for the benefit of Lenders and the Subordinated Lenders, may participate in any such proceedings and join Grantor in adjusting any loss covered by insurance. In addition, Beneficiary may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof.

B. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action and payments which Grantor may receive or to which Grantor may become entitled with respect to the Mortgaged Property or any part thereof shall be paid over to Beneficiary, for the benefit of Lenders and Subordinated Lenders, and shall be applied first toward reimbursement of all costs and expenses of Beneficiary in connection with recovery of the same, and then shall be applied, in the sole and absolute discretion of Beneficiary and without regard to the adequacy of its security hereunder, but subject to the provisions of Subsection C below with respect to any condemnation proceeds or insurance recoveries resulting from condemnation, damage or injury to the Mortgaged Property, to the payment or prepayment (without premium or charge) of any Obligations or Subordinated Obligations secured hereby in such order as Beneficiary may determine, or to the reimbursement of Grantor for expenses incurred by it in the repair or restoration of the Mortgaged Property. Any application of such amounts or any portion thereof to any Obligations or Subordinated Obligations secured hereby or any release of funds by Beneficiary to Grantor shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

C. Except to the extent that any such condemnation proceeds or insurance recoveries are required to be applied under the Lease for the purposes of paying rebuilding and restoration costs, in which case the provisions of the Lease shall prevail to the extent such provisions are inconsistent with the terms and conditions hereof, in the event of any condemnation or other taking or damage or injury to the Mortgaged Property, if Grantor shall seek to apply any such condemnation proceeds or insurance recoveries to the rebuilding and restoration of the Mortgaged Property so damaged, then Beneficiary shall make such condemnation proceeds and insurance recoveries available, providing that Grantor shall have fulfilled all of the following conditions:

(i) no Event of Default (as defined in Article II below) shall have occurred under this Security Instrument;

(ii) Grantor shall not be in material default under any of the terms, covenants and conditions of any of the leases, licenses or other occupancy agreements, to which Grantor is a party and which affects the Mortgaged Property;

(iii) Beneficiary shall be satisfied that such condemnation proceeds or insurance recoveries shall be sufficient to fully restore and rebuild the Mortgaged Property free and clear of all liens except the lien of this Security Instrument (and any other liens expressly approved by the terms of this Security Instrument), or, in the event that such condemnation proceeds or insurance recoveries are in Beneficiary's judgment insufficient to restore and rebuild the Mortgaged Property, then,

(a) in the case of damage or injury to the Mortgaged Property, Grantor shall deposit promptly with Beneficiary funds which, together with the insurance recoveries, shall be sufficient in Beneficiary's judgment to restore and rebuild the Mortgaged Property, and



(b) in the case of a partial condemnation or other taking, Grantor shall deposit promptly with Beneficiary funds which, together with the condemnation proceeds shall be sufficient in Beneficiary's judgment to restore what remains of the Mortgaged Property to an economically viable entity;

(iv) construction and completion of restoration and rebuilding of the Mortgaged Property shall be completed in accordance with plans and specifications and drawings submitted to and approved by Beneficiary, which approval shall not be unreasonably withheld or delayed. The plans, specifications and drawings shall provide for the reconstruction of the Mortgaged Property to its original condition (unless otherwise approved by Beneficiary, which approval shall not be unreasonably withheld or delayed). The plans shall not be modified in any material respect without Beneficiary's prior written consent, which consent shall not be unreasonably withheld or delayed;

(v) Beneficiary shall also have approved all prime contractors and subcontractors, and the general contract or contracts Grantor proposes to enter into with respect to the restoration and rebuilding, which approval Beneficiary shall not unreasonably withhold or delay;

(vi) any and all monies which are made available for restoration and rebuilding hereunder shall be held in an interest-bearing account (which interest shall become a part of such fund) and disbursed through Beneficiary or a title insurance or trust company satisfactory to Beneficiary, in accordance with standard construction lending practice, including, if requested by Beneficiary, monthly lien waivers and title insurance date-downs, and the provision of payment and performance bonds by Grantor, or in any other manner approved by Beneficiary in Beneficiary's discretion; and

(vii) Beneficiary shall be satisfied that the quality of the materials and workmanship of the repair or reconstruction of the Mortgaged Property will be at least equal to the quality of the materials and workmanship of the Mortgaged Property prior to such damage.

The excess of the above condemnation proceeds or insurance recoveries above the amount necessary to complete such restoration or rebuilding, if any, shall be disbursed to Grantor if Beneficiary determines, in its reasonable discretion, that Beneficiary's security, for the benefit of Lenders and Subordinated Lenders, under this Mortgage will not be impaired. Otherwise, such excess shall be applied without prepayment premium as a credit upon the Obligations and Subordinated Obligations secured hereby.

#### 1.4 Taxes, Liens and Other Items.

A. Grantor shall pay all taxes (including, without limitation, all real and personal property taxes and assessments), bonds, assessments, fees, liens, charges, fines, impositions and any and all other items which are attributable to or affect the Mortgaged Property and which may attain a priority over this Security Instrument by making payment prior to delinquency directly to the payee thereof, unless Grantor shall be required to make payment to Beneficiary, for the benefit of Lenders and Subordinated Lenders, on account of such items pursuant to Section 1.6 hereof; and

B. Grantor shall promptly discharge any lien which has or may attain priority over this Security Instrument.

#### 1.5 Leases.

A. Grantor shall give written notice to Beneficiary of the entering into any material Tenant Lease, including a copy thereof;

B. Grantor shall not execute any material Tenant Lease without first providing Beneficiary with a copy of the proposed lease, and Beneficiary has the right, in its discretion, to approve or disapprove such material Tenant Lease. Grantor shall at all times fully perform the obligations of the lessor under all material Tenant Leases, and

C. Whenever requested by Beneficiary, Grantor shall furnish to Beneficiary a certificate of Grantor setting forth the names of all lessees under any material Tenant Leases, the terms of their respective material Tenant Leases, the space occupied, and the rents payable thereunder.

1.6 Rents.

A. Grantor shall receive Rents in trust for Beneficiary, to be applied by Beneficiary, for the benefit of Lenders and Subordinated Lenders, for the purpose of paying principal and interest and all other sums payable on the Obligations and the Subordinated Obligations and any other costs associated with the performance of the Obligations and the Subordinated Obligations then due, if any and for all other sums payable under this Security Instrument.

B. Rents are hereby absolutely, presently and unconditionally assigned, transferred, conveyed and set over to Beneficiary and Grantor agrees and stipulates that the absolute, present, and unconditional assignment of Rents herein to Beneficiary perfects and makes effective, as of the date upon which this Assignment is delivered, Beneficiary's interest, for the benefit of Lenders and Subordinated Lenders, in Rents and that no further act by Beneficiary is needed to perfect, enforce or make effective Beneficiary's interest, for the benefit of Lenders, in the Rents. Such absolute assignment to Beneficiary, for the benefit of Lenders and Subordinated Lenders, is independent of Beneficiary's actual or constructive possession of the Mortgaged Property. Grantor agrees and stipulates that Grantor shall hold any and all Rents, whether now due, past due, or to become due, including all prepaid rents and security deposits, in trust for application to the Obligations and for the preservation and operation of the Mortgaged Property.

C. It is understood and agreed that neither the foregoing assignment of Rents to Beneficiary nor the exercise by Beneficiary of any of its rights or remedies under this Security Instrument shall impose upon Beneficiary any of the duties and obligations of a Beneficiary-in-possession or otherwise make Beneficiary responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Mortgaged Property by any court at the request of Beneficiary or by agreement with Grantor, or the entering into possession of the Mortgaged Property or any part thereof by such receiver, be deemed to make Beneficiary a Beneficiary-in-possession or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

D. Notwithstanding the foregoing absolute assignment of Rents, Beneficiary confers upon Grantor a license to collect and retain Rents as they become due and payable; provided, however, that Beneficiary may at any time after the occurrence of an Event of Default (as hereinafter defined) and without regard to the value of the security, in Beneficiary's sole discretion and without notice to Grantor, revoke said license and may collect and retain any or all Rents, without taking possession of all or any part of the Mortgaged Property.

E. Upon such revocation of Grantor's license, Grantor shall have no interest whatsoever, legal and/or economic, in the Rents or other benefits of the Mortgaged Property assigned hereunder, and all such Rents and other benefits shall be received and held by Grantor in constructive trust for Beneficiary and delivered promptly in kind to Beneficiary or to a court-appointed receiver for the Mortgaged Property, without the necessity for further notice to, or demand upon, Grantor.



Additionally, upon an Event of Default, upon Beneficiary's demand therefor, Grantor shall immediately turn over to Beneficiary, for the benefit of Lenders and Subordinated Lenders, or to a receiver appointed by the court, all Rents then held by Grantor, together with any interest accumulated thereupon.

F. Grantor agrees that in the event Beneficiary seeks to trace Rents assigned hereunder for a period commencing upon an Event of Default and continuing so long as the Event of Default continues and Grantor collects Rents from the Mortgaged Property, it shall be a conclusive evidentiary presumption that funds held by or for the benefit of Grantor, its principals, or agents, are Rents to Beneficiary, for the benefit of Lenders and Subordinated Lenders, under the terms of this Security Instrument in an amount equal to the aggregate of actual gross receipts of Rents received by Grantor during such period.

G. The right of Beneficiary to collect Rents as herein provided shall not be deemed to grant to Beneficiary the right to possession of the Mortgaged Property, except as expressly herein provided, or to impose upon Beneficiary the duty to produce any Rents or maintain the Mortgaged Property in whole or in part.

H. Any Rents collected by Beneficiary, for the benefit of Lenders and Subordinated Lenders, may be applied by Beneficiary, in its sole discretion, against any of the Obligations or Subordinated Obligations whether now existing or hereafter arising. Collection of any Rents by Beneficiary, for the benefit of Lenders, shall not waive any other right or remedy of Beneficiary hereunder or any notice of default given hereunder or invalidate any acts done pursuant to notice.

I. Without the prior written consent of Beneficiary, Grantor shall not:

(i) accept prepayments of rent exceeding one month under any Tenant Lease of any part of the Mortgaged Property, or

(ii) take any action under or with respect to any material Tenant Lease which would materially decrease either the obligations of the lessee thereunder or the rights or remedies of the lessor, or

(iii) modify or amend in any material respect any material Tenant Lease or, except where the lessee is in default, cancel or terminate the same or accept a surrender of the leased premises, or

(iv) consent to the assignment of the whole or any portion of any lessee's interest under any material Tenant Lease, or

(v) create or permit any lien or encumbrance which, upon foreclosure, would be superior to any material Tenant Lease, unless the lienor or encumbrancer provides the lessee with a non-disturbance agreement, or

(vi) in any other manner impair Beneficiary's rights and interest with respect to Rents. A default by Grantor in the performance of any covenant in any material Tenant Lease assigned to Beneficiary by reason of which default the tenant has the right to cancel such Tenant Lease or to claim any diminution of or offset against future rents payable thereunder, shall, at the option of Beneficiary, constitute an Event of Default hereunder.

A Tenant Lease shall be "material" if either (a) the space which the tenant thereunder has the right to occupy consists of more than ten percent (10%) of the floor space of the building or buildings on the Mortgaged Property in which Grantor has a leasehold interest, or (b) the subrent payable annually by the tenant thereunder represents more than ten percent (10%) of the annual gross revenue delivered by Grantor on account of Grantor's interest in or use of the Mortgaged Property.



J. Unless otherwise approved in writing by Beneficiary, each existing Tenant Lease of a portion of any structures or improvements which constitute a part of the Mortgaged Property shall be prior to the lien of this Security Instrument. As for any Tenant Leases entered into by Grantor after the date hereof, such Tenant Leases shall contain a provision satisfactory to Beneficiary that in the event of the exercise of the private power of sale or a judicial foreclosure hereunder, such Tenant Leases, at the sole and exclusive option of the purchaser at such sale, shall not be terminated and the tenants thereunder shall attorn to such purchaser and, if requested to do so, shall enter into a new Tenant Lease for the balance of the term of such Tenant Lease then remaining upon the same terms and conditions.

1.7 Uniform Commercial Code, Security Agreement and Fixture Filing.

A. This Security Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code -- Secured Transactions, as enacted in the state in which the Mortgaged Property is located (the "Commercial Code") for any items of personal property specified above as part of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the Commercial Code and which are not herein effectively made part of the Mortgaged Property, and Grantor hereby grants Beneficiary, for the benefit of Lenders and Subordinated Lenders, a security interest in said property, and in all additions thereto, substitutions therefor and proceeds thereof, for the purpose of securing all Obligations and Subordinated Obligations of Grantor now or hereafter secured by this Security Instrument.

B. Grantor agrees that Beneficiary may file any appropriate document in the appropriate index as a financing statement for any of the items specified above as part of the Mortgaged Property. Grantor agrees to execute and deliver financing and continuation statements covering said property from time to time and in such form as Beneficiary may require to perfect and continue the perfection of Beneficiary's lien or security interest, for the benefit of Lenders and Subordinated Lenders, with respect to said property. Grantor shall pay all costs of filing such statements and renewals and releases thereof and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require.

C. Without the prior written consent of Beneficiary, Grantor shall not create or suffer to be created any other security interest in said property, including replacements and additions thereto.

D. Upon the occurrence of an Event of Default hereunder, Beneficiary, for the benefit of Lenders and Subordinated Lenders, shall have the rights and remedies of a secured party under the Commercial Code as well as all other rights and remedies available at law or in equity, and, at Beneficiary's option, Beneficiary may also invoke, for the benefit of Lenders and Subordinated Lenders, the remedies provided in Article III of this Security Instrument as to such property.

E. Grantor warrants and agrees that there is no financing statement covering any such property, or any part thereof, on file in any public office and agrees that all or such portion of any such property now or hereafter subject to this Mortgage is, and shall be kept (except with the prior written consent of Beneficiary) free from any other lien, security interest or encumbrance.

F. This Security Instrument constitutes a financing statement filed as a fixture filing in the Official Records of the State in which the Mortgaged Property is located with respect to any and all fixtures included within the term Mortgaged Property as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

G. Upon written request of the Lenders or Subordinated Lenders and surrender of the Loan Documents or Subordinated Loan Documents to the Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the property then subject to this Security Instrument. Any reconveyance, whether full or partial, may be made in terms to "the person or persons



legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

1.8 Further Encumbrances; Transfers of Property; Change of Ownership; Attorneys' Fees.

A. Except as expressly provided in Section 1.8(B) below, without the prior written consent of Beneficiary, Grantor shall not execute or deliver any pledge, security agreement, mortgage, deed of trust or other instrument of hypothecation, covering all or any portion of the Mortgaged Property or any interest therein, grant a security interest in the Mortgaged Property or permit the creation of a voluntary or contractual lien or other encumbrance in the Mortgaged Property.

B. Notwithstanding Section 1.8(A) above, Grantor may from time to time replace items of personal property and fixtures owned by Grantor and constituting a part of the Mortgaged Property, provided that:

(i) the replacements for such items of personal property or fixtures are of substantially equivalent value and quality;

(ii) Grantor has good title to such replacement property which is free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise), or charges of any kind, or the rights of any conditional sellers, vendors or any other third parties in or to such replacement property have been expressly subordinated at no cost to Beneficiary to the lien of this Security Instrument in a manner satisfactory to Beneficiary; and

(iii) at the option of Beneficiary, Grantor provides, at no cost to Lenders or Subordinated Lenders, a satisfactory opinion of counsel to the effect that this Security Instrument constitutes a valid and subsisting first lien on and security interest in such replacement property and is not subject to being subordinated or the priority thereof affected under any applicable law.

C. Grantor acknowledges that ownership by Grantor of a valid and enforceable leasehold interest in the Mortgaged Property was a material inducement to Lenders in undertaking to provide the financial accommodations set forth in the Credit Agreement secured by this Security Instrument, and that Lenders and Subordinated Lenders, in providing the financial accommodations set forth in the Credit Agreement secured by this Security Instrument, are relying upon the creditworthiness, business reputation, knowledge and prior experience of Grantor in operating and managing properties similar to the Mortgaged Property. Accordingly, without the prior written consent of Beneficiary being first had and obtained, which consent can be granted or denied in Beneficiary's sole discretion:

Grantor shall not, voluntarily or involuntarily, by operation of law or otherwise, sell, convey, transfer (including, without limitation, any foreclosure sale or deed in lieu of foreclosure under any mortgage or deed of trust, the lien of which is junior to the lien of this Security Instrument whether or not Beneficiary has approved such mortgage or deed of trust) or dispose of all or any portion of the Mortgaged Property or any interest therein without the Beneficiary's written consent. For purposes of this Section 1.8, a transfer or disposition of the Mortgaged Property or any interest therein shall include, without limitation, the sale, execution of a contract to sell or option to purchase, pledge assignment, conditional sale, execution of a title retention agreement, lease for space in the Improvements located on the Mortgaged Property containing an option to purchase, transfer (including a transfer as a result of or in lieu of condemnation), or other alienation of all or any portion of the Mortgaged Property or any interest therein except pursuant to Tenant Leases permitted by Section 1.6 (collectively, "Transfer"). In the event of a breach of any of the foregoing covenants, Beneficiary may at its option and without limiting any other right or remedy available to Beneficiary, for the benefit of Lenders and Subordinated Lenders, at law, in equity or by agreement with Grantor, accelerate the maturity of the Obligations and the Subordinated



Obligations and require the payment of the then existing outstanding principal balance and all other sums due under the Credit Agreement and under this Security Instrument.

D. Grantor shall reimburse Beneficiary for all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by Beneficiary in connection with the review by Beneficiary of Grantor's request for Beneficiary's consent to any Transfer, including, without limitation, any reasonable attorneys' fees and expenses incurred by Beneficiary in reviewing any Subordinate Security Instrument pursuant to Section 1.16 below.

1.9 Preservation and Maintenance of Mortgaged Property.

A. Grantor shall keep the Mortgaged Property and every part thereof in good condition and repair, and shall not permit or commit any waste, impairment, or deterioration of the Mortgaged Property, nor commit, suffer or permit any act upon or use of the Mortgaged Property in violation of law or applicable order of any governmental authority, whether now existing or hereafter enacted and whether foreseen or unforeseen, or in violation of any covenants, conditions or restrictions affecting the Mortgaged Property, or bring or keep any article upon any of the Mortgaged Property or cause or permit any condition to exist thereon which would be prohibited by or could invalidate any insurance coverage maintained, or required hereunder to be maintained, by Grantor on or with respect to any part of the Mortgaged Property, and Grantor further shall do all other acts which from the character or use of the Mortgaged Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Grantor shall underpin and support, when necessary, any building, structure or other improvement situated on the Mortgaged Property, or take such steps as reasonably necessary to enforce any obligation to do so on the part of Grantor's landlord or the owner or lessor of the Land. Grantor shall complete or restore and repair promptly and in a good workmanlike manner any building, structure or improvement on the Mortgaged Property which may be constructed, damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, whether or not insurance or other proceeds are available to cover in whole or in part the costs of any such completion, restoration or repair, or take such steps as reasonably may be necessary to enforce any obligation to do so on the part of Grantor's landlord or the owner or lessor of the Land; provided, however, Grantor shall not demolish, remove, expand or extend any building, structure or improvement on the Mortgaged Property, nor construct, restore, add to or alter any such building, structure or improvement, nor consent to or permit any of the foregoing to be done, without in each case obtaining the prior written consent of Beneficiary thereto.

B. Grantor shall obtain and at all times shall keep in full force and effect and comply with all governmental permits and requirements as may be necessary under applicable law, whether now existing or hereafter created, to lawfully exercise such rights as Grantor may have under the Leases to construct, own and operate the Mortgaged Property in accordance with the Leases, including, without limiting the generality of the foregoing, all applicable environmental and zoning laws, ordinances and regulations and all certificates of occupancy or equivalent permits required for such portion of the Mortgaged Property and its occupancy.

C. Grantor hereby does and shall defend and indemnify each Person in Lenders and Subordinated Lenders and hold each Person in Lenders and Subordinated Lenders harmless from and against any and all Claims. As used herein, "Claims" mean any and all actual out-of-pocket-cost (including, without limitation, attorneys' reasonable fees and expenses, and also including, without limitation, fees and expenses of both outside and staff counsel), expense or loss arising from any and all claims, losses, liabilities, damages, fines, penalties, charges, administrative and judicial proceedings and orders, injunctive relief, judgments, remedial action requirements and enforcement actions of any kind, injury to person, property or natural resources, and arising, directly or indirectly, in whole or in part, out of or attributable to the presence, use, generation, disposal, discharge, storage, Release (as defined in the Credit Agreement) or threatened Release of any asbestos or asbestos-containing material, or any Hazardous Material (as defined in the Credit Agreement) at, about, on, from, under, within or affecting the Mortgaged Property, or elsewhere in connection with the transportation of Hazardous Material to or



from the Mortgaged Property, whether foreseeable or unforeseeable, regardless of when such presence is discovered and regardless of whether by Grantor, any employees, agents, contractors or subcontractors of Grantor or any third person.

D. Without limiting the generality of the foregoing and for purposes of clarification only, Claims include reasonable and actual out-of-pocket costs incurred by Beneficiary in connection with (x) determining whether the Mortgaged Property is in compliance with all applicable Environmental Laws (as defined in the Credit Agreement), if the investigation thereof is based on Beneficiary's reasonable suspicion of noncompliance, (y) any removal, remediation of any kind and disposal of any Hazardous Material present or Released at, on, about, under or within the Mortgaged Property to the extent required by applicable Environmental Laws in effect at the time of such removal, remediation or disposal, and (z) any repair of any damage to the Mortgaged Property or any other property caused by any such removal, remediation or disposal. The rights of Lenders and Subordinated Lenders hereunder shall not be limited by any investigation or the scope of any investigation undertaken by or on behalf of Lenders and Subordinated Lenders in connection with the Mortgaged Property prior to the date hereof. This indemnity shall not be limited by any representation, warranty or indemnity of Grantor made in connection with any Obligations or Subordinated Obligations secured hereby, irrespective of whether Grantor has knowledge as of the date of this Security Instrument or during the term of this Security Instrument of the matters to which such representation, warranty or indemnity relate.

E. Grantor shall provide parking facilities in kind, size and location necessary to comply with any requirements of any ordinance, Tenant Lease or recorded restrictions now or hereafter affecting the Mortgaged Property or any part thereof, or any other applicable governmental laws and regulations, if and to the extent that it is Grantor's responsibility to do so under the terms of the Lease.

F. Grantor shall not drill or extract or enter into any lease for the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind or character on or from the Mortgaged Property or any part thereof without first obtaining Beneficiary's written consent.

G. Unless required by applicable law or unless Beneficiary has otherwise first agreed in writing, which agreements shall not be unreasonably withheld or delayed, Grantor shall not make or allow any changes to be made in the nature of the occupancy or use of the Mortgaged Property or any part thereof for which the Mortgaged Property or such part was intended at the time this Security Instrument was delivered. Grantor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and affecting the Mortgaged Property or any part thereof without in each case obtaining Beneficiary's prior written consent thereto, which consent shall not be unreasonably withheld or delayed.

1.10 Financial Statements; Offset Certificates.

Grantor, within ten (10) days after receiving a request from Beneficiary therefor, shall furnish a written statement, duly acknowledged, of all amounts Grantor believes are due on any Obligations secured hereby, whether for principal or interest or otherwise, and stating whether any offsets or defenses exist against the Obligations or Subordinated Obligations secured hereby and covering such other matters with respect to any such Obligations or Subordinated Obligations as Beneficiary may reasonably require.

1.11 Governmental Charges.

Grantor shall pay all costs, fees and expenses of Beneficiary, its agents and counsel in connection with the performance of its duties hereunder, including, without limitation, the cost of any Beneficiary's sale guaranty or other title insurance coverage ordered in connection with any foreclosure proceedings hereunder, and shall pay all taxes (except federal and state income taxes) or other governmental charges or impositions imposed by



any governmental authority on Beneficiary by reason of their interest in the Loan Documents, Subordinated Loan Documents or this Security Instrument.

1.12 Protection of Security; Costs and Expenses.

A. Grantor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary, and shall pay all costs and expenses, including, without limitation, cost of evidence of title and reasonable attorneys' fees and expenses (including, without limitation, fees and expenses of both outside and staff counsel), in any such action or proceeding in which Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Security Instrument or to enforce or establish any other rights or remedies of Beneficiary, for the benefit of Lenders and Subordinated Lenders, hereunder.

B. If Grantor fails to perform any of the covenants or agreements contained in this Security Instrument, or if any action or proceeding is commenced which affects Beneficiary's interest, for the benefit of Lenders and Subordinated Lenders, in the Mortgaged Property or any part thereof, including, but not limited to, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal or state law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, or to a decedent, then Beneficiary may, but without obligation to do so and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereunder, make such appearances, disburse such sums and take such action as Beneficiary deems necessary or appropriate to protect any Person in Lenders' and Subordinated Lenders' interest, including, but not limited to, disbursement of reasonable attorneys' fees (including, without limitation, fees and expenses of both outside and staff counsel), entry upon the Mortgaged Property to make repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of either Beneficiary appears to be prior or superior hereto.

C. Grantor further agrees to pay all reasonable expenses of any Person in Lenders and Subordinated Lenders (including fees and disbursements of counsel) incident to the protection of the rights of any Person in Lenders and Subordinated Lenders hereunder, or to enforcement or collection of payment of the Obligations or Subordinated Obligations, whether by judicial or non-judicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Grantor, or otherwise, including costs of collection of judgment and costs of appeal.

D. Any amounts disbursed by any Person in Lenders or Subordinated Lenders pursuant to this Section 1.12 shall be additional Obligations or Subordinated Obligations of Grantor secured by this Security Instrument and each of the Loan Documents and Subordinated Loan Documents as of the date of disbursement and shall bear interest at the Default Rate. All such amounts shall be payable by Grantor immediately without demand. Nothing contained in this Section 1.12 shall be construed to require any Person in Lenders and Subordinated Lenders to incur any expense, make any appearance, or take any other action.

1.13 Hazardous Material.

Except as to the information set forth and disclosed by Grantor to Beneficiary in Disclosure Schedule (3.17) of the Credit Agreement, Grantor hereby warrants that there has not been, since the first date upon which Grantor acquired title to, an interest in, or possession of the portion of the Mortgaged Property with respect to which Grantor has a right of occupancy, any Release of Hazardous Material of any type whatsoever on, upon or into the portion of the Mortgaged Property with respect to which Grantor has a right of occupancy (including any "release" (as defined in 42 U.S.C. Section 9601 (22)) or threat of any Release of any Hazardous Material (including, without limitation, as defined in 42 U.S.C. Section 9601 (14) or as defined as hazardous or toxic under any other federal, state, or local law)), including without limitation, petroleum, crude oil or any fraction thereof, or natural gas liquids, liquefied natural gas, or synthetic gas. Grantor further warrants that except as to the information set forth and



disclosed by Grantor to Beneficiary in Disclosure Schedule (3.17) of the Credit Agreement, to Grantor's knowledge, there has never been any such Release on, upon or into any such portion of the Mortgaged Property nor on, upon or into any property adjoining or in the vicinity of the Mortgaged Property which could have come to be located upon the Mortgaged Property or the water or ground water thereon or thereunder, except to the extent that any such Release, taken together with any prior Release, does not constitute a condition that violates any applicable Environmental Laws (as defined in the Credit Agreement) in effect at any time and for which Grantor as tenant or subtenant may be held responsible.

Except as to the information set forth and disclosed by Grantor to Beneficiary in Disclosure Schedule (3.17) of the Credit Agreement, Grantor further warrants that: (a) to the best of Grantor's knowledge the Mortgaged Property has never been used for a mine, a landfill, a dump, or other disposal facility; (b) Grantor has no knowledge of any underground storage tanks of any kind or character, whether empty or containing substances of any nature located within the portion of the Mortgaged Property which has been leased or subleased to Grantor, and from the date of acquisition by Grantor of its leasehold interest, such portions of the Mortgaged Property as are subject to that interest and the use thereof, including the use of any and all such underground storage tanks described herein, has been and is in compliance with all applicable Environmental Laws; (c) Grantor has received no notice of any violation or any alleged violation of any Environmental Laws (as defined in the Credit Agreement) from any governmental entity or agency with respect to all or any portion of the Mortgaged Property, and to the best of Grantor's knowledge, there is not now nor has there ever been any other past or pending investigation or report involving the Mortgaged Property by any governmental entity or agency which in any way relates to Hazardous Material; (d) to the best of Grantor's knowledge, no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any violation of any Environmental Laws in connection with the Mortgaged Property; (e) to the best of Grantor's knowledge, there are not now, nor have there ever been, any actions, suits, proceedings or damage settlements relating in any way to any Release of or threatened Release of Hazardous Material, in, upon, under, over or from the Mortgaged Property; (f) to the best of Grantor's knowledge, the Mortgaged Property is not listed in the United States Environmental Protection Agency's List of Hazardous Waste Sites or any other list of "hazardous substance" or Hazardous Material sites maintained by any federal, state or local governmental agency. The representations and warranties contained in this Subsection shall, insofar as they relate to the Mortgaged Property, be deemed to be continuing and shall remain true and correct in all material respects until the Obligations and Subordinated Obligations secured by this Security Instrument have been paid in full. In that regard, Grantor further agrees as follows:

A. Notice of Hazardous Material. Grantor agrees to provide Lenders and Subordinated Lenders with copies of any notifications of any Release of oil or Hazardous Material or of any environmental hazards or potential hazards which are given by or on behalf of Grantor to any federal, state or local agencies or authorities or which are received by Grantor from any federal, state or local agencies or authorities with respect to the Mortgaged Property secured by this Security Instrument. Such copies shall be sent to Beneficiary concurrently with their being mailed or delivered to the governmental agencies or authorities and within ten (10) days after they are received by Grantor.

B. Notice of Chemical Disclosures. Grantor agrees to provide Beneficiary with copies of all emergency and hazardous chemical inventory forms (hereinafter "Notices") previously given by Grantor, as of the date hereof, to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, (42 U.S.C. Section 11011 et seq.), and to provide Beneficiary with copies of all such Notices subsequently sent to any such governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986. Such copies of subsequent Notices shall be sent to Beneficiary, concurrently with their being mailed to any such governmental authority or agency.

C. Indemnity. Grantor hereby covenants and agrees to indemnify, protect and hold harmless any Person in Lenders and Subordinated Lenders from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising as a result of the interest granted to such Person pursuant to this Security Instrument and from (a) any Release or threat of a Release, actual or alleged, of any Hazardous Material upon or about the Mortgaged Property or respecting any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Mortgaged Property, or respecting any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Mortgaged Property, regardless of whether such Release or threat of Release or alleged Release or threat of Release has occurred prior to the date hereof or hereafter occurs and regardless of whether such Release occurs as the result of the negligence or misconduct of Grantor or any third party or otherwise, (b) any violation, actual or alleged, of or any other liability under or in connection with any Environmental Laws or any other law, statute, ordinance, rule or regulation of any Governmental Authority or quasi-Governmental Authority, specifically including, without limitation, the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Emergency Planning and Community Right-to-Know Act of 1986, the Washington State Environmental Policy Act, RCW 43.21, et seq.; the Water Pollution Control Act, RCW 90.48.010, et seq.; the Hazardous Waste Management Statute, RCW 70.105, et seq.; the Toxic Substance Control Act, RCW 70.105B, et seq.; and the Model Toxic Control Act, RCW 70.105C, et seq., as same may be amended, or any other Environmental Laws or environmental protection or toxic waste or Hazardous Material handling, treatment, storage, or disposal laws, statutes, ordinances, rules or regulations, relating to the Mortgaged Property or respecting any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Mortgaged Property, regardless of whether such violation or alleged violation or other liability has occurred or arisen prior to the date hereof or hereafter occurs or arises and regardless of whether such violation or other liability occurs or arises as the result of the negligence or misconduct of Grantor or any third party or otherwise. This indemnity shall survive any foreclosure of this Security Instrument as to any such Release or threat of Release or any such violation, alleged violation or other liability occurring or arising prior to such foreclosure.

D. No Use of Hazardous Material. Grantor covenants and agrees that it shall not locate, produce, treat, transport, incorporate, discharge, emit, Release, deposit or dispose of any Hazardous Material in violation of any Environmental Laws in, upon, under, over or from the Mortgaged Property, shall not permit any Hazardous Material to be located, produced, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Laws, and shall comply with all Environmental Laws which are applicable to the Mortgaged Property.

E. Environmental Audits. At any time, and from time to time if Beneficiary so requests, Grantor shall have any environmental review, audit, assessment and/or report relating to the Mortgaged Property heretofore provided to Beneficiary, updated, at Grantor's sole cost and expense, by an engineer or scientist acceptable to Beneficiary and shall promptly provide Beneficiary with a copy of all such audits. Beneficiary may also at its option and at Grantor's sole expense, contract for a "Phase 1" environmental inspection report prepared and certified by an environmental consultant satisfactory to Beneficiary to determine whether the Mortgaged Property complies with all Environmental Laws. If, based on a "Phase 1" environmental audit, Beneficiary determines that additional testing or investigation should be performed on the Mortgaged Property, Beneficiary may contract for such testing, which shall be performed at Grantor's sole expense. Grantor shall cooperate in all reasonable ways with Beneficiary in connection with any such audits or tests.

1.14 Warranty of Title.

Grantor is lawfully seized and possessed of a valid, subsisting and indefeasible leasehold estate in all of the property described in the Lease, and has the right, power and authority to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey such leasehold estate to Lenders and Subordinated Lenders. The Lease is a lease of fee simple absolute estate in the Land or a sublease granted by a tenant having a lease of a fee simple



absolute estate in the Land and, to the extent not owned in fee by the Grantor, the Improvements. The Lease is not subject to any liens, mortgages or encumbrances other than Permitted Exceptions (as hereinafter defined). Grantor owns its interest in the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument, other than standard printed exceptions (the "Permitted Exceptions"). Grantor shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend such title, validity and priority to Lenders and Subordinated Lenders against the claims of all parties or persons whomsoever. No portion of the Mortgaged Property in which the Grantor has any right, title or interest is principally or primarily used for agricultural or farming purposes.

1.15 Management of Mortgaged Property.

If Beneficiary so requires, Beneficiary, for the benefit of Lenders and Subordinated Lenders, shall receive an assignment of Grantor's rights under any property management agreement with respect to the Mortgaged Property and the written consent of the property manager thereto, and shall have the right to cure any default by Grantor under any such property management agreement.

1.16 Subordinate Security Instrument.

Grantor (i) represents as a special inducement to Lenders to enter into and extend credit pursuant to the Credit Agreement, and to the Subordinated Lenders to enter into and extend credit pursuant to the Subordinated Debt Restructure Agreement, that as of the date hereof, there are no liens against the Grantor's right, title, and interest in the Mortgaged Property securing debt junior to the Obligations and Subordinated Obligations secured by this Security Instrument, (ii) covenants that there are to be none as of the date when this Security Instrument becomes of record, and (iii) agrees that Grantor will not, without the prior written consent of Beneficiary, which consent may be withheld by Beneficiary in its sole and absolute discretion and without regard to the adequacy of its security hereunder, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property or any interest therein (herein "Subordinate Security Instrument").

1.17 Grantor's Obligation In Leases, and Security Instruments and Agreements About Leases.

A. Grantor shall fulfill Grantor's obligations under the Lease applicable to the Mortgaged Property.

B. If (i) Grantor, or anyone else with rights to and/or obligations under the Lease or any material Tenant Lease, including, but not limited to, lessors, lessees, sublessors, and sublessees thereunder, becomes a debtor in a voluntary or involuntary bankruptcy case, and (ii) an order for relief is issued pursuant to the bankruptcy laws, then Grantor shall take all permissible and available actions consistent with the bankruptcy, and on a timely basis, for the purpose of preventing the Lease (a) from being rejected by Grantor, any bankruptcy trustee or any other person pursuant to the bankruptcy laws, or (b) from being terminated in any manner. Grantor shall take such actions within five (5) days from the date of filing of the order for relief. References herein to the bankruptcy laws include, but are not limited to, Section 365 of Title 11 of the provisions of the United States Code, which is often referred to as Bankruptcy Code Section 365, and to Bankruptcy Rules applicable to proceedings involving the application of that section, as it and they may be amended from time to time.

Grantor hereby appoints Beneficiary, for the benefit of Lenders and Subordinated Lenders, as Grantor's attorney-in-fact to do whatever Beneficiary believes is necessary to protect Beneficiary's interests, for the benefit of Lenders, in the Mortgaged Property, including the right to prevent the rejection or termination of the Lease under the bankruptcy laws. Beneficiary, for the benefit of Lenders, shall have the right, in Grantor's name, place and stead, or in Beneficiary's own name to do whatever Beneficiary, for the benefit of Lenders, deems



necessary to protect Lenders' interests, in the Mortgaged Property. Notwithstanding the foregoing, Lenders and Subordinated Lenders shall have no obligation or responsibility to look out for or take care of any of Grantor's interests in the Mortgaged Property or otherwise. Beneficiary may, for the benefit of Lenders and Subordinated Lenders, but is not obligated to, take any actions to prevent the Leases from being rejected or terminated pursuant to the bankruptcy laws. Those actions include, but are not limited to, the following:

(i) The filing of any instruments, documents and pleadings with the court with respect to an assumption or assignment of the Lease; and

(ii) The filing of a notice of election to remain in possession of leased real property if any lessor under any Lease becomes a debtor in a bankruptcy case and rejects any Lease.

C. Regarding Tenant Leases, (i) Grantor shall give written notice to Beneficiary of the entering into of any Tenant Lease, including a copy thereof, (ii) Grantor shall not execute any material Tenant Lease without first providing Beneficiary with a copy of the proposed lease, and Beneficiary has the right, in its discretion, to approve or disapprove such Tenant Lease, (iii) Grantor shall at all times fully perform the obligations of the lessor under all Tenant Leases, and (iv) whenever requested by Beneficiary, Grantor shall furnish to Beneficiary a certificate of Grantor setting forth the names of all lessees under any Tenant Leases, the terms of their respective Tenant Leases, the space occupied, and the rents payable thereunder.

## ARTICLE II

### EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder:

2.1 The occurrence of any Event of Default under, and as defined in the Credit Agreement, this Security Instrument or any other Loan Document.

## ARTICLE III

### REMEDIES

Upon the occurrence of any Event of Default, Trustee or Beneficiary, for the benefit of Lenders and Subordinated Lenders, shall have, in its sole discretion, any and all of the following rights and remedies, without regard to the adequacy of any security for the Obligations or Subordinated Obligations hereby secured:

#### 3.1 Acceleration.

A Trustee or Beneficiary may declare the entire principal amount of the Obligations or Subordinated Obligations then outstanding (if not then due and payable) and accrued and unpaid interest thereon, and all other sums or payments required thereunder, to be due and payable immediately, without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Grantor.

B. Upon such acceleration and notwithstanding the stated maturity in the Credit Agreement, the principal amount of the Obligations or Subordinated Obligations, the accrued and unpaid interest thereon and all other sums or payments required thereunder shall thereupon become and be immediately due and payable. Any acceleration may be rescinded and annulled by Trustee or Beneficiary. No such rescission and annulment shall



affect any subsequent Event of Default or acceleration or impair any right of Trustee or Beneficiary, for the benefit of Lenders and Subordinated Lenders, with respect to any subsequent Event of Default or acceleration.

3.2 Entry.

A. Irrespective of whether Trustee or Beneficiary, for the benefit of Lenders and Subordinated Lenders, exercises the option to accelerate provided in Section 3.1 above, Trustee or Beneficiary in person, by agent, or by a receiver appointed by the court, with or without bringing any action or proceeding may enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof, and do all things necessary or appropriate in Trustee's or Beneficiary's sole discretion in connection therewith, including, without limitation, making and enforcing, and if the same be subject to modification or cancellation, modifying or canceling Tenant Leases upon such terms or conditions as Trustee or Beneficiary deems proper, obtaining and evicting tenants, and fixing or modifying rents, contracting for and making repairs and alterations, and doing any and all other acts which Trustee or Beneficiary deems proper to protect the security hereof; and either with or without so taking possession, in its own name or in the name of Grantor, sue for or otherwise collect and receive Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and expenses (including, without limitation, fees and expenses of both outside and staff counsel), upon any Obligations or Subordinated Obligations secured hereby, and in such order as Trustee or Beneficiary may determine.

B. Upon request of Trustee or Beneficiary, Grantor shall assemble and make available to Trustee or Beneficiary at the site of the Mortgaged Property covered hereby any personal property of any nature which within the Trustee's possession or control that has been removed therefrom.

C. The entering upon and taking possession of the Mortgaged Property, or any part thereof, the collection of any Rents and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice of default hereunder or invalidate any act done pursuant to any such default or notice, and, notwithstanding continuance in possession of the Mortgaged Property or any part thereof by Trustee or Beneficiary, for the benefit of Lenders, or a receiver, and the collection, receipt and application of the Rents, Beneficiary, for the benefit of Lenders and Subordinated Lenders, shall be entitled to exercise every right provided for in this Security Instrument or by law or in equity upon or after the occurrence of an Event of Default, including, without limitation the right to exercise the power of sale.

D. Any of the actions referred to in this Section 3.2 may be taken by Trustee or Beneficiary irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the Obligations or Subordinated Obligations hereby secured.

3.3 Appointment of Receiver.

A. Upon an Event of Default, Beneficiary may elect to seek the court appointment of a receiver to enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof, and Grantor hereby consents to the appointment of a receiver hereunder.

B. The parties further stipulate that at such hearing on Beneficiary's motion to appoint a receiver for the Mortgaged Property, a copy of this recorded Security Instrument shall be entered into evidence at the request of either party notwithstanding any objection from the other party.

C. Upon the appointment of a receiver for the Mortgaged Property, Grantor agrees to immediately furnish to such receiver any and all (i) security deposits, and (ii) Rents that Grantor has in its possession or control.



D. The receiver shall have the authority to make, terminate, enforce or modify Tenant Leases of the Mortgaged Property upon such terms and conditions as the court shall approve, make repairs, alterations and improvements to the Mortgaged Property or develop the Mortgaged Property for the purpose of protecting or enhancing the security hereof, and Grantor agrees to pay all expenses of action so taken.

E. Grantor shall pay the expenses of the receiver, which expenses shall be secured hereby. All sums collected by the receiver hereunder, less all costs and expenses, including reasonable attorneys' fees, and less such sum as receiver deems necessary and appropriate as a reserve to meet such future expenses, may be applied to the Obligations or Subordinated Obligations secured hereby in such order as Beneficiary, in its sole discretion, shall determine.

F. Neither application of said sums to said Obligations or Subordinated Obligations nor any other action taken by Trustee or Beneficiary hereunder shall waive any other right or remedy of any Person in Lenders hereunder or any notice of default hereunder or nullify the effect of any such notice of default.

G. Any action taken under this Section may be taken by Beneficiary, with or without regard to the adequacy of the security for the Obligations or Subordinated Obligations secured hereunder, and whether or not notice of default has been recorded.

#### 3.4 Judicial Action; Pre-Judgment Attachment.

Beneficiary, for the benefit of Lenders and Subordinated Lenders, may bring an action in any court of competent jurisdiction to foreclose this instrument or to enforce any of the covenants and agreements hereof. In connection with any such judicial action, at any time said action is pending, Beneficiary may apply for a pre-judgment attachment pursuant to the laws of the State in which the Mortgaged Property is located, and Grantor agrees and acknowledges that any such attachment order lawfully obtained and enforced by Beneficiary, for the benefit of Lenders, shall not violate the laws of the State in which the Mortgaged Property is located or similar statutory provision or decisional law.

#### 3.5 Power of Sale.

A. Beneficiary may elect to cause the Mortgaged Property or any part thereof to be sold under the power of sale herein granted in any manner permitted by applicable law.

B. In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Mortgaged Property which consists of a right in action or any improvements thereon without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law.

C. In connection with any sale or sales hereunder, Beneficiary may elect to treat the Grantor's leasehold interest in the Mortgaged Property as if the same were personal property to the extent such treatment is not inconsistent with applicable law and may dispose of the same through public or private sale conducted in the same manner which would be employed if such leasehold interest was within the scope of the Commercial Code.

D. Any sale of any personal property hereunder shall be conducted in any manner permitted by any applicable section of the Commercial Code or any other applicable law. Where the assets in which Beneficiary has an interest by virtue of this Security Instrument consists of real and personal property or fixtures, Beneficiary may elect in its discretion to exercise its rights and remedies, for the benefit of Lenders and Subordinated Lenders, against any or all of the Mortgaged Property, personal property, and fixtures in such order and manner as is now or hereafter permitted by applicable law.



E. Without limiting the generality of the foregoing, Beneficiary may, in its sole and absolute discretion and without regard to the adequacy of its security, elect to proceed against any or all of the Mortgaged Property, personal property and fixtures in any manner permitted under the Commercial Code or any other applicable law; and the power of sale herein granted shall be exercisable with respect to all or any of the Mortgaged Property, personal property and fixtures covered hereby, and Beneficiary is hereby authorized and empowered to conduct any such sale of any Mortgaged Property, personal property and fixtures in accordance with the procedures applicable to Mortgaged Property.

F. Where the assets in which Beneficiary has an interest by virtue of this Security Instrument consists of real and personal property, any reinstatement of the Obligations or Subordinated Obligations secured hereby, following default and an election by Beneficiary to accelerate the maturity of said obligation, which is made by Grantor or any other person or entity permitted to exercise the right of reinstatement under applicable law shall not prohibit Beneficiary from conducting a sale or other disposition of any personal property or fixtures or from otherwise proceeding against or continuing to proceed against any personal property or fixtures in any manner permitted by the Commercial Code or any other applicable law; nor shall any such reinstatement invalidate, rescind or otherwise affect any sale, disposition or other proceeding held, conducted or instituted with respect to any personal property or fixtures prior to such reinstatement or pending at the time of such reinstatement. Any sums paid to Beneficiary in effecting any reinstatement shall be applied to the secured obligation and to the Beneficiary's reasonable costs and expenses in the manner required by applicable law.

G. If this Security Interest covers multiple Leases, Beneficiary may: (i) designate the order in which the Grantor's right, title and interest in such Leases shall be offered for sale or sold, or (ii) elect to sell such leasehold interests through a single sale, or through two or more successive sales, or in any other manner Beneficiary deems in its best interest. In the event Beneficiary elects to treat any such leasehold interests as personal property in connection with any public or private sale, notice of such sale shall be deemed adequate if transmitted at least ten days prior to the sale.

H. In any notice of foreclosure sale, advertisement of sale, or other post-default public statement of Beneficiary in connection with the judicial or nonjudicial foreclosure of all or any part of the Grantor's leasehold interest in the Mortgaged Property, Grantor agrees that Beneficiary shall have the right, but not the obligation, to disclose any information known to them regarding defects in the Mortgaged Property, and Grantor hereby waives and releases any and all claims against any Person in Lenders and Subordinated Lenders arising out of or in connection with the giving or making of any such notices or statements regarding the Mortgaged Property.

I. Any Person, including Grantor or Beneficiary, may purchase at any sale hereunder, and Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the Obligations or Subordinated Obligations hereby secured.

J. If Beneficiary is the successful bidder, it may apply any of the outstanding Obligations or Subordinated Obligations secured hereby in settlement of the purchase price.

K. Should Beneficiary desire that more than one sale or other disposition of the Grantor's leasehold interest in and to the Mortgaged Property be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Grantor's leasehold interest in the Mortgaged Property not sold until all Obligations or Subordinated Obligations secured hereby have been fully paid, nor shall the power of sale granted under this Security Instrument be exhausted until all such sales are conducted.

L. In the event Beneficiary elects to dispose of the Grantor's leasehold interest in the Mortgaged Property through more than one sale, Grantor agrees to pay the costs and expenses of each such sale and



of any judicial proceedings wherein the same may be made, including reasonable compensation to Beneficiary, its agents and counsel, and to pay all expenses, liabilities and advances made or incurred by Beneficiary in connection with such sale or sales, together with interest on all such advances made by Beneficiary at the Default Rate.

M. Upon any sale hereunder, Beneficiary shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

### 3.6 Proceeds of Sale.

The proceeds of any sale made under or by virtue of this Article III, together with all other sums which then may be held by Beneficiary, for the benefit of Lenders and Subordinated Lenders, under this Security Instrument, whether under the provisions of this Article III or otherwise, shall be applied as follows:

**FIRST:** To the payment of the costs and expenses of sale and of any judicial proceedings wherein the same may be made, including reasonable compensation to Beneficiary, its agents and counsel, recording and title fees, escrow fees and to the payment of all expenses, liabilities and advances made or incurred by Beneficiary under this Security Instrument, together with interest on all advances made by Beneficiary at the Default Rate.

**THEREAFTER:** In the sole and absolute discretion of Beneficiary and in such order as Beneficiary may determine, with respect to any Obligations or Subordinated Obligations secured hereby, including, without limitation, all interest, default interest, fees and charges in connection therewith, as provided under this Security Instrument and any other of the Loan Documents and Subordinated Loan Documents.

### 3.7 Hazardous Material Remedies.

In addition to the other rights and remedies provided herein, Beneficiary shall have the following rights and remedies:

A. Beneficiary, acting by itself or through a court-appointed receiver, may enter upon, possess, manage, operate, dispose of, and contract to dispose of personal property belonging to Grantor located upon the Mortgaged Property or any part thereof; take custody of all accounts; negotiate with governmental authorities with respect to the Mortgaged Property's environmental compliance and remedial measures; take any action necessary to enforce compliance with environmental provisions, including, but not limited to, spending Rents to abate the problem; make, terminate, enforce or modify Tenant Leases of the Mortgaged Property upon such terms and conditions as Beneficiary deems proper; contract for goods and services, hire agents, employees, and counsel, make repairs, alterations, and improvements to the Mortgaged Property necessary, in Beneficiary's judgment, to protect or enhance the security hereof; incur the risks and obligations ordinarily incurred by owners of property (without any personal obligation on the part of the receiver); and/or take any and all other actions which may be necessary or desirable to comply with Grantor's Obligations or Subordinated Obligations hereunder and under the Loan Documents and Subordinated Loan Documents.

B. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations which Beneficiary may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Grantor. All such costs and expenses incurred by Beneficiary (including without limitation court costs, reasonable consultant fees and attorneys, fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Default Rate, from the date they are incurred until said sums have been paid.



C. With or without notice (except for such notice as is required under applicable law), and without releasing Grantor from any Obligations or Subordinated Obligations hereunder, Beneficiary may cure any default of Grantor and, in connection therewith, Beneficiary or its agents, acting by themselves or through a court-appointed receiver, may enter upon the Mortgaged Property or any part thereof and perform such acts and things as Grantor might perform without breaching the Lease and that Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including without limitation of any of its other rights:

(i) to obtain a court order to enforce Beneficiary's right to enter and inspect the Mortgaged Property, to which the decision of Beneficiary as to whether there exists a Release or threatened Release of a Hazardous Material onto the Mortgaged Property shall be deemed reasonable and conclusive as between the parties hereto, if made in good faith; and

(ii) to have a receiver appointed to enforce Beneficiary's right to enter and inspect the Mortgaged Property for Hazardous Material.

D. Beneficiary may seek a judgment that Grantor has breached its covenants, representations and/or warranties with respect to or in connection with Hazardous Material or the Release thereof, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract, whether commenced prior to or after foreclosure of all or any portion of the Grantor's leasehold interest in the Mortgaged Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties and other out-of-pocket expenses (collectively, "Environmental Costs") incurred or advanced by Beneficiary relating to any cleanup, remediation or other response action either (i) required by applicable law or (ii) relating to a reasonable and good faith cleanup, remediation, or other response action concerning a Release or threatened Release of Hazardous Material. All Environmental Costs incurred by Beneficiary pursuant to this paragraph (including without limitation court costs, consultants' fees and attorneys' fees, whether incurred in litigation or not and whether before or after judgment) shall be reimbursed by Grantor to Beneficiary upon demand therefor and shall bear interest at the Default Rate from the date of expenditure until said sums have been paid by Grantor. Beneficiary shall be entitled to bid, at the sale of all or any portion of the Grantor's leasehold interest in the Mortgaged Property held pursuant to this Security Instrument, the amount of said Environmental Costs, and interest in addition to the amount of the other Obligations or Subordinated Obligations hereby secured. Grantor and Beneficiary acknowledge and agree that Grantor shall be fully and personally liable for Environmental Costs hereunder, and such liability shall not be limited to the original principal amount of the obligations secured by the Security Instrument. For the purposes of any action brought under this paragraph, Grantor hereby waives the defense of laches and any applicable statute of limitations.

E. Beneficiary may waive its lien against any parcel or portion of the leasehold interest of Grantor in any Mortgaged Property that has been damaged, impaired or adversely affected in any manner due to the Release or presence or threatened Release of Hazardous Material, whether Mortgaged Property, fixtures, or personal property, and pursue Grantor for any debt, and may exercise any and all rights and remedies of an unsecured creditor against Grantor and all of Grantor's assets and property for the recovery of any deficiency and Environmental Costs. As between Beneficiary and Grantor, Grantor shall have the burden of proving that Grantor or any related party (or any affiliate or agent of Grantor or any related party) was not negligent in permitting the Release or presence or threatened Release of Hazardous Material.

F. Grantor acknowledges and agrees that, notwithstanding any term or provision contained herein or in the Loan Documents or Subordinated Loan Documents, Grantor shall be fully and personally liable for all judgments and awards entered against Grantor on the Obligations or Subordinated Obligations herein pursuant to a valid waiver of Beneficiary's lien under applicable law, and such judgments and awards shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents and Subordinated Loan Documents, if any, and Grantor shall be fully liable for all judgments and awards entered against Grantor hereunder and such liability shall not be limited to the original principal amount of the Obligations or Subordinated Obligations secured by this



Security Instrument and Grantor's Obligations and Subordinated Obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance or any other transfer of all or any portion of the Grantor's leasehold interest in the Mortgaged Property or the Security Instrument. For purposes of any action brought under this paragraph, Grantor hereby waives the defense of laches and any applicable statute of limitations.

3.8 Waiver of Marshalling; Application of Proceeds; and Set-Off Claims.

A. Grantor, for itself and for all persons hereafter claiming through or under it, or who may at any time hereafter become holders of liens junior to the lien of this Security Instrument, hereby expressly waives and releases all rights to direct the order in which any of the Grantor's leasehold interests in the Mortgaged Property shall be sold, in the event of any sale or sales pursuant hereto, and to have any of such leasehold interests and/or any other property, now or hereafter constituting security for any of the Obligations or Subordinated Obligations secured hereby, marshalled upon any foreclosure of this Security Instrument or of any other security for any of said Obligations or Subordinated Obligations.

B. Grantor hereby waives and disclaims any state law or principle of equity which limits the ability of Beneficiary, for the benefit of Lenders and Subordinated Lenders, to sell or dispose of the Grantor's leasehold interests in the Mortgaged Property in multiple nonjudicial foreclosure actions, rather than one nonjudicial foreclosure action, individually rather than en masse, or to obtain and/or force a deficiency judgment in respect of any individual leasehold interest of Tenant in any Mortgaged Property.

C. Grantor hereby waives and disclaims any state law or principle of equity which limits the discretion of Beneficiary, for the benefit of Lenders, to apply any payment received pursuant to this Security Instrument or any other Loan Document or received on account of liquidation of any or all of the Grantor's leasehold interest in the Mortgaged Property, and Grantor further agrees that Beneficiary, for the benefit of Lenders and Subordinated Lenders, may apply such payment(s) to any of the Obligations or Subordinated Obligations evidenced or secured by this Security Instrument or any other Loan Document in such order as Beneficiary in its sole discretion shall determine.

D. With regard to any set-off exercised in connection with the Obligations or Subordinated Obligations secured hereby, Grantor agrees (i) to notify Beneficiary in the event that Grantor believes that any setoff has been exercised against Grantor, (ii) if Grantor believes such setoff is improper, it shall give Beneficiary a written demand for restitution of the sums so setoff with reasonable opportunity for Beneficiary to affect such restitution, and (iii) Grantor's rights and remedies, if any, with regard to any setoff shall be limited to money damages compensating Grantor for the damages proximately caused thereby, and Grantor hereby waives and disclaims all claims based on any state law or principle of equity which would give rise to any right or remedy in Grantor other than the foregoing, including, but not limited to, claims by Grantor based upon set-off as an election of remedies or upon any applicable decisional law.

3.9 Remedies Cumulative.

A. No remedy herein conferred upon or reserved to Beneficiary, for the benefit of Lender Group, is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

B. No delay or omission of Beneficiary to exercise any right or power, for the benefit of Lenders and Subordinated Lenders, accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence thereof, and every power and remedy given by this Security Instrument to Beneficiary may be exercised from time to time as often as may be deemed expedient by Beneficiary.



C. If there exists additional security for the performance of the Obligations or Subordinated Obligations secured hereby, the holder of applicable Notes or Subordinated Notes or other evidence of the Obligations or Subordinated Obligations, at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder, either concurrently with whatever rights and remedies it may have in connection with such other security or in such order as it may determine.

D. Any application of any amounts or any portion thereof held by Beneficiary, for the benefit of Lenders, at any time as additional security hereunder to the Obligations or Subordinated Obligations secured hereby, shall not extend or postpone the due dates of any payments due from Grantor to Beneficiary, for the benefit of Lenders and Subordinated Lenders, hereunder or under the Loan Documents and Subordinated Loan Documents, or change the amounts of any such payments or otherwise be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

#### ARTICLE IV

#### MISCELLANEOUS

##### 4.1 Notice of Sale.

Any power granted to Beneficiary in this Security Instrument may be exercised, pursuant to a single notice of sale, separately with respect to each and every item of property or leasehold interest in any Mortgaged Property or with respect to groups and assemblages of items or leasehold interests secured by this Security Instrument, in Beneficiary's sole discretion, and may be exercised on separate days or at separate times or in separate places; the exercise of such power of sale shall not be an action for purposes of any law or statute pertaining to actions to enforce secured transactions.

##### 4.2 WAIVER OF JURY TRIAL.

GRANTOR AND BENEFICIARY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS SECURITY INSTRUMENT OR ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF GRANTOR OR BENEFICIARY. GRANTOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR BENEFICIARY ENTERING INTO EACH SUCH OTHER LOAN DOCUMENT.

##### 4.3 Non-Waiver.

A. By accepting payment of any amount after its due date or late performance of the Obligations secured hereby, Beneficiary will not waive its right, for the benefit of Lender Group, either to require prompt payment when due of any other amounts or prompt performance of any other Obligations or Subordinated Obligations so secured or to declare a default for failure to pay or perform when due. No exercise of any right or remedy by Beneficiary hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law.

B. No waiver by Beneficiary will be effective unless it is in writing and then only to the extent specifically stated. Without limiting the generality of the foregoing, any payment made by the Beneficiary



for insurance premiums or any other charges affecting the Mortgaged Property, shall not constitute a waiver of Grantor's default in making such payments and shall not obligate Beneficiary to make any further payments.

4.4 Severability.

Any provision of this Security Instrument which is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Security Instrument or affecting the validity or enforceability of such provision in any other jurisdiction, except that if such provision relates to the payment of any monetary sum, then unless such determination is obtained at the instance of Beneficiary or any other Lender, Beneficiary may at its option declare the Obligations, Subordinated Obligations and all other sums secured hereby immediately due and payable.

4.5 Certain Charges.

A. Grantor agrees to pay Beneficiary for each statement of Beneficiary as to the Obligations or Subordinated Obligations secured hereby, furnished at Grantor's request, the maximum fee allowed by law, or if there be no maximum fee, then such reasonable fee as is generally charged by Beneficiary to its customers as of the time said statement is furnished.

B. Grantor agrees to pay the lawful charges of Beneficiary for any service rendered Grantor, or on its behalf, connected with this Security Instrument or the Obligations or Subordinated Obligations secured hereby, including, without limitation, preparation, delivery and recordation of a release of Security Instrument, transmitting to an escrow holder moneys secured hereby, changing its records pertaining to this Security Instrument and Obligations or Subordinated Obligations secured hereby to show a new owner of the Mortgaged Property, and replacing an existing policy of insurance held hereunder with another such policy.

4.6 Notices.

Except as otherwise provided herein, whenever it is provided herein that any notice, declaration, demand, request, consent, approval, declaration or other communication shall or may be given to, sent, or served upon any of the parties by another, or whenever any of the parties desires to give, send, or serve upon another any communication with respect to this Security Instrument, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been given, sent, served, and received, upon the following dates in the following manner: (i) in person with receipt acknowledged on the date of receipt; or (ii) by facsimile transmission, with receipt electronically confirmed during normal business hours of recipient, on the date of transmission, provided that no later than one (1) business day following such transmission, a copy of such facsimile shall be mailed by first class mail, postage prepaid; or (iii) by Federal Express or other comparable overnight delivery service, on the next business day following delivery to Federal Express or comparable overnight delivery service, in each case addressed as set forth below, or at such other address or facsimile transmission number as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any properly given notice, demand, request, consent, approval, declaration or other communication to any person (other than Grantor or Beneficiary) shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.



Notices shall be sent to the addresses set forth below:

If to Grantor:

Brown & Cole Stores, LLC  
1331 Commercial Avenue  
Bellingham, WA 98225  
Attn: Craig Cole, President  
Facsimile No: (360) 714-7813

With a copy to:

Karr Tuttle Campbell  
Attn: James L. Austin, Jr.  
Suite 2900, Washington Mutual Tower  
1201 Third Avenue  
Seattle, WA 98101-3028  
Facsimile No: (206) 682-7100

If to Beneficiary:

General Electric Capital Corporation/Capital Funding, Inc  
401 Merritt Seven, 2<sup>nd</sup> Floor  
Norwalk, Connecticut 06856  
Attention: James J. Russell, Senior Risk Manager  
Attention: William A. Holley, Esq.  
Facsimile No.: (203) 229-1991

With a copy to:

Milbank, Tweed, Hadley & McCloy LLP  
601 South Figueroa, Ste. 3000  
Los Angeles, CA 90017  
Attn: Gregory A. Bray  
Facsimile No.: (213) 629-5063

Any party may change its address for notice by written notice given in accordance with the foregoing provisions.

4.7 Grantor Not Released.

A. Extension of the time for payment or modification of the terms of payment of any sums secured by this Security Instrument granted by Beneficiary to any successor in interest of Grantor shall not operate to release, in any manner, the liability of the original Grantor. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by this Security Instrument by reason of any demand made by the original Grantor.

B. Without affecting the liability of any person, including Grantor, for the payment of any Obligations or Subordinated Obligations secured hereby, or the lien of this Security Instrument on the remainder of the Mortgaged Property for the full amount of any such Obligations or Subordinated Obligations and liability unpaid, Beneficiary is empowered as follows:



Beneficiary may from time to time and without notice;

- (a) release any person liable for the payment of any of the Obligations or Subordinated Obligations;
- (b) extend the time or otherwise alter the terms of payment of any of the Obligations or Subordinated Obligations;
- (c) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or
- (d) alter, substitute or release any property securing the Obligations or Subordinated Obligations;

Beneficiary may, at any time, and from time to time:

- (a) consent to the making of any map or plat of the Mortgaged Property or any part thereof;
- (b) join in granting any easement or creating any restriction thereon;
- (c) join in any subordination or other agreement affecting this Security Instrument or the lien or charge hereof; or
- (d) release or reconvey all or any of its security interests under this Security Instrument.

4.8 Inspection.

Beneficiary may, at any reasonable time or times, make or cause to be made entry upon and inspections of the Mortgaged Property or any part thereof in person or by agent.

4.9 Release of Security Instrument.

Upon the payment and satisfaction in full of all obligations secured by this Security Instrument, Beneficiary shall release and reconvey all of its right, title and interest by virtue of this Security Instrument in and to Grantor's leasehold interests in Mortgaged Property, all other assets or property in which Beneficiary is granted a security interest under this Security Instrument, and in all Rents, and shall surrender this Security Instrument and all notes evidencing Obligations of Subordinated Obligations secured by this Security Instrument to Grantor.

4.10 Interpretation.

A. Wherever used in this Security Instrument, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Grantor" shall mean and include both Grantor any successor in interest of Grantor with respect to any of the Leases, and the word "Beneficiary" shall mean and include not only the original Beneficiary hereunder but also any future owner and holder, including pledgees, of the Obligations or Subordinated Obligations secured hereby.

B. In this Security Instrument whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter includes the feminine and/or masculine, and the singular number includes the plural and conversely.



C. Specific enumeration of rights, powers and remedies of Beneficiary and of acts which they may do and of acts to be done and not to be done by Grantor is not to be deemed to exclude or limit the general.

D. The captions, headings and arrangements used in this Security Instrument are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions hereof.

E. No provision of this Security Instrument or any of the other Loan Documents or Subordinated Loan Documents shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party's having or being deemed to have structured, drafted or dictated such provision.

4.11 Consent; Delegation to Sub-Agents.

The granting or withholding of consent by Beneficiary to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Wherever a power of attorney is conferred upon Beneficiary hereunder, it is understood and agreed that such power is conferred with full power of substitution, and Beneficiary may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more sub-agents.

4.12 Successors and Assigns.

Subject to the provisions of Section 1.8 of this Security Instrument, all of the grants, Obligations, Subordinated Obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, administrators, executors, personal representatives, successors, legatees, devisees and assigns of Grantor and the endorsees, transferees, successors and assigns of Beneficiary.

4.13 Governing Law.

THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE IN WHICH THE LAND IS LOCATED.

4.14 Request for Notices.

Grantor hereby requests that a copy of any notice of default and notice of sale as may be required by law be mailed to Grantor at its address above stated.

4.15 Substitution Of Trustee.

Lenders and Subordinated Lenders shall have, and are hereby granted by Grantor with warranty of further assurances, the irrevocable power to appoint one or more persons or entities as a substitute Trustee hereunder, to be exercised at any time hereafter without specifying any reason therefor, by filing for record in the office where this Security Instrument is recorded a deed of appointment or by taking such other steps as may be permissible under applicable law to appoint a substitute Trustee. Said power of appointment of one or more successor Trustees may be exercised as often and whenever Lenders and Subordinated Lenders deem it advisable. The exercise of said power of appointment, no matter how often, shall not be an exhaustion thereof. Upon the recordation of such deed of appointment, the Trustee so appointed shall thereupon, without any further act or deed of conveyance, become fully vested with identically the same title and estate in and to the Mortgaged Property and with all the rights, powers, trusts and duties of their, his, hers or its predecessor in the trust hereunder with like effect as if originally named as Trustee. Whenever in this Security Instrument reference is made to Trustee, it shall be construed to mean each person or entity



appointed as Trustee for the time being, whether original or successors or successor in trust. All title, estate, rights, powers, trusts and duties hereunder given or appertaining to or devolving upon Trustee shall be in each of the persons or entities appointed as Trustee so that any action hereunder or purporting to be hereunder of any one of the persons or entities appointed as Trustee shall for all purposes be considered to be, and as effective as, the action of Trustee.

4.16 The Trustees Fees.

Grantor shall pay all reasonable costs, fees and expenses incurred by the Trustee and the Trustees agents and counsel in connection with the performance by the Trustee of the Trustees duties hereunder and all costs, fees and expenses shall be secured by this Security Instrument.

4.17 Certain Rights.

With the approval of Lenders and Subordinated Lenders, the Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lenders) upon any matters arising hereunder, including the interpretation of the Notes, the Subordinated Notes, this Security Instrument, the Loan Documents or the Subordinated Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of the Trustee, and the Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by the Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for the Trustees gross negligence or bad faith, and (iv) any and all other lawful action as Lenders and Subordinated Lenders may instruct the Trustee to take to protect or enforce Lenders' rights and Subordinated Lenders' rights hereunder. The Trustee shall not be personally liable in case of entry by the Trustee, or anyone entering by virtue of the powers herein granted to the Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. The Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by the Trustee hereunder, believed by the Trustee in good faith to be genuine. The Trustee shall be entitled to reimbursement for actual expenses incurred by the Trustee in the performance of the Trustee's duties hereunder and to reasonable compensation for such of the Trustee's services hereunder as shall be rendered.

4.18 Retention Of Money.

All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and the Trustee shall be under no liability for interest on any moneys received by the Trustee hereunder.

4.19 Perfection Of Appointment.

Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.



4.20 Succession Instruments.

Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as the Trustee herein; but nevertheless, upon the written request of Lenders, Subordinated Lenders or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustees place.

4.21 Reliance Of Trustee.

As to all matters concerning the existence of defaults hereunder and the amount of indebtedness subject to the Notes and the Subordinated Notes and secured hereby, as well as similar or related matters, the Trustee is hereby authorized by Grantor to rely conclusively upon, without further inquiry, the affidavit of any officer of Lenders and Subordinated Lenders.

ARTICLE V

ADDITIONAL PROVISIONS REGARDING  
LEASEHOLD MORTGAGE

5.1. Grantor shall promptly pay all rent, additional rent, contingent rent, taxes and all other sums and charges when due and payable under the terms of the Lease, shall fully and promptly perform and observe all of the agreements, terms, covenants and conditions required to be performed and observed by the Grantor under the Lease within the grace periods provided therein for the Grantor's performance (in contrast to any additional grace periods provided for therein or by any separate agreement for curative action by the Lenders and Subordinated Lenders), and shall do all things necessary to preserve and keep unimpaired the Grantor's rights under the Lease. Upon demand, the Grantor shall furnish to Beneficiary proof of payment of all sums which the Lease requires Grantor to pay.

5.2. Grantor shall immediately notify Beneficiary in writing of: (i) any default (or alleged default) by the Grantor or the Lessor in the performance or observance of any of the terms, covenants or conditions on the part of the Grantor or the Lessor to be performed or observed under the Lease; (ii) the receipt by the Grantor of any notice or other writing or communication from the Lessor noting or claiming any default by the Grantor in such performance or observance under the Lease; and (iii) the receipt by the Grantor of any notice from the Lessor of any termination of the Lease pursuant to the terms thereof or otherwise. The Grantor shall immediately cause a copy of each such notice to be delivered to Lenders and Subordinated Lenders.

5.3. If the Grantor fails to observe or perform any covenant or agreement to be observed or performed under the Lease on the part of the Grantor, or if Beneficiary receives from the Lessor any notice of any default by the Grantor thereunder, Beneficiary may rely on such notice and may take any action that Beneficiary in its sole discretion deems necessary or advisable to cure such default, even if the existence of such default or the nature thereof is questioned or denied by the Grantor; provided, however, that Beneficiary shall not take any action to cure such default if, and so long as (a) Grantor shall take all steps necessary to challenge or take any action to cure such default; and (b) during such challenge or cure: (i) the interests of Beneficiary may in no way be adversely affected, (ii) no time limits or grace periods under the Lease would expire which would give Lessor any right or option to terminate the Lease, and (iii) no additional right or remedy would become available to Lessor by reason of the deferral by Beneficiary of any action to effect a cure of the claimed default; and (c) if the default is a default in the payment of a sum of money, Grantor shall post with Beneficiary security acceptable to Beneficiary to pay the amount in dispute. The Grantor hereby expressly grants to Beneficiary the absolute and immediate right to enter in



and upon the Land to such extent and as often as Beneficiary in its sole discretion deem necessary or desirable to prevent or cure any default by the Grantor under the Lease or this Security Instrument. Beneficiary may pay and expend such sums of money as Beneficiary in its sole discretion deems necessary for any such purpose, and upon doing shall be subrogated to any and all rights of the Grantor, as lessee, and all such sums shall be secured by the lien of this Security Instrument, shall be added to the principal amount of the Obligations and Subordinated Obligations and shall accrue interest at the Default Rate.

5.4. Without the prior written consent of the Beneficiary, which Beneficiary may grant or withhold in its sole discretion, the Grantor shall not: (i) surrender the Lease or terminate, cancel, release or assign the Lease (nor permit any of the foregoing to occur), whether under Section 365 of the Bankruptcy Code (or any successor provision) or under any similar law or right of any nature, or otherwise; nor (ii) modify, abridge, change, supplement, alter or amend the Lease, either orally or in writing, and hereby irrevocably grants and assigns to Beneficiary the power and right to modify, abridge, change, supplement, alter or amend the Lease, and no agreement seeking to modify, abridge, change, supplement, alter or amend the Lease shall be valid or binding without the prior written consent of Beneficiary; nor (iii) waive any of its rights against the Lessor under the Lease; nor (iv) subordinate the Lease to any Security Instrument encumbering any portion of the Land; nor (v) agree to or acquiesce in any rejection or termination of the Lease by the Lessor or Lessor's trustee in bankruptcy, whether under Section 365 of the Bankruptcy Code (or any successor provision) or under any similar law or provision, and any such surrender, abandonment, termination, cancellation, release, modification, change, supplement, alteration, amendment, waiver, subordination, agreement or acquiescence without Beneficiary's prior written consent shall be ineffective as against Beneficiary, and shall constitute a default under this Security Instrument for which no grace or curative period shall apply.

5.5. In addition to the provisions of Section 5.4:

(i) If any action, proceeding, motion or notice shall be commenced or filed in respect of the Lease by any party thereto in connection with any case under the Bankruptcy Code, Beneficiary shall have the option, to the exclusion of the Grantor, to conduct and control any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents and other documents required by the Beneficiary in connection therewith. Grantor shall, upon demand, pay to Beneficiary all costs and expenses (including reasonable attorneys' fees and costs) paid or incurred by Beneficiary in connection with the prosecution or conduct of any such proceedings. Any such costs and expenses not paid by Grantor as aforesaid shall be secured by the lien of this Security Instrument, shall be added to the principal amount of the Obligations and Subordinated Obligations and shall accrue interest at the Default Rate. Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Lease, in any case under the Bankruptcy Code as amended from time to time without the prior written consent of Beneficiary.

(ii) Grantor shall, promptly after obtaining knowledge thereof, notify Beneficiary orally of any filing by or against the Grantor of a petition under the Bankruptcy Code. Grantor shall thereafter forthwith deliver written notice of such filing to Beneficiary, setting forth any information available to Grantor as of the date of such filing, the court in which such petition was filed, and the relief sought therein. Upon its receipt thereof, Grantor shall promptly deliver to Beneficiary any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and any proceedings relating thereto.

(iii) The lien of this Security Instrument attaches to all of the Grantor's and Lessor's rights and remedies at any time arising under or pursuant to Section 365 of the Bankruptcy Code (whether as landlord or tenant under any lease), including, without limitation, all of the Grantor's rights to remain in possession of the Land and Improvements in the event of the Lessor's rejection of the Lease. Neither the Grantor nor the



Beneficiary (absent the existence of an Event of Default) shall, without the other party's prior written consent, elect to treat the Lease as terminated under Section 365 of the Bankruptcy Code. Any such election made without Beneficiary's prior written consent shall be void.

(iv) Grantor hereby unconditionally assigns, transfers and sets over to Beneficiary all of Grantor's claims and rights to the payment of damages (including but not limited to the right to any offsets or credits) arising from any rejection of the Lease by Lessor under the Bankruptcy Code. Beneficiary shall have the right to proceed in its own name or in the name of Grantor 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 the Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case 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 and Subordinated Obligations shall have been satisfied and discharged in full. Any amounts received by Beneficiary as damages arising out of the rejection of the Lease as aforesaid shall be applied first to all costs and expenses of Beneficiary (including, without limitation, attorneys' fees and costs) incurred in connection with the exercise of any of its rights or remedies under this Security Instrument. For the purposes of construing Section 365(h) of the Bankruptcy Code, the intention of the parties hereto is that the term "possession" shall mean the right to possession of all of the leased premises granted to the Grantor under the Lease, whether or not all or part of the leased premises is covered by any of the Leases.

(v) If there shall be filed by or against the Grantor a petition under the Bankruptcy Code, and the Grantor, as lessee under the Lease or lessor under the Leases, shall determine to reject the Lease or any of the Leases pursuant to Section 365 of the Bankruptcy Code, the Grantor shall give Beneficiary not less than ten days' prior written notice of the date on which the Grantor shall apply to the bankruptcy court for authority to reject the Lease or any of the Leases. Beneficiary shall have the right, but not the obligation, to serve upon the Grantor within such ten day period a notice stating that (A) Beneficiary demands that the Grantor assume and assign the Lease in question to Beneficiary pursuant to Section 365 of the Bankruptcy Code and (B) Beneficiary covenants to cure (or provide adequate assurance of prompt cure of) all defaults and provide adequate assurance of future performance under such Lease. If Beneficiary serves upon the Grantor the notice described in the preceding sentence, the Grantor shall not seek to reject such Lease and shall comply with the demand provided for in clause (A) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Beneficiary of the covenant provided for in clause (B) of the preceding sentence.

5.6. The Grantor shall require strict and full performance by the Lessor of all the agreements, terms, covenants and conditions required to be performed and observed by the Lessor under the Lease.

5.7. Grantor shall promptly notify Beneficiary in writing of any claim, action or proceeding (including, but not limited to, any request for arbitration or institution of such arbitration) made by any party to the Lease pertaining to the Lease or to the Mortgaged Property, and the progress thereof and any determination made by the court and/or arbitrators thereunder. Beneficiary shall have the right to participate in any such claim, action or proceedings as an interested party.

5.8. Grantor shall use its best efforts to obtain from the Lessor under the Lease, and deliver to Beneficiary within thirty (30) days after demand from Beneficiary, a statement in writing certifying that the Lease is in full force and effect and the dates to which the ground rent and other charges, if any, have been paid in advance, and stating whether or not, to the best knowledge of Lessor, Grantor is in default in the performance of any covenant, agreement or condition contained in the Lease and if so, specifying each such default of which Lessor has knowledge.

5.9. Unless Beneficiary shall otherwise consent in writing, the fee simple title to the property subject to the Lease shall not merge with the leasehold estate under the Lease for so long as any obligations secured by the



Security Instrument remain outstanding, but such estates shall always remain separate and distinct estates, notwithstanding the union of any thereof in any person whatsoever, whether by purchase or otherwise.

5.10. No release or forbearance of any of Grantor's obligations under the Lease, pursuant to the Lease or otherwise, shall release the Grantor from any of its obligations under this Security Instrument, the Notes, the Subordinated Notes, the Loan Documents or the Subordinated Loan Documents.

5.11. Grantor acknowledges and agrees that it shall not have any right to terminate the Lease without the prior written consent of Beneficiary, and any attempt to terminate, or purported exercise of termination, shall be void.


5.12. Wherever this Security Instrument requires the consent of the Beneficiary to action or inaction on the part of the Grantor, such consent shall not unreasonably be refused by Beneficiary if the proposed action or inaction is required by the terms of the Lease, or by any material Tenant Lease, or otherwise is necessary in order to prevent a breach or default of any such lease, sublease or material Tenant Lease.



IN WITNESS WHEREOF, the undersigned has executed this Security Instrument the day and year first hereinabove written.

GRANTOR:

BROWN & COLE STORES, LLC, a Washington limited liability company

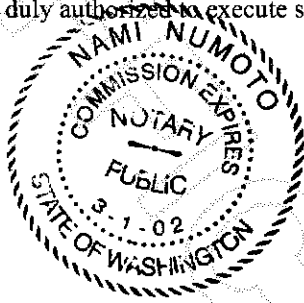
By:   
Name: James R. Anderson  
Title: Senior Vice President



STATE OF WASHINGTON  
COUNTY OF KING

)  
)SS.  
)

On this 17 day of JANUARY, 2002 before me personally appeared JAMES R. ANDERSON, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Nami Numoto  
Name: NAMI NUMOTO  
Notary Public, State of WA

My Commission expires: 3-1-02

SCHEDULE 1

LIST OF LEASES AND SUBLEASES

1. Mount Vernon Store

Lease Agreement dated March 12, 1996 between Pacific Northwest Properties, a Washington general partnership, as Landlord, and Thrifty Foods of Burlington, Inc. as Tenant, and an amendment thereto dated September 27, 2001

Lease Assignment, Assumption, Amendment, Ratification and Consent Agreement dated January 24, 1997 by and among Shopping Center Properties of Arlington (as successor in interest to Thrifty Properties of Arlington), Thrifty Foods of Burlington, Inc. and Brown & Cole, Inc.

Assignment and Assumption of Lease by and between Brown & Cole Stores, LLC and Brown & Cole, Inc., dated as of the date of this Leasehold Deed of Trust

Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement, by and between Pacific Northwest Properties, Brown & Cole, Inc. and Brown & Cole Stores, LLC, dated as of October 26, 2001

2. Sedro-Woolley Thrifty

Lease and Agreement dated April 1, 1988 by and between Pacific Northwest Properties and Thrifty Foods of Burlington, Inc.

Amendment to Lease and Agreement dated November 22, 1989

Lease Amendment, Ratification, Consent and Nondisturbance Agreement dated February 28, 1994

Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement dated January 24, 1997 by and among Pacific Northwest Properties, Thrifty Foods of Burlington, Inc. and Brown & Cole, Inc.

2001 Amendment to Lease and Agreement dated September 17, 2001

Assignment and Assumption of Lease by and between Brown & Cole Stores, LLC and Brown & Cole, Inc., dated as of the date of this Leasehold Deed of Trust

Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement, by and between Pacific Northwest Properties, Brown & Cole, Inc. and Brown & Cole Stores, LLC, dated as of October 26, 2001

3. Burlington Thrifty Foods

Lease dated April 1, 1969 by and between Thrifty Properties of Burlington and Thrifty Foods of Burlington, Inc.

Addendum to Lease dated November 11, 1993

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Lease Amendment, Ratification and Consent Agreement dated February 28, 1994

Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement dated January 24, 1997 by and among Thrifty Properties of Burlington, Thrifty Foods of Burlington, Inc. and Brown & Cole, Inc.

Assignment and Assumption of Lease by and between Brown & Cole Stores, LLC and Brown & Cole, Inc., dated as of the date of this Leasehold Deed of Trust

Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement, by and between Thrifty Properties of Burlington, Brown & Cole, Inc. and Brown & Cole Stores, LLC, dated as of October 15, 2001

4. Burlington Cost Cutter

Lease Agreement dated February 1, 1991 by and between Pacific Northwest Properties and Thrifty Foods of Burlington, Inc.

Addendum to Lease Agreement dated March 19, 1991

Third Amendment to Lease dated February 28, 1994

Lease Amendment, Ratification, Consent and Nondisturbance Agreement dated February 28, 1994 by and among Pacific Northwest Properties, Thrifty Foods of Burlington, Inc. and West One Bank, Washington

Lease Assignment, Assumption, Amendment, Ratification and Consent Agreement dated January 24, 1997 by and among Pacific Northwest Properties, Thrifty Foods of Burlington, Inc. and Brown & Cole, Inc.

2001 Amendment to Lease and Agreement dated September 17, 2001

Assignment and Assumption of Lease by and between Brown & Cole Stores, LLC and Brown & Cole, Inc., dated as of the date of this Leasehold Deed of Trust

Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement, by and between Pacific Northwest Properties, Brown & Cole, Inc. and Brown & Cole Stores, LLC, dated as of the date of October 26, 2001

5. Sedro-Woolley Market Place

Lease dated September 1, 1972 by and between Pacific Northwest Properties and Thrifty Foods of Sedro Woolley, Inc.

Lease Assignment, Assumption, Amendment, Ratification and Consent Agreement dated February 28, 1994 by and among Pacific Northwest Properties, Thrifty Foods of Sedro Woolley, Inc. and Thrifty Foods of Burlington, Inc.

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Lease Assignment, Assumption, Amendment, Ratification and Consent Agreement dated January 24, 1997 by and among Pacific Northwest Properties, Thrifty Foods of Burlington, Inc. and Brown & Cole, Inc.

Letter Agreement dated June 8, 1998

Assignment and Assumption of Lease by and between Brown & Cole Stores, LLC and Brown & Cole, Inc., dated as of the date of this Leasehold Deed of Trust

Lease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement, by and between Pacific Northwest Properties, Brown & Cole, Inc. and Brown & Cole Stores, LLC, dated as of October 26, 2001

6. Anacortes Food Pavilion

Sublease between Associated Grocers, Inc. and Brown & Cole, Inc. dated March 9, 1998

Assignment and Assumption of Sublease by and between Brown & Cole Stores, LLC and Brown & Cole, Inc., dated as of the date of this Leasehold Deed of Trust

Sublease Assignment, Assumption, Amendment, Ratification, Consent and Nondisturbance Agreement, by and between Associated Grocers Incorporated, Brown & Cole, Inc. and Brown & Cole Stores, LLC, dated as of the date of this Leasehold Deed of Trust



**EXHIBIT A1**

**Mount Vernon (Store #15)  
Legal Description**

LOTS 9 THROUGH 17, INCLUSIVE, AND LOTS 20 THROUGH 24, INCLUSIVE, "PARKER BUSINESS CENTER", AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGES 91 THROUGH 96, INCLUSIVE, RECORDS OF SKAGIT COUNTY, WASHINGTON.

TOGETHER WITH ALL OF JAY WAY LYING BETWEEN THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 9 (EXTENDED SOUTH TO THE NORTH LINE OF LOT 16) AND THE WEST LINE OF 18TH STREET;

ALSO, TOGETHER WITH THE SOUTH ½ OF JAY WAY LYING BETWEEN THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 9 (EXTENDED SOUTH TO THE NORTH LINE OF LOT 16) AND THE NORTHERLY EXTENSIONS OF THE WEST LINE OF LOT 17.

SITUATE IN THE CITY OF MOUNT VERNON, COUNTY OF SKAGIT, STATE OF WASHINGTON.



**EXHIBIT A2**

**Sedro-Woolley Thrifty (Store #22)  
Legal Description**

LOT 2, SHORT PLAT NO. SW-0284, APPROVED JANUARY 11, 1985, RECORDED JANUARY 14, 1985 IN BOOK 6 OF SHORT PLATS, PAGE 200, UNDER AUDITOR'S FILE NO. 8501140002 AND BEING A PORTION OF LOTS 1, 2, 8, 9 AND 10, "SEDRO ACREAGE", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 35, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF SEDRO WOOLLEY, COUNTY OF SKAGIT, STATE OF WASHINGTON.



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**EXHIBIT A3**

**Burlington Thrifty Foods (Store #44)  
Legal Description**

LOTS 1 THROUGH 26, INCLUSIVE, BLOCK 102, "AMENDED PLAT OF BURLINGTON, SKAGIT COUNTY, WASH.", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 17, RECORDS OF SKAGIT COUNTY, WASHINGTON, EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF BURLINGTON BY DEEDS RECORDED APRIL 13, 1990 UNDER AUDITOR'S FILE NOS. 9004130154 AND 9004130155, TOGETHER WITH ALL OF THE VACATED ALLEY IN SAID BLOCK 102.

SITUATE IN THE CITY OF BURLINGTON, COUNTY OF SKAGIT, STATE OF WASHINGTON.



**EXHIBIT A4**


**Burlington Cost Cutter (Store #55)  
Legal Description**

LOT 3, SHORT PLAT NO. BU-3-88, APPROVED SEPTEMBER 20, 1988, AND RECORDED NOVEMBER 1, 1988, IN BOOK 8 OF SHORT PLATS, PAGE 80, UNDER AUDITOR'S FILE NO. 8811010018, BEING A PORTION OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 8, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

TOGETHER WITH NON-EXCLUSIVE EASEMENTS OVER AND ACROSS PORTIONS OF LOTS 1 AND 2 OF SAID SHORT PLAT AS ESTABLISHED BY INSTRUMENT DATED APRIL 28, 1989, AND RECORDED MAY 4, 1989, UNDER AUDITOR'S FILE NO. 8905040020.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

LA1:#6228190 (Skagit)

  
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**EXHIBIT A5**

**Sedro-Woolley Market Place (Store #57)  
Legal Description**

PARCEL A

LOTS 6 THROUGH 16, INCLUSIVE, "SUPPLEMENTAL PLAT OF BLOCK 78, SECOND ADDITION TO SEDRO," AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 98, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF SEDRO WOOLLEY, COUNTY OF SKAGIT, STATE OF WASHINGTON.

PARCEL B

LOTS 19 THROUGH 27, INCLUSIVE, BLOCK 9, "WOOLLEY, THE HUB OF SKAGIT COUNTY, WASHINGTON", AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF SEDRO WOOLLEY, COUNTY OF SKAGIT, STATE OF WASHINGTON.



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EXHIBIT A6

**Anacortes Food Pavilion (Store #79)  
Legal Description**

UNRECORDED

THAT PORTION OF GOVERNMENT LOTS 1 AND 2, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., LYING SOUTH OF THE SOUTH LINE OF 15TH STREET, EAST OF THE EAST LINE OF COMMERCIAL AVENUE AND COMMERCIAL AVENUE EXTENDED, EASTERLY OF THE WESTERLY LINE OF THE FIRST DESCRIBED PREMISES IN DEED TO ESTVOLD ENTERPRISES, INC., A CORPORATION, DATED NOVEMBER 12, 1965, FILED DECEMBER 7, 1965, AS FILE NO. 675599, NORTH OF THE NORTH LINE OF 17TH STREET EXTENDED AND WEST OF THE WEST LINE OF "Q" AVENUE, EXCEPT THE FOLLOWING DESCRIBED TRACTS:

PART OF GOVERNMENT LOT 2, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF 17TH STREET WITH THE EAST LINE OF COMMERCIAL AVENUE IN THE CITY OF ANACORTES; THENCE EAST ALONG THE NORTH LINE OF 17TH STREET A DISTANCE OF 37.55 FEET TO THE SOUTHWESTERLY LINE OF THAT CERTAIN TRACT DEEDED TO THE SEATTLE AND MONTANA RAILROAD COMPANY BY DEED DATED JULY 29, 1902, AND RECORDED AUGUST 11, 1902 IN VOLUME 47 OF DEEDS, PAGE 405, AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING CONTINUE EAST ALONG THE NORTH LINE OF 17TH STREET A DISTANCE OF 9.8 FEET; THENCE NORTH 0°35'45" EAST PARALLEL TO THE EAST LINE OF COMMERCIAL AVENUE A DISTANCE OF 84.73 FEET; THENCE NORTH 89°24'15" WEST PARALLEL TO THE NORTH LINE OF 17TH STREET, A DISTANCE OF 47.35 FEET TO THE INTERSECTION OF THE EAST LINE OF COMMERCIAL AVENUE AND THE SOUTHWESTERLY LINE OF SAID SEATTLE AND MONTANA RAILROAD COMPANY TRACT; THENCE SOUTH 23°18'30" EAST A DISTANCE OF 92.68 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.



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**EXHIBIT B**

**Property Tax Parcel Nos.:**

**Legal Description**

4367-000-009-0000	R80368
4367-000-010-0007	R80369
4367-000-011-0006	R80370
4367-000-012-0005	R80371
4367-000-013-0004	R80372
4367-000-014-0003	R80373
4367-000-015-0002	R80374
4367-000-016-0001	R80375
4367-000-017-0000	R80376
4367-000-020-0005	R80379
4367-000-021-0004	R80380
4367-000-022-0003	R80381
4367-000-023-0002	R80382
4367-000-024-0001	R80383
4452-000-010-0003	R82659
4452-000-011-0002	R82660
4452-000-012-0001	R82661
4452-000-017-0006	R82662
4170-000-001-005	R76911
4170-000-001-0104	R100311
4170-000-001-0302	R100330
4170-000-001-0401	R100335
4170-000-001-0500	R100467
4170-000-001-0609	R100469
4170-000-001-0203	R100316
4076-102-026-005	R71976
4076-102-016-0007	R71975
4076-102-013-0000	R71974
340408-2-010-0705	R 24249
4151-078-016-0106	(P76157)
4177-009-027-0009	(P77513)
4177-009-025-0001	(P77512)
4177-009-023-0003	(P77511)
350219-0-002-0004	R32909



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