

WHEN RECORDED RETURN TO:

U.S. Bank National Association
111 S.W. Fifth Avenue, Suite 700
Portland, Oregon 97204
Attention: Ms. Robyn Ehrig



200202120050
Skagit County Auditor
2/12/2002 Page 1 of 30 1:09PM

FIRST AMERICAN TITLE CO.

DEED OF TRUST, SECURITY AGREEMENT, *056800-2*
ASSIGNMENT OF LEASES AND RENTS,
AND FIXTURE FILING

Document Title(s) (or transactions contained herein):

- 1. Deed of Trust
- 2. Security Agreement
- 3. Assignment of Leases and Rents
- 4. Fixture Filing

Reference Nos. of Documents Released or Assigned:
None

Additional on page

Grantor/Borrower:

- 1. Powell-Anacortes LLC

Additional on page

Beneficiary:

- 1. U.S. Bank National Association

Additional on page

Legal Description (abbreviated):

Section 19, Township 35, Range 2, Ptn. Gov. Lot 2

Additional on page

Assessor's Tax Parcel ID#: R32947 and R32939

Trustee: FIRST AMERICAN TITLE CO.

UNRECORDED
DOCUMENT

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

This Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (hereinafter called "Deed of Trust") is made this 8th day of February, 2002, between **POWELL-ANACORTES LLC**, a Washington limited liability company, whose address is c/o Powell Development Company, 737 Market Street, Kirkland, Washington 98033 (hereinafter called "Grantor"); **FIRST AMERICAN TITLE COMPANY OF SKAGIT COUNTY**, whose address is 1301-B Riverside Drive, Mount Vernon, Washington 98273 (hereinafter called "Trustee"); and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, whose address is Commercial Real Estate Division, Suite 700, 111 S.W. Fifth Avenue, Portland, Oregon 97204 (hereinafter called "Beneficiary"),

WITNESSETH:

That Grantor does hereby irrevocably GRANT, BARGAIN, SELL, and CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain real property in the County of Skagit, and State of Washington, described on Exhibit A attached hereto (the "Real Property"), together with any and all buildings and improvements now or hereafter erected thereon, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements (herein collectively called, together with the Real Property, the "Property");

Together With all interests, estate or other claims, both in law and in equity, which Grantor now has or may hereafter acquire in the Property;

Together With all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

Together With all right, title and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property; and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

Together With all right, title and interest of Grantor in and to all tangible personal property (the "Personal Property") now or hereafter owned or leased by Grantor and now or at any time hereafter located on or at the Property or used in connection therewith, including, but not limited to, all construction and building materials, goods, machinery, tools, equipment (including fire sprinklers and alarm systems, office air



conditioning, heating, refrigerating, electronic monitoring, window or structural cleaning rigs, maintenance, and all other equipment of every kind), lobby and all other indoor and outdoor furniture, rugs, carpets, and other floor coverings, all inventory related to the operation of the Property and any business operated thereon by Grantor, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures, and building maintenance and other supplies;

Together With all right, title, and interest of Grantor in the funds deposited pursuant to Section 1.6 or Section 1.7 hereof;

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

Together With Grantor's right, title, and interest in any and all existing and future leases (including subleases thereof), whether written or oral, including without limitation that certain Lease between Grantor and Walgreen Co., an Illinois corporation, dated February 12, 2002, all rental agreements and all future agreements for use and occupancy, and any and all extensions, renewals and replacements thereof, upon all or relating to any part of the Property (hereinafter collectively referred to as the "Leases") and any and all guaranties of a tenant's performance under any and all of the Leases;

Together With the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now due or which may become due or to which Grantor may now or hereafter (including any income of any nature coming due during any redemption period) become entitled to or may make demand or claim for, arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to, minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents and liquidated damages following default in any Lease, all accounts receivable and general intangibles related to the operation of the Property and any business operated thereon by Grantor and all proceeds thereof, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Property, together with any and all rights and claims of any kind which Grantor may have against any tenant under the Leases or any subtenants or occupants of the Property (all such monies, rights and claims described in this paragraph being hereinafter called "Cash Collateral"), Excepting Therefrom, any sums which by the express provisions of any of the Leases are payable directly to any governmental authority or to any other person, firm or corporation other than the landlord under the Leases;



Together With all of Grantor's interest in and to all contracts and general intangibles relating to the Property and/or the construction of improvements thereon, including without limitation any and all construction contracts, architect contracts and plans and specifications created thereunder, development contracts, and property management contracts;

Together With all additions, accessions, replacements, substitutions, proceeds, and products of the Property and related collateral described herein;

Together With all books and records pertaining to any and all of the Property and related collateral, including records relating to tenants under any Leases and the qualifications of such tenants and any certificates, vouchers, and other documents in any way related thereto and records relating to the application and allocation of any federal, state, or local tax credits or benefits, and including computer-readable memory and any computer hardware or software necessary to access and process such memory;

Subject, However, to a license hereby granted by Beneficiary to Grantor, but limited as hereinafter provided, to collect and receive all of the Cash Collateral.

The entire estate, property, and interest hereby conveyed to Trustee may hereafter be referred to as the "Trust Estate."

FOR THE PURPOSE OF SECURING:

1. Payment of indebtedness in the total principal amount of Four Million Five Thousand Dollars (\$4,005,000) with interest thereon, evidenced by that certain Project Note of even date herewith, with a maturity date of September 1, 2003, payable by Grantor to Beneficiary and any and all modifications, extensions and renewals thereof (the "Note"). The interest rate, payment terms or the balance due on the Note and the indebtedness evidenced thereby may be indexed, adjusted, renewed, or renegotiated without affecting the priority of this Deed of Trust.

2. Payment of all sums which may become due (a) from Grantor, including without limitation, Grantor's liability for waste on the Property or for wrongful retention of any Cash Collateral, insurance proceeds, or condemnation awards or (b) for advances by Beneficiary or its successor; in each case, with interest thereon at the rate set forth herein, which include but are not limited to, fire and other hazard insurance and taxes upon the real property herein described, according to the terms of this Deed of Trust; payment by Grantor of all attorney fees and costs, including without limitation, the cost of any appraisal of the Property (whether or not obtained in an action for a deficiency judgment under RCW 61.24.100(3)), incurred by Trustee or Beneficiary in foreclosing this Deed of Trust or realizing upon any of the collateral for the obligations which this Deed of Trust secures; payment by Grantor of all attorney fees and costs incurred by Trustee or Beneficiary in defending the priority or validity of this Deed of Trust or the title to the Property; payment by Grantor of all sums advanced by Beneficiary to or on behalf of Grantor for the purpose of



clearing encumbrances or defects from the title to the Property described in this Deed of Trust where Beneficiary, in good faith, believes such encumbrances to be superior to the lien of the Deed of Trust, including, without limitation, payment of ad valorem taxes and mechanics' or materialmen's liens which may have gained priority over the lien of this Deed of Trust; payment by Grantor of all attorney fees and costs incurred by Trustee or Beneficiary in any bankruptcy proceedings or any reorganization or arrangement proceeding under the United States Bankruptcy Code affecting Grantor or this Deed of Trust; and payment of all other sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate set forth herein.

3. Payment and performance of all of the obligations of Grantor under that certain Project Loan Agreement between Grantor and Beneficiary of even date herewith related to the construction of improvements on the Property.

4. Payment and performance of all of the obligations of Grantor under those certain "Loan Documents" as defined in the Project Loan Agreement.

5. Notwithstanding anything to the contrary in this Deed of Trust or any of the other Loan Documents, Grantor's obligation to indemnify and hold Beneficiary harmless in accordance with the terms of that certain certificate and indemnity regarding hazardous substances or that certain certificate and indemnity regarding access laws, both of even date herewith, shall not be secured by the Trust Estate.

This Deed of Trust, the Note, the Project Loan Agreement, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Documents."

ARTICLE 1 COVENANTS AND AGREEMENTS OF GRANTOR

Grantor hereby covenants and agrees:

1.1 Maintenance of the Property. The Property shall be maintained in good condition at all times. Grantor shall promptly make all necessary repairs, replacements, and renewals so that the value of the Property shall be maintained. Grantor shall not commit or permit any waste on the Property. Grantor shall comply with all laws, ordinances, regulations, and private restrictions affecting the Property. To the extent that the Property constitutes commercial property, Grantor shall operate the Property in such manner as to prevent deterioration of the land and improvements including fences, except for reasonable wear and tear from proper use. Grantor shall not demolish or remove any improvements from the Property without the written consent of Beneficiary.

1.2 Required Insurance. Grantor shall at all times provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force, such insurance as are required by the Loan Documents and the following policies of insurance:



(a) Insurance against loss or damage to the building and improvements situated on the Property (the "Improvements") by fire and any of the risks covered by insurance of the type now known as "special form all-risk coverage," in an amount not less than the greater of (i) one hundred percent (100%) of the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor), or (ii) an amount sufficient to prevent Grantor and/or Beneficiary from becoming a co-insurer within the terms of the applicable policies; and with not more than Twenty Thousand and No/100 Dollars (\$20,000.00) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph a. shall contain the "Replacement Cost Endorsement";

(b) Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as "broad form of extended coverage";

(c) Such other insurance and in such amounts as may, from time to time, be required by Beneficiary against the same or other hazards, including, without limitation, business interruption insurance or insurance covering loss of rents and flood insurance where applicable; and

(d) All policies of insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim, or deductions against Grantor. (Non-Contributory Standard Mortgage Clause and Lender's Loss Payable Endorsement - Form 438 BFU NS or CP 12- or their equivalent.)

1.3 Delivery of Policies; Payment of Premiums; Proceeds.

(a) All policies of insurance shall be issued by companies and in amounts in each company satisfactory to Beneficiary. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary. Grantor shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date, together with a copy of the loss payable endorsement required by Section 1.2(d).

(b) At least thirty (30) days prior to the expiration of each such policy, Grantor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a...



policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage without at least thirty (30) days' prior written notice to Beneficiary. In the event Grantor fails to provide, maintain, keep in force, or deliver and furnish to Beneficiary the policies of insurance required and certificates by this section, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Grantor will pay all premiums thereon promptly upon demand by Beneficiary and, until such payment is made by Grantor, the amount of all such premiums shall be secured by this Deed of Trust.

(c) If Grantor shall fail to obtain the insurance required by Section 1.2, make the payments required by Section 1.6 (other than payments that Grantor is contesting in accordance with Section 1.6), or perform or observe any of its other covenants or agreements under this Deed of Trust, Beneficiary may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure. All sums, including reasonable attorney fees, so expended to maintain the lien or estate of this Deed of Trust or its priority, or to protect or enforce any of Beneficiary's rights, or to recover any indebtedness secured by this Deed of Trust, shall be a lien on the Property, shall be secured by this Deed of Trust, and shall be paid by Grantor upon demand, together with interest at the rate provided in the Note. No payment or other action by Beneficiary under this section shall impair any other right or remedy available to Beneficiary or constitute a waiver of any default.

(d) In the event of loss, Grantor shall immediately notify Beneficiary, who may make proof of loss if it is not made promptly by Grantor. Proceeds shall be paid directly to Beneficiary who may compromise with any insurance company and make a final settlement which shall be binding upon Grantor. Beneficiary may, at its election, apply the proceeds to the reduction of any indebtedness secured hereby whether or not then due and payable or to the restoration or repair of the Property, subject to such disbursements procedures as Beneficiary may deem advisable. Notwithstanding the foregoing, Beneficiary shall release to Grantor insurance proceeds arising from any casualty loss to the Property for the purpose of repairing damage to the Property subject to the following conditions: (i) no event of default under Section 4.1 of this Deed of Trust then exists (other than an event of default which may arise by virtue of the casualty loss) nor has any event occurred which would constitute an event of default upon the giving of notice or mere passage of time; (ii) Grantor presents and Beneficiary approves architectural plans for the completion of the repairs; and (iii) Grantor has demonstrated to Beneficiary's reasonable satisfaction (A) that Grantor has sufficient funds, whether from insurance or other sources, reasonably available to Grantor to complete the proposed repairs, (B) that neither the proposed repairs nor the proposed process by which the repairs are affected will unreasonably impair or jeopardize the value of the Trust Estate, and (C) the Property as repaired will be in substantially the same,



or better condition than the Property was in before the casualty loss. If the foregoing conditions are satisfied, the insurance proceeds shall be disbursed and used subject to the same provisions as those applicable to disbursement and use of loan proceeds as set forth in the Project Loan Agreement of even date herewith between Grantor and Beneficiary. If any insurance proceeds remain after completion of the repairs, those proceeds shall be applied by Beneficiary to Grantor's obligations to Beneficiary secured hereby.

1.4 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title, and interest of Grantor in and to all policies of insurance required by Section 1.2 shall inure to the benefit of and pass to the successor in interest to Grantor or the purchaser or grantee of the Trust Estate.

1.5 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Trust Estate or any part thereof or interest therein, or the occupancy thereof by Grantor, then Grantor shall indemnify, defend, and hold Beneficiary and its directors, officers, employees, agents, and representatives (hereafter referred to as the "Indemnitees") harmless from all liability, loss, cost, or damage, by reason of said litigation, including reasonable attorney's fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment.

(b) Grantor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents, and representatives, for loss of or damage to Grantor, the Trust Estate, Grantor's property, or the property of others under Grantor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Grantor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction; and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Grantor



has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Grantor.

1.6 Taxes and Liens. Grantor shall pay before they become delinquent all taxes and assessments levied against or on account of the Trust Estate and shall pay as due all claims for work done on or for services rendered or material furnished to the Property. Special assessments shall be paid currently, without deferral, unless the lien for deferred assessments is subordinate to the interest of Beneficiary under this Deed of Trust, or Beneficiary gives its prior written consent to the deferral. Grantor shall maintain the Trust Estate free of any liens having priority over or equal to the interest of Beneficiary under this Deed of Trust except for "Permitted Encumbrances" as defined in Section 1.10, the lien of taxes and assessments not delinquent, and except as hereinafter otherwise provided. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Beneficiary's interest in the Trust Estate is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantor has notice of the filing, secure the discharge of the lien or deposit with Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any costs, attorney fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. The assessor or tax collector of the county in which the Property is located is authorized to deliver to Beneficiary a written statement of the property taxes assessed or owing at any time.

1.7 Reserves. At any time after the occurrence of an Event of Default (as described in Section 4.1 hereof), regardless of whether such Event of Default has been waived or cured, Beneficiary may require Grantor to maintain reserves for payment of taxes (including special assessments and other charges against the Trust Estate by governmental or quasi-governmental bodies) or premiums on property insurance or both. The reserves shall be created by payment each month to Beneficiary of an amount determined by Beneficiary to be sufficient to produce by the date they are due amounts equal to the estimated taxes and insurance premiums to be paid. If at the time that payments are to be made the reserve for either taxes or insurance premiums is insufficient, Grantor shall upon demand pay such additional sum as Beneficiary shall determine to be necessary to cover the required payment. If Grantor desires to carry a package plan of insurance that includes coverage in addition to that required under this Deed of Trust, Beneficiary, if allowed by law, may at its option establish and administer a reserve for that purpose. In such event the premium attributable to the required insurance coverage shall



be quoted separately, and Beneficiary may permit Grantor to furnish a certificate of insurance rather than deposit the policy as required above. If at any time Beneficiary holds an insufficient amount in the insurance reserve to cover the premium for the entire package policy, Beneficiary may, at its discretion, pay only that portion of the premium attributable to the required insurance coverage. If the blanket policy does not permit such partial payment, Beneficiary may use the reserve funds for the premium on a new, separate policy providing the required insurance coverage and allow the package policy to lapse. Beneficiary shall not charge a service charge for collecting reserves and paying taxes and insurance premiums. The reserves shall not constitute a trust. Grantor agrees that Beneficiary may commingle reserve funds with other funds of Beneficiary and need not invest them for the benefit of Grantor. Grantor agrees that Beneficiary need not pay Grantor interest on reserves, unless applicable statutes require payment of interest notwithstanding any contrary agreement.

1.8 Expenditures by Beneficiary. If Grantor shall fail to comply with any provision of this Deed of Trust, Beneficiary may, at its option, on Grantor's behalf take the required action and any amount that it expends in so doing shall be added to the indebtedness secured hereby. Amounts so added shall be payable on demand with interest at the rate specified in the Note as the Default Rate (the "Default Rate") from the date of expenditure. The rights provided for in this section shall be in addition to any other rights or any remedies to which Beneficiary may be entitled on account of the default, and Beneficiary shall not by taking the required action cure the default so as to bar it from any remedy that it otherwise would have had.

1.9 Utilities. Grantor shall pay or cause to be paid when due all utility charges which are incurred by Grantor for the benefit of the Trust Estate or which may become a charge or lien against the Trust Estate for gas, electricity, water or sewer services furnished to the Trust Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such assessments or charges are liens thereon.

1.10 Warranty; Defense of Title. Grantor warrants that Grantor holds title to the Property, free of all encumbrances other than the encumbrances described on Exhibit B attached hereto (hereinafter referred to as "Permitted Encumbrances"). Grantor warrants and will forever defend the title against the claims, other than Permitted Encumbrances, of all persons. Grantor shall pay any sums and do any other acts necessary to prevent a default or prevent any action or condition which with the lapse of time, the giving of notice, or any other action of a creditor, would be a default or enable any creditor to declare a default under or foreclose any Permitted Encumbrance. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Beneficiary under this Deed of Trust, including any proceeding to terminate Grantor's title to the Property, Grantor shall defend the action at Grantor's expense.



1.11 Condemnation. Should any part of or interest in the Real Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Grantor receive any notice or other information regarding such action, Grantor shall give immediate notice of such action to Beneficiary. Beneficiary shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the obligations secured by this Deed of Trust, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Grantor's name and make any compromise or settlement in connection with such Condemnation. In the event the Real Property is taken in its entirety by Condemnation, all obligations secured by this Deed of Trust, at Beneficiary's election, shall become immediately due and collectible. Beneficiary may, at its sole option, apply the net Condemnation Proceeds to the reduction of the obligations secured hereby in such order as Beneficiary may determine, or apply all or any portion of the Condemnation Proceeds to the cost of restoring and improving the remaining Real Property. In the event that Beneficiary elects in its sole discretion to apply the Condemnation Proceeds to restoration and improvement, the proceeds shall be held by Beneficiary and shall be released only upon such terms and conditions as Beneficiary shall require, including but not limited to, prior approval of plans and release of liens. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorney fees necessarily paid or incurred by Grantor and Beneficiary in connection with the Condemnation.

1.12 Imposition of Tax. The following shall constitute taxes to which this paragraph applies: (a) a specific tax upon deeds of trust or upon all or any part of the indebtedness secured by a deed of trust; (b) a specific tax on the owner of property covered by a deed of trust which the taxpayer is authorized or required to deduct from payments on the deed of trust; (c) a tax on premises covered by a deed of trust chargeable against Beneficiary under the deed of trust or the holder of the note secured; and (d) a specific tax on all or any portion of the indebtedness secured hereby or on payments of principal and interest made by a Grantor under a deed of trust. If any federal, state, or local tax to which this paragraph applies is enacted subsequent to the date of this Deed of Trust, this shall have the same effect as a default and Beneficiary may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met: (i) Grantor may lawfully pay the tax or charge imposed without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee; and (ii) Grantor pays the tax or charge within 30 days after notice from Beneficiary that the tax law has been enacted.

1.13 Inspections. Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon reasonable notice to Grantor upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.



1.14 No Waiver. By accepting payment of any obligation herein mentioned after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure so to pay.

1.15 Accounting. Grantor will keep and maintain or will cause to be kept and maintained in accordance with sound accounting practice accurate and proper books of record and account relating to the Property. Grantor shall permit Beneficiary to examine the books of account and other records of Grantor, to discuss the affairs, finances and accounts of Grantor and to be informed as to the same by Grantor, all at such reasonable times and intervals as Beneficiary may desire. At the request of Beneficiary, Grantor will, at its own cost and expense, furnish to Beneficiary annual financial statements of Grantor and copies of the balance sheet and operating statements relating to the Property for such year, in reasonable detail and in form and substance satisfactory to Beneficiary. In addition, at the request of Beneficiary, Grantor shall furnish monthly to Beneficiary a rent roll, including but not limited to a listing of each tenant, the space occupied, the amount of rent and the expiration of the lease, together with unaudited statements setting forth rental income (itemized as to source, itemized operating expenses, and net income before federal income taxes) relating to the Property for such month, certified to as being correct by the Grantor. In the event Grantor fails to furnish any of the financial statements hereinabove required, Beneficiary may cause an audit to be made of Grantor's books and records, at Grantor's sole cost and expense.

1.16 Repayment of Advances. Upon receipt of notice, the Grantor shall repay immediately all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the Default Rate, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of such notice will, at Beneficiary's option, constitute an event of default hereunder; or Beneficiary may, at its option, commence an action against Grantor for the recovery of such expenditure or advance and interest thereon, and in such event Grantor agrees to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney's fee at trial and on appeal.

1.17 Use of Property. The Property is not used principally for agricultural purposes and is not Grantor's residence.

1.18 Use of Loan Proceeds. The commercial loan evidenced by the Note was not made, and its proceeds will not be used for personal, family, or household purposes.

**ARTICLE 2
SECURITY AGREEMENT; FIXTURE FILING**



200202120050

Skagit County Auditor

2/12/2002 Page 12 of 30 1:09PM

080051-0232/020802/PDXDOCS:1280530.2

2.1 Creation of Security Interest. Grantor hereby grants to Beneficiary a security interest in (a) the Personal Property located on or at the Property, including without limitation any and all property of similar type or kind hereafter located on or at the Property, (b) the Cash Collateral, and (c) all other property which forms a portion of the Trust Estate in which a security interest may be granted under the Uniform Commercial Code of Washington (collectively, the "Secured Property"), for the purpose of securing all obligations of Grantor contained in any of the Loan Documents. Grantor hereby authorizes Beneficiary to file one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Washington in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.

2.2 Warranties, Representations, and Covenants of Grantor.
Grantor hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Secured Property to be acquired after the date hereof will be, the sole owner of the Secured Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Grantor will notify Beneficiary of, and will defend the Secured Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Grantor will not lease, sell, convey or in any manner transfer the Secured Property without the prior written consent of Beneficiary.

(c) The Secured Property is not used or bought for personal, family or household purposes.

(d) The Personal Property will be kept on or at the Property and Grantor will not remove the Personal Property from the Property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantor with an article of equal suitability owned by Grantor free and clear of any lien or security interest except such as may be approved in writing by Beneficiary.

(e) Grantor maintains a place of business in the State of Washington, and Grantor will immediately notify Beneficiary in writing of any change in its place of business.

(f) All covenants and obligations of Grantor contained herein relating to the Trust Estate shall be deemed to apply to the Secured Property whether or not expressly referred to herein.



200202120050

Skagit County Auditor

(g) This Deed of Trust constitutes a security agreement as that term is used in the Uniform Commercial Code of Washington.

2.3 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County in which the Property is located with respect to any and all fixtures included within the term "Trust Estate" as used herein and with respect to any goods or other personal property that may now or hereafter become such fixtures.

ARTICLE 3 ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. Grantor hereby assigns to Beneficiary and grants to Beneficiary a security interest in all Leases as security for performance of all obligations secured by this Deed of Trust.

3.2 Representations and Warranties. Grantor represents and warrants as follows:

- (a) Grantor has good right, title and interest in and to the Leases and good right to assign the same, and that no other person has any right, title or interest therein.
- (b) Grantor has duly and punctually performed all the terms, covenants, conditions and warranties of the Leases on Grantor's part to be kept, observed and performed.
- (c) The existing Leases, if any, are valid and unmodified and are in full force and effect.
- (d) Grantor has not previously sold, assigned, transferred, mortgaged, pledged or granted a security interest in the Cash Collateral, whether now due or hereafter to become due.
- (e) None of the Cash Collateral due and issuing from the Property or from any part thereof has been collected for any period in excess of one (1) month from the date hereof, and that payment of any of same has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised.
- (f) Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Cash Collateral.
- (g) None of the tenants under any existing Leases is in default of any of the terms thereof.



200202120050

Skagit County Auditor

3.3 Covenants of Performance. Grantor covenants and agrees as follows:

(a) Grantor shall observe, perform, and discharge, duly and punctually, all of the obligations of the Leases on the part of Grantor to be kept, observed, and performed; and shall give prompt notice to Beneficiary of any failure on the part of Grantor to observe, perform, and discharge same.

(b) Grantor shall enforce the performance of each and every obligation, term, covenant, condition, and agreement in the Leases by any tenant to be performed, and shall notify Beneficiary of the occurrence of any material default under any commercial Lease.

(c) Grantor shall appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties, or liabilities of Grantor or any tenant thereunder at the expense of Grantor.

3.4 Prior Approval for Actions Affecting Leases. Grantor, without the prior written consent of Beneficiary, further covenants and agrees as follows:

(a) Grantor shall not receive or collect any Cash Collateral from any present or future tenant of the Property or any part thereof for a period of more than one (1) month in advance (whether in cash or by promissory note) nor pledge, transfer, mortgage, grant a security interest in, or otherwise encumber or assign future payments of Cash Collateral.

(b) Grantor shall not waive, forgive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any Leases having a term in excess of one (1) year of or from any obligations, covenants, conditions, and agreements by such tenant to be kept, observed, and performed, including the obligation to pay the Cash Collateral thereunder in the manner and at the place and time specified therein.

(c) Grantor shall not cancel, terminate, or consent to any surrender of any of the Leases having a term in excess of one (1) year, nor commence any action of ejectment or any summary proceedings for dispossession of the tenant under any such Leases, nor exercise any right of recapture of the Property provided in any such Leases, nor modify or in any way alter the terms thereof.

(d) Other than leases of five years duration or less with rental rates consistent with the rental rates described in the Appraisal (as such term is defined in the Note), Grantor shall not lease any part of the space within the Property for a term in excess of one (1) year, nor renew or extend the term of any such Leases,



200202120050
Skagit County Auditor

other than month-to-month rental agreements, unless an option therefor was originally so reserved by the tenant in any such Lease.

(e) Grantor shall not relocate any commercial tenant within the Property nor consent to any modification of the express purposes for which the Property has been leased, nor consent to any subletting of the Property or any part thereof, or to any assignment of the Leases by any commercial tenant thereunder or to any assignment or further subletting of any sublease.

3.5 Rejection of Leases. Grantor further covenants and agrees as follows:

(a) In the event any tenant under the Leases should become the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Grantor covenants and agrees that in the event any of the Leases are so rejected, no damage settlement shall be made without the prior written consent of Beneficiary.

(b) Grantor will request that any check in payment of damages for rejection or termination of any such Lease will be made payable both to the Grantor and Beneficiary.

(c) Grantor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary, it will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to any portion of the indebtedness secured by this Deed of Trust in such manner as Beneficiary may elect.

3.6 License to Collect Cash Collateral. As long as there shall exist no default by Grantor in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant or condition or warranty herein or in the Project Loan Agreement or contained in the Leases, Grantor shall have the right under a license granted hereby (but limited as provided in the following paragraph) to collect, but not prior to accrual, all of the Cash Collateral arising from or out of said Leases or any renewals, extensions and replacements thereof, or from or out of the Property or any part thereof. Grantor shall receive such Cash Collateral and hold the Cash Collateral, together with the right and license herein granted as a trust fund to be applied, and Grantor hereby covenants to so apply them, as required by Beneficiary, first to the payment of taxes and assessments upon the Property before penalty or interest is due thereon; second to the costs of insurance, maintenance and repairs required by the terms of this Deed of Trust; third to satisfaction of all obligations under the Leases; and fourth to the payment of interest, principal and any other sums becoming due under the Note and Deed of Trust, before using any part of the same for any other purposes. Upon the conveyance by Grantor and its successors and assigns of Grantor's interest in the Property, all right, title, interest

080051-0232/020802/PDXDOCS:1280530.2



200202120050
Skagit County Auditor
2/12/2002 Page 16 of 30 1:09PM

and powers granted under the license aforesaid shall automatically pass to and may be exercised by each subsequent owner.

ARTICLE 4 REMEDIES UPON DEFAULT

4.1 Events of Default. Any of the following events shall be deemed an event of default hereunder:

(a) Default shall be made in the payment of any installment of principal or interest under the Note or any other sum secured hereby when due and the default is not cured within ten (10) days after written notice by Beneficiary to Grantor; or

(b) The Trust Estate or any portion thereof or other interest is transferred in violation of the terms of Section 4.5 of this Deed of Trust; or

(c) Grantor fails to perform any covenant contained in this Deed of Trust (other than the covenants in Section 4.5) and such failure is not cured within 30 days after written notice thereof given to Grantor by the Beneficiary or, if the failure cannot reasonably be cured within 30 days, Grantor does not substantially commence cure within such 30-day period or thereafter fails to complete the curative action within a reasonable period of time; or

(d) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Trust Estate, or any judgment involving monetary damages shall be entered against Grantor which shall become a lien on the Trust Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within thirty (30) days after its entry or levy; or

(e) Grantor or any guarantor of the indebtedness secured hereby as applicable shall file a voluntary petition in bankruptcy or such a petition shall be filed against Grantor or any guarantor and is not dismissed within 60 days after filing; or Grantor or any guarantor shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors, a court of competent jurisdiction shall enter an order, judgment, or decree approving a petition filed against Grantor or any guarantor seeking any such relief and such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or



200202120050
Skagit County Auditor

2/12/2002 Page 17 of 30 1:09PM

080051-0232/020802/PDXDOCS:1280530.2

(f) Grantor or any guarantor shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Grantor, any guarantor, or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues, or profits thereof, or any trustee, receiver, or liquidator of Grantor or any guarantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues, or profits thereof, shall be appointed without the consent or acquiescence of Grantor or any affected guarantor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(g) Grantor or any guarantor shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(h) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation, or warranty contained in any other Loan Document subject to any applicable cure period specified in such Loan Document; or

(i) Any guaranty of the obligations secured hereby ceases to be in full force and effect, any guarantor asserts that his or her guaranty is not in full force and effect, including without limitation, the validity and enforceability of Beneficiary's right to obtain a deficiency judgment against all guarantors under RCW 61.24.100(3), or Peter W. Powell dies. Notwithstanding the foregoing, the death of Peter W. Powell shall not constitute an event of default hereunder provided that within 30 days of said death one of the following conditions is satisfied: (i) Beneficiary determines in its reasonable discretion that substantially all of the assets of Peter W. Powell have been transferred to or will at the conclusion of the probate of his estate be transferred to his spouse, Maryanne L. Powell, and such spouse is then alive and a guarantor of the Note; (ii) Grantor proposes and Beneficiary accepts a substitute guarantor with financial strength acceptable to Beneficiary to support the indebtedness secured hereby as determined in Beneficiary's sole discretion; or (iii) the personal representative for the estate of Peter W. Powell reserves from distribution to Peter W. Powell's heirs and devisees funds in an amount equal to the indebtedness secured hereby, obtains a letter of credit payable to Beneficiary on terms reasonably acceptable to Beneficiary supporting repayment of the indebtedness, or establishes such other security as may be acceptable to Beneficiary in its sole discretion and the foregoing is approved by the court in which Peter W. Powell's estate is being probated.

4.2 Rights and Remedies on Default. Upon the occurrence of any event of default and at any time thereafter, Beneficiary may exercise any one or more of the following rights and remedies:



200202120050

Skagit County Auditor

(a) The right at its option by notice to Grantor to declare the entire indebtedness secured hereby immediately due and payable.

(b) With respect to all or any part of the Property, the right to foreclose by judicial foreclosure in accordance with applicable law.

(c) The right to have the Trustee sell the Trust Estate in accordance with the Deed of Trust Act of Washington and the Uniform Commercial Code of Washington where applicable, at public auction to the highest bidder. Any person except the Trustee may bid at the Trustee's sale. The power of sale conferred by this Deed of Trust and the law is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. The Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee, or Beneficiary shall be a party, unless such action or proceeding is brought by the Trustee.

(d) With respect to all or any part of the Trust Estate that constitutes personalty, the rights and remedies of a secured party under the Uniform Commercial Code of Washington.

(e) The right, without notice to Grantor, to terminate the license granted to Grantor to collect the Cash Collateral without taking possession, and to demand, collect, receive, sue for, attach and levy against the Cash Collateral in Beneficiary's name; to give proper receipts, releases and acquittances therefor; and after deducting all necessary and proper costs and expenses of operation and collection as determined by Beneficiary, including reasonable attorney fees, to apply the net proceeds thereof, together with any funds of Grantor deposited with Beneficiary, upon any indebtedness secured hereby and in such order as Beneficiary may determine. In furtherance of this right, Beneficiary may require any tenant or other user to make payments of rent or use fees directly to Beneficiary, and payments by such tenant or user to Beneficiary in response to its demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed.

(f) The right to have a receiver appointed to take possession of any or all of the Trust Estate, with the power to protect and preserve the Trust Estate and to operate the Trust Estate preceding foreclosure or sale and apply the proceeds, over and above cost of the receivership, against the indebtedness secured hereby. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not apparent value of the Trust Estate exceeds the indebtedness by a substantial amount. Grantor hereby irrevocably consents to the appointment of a receiver on the terms set forth herein. Employment by Beneficiary shall not disqualify a person from serving as receiver. Upon taking possession of all or any part of the Trust Estate, the receiver may:



200202120050
Skagit County Auditor

2/12/2002 Page 19 of 30 1:09PM

080051-0232/020802/PDXDOCS:1280530.2

(1) Use, operate, manage, control, and conduct business on the Trust Estate;

(2) Make expenditure for all maintenance, renewals, replacements, alterations, additions, and improvements to the Trust Estate as in its judgment are proper;

(3) Insure and reinsure the Trust Estate and all risks incidental to the possession, operation, and management of the Trust Estate;

(4) Collect the Cash Collateral and any other revenues and income from the Trust Estate and apply such sums to the expenses of use, operation, and management in such priority as the receiver deems appropriate. Grantor shall promptly turn over to the receiver all documents, books, records, papers, and accounts, together with the amount of any deposits, rentals, and use fees from any tenant or other user. The receiver may appear in any proceeding or bring suit on Grantor's behalf, as necessary to enforce obligations of any tenant or other user, including actions for the recovery of rent and actions in forcible detainer;

(5) Cancel or terminate any Lease or agreement for any cause for which Grantor would be entitled to cancel the same;

(6) Extend or modify any Lease (with the agreement of any tenant thereunder) and make any new Lease on any portion of the Trust Estate. Any such instruments shall be binding upon Grantor and all persons whose interests in the Trust Estate are subordinate to this Deed of Trust, and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge, or indebtedness, satisfaction of the foreclosure decree or issuance of any certificate of sale or deed to any purchaser;

(7) Complete any construction in progress on the Property, and in that connection, pay bills, borrow funds, employ contractors, and make any changes in plans or specifications as the receiver deems appropriate; or

(8) If the revenues and income are insufficient to pay expenses, the receiver may borrow such sums as the receiver deems necessary for the purposes stated in this paragraph. The amounts borrowed shall bear interest from the date of expenditure until repaid at the same rate per annum as is accruing on the Note. Such sums shall become a part of the balance secured by this Deed of Trust and shall be payable by Grantor on demand.

(g) To the maximum extent permitted by applicable law, the right to obtain a deficiency judgment against Grantor or all guarantors of the indebtedness



200202120050
Skagit County Auditor

secured hereby in the event the net sale proceeds of any foreclosure sale are insufficient to pay the entire unpaid indebtedness secured hereby.

(h) To the maximum extent permitted by applicable law, the right to maintain an action to collect the indebtedness secured hereby from Grantor or any other person liable on the indebtedness secured by this Deed of Trust.

(i) Any other right or remedy provided in this Deed of Trust, the Note, any other Loan Documents, or under law.

4.3 Foreclosure by Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be given such Notice of Default as then required by law, including any notices required to preserve Beneficiary's right to seek a deficiency judgment against Grantor or any guarantor. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after Notice of Sale and Notice of Foreclosure having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale and Notice of Foreclosure, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest, all other sums then secured hereby and the remainder, if any, shall be paid into court in the manner provided by law.

4.4 Sale of Personal Property. Beneficiary shall give Grantor reasonable notice of the time and place of any public sale of any Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten days before the time of the sale or disposition.



200202120050

Skagit County Auditor

4.5 Due on Sale or Increase in Interest Rate on Sale.

(a) Grantor agrees and acknowledges that the indebtedness evidenced by the Note is personal to Grantor, and that Grantor's personal responsibility and/or control of the Property is a material inducement to Beneficiary to agree to enter into this transaction. Any conveyance of the whole or any part of the Property, whether by deed, contract, further encumbrance, or otherwise, lease of the same (other than a lease of any portion of the space in the improvements on the Property in the ordinary course of business without an option to purchase) without Beneficiary's prior written consent, or any transfer of limited liability company interests in Grantor without Beneficiary's prior written consent shall be deemed to increase the risk of Beneficiary, and Beneficiary or other holder may declare the entire unpaid balance immediately due and payable, or, at its sole option, it may consent to such conveyance, or transfer of limited liability company interest in writing and may increase the interest rate on the Note, change the maturity date of the Note, modify the terms, or impose whatever other conditions it shall deem necessary to compensate it for such increased risk. Any increase in interest shall entitle the holder to increase monthly payments on the indebtedness evidenced by the Note so as to retire the obligation within the original stipulated time. Notwithstanding the foregoing, limited liability company interests in Grantor may be transferred between members and such interests may be transferred to entities controlled by members if for estate planning purposes, without Beneficiary's consent in either instance, so long as the transferring member gives prior written notice thereof to Beneficiary and following such transfer Peter W. Powell will hold, directly or indirectly through entities which he controls, a majority interest in Grantor.

(b) The execution and delivery by the Grantor of any joint venture agreement, partnership agreement, declaration of trust, option agreement, or other instrument whereunder any other person or corporation may become entitled, directly or indirectly, to the possession or enjoyment of the Property, or the income or other benefits derived or to be derived therefrom, shall in each case be deemed to be a conveyance or assignment of Grantor's interest in the Property for the purposes of this section, and shall require the prior written consent of Beneficiary.

(c) In the event Grantor shall request the consent of Beneficiary in accordance with the provisions of this Section 4.5, Grantor shall deliver a written request to Beneficiary, together with such information as Beneficiary may reasonably request regarding such conveyance, further encumbrance, lease or transfer of capital stock, partnership interest, or limited liability company interest and shall allow Beneficiary 30 days to evaluate such request. In the event Beneficiary approves such conveyance, encumbrance, lease, or transfer of capital stock or partnership interest, Grantor shall pay Beneficiary a processing fee in an amount to be determined by Beneficiary but in no event less than Five Hundred Dollars to compensate Beneficiary for its costs in processing such request. Consent

080051-0232/020802/PDXDOCS:1280530.2



200202120050

Skagit County Auditor

as to any one transaction shall not be deemed to be a waiver of the right to require consent to any further or successive transaction.

(d) In the event ownership of the Property or any portion thereof becomes vested in a person other than Grantor, Beneficiary may, without notice to Grantor herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Grantor herein named, without in any way vitiating or discharging Grantor's liability hereunder or the obligations hereby secured.

4.6 Release of Certain Property. Upon payment by Grantor to Beneficiary of \$85,000 to reduce the principal balance outstanding under the Note, Beneficiary agrees to release from the lien of this Deed of Trust Parcel C described on Exhibit A attached hereto.

4.7 Attorney Fees. In the event suit, action, or arbitration proceeding is instituted to enforce any of the terms of this Deed of Trust, Beneficiary shall be entitled to recover from Grantor such sum as the court or arbitrator may adjudge reasonable as attorney fees at trial, on any appeal, and in any bankruptcy proceeding. All reasonable expenses incurred by Beneficiary that are necessary at any time in Beneficiary's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of any appraisal of the Property (whether or not obtained in an action for a deficiency judgment under RCW 61.24.100(3)), searching records, obtaining title reports, surveyors' reports, demanding payment, attorneys' opinions, or title insurance, whether or not any court action is involved, shall become a part of the indebtedness secured hereby, payable on demand, and shall bear interest at the Note Rate from the date of expenditure until paid.

4.8 Surviving Obligations. The obligations and liabilities of Grantor for waste on the Property or for wrongful retention of any Cash Collateral, insurance proceeds, or condemnation awards shall survive any termination, satisfaction, assignment, entry of judgment of foreclosure, delivery of trustee's deed in a nonjudicial foreclosure proceeding, or delivery of a deed in lieu of foreclosure.

ARTICLE 5 MISCELLANEOUS

5.1 Governing Law. This Deed of Trust has been delivered to Beneficiary and accepted by Beneficiary in the State of Oregon. Except as set forth hereinafter, this Deed of Trust shall be governed by, construed, and enforced in accordance with the laws of the State of Oregon, except and only to the extent of procedural matters related to the perfection and enforcement by Beneficiary of its rights and remedies against the Property, which matters shall be governed by the laws of the State of Washington. The loan transaction which is evidenced by the Note and this Deed of Trust (which secures the

080051-0232/020802/PDXDOCS:1280530.2



200202120050
Skagit County Auditor

Note) has been applied for, considered, approved, and made in the State of Oregon. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable.

5.2 Modification. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

5.3 Inspections and Appraisals. Beneficiary or its agents may enter upon the Property at any reasonable times to inspect or appraise it, whether or not any default exists hereunder. If Grantor refuses to permit such inspection or appraisal, Beneficiary may specifically enforce performance of this provision. Grantor agrees to pay the cost of all appraisals required by Beneficiary in its sole discretion (a) to comply with (i) any applicable statute or regulation, or (ii) the request or directive (whether or not having the force of law) of any regulatory authority with jurisdiction over Beneficiary, (b) to comply with Beneficiary's policies concerning appraisals, or (c) at any time after the occurrence of an event of default. All such appraisal costs shall become a part of the indebtedness secured hereby and shall be payable on demand, together with interest thereon at the highest rate applicable to any such indebtedness.

5.4 Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums and other obligations secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

5.5 Notices. Whenever Beneficiary, Grantor, or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any communication which is mailed as provided above shall be deemed delivered 72 hours after mailing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

5.6 Acceptance by Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.



200202120050

Skagit County Auditor

5.7 **Captions.** The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

5.8 **Invalidity of Certain Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially unsecured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust. Further, the invalidity or unenforceability of any portion or provision of this Deed of Trust shall in no way affect the validity or enforceability of the remainder hereof.

5.9 **Subrogation.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Grantor's request and Beneficiary shall be subrogated to any and all rights and liens owed by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether such liens, charges or encumbrances are released.

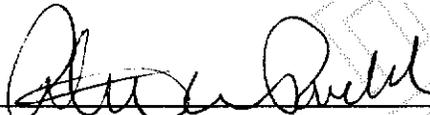
5.10 **No Merger.** If both the lessor's and lessee's estates under any lease or portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and created by Grantor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

In Witness Whereof, Grantor has executed this Deed of Trust as of the day and year first above written.

GRANTOR:

POWELL-ANACORTES LLC

By:


Peter W. Powell, Manager



200202120050
Skagit County Auditor

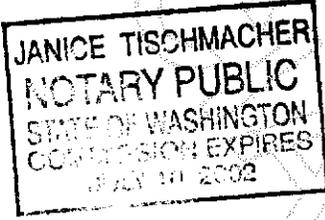
2/12/2002 Page 25 of 30 1:09PM

080051-0232/020802/PDXDOCS:1280530.2

State of Washington)
) ss.
County of KING)

I certify that I know or have satisfactory evidence that Peter W. Powell is the person who appeared before me, and said person acknowledged that he/~~she~~ signed this instrument, on oath stated that he/~~she~~ was authorized to execute the instrument, and acknowledged it as the manager of Powell-Aracortes, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: February 8, 2002.



Janice Tischmacher
Notary Public for Washington
Janice Tischmacher
(Printed or Stamped Name of Notary)
Residing at Skunkland, WA
My appointment expires: 7-10-02



200202120050
Skagit County Auditor
2/12/2002 Page 26 of 30 1:09PM

EXHIBIT A

Legal Description

PARCEL "A":

Those portions of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

(b) That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at the intersection of the East line of Commercial Avenue and the South line of 17th Street projected Easterly from the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington; thence South, 60.00 feet; thence East to the right-of-way of the Great Northern Railway Company; thence Northerly along the West line of said railway right-of-way to the South line of 17th Street, projected Easterly; thence West along the South line of said 17th Street projected to the point of beginning.

(c) That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at a point on the East line of Commercial Avenue in the City of Anacortes, which point is 60.00 feet South of the South line of 17th Street produced; thence South on the East line of Commercial Avenue, 60.00 feet; thence at right angles East to the Westerly boundary of the Great Northern Railway right-of-way; thence Northerly along the Westerly boundary of said Great Northern Railway right-of-way to a point where the same intersects a line extending at right angles to Commercial Avenue from the point of beginning; thence West along said line to the point of beginning.

(d) That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning on the East side of Commercial Avenue at a point 120.00 feet South of the South line of 17th Street projected Easterly from the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington; thence South, along the East side of said Commercial Avenue, 96.00 feet; thence East, 90.00 feet; thence North, 96.00 feet; thence West, 90.00 to the point of beginning.

TOGETHER WITH the following described:



200202120050
Skagit County Auditor

080051-0232/020802/PDXDOCS:1280530.2

ALSO commencing on the North line of 18th Street, if produced Easterly from 18th Street as shown on the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington, 90.00 feet East of the East line of Commercial Avenue; thence North, 96.00 feet; thence East to the West line of the Great Northern Railway right-of-way; thence Southerly along said right-of-way to a point directly East of the point of beginning; thence West to the point of beginning.

PARCEL "B":

That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at the point of intersection of the South line of 17th Street extended East from the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington, with the West line of that certain tract conveyed to Seattle & Northern Railway Company, by Deed dated December 17, 1889, and recorded January 10, 1890, in Volume 9 of Deeds, Page 314, which point is also described as a point bearing from the Northwest corner of said Government Lot 2, East along the North line of said Government Lot 2, 370.00 feet; South 250.00 feet; thence South 24 degrees 03' East to the South line of 17th Street extended East; thence from said point of beginning, run South 24 degrees 03' East to a point that is 216.00 feet South, measured perpendicularly from the South line of 17th Street extended East; thence East parallel with the said South line of 17th Street extended to the West line of Avenue "Q" extended South from the plat of the "City of Anacortes"; thence North along the West line of Avenue "Q" extended, 216.00 feet to the South line of 17th Street extended; thence Westerly along the South line of said extension of 17th Street to the point of beginning.

PARCEL "C":

That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at a point on the North side of 18th Street produced in the City of Anacortes, Skagit County, Washington, according to the original plat of said City on file and of record in the Office of the Auditor of Skagit County, Washington, and 90.00 feet East of the East line of Commercial Avenue; thence running South 180.00 feet; thence running East, 85.00 feet; thence running North to the West line of the right-of-way of the Seattle and Montana Railway (now Great Northern Railroad); thence running Northwesterly along the said right-of-way to a point due East of the place of beginning; thence West to the point of beginning.

EXCEPT from all the above Parcels "A", "B" and "C", that portion described as follows:



200202120050

Skagit County Auditor

2/12/2002 Page 28 of 30

1:09PM

080051-0232/020802/PDXDOCS:1280530.2

Beginning at the intersection of the North line of 18th Street, if produced Easterly from 18th Street as shown on the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington, and the East line of Commercial Avenue; thence North along the East line of Commercial Avenue, 63.00 feet; thence East parallel with the North line of 18th Street produced, a distance of 70.00 feet; thence South parallel with the East line of Commercial Avenue, 63.00 feet to the North line of 18th Street produced; thence West along the North line of 18th Street produced, a distance of 70.00 feet to the point of beginning.

AND EXCEPT from all the above Parcels "A", "B" and "C", that portion conveyed to the City of Anacortes by instrument recorded May 12, 1999, under Skagit County Auditor's File No. 9905120020.

(The above described property delineated of record by Survey filed in Volume 15 of Surveys, at Pages 45 and 46, and recorded December 1, 1993, under Auditor's File No. 9312010077, all records of Skagit County, Washington.)



200202120050
Skagit County Auditor

2/12/2002 Page 29 of 30 1:09PM

080051-0232/020802/PDXDOCS:1280530.2

EXHIBIT B

Permitted Encumbrances

1. An easement over and across a strip of land 7 feet in width North and South and abutting upon and immediately adjacent to the tract excepted in Parcel (d) above on the entire distance on the North, which easement shall be for ingress and egress and shall be for the joint right of usage with the vendor and/or successors or assigns. Also an easement for the right to construct, operate, maintain and repair an underground sewer over a strip of ground 6 feet in width, the center line of which is described as follows:

Beginning at a point 70 feet East and 3 feet North of the intersection of the East line of Commercial Avenue and the North line of 18th Street produced Easterly in the City of Anacortes, Skagit County, Washington; thence East parallel to the North line of said 18th Street produced to the West line of the Great Northern Railway right-of-way, as granted to Harold Breckenridge and Connie Breckenridge, husband and wife, by instrument dated July 30, 1955, and recorded August 9, 1955 under Auditor's File No. 522234.

2. Reservations contained in deed:

Executed by:	Great Northern Railway Company, a Minnesota corporation
Recorded:	January 16, 1967
Auditor's No.:	693445
As Follows:	

"EXCEPTING AND RESERVING unto the Grantor, its successors and assigns, forever, all iron, natural gas, coal, oil and all minerals of any nature whatsoever upon or in the lands above described, together with the sole, exclusive and perpetual right to explore for, remove and dispose of the same by any means or methods suitable to the Grantor, its successors and assigns, but without entering upon or using the surface of the lands hereby conveyed, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by the Grantee, its successors and assigns."

3. Matters as disclosed and/or delineated on the face of that Survey filed in Volume 15 of Surveys, pages 45-46 and recorded December 1, 1993 under Auditor's file No. 9312010077, all records of Skagit County, Washington. (Copy Attached)

4. Matters of record disclosed by survey recorded as:

Auditor's No.:	200107200060
Recorded:	July 20, 2001
Survey Affects:	Subject property



200202120050
Skagit County Auditor
2/12/2002 Page 30 of 30 1:09PM

080051-0232/020802/PDXDOCS:1280530.2