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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Virginia M. Pedreira  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101-3197

FIRST AMERICAN TITLE CO.  
69090-1

LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING  
(WITH ASSIGNMENT OF RENTS AND LEASES)

GRANTOR: ADVANCED H2O, INC., a Washington corporation

GRANTEES:  
Beneficiary: COMERICA BANK-CALIFORNIA

Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY

ABBREVIATED  
LEGAL  
DESCRIPTION: LOT 22, "HOPPER ROAD BUSINESS PARK"

Complete description may be found on Exhibit A of document.

ASSESSOR'S  
PROPERTY TAX  
PARCEL ACCOUNT  
NUMBER: 8025-000-022-0000 (P-116595)  
5002382 (L109760)

REFERENCE NUMBERS OF  
DOCUMENTS ASSIGNED: 9502010066, 9512180067, 9801230057,  
200005100050, 200202260120

This Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents and Leases) ("Deed of Trust") is made this 31st day of May, 2002, by ADVANCED H2O, INC., a Washington corporation ("Trustor"), whose address is 13226 SE 30<sup>th</sup>, Suite B-3, Bellevue, Washington 98005, to FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation ("Trustee"), whose address is c/o First American Title Company of Skagit County, 1301-B Riverside Drive, Mount Vernon, Washington 98273, for the benefit of COMERICA BANK-CALIFORNIA a California banking corporation ("Beneficiary"), whose address is 333 W. Santa Clara Street, San Jose, California 95113, Attn: Corporate Banking Center.

Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE, its successors and assigns, in Trust, WITH POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION, all of Trustor's existing and after-acquired leasehold and fee interests in the real property in the County of Skagit, State of Washington, legally described as follows:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

Together with:

(a) all easements, hereditaments, appurtenances, rights, licenses and privileges now or later benefiting or otherwise relating to the above described land or any improvements thereon;

(b) all buildings and improvements now or later situated under, upon or over any of the above described land;

(c) subject to the assignment to Beneficiary under paragraph 9 below, all the rents, issues, profits, revenues, security deposits, advance rentals, royalties, deposit accounts, accounts and general intangibles now or later arising from the above described land, or relating to any business conducted by Trustor on it, under present or future leases, licenses or otherwise (individually and collectively, the "Rents");

(d) all machinery, equipment, goods, fixtures, and articles of personal property of every kind and nature (other than Household Goods, as defined by 12 CFR 227.12, as amended from time to time, unless such goods were purchased with the proceeds of any loan secured by this Deed of Trust), now or later located upon the above described land and usable in connection with any present or future operation on the land (individually and collectively the "equipment") including, without limit, all lighting, heating, cooling, ventilating, air-conditioning, incinerating, refrigerating, plumbing, sprinkling, communicating and electrical systems. It is agreed that all equipment shall for the purposes of this Deed of Trust, unless Beneficiary shall otherwise elect, be deemed conclusively to be real estate and mortgaged under this Deed of Trust;

(e) all right, title and interest of Trustor under all leases, licenses, agreements and permits now or hereafter relating to the above described land or improvements thereon, including without limitation that certain Lease Agreement (the "Site Lease") dated December 20, 1994, between Trustor, as lessee, and the Port of Skagit County (the "Port"), as lessor, recorded under Skagit County Auditor's File No. 9502010066, as amended by Amendment to Lease Agreement recorded under Skagit County Auditor's File No. 9512180067, by Assignment of Lease recorded under Skagit County Auditor's File No. 9801230057, by Second Amendment to Lease recorded under Skagit County Auditor's File No. 200005100050, and by Second Assignment of Lease With Consent Thereto & Third Amendment Thereof recorded under Skagit County Auditor's File No. 200202260120, with respect to the real property described above; and

(f) all awards or payments, including insurance and condemnation proceeds, and interest on them, made with respect to the Premises as a result of (i) any eminent domain proceeding, (ii) any street grade alteration, (iii) any loss of or damage to any building or other improvement, (iv) any other injury to or decrease in the value of the Premises, (v) any refund due on account of the payment of real estate taxes, assessments or other charges levied against the Premises or (vi) any refund of utility deposits or right to any tenant deposit (all of the above individually and collectively the "Premises.")

In addition, Trustor agrees that this Deed of Trust constitutes a fixture filing under the Washington Uniform Commercial Code (the "UCC"). The "debtor" is Advanced H2O, Inc., a Washington corporation, and the "secured party" is the Beneficiary, and the addresses of the debtor and secured party are the addresses stated in the first paragraph of this Deed of Trust. The organizational identification number of the debtor is 601878589. The owner of record of the land described above is the Port of Skagit County, a Washington municipal corporation.

THIS DEED OF TRUST IS GIVEN FOR THE PURPOSE OF SECURING, in order of priority as Beneficiary may elect, the following (the "Secured Obligations"):

(1) Payment and performance of all of Trustor's obligations under the terms of that certain Loan and Security Agreement between Trustor and Beneficiary of even date herewith (the "Loan and Security Agreement") and all the other documents and instruments executed by the Trustor in connection therewith, excluding however any guaranty or unsecured environmental indemnity (collectively, the "Loan Documents") and all sums which are or may become owing under the Loan Documents and any and all modifications, extensions, renewals and replacements thereof, including without limitation all obligations and liabilities of Trustor to Beneficiary in connection with the Letter of Credit to be issued thereunder in the face principal amount not to exceed \$2,185,529.16, the Equipment Line (as defined in the Loan and Security Agreement) in a principal amount up to \$1,200,000, and the Revolving Facility (as defined in the Loan and Security Agreement) with a credit limit of up to the principal amount of \$1,300,000 pursuant to which advances may be made, repaid and remade from time to time subject to the terms and limitations of the Loan and Security Agreement;

(2) Payment of all other sums becoming due or payable under this Deed of Trust to Trustee or Beneficiary;

(3) Complete observance, performance and discharge of every condition, obligation, and agreement contained in this Deed of Trust; and

(4) Payment of all additional sums with interest as may be later borrowed from Beneficiary, its successors or assigns by Trustor when evidenced by another promissory note or notes or agreement, which is by its terms specifically secured by this Deed of Trust.

In addition, this Deed of Trust also secures and the Secured Obligations also include all costs incurred by Beneficiary or Trustee in establishing, determining, continuing, or defending the validity or priority of its lien or security interest, or to protect the value of the Premises, or for any appraisal, environmental audit, title examination or title insurance policy relating to the Premises, or in pursuing its rights and remedies under this Deed of Trust; all costs incurred by Beneficiary or Trustee in connection with any suit or claim involving or against Beneficiary or Trustee in any way relating to the Premises, the Secured Obligations or this Deed of Trust; and all costs of collecting Secured Obligations; all of the above costs including without limit attorney fees incurred by Beneficiary or Trustee. Trustor agrees to pay Beneficiary and Trustee, upon demand, all costs incurred by Beneficiary or Trustee which are secured by this Deed of Trust, and until paid all costs shall bear interest at the highest per annum rate applicable to the indebtedness secured by this Deed of Trust, but not in excess of the maximum rate permitted by law. Any reference in this Deed of Trust to attorney fees shall be deemed a reference to all reasonable fees, charges, costs and expenses of both in-house and outside counsel and paralegals, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorney fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding or otherwise.



Trustor, on a continuing basis, warrants, covenants and agrees to and with Beneficiary and Trustee, which covenants, warranties and agreements, to the extent permitted by law, shall be deemed to run with the land, as follows:

1. To pay, perform and observe each condition, obligation, and covenant for which this Deed of Trust has been given as security.

2. Trustor holds a valid leasehold interest in the entire Premises under the Site Lease with full power to sell, mortgage and convey it; the Premises are free of all easements, restrictions, liens, leases and encumbrances whether now existing or later created, except those matters listed on attached Schedule A (if any) to which this Deed of Trust is expressly subject, and Trustor will warrant and defend said estate against all other claims. Beneficiary and Trustee shall each have the right, at their option and at such times as either, in its sole discretion, deems necessary, to take whatever action it may deem necessary to defend or uphold the lien of this Deed of Trust or otherwise enforce any of its rights under this Deed of Trust or any obligation secured by this Deed of Trust including, without limit, the right to institute appropriate legal proceedings for these purposes. With respect to the right, title, or lien of any person or entity which is superior to the lien of this Deed of Trust, Beneficiary and Trustee each have the right, but not the obligation, to acquire and/or pay off the holder of such right, title, or lien and add the amount so paid to the obligations secured by this Deed of Trust. The Premises are not used principally for agricultural purposes.

3. Without the prior written consent of Beneficiary, Trustor shall not mortgage or pledge the Premises as security for any other indebtedness or obligations. Trustor shall pay when due, and before any interest, collection fees or penalties accrue or default occurs, all payments required under any mortgages on the Premises, all ground rent payments under the Site Lease, and all taxes, assessments, and other charges and impositions levied, assessed or existing with respect to (i) the Premises or (ii) the execution, delivery or recordation of this Deed of Trust or any note or other instrument evidencing or securing repayment of the Secured Obligations or the interest of Beneficiary in the Premises, and will deliver to Beneficiary without demand official receipts showing these payments. If Trustor fails to pay these mortgage payments, ground rents, taxes, assessments, other charges or impositions when due, or if Trustor fails to pay all interest, collection fees and penalties accrued on them, Beneficiary, at its sole option, may (but is not obligated to) pay them and the monies paid shall be added to the Secured Obligations. Trustor shall pay (before the same become liens or encumbrances against the Premises) any and all obligations or liabilities for repairs or improvements to the Premises or for any other goods, services, or utilities furnished to the Premises. At the sole option of Beneficiary, Trustor shall pay to Beneficiary in advance on the first day of each month a pro rata portion (as determined by Beneficiary) of all ground rents, taxes, assessments, liens, mortgages, and other charges levied, assessed or existing on the Premises. In the event that sufficient funds have been deposited with Beneficiary to cover the amount of these ground rents, taxes, assessments, liens, mortgages, and other charges when they become due and payable, Beneficiary shall pay them. In the event that sufficient funds have not been deposited to cover the amount of these ground rents, taxes, assessments, liens, mortgages and other charges at least thirty (30) days prior to the time when they become due and payable, Trustor shall immediately upon request by Beneficiary pay the amount of the deficiency to Beneficiary. Beneficiary shall not be required to keep in a separate account or to pay Trustor any interest or earnings whatever on the funds held by Beneficiary for the payment of ground rents, taxes, assessments, liens, mortgages, or other charges pursuant to this paragraph or for the payment of insurance premiums under paragraph (4) below, or on any other funds deposited with Beneficiary in connection with this Deed of Trust. If an Event of Default occurs under this Deed of Trust, any funds then remaining on deposit with Beneficiary may be applied against the Secured Obligations immediately upon or at any time after the Event of Default occurs, and without notice to Trustor. Nothing in this paragraph shall be considered a consent by Beneficiary to any lien, mortgage or encumbrance on the Premises unless set forth on attached Schedule A, if any.



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4. Trustor shall keep the buildings and all other improvements now or later existing on the Premises constantly insured for the benefit of Beneficiary against fire and other hazards and risks, including without limit vandalism and malicious mischief, as Beneficiary may require and shall further provide flood insurance (if the Premises are situated in an area which is considered a flood risk area by the Federal Emergency Management Agency or successor agency), loss of rents insurance, public liability and product liability insurance and any other insurance as Beneficiary may require from time to time, all in amounts and in forms and with companies as are satisfactory to Beneficiary. Trustor shall deliver to Beneficiary the policies evidencing the required insurance with premiums fully paid for one year in advance and with standard mortgagee clauses satisfactory to Beneficiary. Renewals of the required insurance (together with evidence of premium prepayment for one year in advance) shall be delivered to Beneficiary at least thirty (30) days before the expiration of any existing policies. All policies and renewals shall provide that they may not be canceled or amended without giving Beneficiary thirty (30) days prior written notice of cancellation or amendment. All policies and renewals shall be held by, and are pledged to, Beneficiary, along with all insurance premium rebates, as additional security for the Secured Obligations. Should Trustor fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals of them as provided above, Beneficiary may (but is not obligated to) have the insurance issued or renewed (and pay the premiums on it for the account of Trustor) in amounts and with companies and at premiums as Beneficiary deems appropriate. If Beneficiary elects to have insurance issued or renewed to insure Beneficiary's interest, Beneficiary shall have no obligation to also insure Trustor's interest or to notify Trustor of Beneficiary's actions. Any sums paid by Beneficiary for insurance as provided above shall be added to the Secured Obligations. Such amounts will bear interest from the date they are advanced at the highest rate shown in the instrument or instruments evidencing the Secured Obligations. Such amounts shall be payable upon demand or, at Beneficiary's option, in the form of larger installments otherwise payable under such instrument or instruments. In the event of loss or damage, the proceeds of all required insurance shall be paid to Beneficiary alone. No loss or damage shall itself reduce the Secured Obligations. Beneficiary and any of Beneficiary's employees is each irrevocably appointed attorney-in-fact for Trustor and is authorized to adjust and compromise each loss without the consent of Trustor, to collect, receive and receipt for the insurance proceeds in the name of Beneficiary and Trustor and to endorse Trustor's name upon any check in payment of the loss. The proceeds shall be applied first toward reimbursement of all costs and expenses of Beneficiary in collecting the proceeds (including, without limit, attorneys' fees), and then toward payment of the Secured Obligations or any portion of it, whether or not then due or payable and in whatever order of maturity as Beneficiary may elect, or Beneficiary, at its option, may apply any or all the insurance proceeds to the repair or rebuilding of the Premises. Application of proceeds by Beneficiary toward later maturing installments of the Secured Obligations, if any, shall not excuse Trustor from making any regularly scheduled installment payments, if any, nor shall such application extend or reduce the amount of any of such payments. Application of proceeds by Beneficiary toward payment of the Secured Obligations shall constitute an acceleration and prepayment and shall subject Trustor to any applicable prepayment premium or formula. In the event of a foreclosure of this Deed of Trust, or the giving of a deed or assignment in lieu of foreclosure, the purchaser or grantee/assignee of the Premises shall succeed to all of the rights of Trustor under said insurance policies. At the sole option of Beneficiary, Trustor shall pay to Beneficiary in advance on the first day of each month a pro rata portion of the annual premiums (as estimated by Beneficiary) due on the required insurance. In the event that sufficient funds have been deposited with Beneficiary to cover the amount of the insurance premiums for required insurance when the premiums become due and payable, Beneficiary shall pay the premiums. In the event that sufficient funds have not been deposited with Beneficiary to pay the insurance premiums at least thirty (30) days prior to the time when they become due and payable, Trustor shall immediately upon request pay the amount of this deficiency to Beneficiary. Trustor shall promptly repair, replace or rebuild each part of the Premises which may be damaged or destroyed by fire or other casualty or which may be affected by any eminent domain proceedings, notwithstanding application by Beneficiary of the insurance proceeds or eminent domain award to payment of the Secured Obligations.



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5. Trustor shall abstain from commission of waste upon the Premises, keep the Premises in good repair, and promptly comply with all laws, regulations and requirements of all governmental bodies affecting the Premises. If Beneficiary or Trustee determines that the Premises requires inspection, testing, appraisal, repair, care, alteration or attention of any kind, Beneficiary, Trustee or their respective representatives may (but are not obligated to) enter upon the Premises upon not less than twenty-four (24) hours prior notice (although no notice is required if an Event of Default has occurred and is continuing or in an emergency), and inspect, test, appraise, repair, alter or maintain the Premises as Beneficiary or Trustee may deem necessary, and Trustor shall reimburse Beneficiary and Trustee upon demand for all resulting costs and expenses incurred by Beneficiary or Trustee, as the case may be. Any inspection, audit, appraisal or examination by Beneficiary, Trustee or their respective representatives of the Premises or of information or documents pertaining to the Premises is for the sole purpose of protecting Beneficiary's and Trustee's interests under this Deed of Trust and is not for the benefit or protection of Trustor or any third party. Neither Beneficiary nor Trustee have any obligation to provide Trustor or any third party with information concerning or results of any inspection, audit, appraisal or examination by Beneficiary, Trustee or their respective representatives. If Beneficiary or Trustee, in its sole discretion, discloses information to Trustor this disclosure is for the sole protection of Beneficiary or Trustee, does not constitute an agreement to make further disclosure and does not create a warranty by Beneficiary or Trustee as to the accuracy, sufficiency or any other aspect of the disclosure. Beneficiary or Trustee may spend money as Beneficiary or Trustee deems essential to protect the value of the Premises. Trustor shall not make or permit any other party to make any material alterations, additions or improvements of any type to the Premises (individually and collectively the "Improvements"), regardless of whether the Improvements would increase the value of the Premises, without Beneficiary's prior written consent, which consent shall not be unreasonably withheld or delayed. If Beneficiary consents to the making of any Improvements and the Improvements are not completed with due diligence in accordance with the plans and specifications approved in writing by Beneficiary, or if construction of the Improvements should cease before completion for a period of thirty (30) days, then and in either event it shall be an Event of Default under this Deed of Trust and Beneficiary shall have all the rights and remedies provided in this Deed of Trust, including without limitation, the right (but not the obligation) to enter or cause entry to be made upon the Premises and complete the Improvements and its costs shall be added to the Secured Obligations. If any action is threatened or commenced which affects Beneficiary's or Trustee's interest in the Premises, including without limit building, environmental or zoning proceedings, Beneficiary or Trustee may take such action as it deems necessary to protect its interest and its costs shall be added to the Secured Obligations.

6. In the event the Premises is taken under power of eminent domain, or by condemnation, the entire proceeds of the award shall be paid directly to Beneficiary and applied toward reimbursement of all Beneficiary's costs and expenses incurred in connection with collecting the award (including, without limit, attorney fees), and the balance applied upon the Secured Obligations whether or not then due or payable in whatever manner Beneficiary deems advisable. Excess proceeds of the award, if any, shall be paid to Trustor. Application by Beneficiary of any condemnation award or portion of it toward the last maturing installments or payments of the Secured Obligations shall not excuse Trustor from making any regularly scheduled payments nor extend or reduce the amount of these payments, if any. Application of any condemnation award by Beneficiary toward payment of the Secured Obligations shall constitute an acceleration and a prepayment and shall subject Trustor to any applicable prepayment premium or formula. Beneficiary or any of Beneficiary's employees is irrevocably appointed attorney-in-fact and is duly authorized and empowered to receive, receipt for, discharge and satisfy any condemnation award and judgment, whether joint or several, on behalf of Trustor. Beneficiary shall not be liable for failure to collect any condemnation award, regardless of the cause of such failure.

7. The Secured Obligations shall become due and payable immediately, without notice, at the option of Beneficiary, if Trustor shall convey, assign or transfer the Site Lease or any portion of the Premises by deed, assignment, installment sale contract or other instrument, or if the interests held by Trustor in the Site Lease



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or any portion of the Premises shall become vested in any other person or party in any manner whatsoever or if there is any disposition (through one or more transactions) of legal or beneficial title to a controlling interest of Trustor. In the event the lessee's interests under the Site Lease or the ownership of the Premises becomes vested in a person or persons other than Trustor (with or without the prior written approval of Beneficiary), Beneficiary and Trustee may (but shall not be obligated to) deal with and may enter into any contract or agreement with the successor(s) in interest with reference to this Deed of Trust in the same manner as with Trustor, without in any manner discharging or otherwise affecting the lien of this Deed of Trust or Trustor's liability under this Deed of Trust or upon the Secured Obligations.

8. This Deed of Trust shall, as to the equipment and other aspects of the Premises described above that constitute personal property covered by Article 9 of the UCC (the "**Personal Property**"), be deemed to grant a security interest in the Personal Property pursuant to the UCC and for such purposes Trustor hereby grants a security interest in the Personal Property to Beneficiary. Trustor hereby authorizes Beneficiary to file a UCC Financing Statement in form and substance deemed necessary by Beneficiary to perfect its security interest in the Personal Property and such modifications, amendments or terminations thereof as Beneficiary may deem appropriate from time to time. Trustor agrees, upon request of Beneficiary from time to time, to promptly furnish a list of Personal Property subject to this Deed of Trust and, upon request by Beneficiary, to immediately execute, deliver and/or file any mortgage, security agreement, financing statement or amendment to any of the foregoing to include specifically this list of Personal Property. Upon the occurrence of any Event of Default under this Deed of Trust, Beneficiary shall have all of the rights and remedies of a secured party under the UCC or otherwise provided by law or by this Deed of Trust including, without limit, the right to require Trustor to assemble the Personal Property and make it available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to both parties, the right to take possession of the Personal Property with or without demand and with or without process of law and the right to sell and dispose of it and distribute the proceeds according to law. Trustor agrees that the proceeds of any disposition of the Personal Property may be applied by Beneficiary first to Beneficiary's reasonable expenses in connection with the disposition including, without limit, attorney fees, and then to payment of the Secured Obligations.

9. Trustor absolutely and unconditionally assigns, transfers and conveys to Beneficiary all the Rents; provided, however, prior to the occurrence of any Event of Default, Trustor shall have the right as the agent and fiduciary representative of Beneficiary for collection and distribution purposes only, to collect and receive the Rents as they become due and payable to be applied by Trustor to the payment of the Secured Obligations and, thereafter, so long as no Event of Default has occurred, the balance shall be distributed to the account of Trustor. Upon the occurrence of any Event of Default, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Premises or any part of it, in its own name or in the name of Trustor, sue for or otherwise collect the Rents, including without limit those past due and unpaid and apply the same, less costs and expenses of operation and collection, including without limit attorney fees, to the payment of the Secured Obligations in such order as Beneficiary may determine. The entering upon and taking possession of the Premises, the collection of the Rents and the application of them to the Secured Obligations, shall not cure or waive any Event of Default.

All leases, subleases and rental or occupancy agreements now or later affecting the Premises, including without limit all oil and gas leases and other subsurface leases and the related royalties, are assigned and transferred to Beneficiary by the Trustor, and Trustor agrees that none of said leases or rental or occupancy agreements will be modified or terminated without the written consent of Beneficiary. Promptly upon Beneficiary's request, Trustor shall provide to Beneficiary a subordination, non-disturbance and attornment agreement, in form acceptable to Beneficiary, executed by each tenant under a lease or rental or occupancy agreement for a portion of the Premises executed after the date of this Deed of Trust.

Trustor agrees that it will not (a) execute any further assignment of any of its right, title and interest in the Rents without the prior written consent of Beneficiary; (b) accept prepayments of any installments of Rents to become due under any leases, subleases or rental or occupancy agreements in excess of one (1) month except prepayments in the nature of a security deposit or (c) accept a surrender of any such lease, sublease or rental or occupancy agreement.

Trustor consents to the appointment of a receiver if this is believed necessary or desirable by Beneficiary to enforce its rights under this Deed of Trust. Beneficiary shall at no time have any obligation to attempt to collect Rents or to enforce any other obligations owed by tenants or occupants of the Premises. Nothing in this Deed of Trust shall be construed to impose upon Beneficiary or Trustee any obligations of the landlord under any leases, subleases or rental or occupancy agreements assigned to Beneficiary.

The assignment of licenses and permits under this Deed of Trust shall not be construed as a consent by Beneficiary to any license or permit so assigned, or to impose upon Beneficiary any obligations with respect to them. Trustor shall not cancel or amend any of the licenses and permits assigned (nor permit any of them to terminate if they are necessary or desirable for the operation of the Premises) without first obtaining the written approval of Beneficiary. This paragraph shall not be applicable to any license or permit that terminates if it is assigned without the consent of another party (other than Trustor), unless this consent has been obtained nor shall this paragraph be construed as a present assignment of any license or permit that Trustor is required by law to hold. Trustor shall comply with and perform as required all obligations and restrictions imposed upon Trustor, the Site Lease or the Premises under applicable deed restrictions, restrictive covenants, easements, leases, installment sale contracts, or other agreements affecting the Premises, but this is not a consent by Beneficiary to take subject to any of these agreements unless specifically set forth on attached Schedule A, if any, and Beneficiary does not assume any obligations under these agreements. Trustor shall promptly provide Beneficiary with certificates of occupancy, licenses, rent rolls, income and expense statements and other documents and information pertaining to the Premises and its operations as Beneficiary, from time to time, may request.

10. (a) Except as previously disclosed by Trustor to Beneficiary in writing, (if any), Trustor represents and covenants as follows: (i) Trustor has not caused or permitted a Release (as later defined) on or affecting the Premises, (ii) there is no condition concerning the Premises which could require correction, removal or other remediation pursuant to Environmental Laws (as later defined), (iii) Trustor has obtained and, to the best of Trustor's knowledge, no prior owner of the Premises or any current or prior occupant has failed to obtain, all applicable permits, licenses and approvals from governmental agencies with jurisdiction over Releases, (iv) Trustor has never received any notice of any actual or potential violation of Environmental Laws with respect to Trustor or the Premises ("**Environmental Complaint**"), (v) to the best of Trustor's knowledge, there have been no actions commenced or threatened by any party with respect to Trustor or the Premises for noncompliance with any Environmental Laws.

(b) Trustor covenants and agrees that neither it nor any occupant shall use, introduce or maintain Hazardous Materials (as later defined) on the Premises, unless done in strict compliance with all Environmental Laws. Trustor shall maintain the Premises in compliance with all Environmental Laws and shall not cause or permit a Release in violation of any such Laws. Within five days, Trustor shall provide Beneficiary with written notice of any of the following: (i) any Release of Hazardous Materials occurring on or near the Premises, (ii) any claims, actions, court or governmental proceedings under any Environmental Laws relating to the Premises, (iii) the introduction, maintenance or discovery by Trustor of any Hazardous Materials on or near the Premises, (iv) the discovery of any occurrence or condition on any real property in the vicinity of the Premises which could cause the Premises to be subject to any restrictions on the ownership, use or transferability of the Premises. Trustor shall conduct and complete in a timely manner all investigations, environmental audits, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on or affecting the Premises, whether



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caused by Trustor or a third party, in accordance with all Environmental Laws to the satisfaction of Beneficiary, and in accordance with the orders and directives of all federal, state and local governmental authorities. Trustor shall notify Beneficiary in writing prior to taking all such actions, and shall continuously keep Beneficiary informed of their status. Consultants and contractors proposed to be retained by Trustor shall be subject to Beneficiary's prior consent, which shall not unreasonably be withheld. Trustor, promptly upon Beneficiary's request, shall provide Beneficiary with copies of the results of all such actions and all related correspondence, reports and other documents and information. Any remedial, removal or other action by Trustor shall not be deemed a cure or waiver of any breach of this paragraph 10 due to the presence or use of Hazardous Materials on or affecting the Premises.

(c) In the event this Deed of Trust is foreclosed or Trustor tenders a deed or assignment in lieu of foreclosure, Trustor shall deliver the Premises to Beneficiary, a purchaser or grantee/assignee, as the case may be, free of Hazardous Materials so that the condition of the Premises shall not be in violation of any Environmental Laws.

(d) Beneficiary may enter and inspect the Premises at any time upon not less than twenty-four (24) hours prior notice (although no prior notice is required if an Event of Default has occurred and is continuing or in an emergency) for the purpose of evaluating Trustor's use or storage of Hazardous Materials and to confirm that Trustor is in compliance with Environmental Laws. If there is any Environmental Complaint pertaining to the Premises or if there is a Release of Hazardous Substance on or near the Premises, then at any time following (10) days' notice to Trustor (except in any emergency or where not practical under applicable law, in which case notice is waived), and without limitation of Beneficiary's other rights under this Deed of Trust or elsewhere, Beneficiary shall have the right, but not the obligation, either through its employees or its consultants to enter on the Premises and to take those actions it deems appropriate to investigate or test for, remediate, remove, resolve, minimize the impact of or advise governmental agencies of the possible existence of any Hazardous Materials. Any such actions conducted by Beneficiary shall be solely for the benefit of and to protect the interests of Beneficiary and shall not be relied upon by Trustor or any third party for any purpose. By conducting any such actions, Beneficiary does not assume control over the environmental affairs or operations of Trustor nor assume any liability of Trustor or any third party. Trustor's obligations under this paragraph 10 shall not be diminished or otherwise affected as a result of any notice or disclosure to, or any other knowledge of, any party to be indemnified under this paragraph of any Release or threatened Release, nor shall Indemnified Party be deemed to have permitted or consented to any Release or any breach of Trustor's other obligations under this paragraph, because any such party had notice or knowledge thereof.

(e) For purposes of this Deed of Trust, (i) "**Hazardous Materials**" means each and all of the following: hazardous materials and/or substances as defined in any Environmental Law including, asbestos, petroleum, petroleum by-products, natural gas, flammable explosives, radioactive materials, and toxic materials, (ii) "**Environmental Laws**" mean any and all present and future federal, state, local or other laws (whether under common law, by legislative action or otherwise), rules, policies, ordinances, directives, orders, statutes, or regulations an object of which is to regulate or improve Releases, health, safety, or the environment, (iii) "**Release**" means any presence, use, generating, storing, spilling, leaking, pumping, pouring, emitting, discharging, escaping, leaching, dumping or disposing Hazardous Materials into the environment, or about, on, from, under, within or affecting the Premises, or transported to or from the Premises, including continuing migration of Hazardous Materials into, onto, or through soil, surface water or groundwater.

11. Upon the occurrence of any of the following events (each an "**Event of Default**"), Trustor shall be in default under this Deed of Trust: (a) any failure to pay the Secured Obligations when due, by acceleration or otherwise; (b) any failure to comply with, or breach of, any term of this Deed of Trust, the Loan and Security Agreement, or any other Loan Document; (c) any warranty, representation, or other written



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information made, given or furnished to Beneficiary by or on behalf of Borrower, Trustor, or any guarantor shall be, or shall prove to have been, false or materially misleading when made, given, or furnished; (d) any loss, theft, substantial damage or destruction to or of any of the Premises, or the issuance or filing of any attachment, levy, garnishment or the commencement of any proceeding in connection with any of the Premises or of any other judicial process of, upon or in respect of Borrower, Trustor, any guarantor, or any of the Premises; (e) sale or other disposition by Trustor or any guarantor of any substantial portion of its assets or property or voluntary suspension of the transaction of business by Trustor or any guarantor, or death, dissolution, termination of existence, merger, consolidation, insolvency, business failure, or assignment for the benefit of creditors of or by Trustor or any guarantor; or commencement of any proceedings under any state or federal bankruptcy or insolvency laws or laws for the relief of debtors by or against Trustor or any guarantor; or the appointment of a receiver, trustee, court appointee, sequestrator or otherwise, for all or any part of the property of Trustor or any guarantor; (f) default under any mortgage or security agreement against any of the Premises; (g) any representation or disclosure made to Beneficiary by Trustor in connection with the application for the Letter of Credit proves to be materially false or misleading when made; (h) at the option of Bank, the occurrence of a default under the Loan Agreement dated December 1, 1995 executed between Trustor and the Port of Skagit County Industrial Development Corporation or other documents executed by Trustor in connection with the Variable Rate Demand Industrial Revenue Bonds 1995 the subject thereof or pursuant to the Indenture of Trust dated December 1, 1995 between the Port of Skagit County Industrial Development Corporation and First Interstate Bank of Washington N.A.; (i) any default by Trustor under the Site Lease which is not cured within any applicable cure period provided for therein; or (j) Beneficiary deems itself insecure, in good faith believing that the prospect of payment of the Secured Obligations or performance of this Deed of Trust is impaired or shall fear deterioration, removal, or waste of the Premises.

12. Acceleration of the Secured Obligations as provided in this Deed of Trust shall trigger any applicable prepayment premium or formula. Without limiting when a prepayment premium may be due, it is agreed that a tender of payment of the amount necessary to satisfy the entire Secured Obligations by or on behalf of Trustor or otherwise, must include any applicable prepayment premium or formula.

13. Immediately upon the occurrence of any Event of Default, Beneficiary, to the extent permissible under applicable law, shall have the option to do any or all of the following: (a) declare the entire unpaid amount of the Secured Obligations, including without limit accrued and unpaid interest on it and any applicable prepayment premium or formula, and all other charges payable by Trustor to Beneficiary, to be immediately due and payable and, at Beneficiary's option, (i) to bring suit for the same, or (ii) to take all steps and institute all other proceedings that Beneficiary deems necessary to enforce payment of the Secured Obligations and performance under this Deed of Trust and to protect the lien of this Deed of Trust; (b) commence foreclosure proceedings against the Premises through judicial proceedings or by power of sale at public auction, at the option of Beneficiary. The commencement by Beneficiary of foreclosure proceedings shall be deemed an exercise by Beneficiary of its option to accelerate the Secured Obligations, unless such proceedings on their face specifically indicate otherwise. Trustor grants power to Beneficiary to sell the Premises or to cause the same to be sold at public sale, and to convey the same to the purchaser, in a single parcel or in several parcels at the option of Beneficiary; Beneficiary may also declare all Secured Obligations immediately due and payable by delivery to Trustee of a written declaration of default and demand for sale and a written notice of default and of election to cause to be sold the Premises, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee (i) this Deed of Trust, and (ii) all documents evidencing expenditures secured by this Deed of Trust. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of the sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Premises at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, 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 time of sale. Trustee may postpone sale of all or any portion of the Premises by public announcement at such



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time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed or assignment conveying the Premises so sold, but without any covenant or warranty, express or implied. The recitals in such deed or assignment of any matters or facts shall be conclusive proof of the truthfulness of them. Except for Trustee, any person, including Trustor or Beneficiary, may purchase at such sale; (c) procure new or cause to be updated abstracts, tax histories, title insurance, or title reports; (d) obtain a receiver to manage the Premises and collect the rents, profits and Income from it; (e) contest the amount of validity of any taxes applicable to the Premises by appropriate proceedings either in Beneficiary's name, Trustor's name or jointly with Trustor. Trustor shall execute and deliver to Beneficiary, upon demand, whatever documents and information Beneficiary determines may be necessary or proper to so contest the taxes or to secure payment of any resulting refund. Trustor shall reimburse Beneficiary for all costs and expenses, including without limit attorney fees, incurred in connection with each tax contest proceeding. All refunds resulting from each tax contest proceeding shall belong to Beneficiary to be applied against the Secured Obligations with the surplus, if any, to be paid to Trustor. Beneficiary and any of its employees is each irrevocably appointed attorney-in-fact for Trustor and is authorized to execute and deliver in the name of Trustor those documents deemed necessary or proper by Beneficiary to carry out any tax contest proceeding or receive any resulting refunds; and/or (f) in the event of any sale of the Premises by foreclosure, through judicial proceedings, by power of sale or otherwise, apply the proceeds of any such sale in the following order or such other order as Beneficiary may elect: to (i) all expenses incurred for the collection of the Secured Obligations and the foreclosure of this Deed of Trust including, without limit, attorney fees; (ii) all sums expended or incurred by Beneficiary directly or indirectly in carrying out terms, covenants and agreements of or under this Deed of Trust or any related document, together with interest as provided in this Deed of Trust; (iii) all accrued and unpaid interest and late payment charges upon the Secured Obligations; (iv) any applicable prepayment premium or formula; (v) the unpaid principal amount of the Secured Obligations; and (vi) the surplus, if any, paid to Trustor unless a court of competent jurisdiction decrees otherwise.

14. No single or partial exercise, or delay in the exercise, of any right or power under this Deed of Trust, shall preclude other or further exercise of the rights and powers under this Deed of Trust. The unenforceability of any provision of this Deed of Trust shall not affect the enforceability of the remainder. This Deed of Trust constitutes the entire agreement of Trustor, Beneficiary and Trustee with respect to the subject matter of this Deed of Trust. No amendment of this Deed of Trust shall be effective unless the same shall be in writing and signed by Trustor and an authorized officer of Beneficiary. If there is more than one Trustor, all undertakings, warranties and covenants made by Trustor and all rights and powers given to Beneficiary are made or given jointly and severally. This Deed of Trust shall be binding on Trustor, Beneficiary and Trustee and on their respective heirs, legal representatives, successors and assigns including, without limit, any debtor in possession or trustee in bankruptcy for Trustor. This shall not be deemed a consent by Beneficiary to a conveyance by Trustor of all or part of the Premises or of any ownership interest in Trustor. In the event of foreclosure of this Deed of Trust or the enforcement by Beneficiary of any other remedies under this Deed of Trust, Trustor waives any right otherwise available in respect to marshalling of assets which secure the Secured Obligations or to require Beneficiary to pursue its remedies against any other assets or any other party. Upon full and final payment of the Secured Obligations and performance by Trustor of all its other obligations under this Deed of Trust, except as otherwise provided in paragraphs 10(f) and 20, the parties shall automatically each fully and finally release and discharge the other from any claim, liability or obligation in connection with this Deed of Trust and the Secured Obligations. This Deed of Trust shall in all respects be governed by and construed in accordance with the laws of the State of Washington.

15. Promptly upon the request of Beneficiary, Trustor shall execute, acknowledge and deliver all further documents, and do all further acts as Beneficiary may require in its sole discretion to confirm and protect the lien of this Deed of Trust or otherwise to accomplish the purposes of this Deed of Trust.

16. Nothing in this Deed of Trust shall be construed to preclude Beneficiary from pursuing any

available remedy provided by law for the collection of the Secured Obligations or enforcement of its rights upon an Event of Default. Nothing in this Deed of Trust shall reduce or release any rights or security interests of Beneficiary contained in any existing agreement between Trustor or any guarantor and Beneficiary. No waiver of default or consent to any act by Trustor shall be effective unless in writing and signed by an authorized officer of Beneficiary. No waiver of any default or forbearance on the part of Beneficiary in enforcing any of its rights under this Deed of Trust shall operate as a waiver of any other default or of the same default on a future occasion or of any rights.

17. At the sole option of Beneficiary, this Deed of Trust shall become subordinate, in whole or in part (but not with respect to priority as to insurance proceeds or any eminent domain award) to any or all leases and/or occupancy agreements of the Premises upon the execution by Beneficiary, and recording in the appropriate official county records where the Premises are located, of a unilateral declaration to that effect.

18. All notices and demands required or permitted to be given to Trustor shall be deemed given when delivered to Trustor or when placed in an envelope addressed to Trustor at the address above, or at such other address as Beneficiary may have on its records, and deposited, with postage, in a depository under the custody of the United States Postal Service or delivered to an overnight delivery courier. The mailing may be certified, first class or overnight delivery mail.

19. To the extent that any of the Secured Obligations is payable upon demand, nothing contained in this Deed of Trust shall modify the terms and conditions of that Secured Obligations nor prevent Beneficiary from making demand, without notice and with or without reason, for immediate payment of any or all of the Secured Obligations at any time(s), whether or not an Event of Default has occurred.

20. Notwithstanding any prior revocation, termination or discharge of this Deed of Trust, (except as to the rights of subsequent intervening bona fide purchasers or lienholders) the effectiveness of this Deed of Trust shall automatically continue or be reinstated in the event that (a) any payment received or credit given by Beneficiary in respect of the Secured Obligations is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable law, in which case this Deed of Trust shall be enforceable as if the returned, disgorged or rescinded payment or credit had not been received or given, whether or not Beneficiary relied upon this payment or credit or changed its position as a consequence of it; or (b) any liability is sought to be imposed against Beneficiary or Trustee relating to any matter for which Trustor has agreed to indemnify Beneficiary or Trustee under this Deed of Trust, including without limit the presence of Hazardous Materials on, in or about the Premises, whether this matter is known or unknown, now exists or subsequently arises (excluding only matters which arise after any acquisition by Beneficiary of any such property, by foreclosure, in lieu of foreclosure or otherwise, to the extent due to the wrongful act or omission of Beneficiary), in which case this Deed of Trust shall be enforceable to the extent of all liability, costs and expenses (including without limit reasonable attorney fees) incurred by Beneficiary or Trustee as the direct or indirect result thereof. In the event of continuation or reinstatement of this Deed of Trust, Trustor agree(s) upon demand by Beneficiary to execute and deliver to Beneficiary those documents which Beneficiary determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of Trustor to do so shall not affect in any way the reinstatement or continuation. If Trustor does not execute and deliver to Beneficiary upon demand such documents, Beneficiary and each employee is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of Trustor (with full power of substitution) to execute and deliver such documents in the name and on behalf of Trustor.

21. From time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability of any person for payment of the Secured Obligations, Trustee may: reconvey any part of the Premises; consent to the making of any map or plat of the Premises; join in granting any easement on the Premises; join in the execution of or subordination of the lien or charge of this Deed of Trust to any covenants, conditions or restrictions affecting the Premises; or join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust.

22. Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid, and upon surrender of this Deed of Trust to Trustee and upon payment by Trustor of its fees, Trustee shall reconvey, without warranty, the Premises then held under this Deed of Trust. The recitals in this reconveyance of any matters or facts shall be conclusive proof of the truthfulness of them. The grantee in this reconveyance may be described as "the person or persons legally entitled thereto."

23. Beneficiary, acting alone, may from time to time, by instrument in writing, substitute a successor to any Trustee named under this Deed of Trust, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee, who shall, without conveying from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. This instrument must contain the name of the original Trustor, Trustee and Beneficiary under this Deed of Trust, the book and page or document number where this Deed of Trust is recorded, and the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt of them upon this instrument of substitution.

24. TRUSTOR, BENEFICIARY AND TRUSTEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS DEED OF TRUST OR THE SECURED OBLIGATIONS.

25. Additional provisions, if any:

25.1 Trustor covenants with regard to the Site Lease as follows:

- (a) The Trustor shall pay when due all ground rent and shall diligently and timely perform and observe all of the terms, covenants and conditions of the Site Lease to be performed or observed by the Trustor as tenant.
- (b) The Trustor shall promptly deliver to the Beneficiary a true and complete copy of any notice given by the Port to the Trustor of any default by the Trustor in the performance or observance of any of the terms, covenants and conditions of the Site Lease to be performed by Trustor, and shall promptly advise the Beneficiary in writing of any default under the Site Lease on the part of the Port.
- (c) The Trustor shall promptly obtain and deliver to the Beneficiary in writing any information the Beneficiary may reasonably request concerning the performance by the Port and the Trustor of their respective obligations under the Site Lease.



- (d) The Trustor hereby assigns to the Beneficiary, as security for the payment and performance of the Secured Obligations and for the performance and observance of the terms, covenants and conditions of this Deed of Trust, all of the rights of the Trustor as tenant under the Site Lease. Accordingly, the Beneficiary's advance written consent shall be required for the surrender of the leasehold estate created by the Site Lease, for any waiver of any obligation or default of the Port under the Site Lease, for any sublease not expressly permitted hereunder, for the termination or cancellation of the Site Lease and for the assignment, encumbrance, subordination, modification, change, supplementation, alteration or amendment of the Site Lease in any respect. Any such action taken without such consent shall be voidable by the Beneficiary.
- (e) If the Port delivers to the Beneficiary a copy of any notice of default sent by the Port to the Trustor as tenant under the Site Lease, the Beneficiary may assume that such notice is accurate and the Trustor shall hold the Beneficiary harmless for any action taken or omitted to be taken by the Beneficiary in good faith and in reliance on such notice.
- (f) The Trustor shall use its best efforts to obtain from the Port such estoppel certificates regarding the status of the Site Lease and the Trustor's performance of its obligations under the Site Lease as the Beneficiary may request.
- (g) The Trustor authorizes the Beneficiary to participate in any arbitration concerning the Site Lease.
- (h) The Trustor shall not, without the Beneficiary's prior written consent, elect to treat the Site Lease or the leasehold estate created thereby as terminated under Subsection 365(h)(1) of the Bankruptcy Code after rejection or disaffirmance of the Site Lease by the Port thereunder or by any trustee of such party, and any such election made without such consent shall be void and ineffective.
- (i) As security for the Secured Obligations, the Trustor hereby unconditionally assigns, transfers and sets over to the Beneficiary all of the Trustor's claims and rights to the payment of damages that may hereafter arise as a result of any rejection or disaffirmance of the Site Lease by the Port thereunder or by any trustee of the Port under the Bankruptcy Code. The Beneficiary shall have and is hereby granted the right to proceed in its own name or in the name of the Trustor with respect to any claim, suit, action or proceeding relating to the rejection or disaffirmance of the Site Lease (including, without limitation, the right to file and prosecute, to the exclusion of the Trustor, any proofs of claim, complaints, motions, application, notices and other documents) in any case with respect to the Port under the Bankruptcy Code. This assignment constitutes an irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Secured Obligations have been satisfied and discharged. Any amounts received by the Beneficiary as damages arising out of any such rejection of the Site Lease shall be applied first, to all reasonable costs and expenses of the Beneficiary (including, without limitation, reasonable legal fees) in connection with the exercise of its rights under this paragraph, and then, in such manner as the Beneficiary shall determine, to the reduction and payment of the indebtedness secured by this Deed of Trust, and thereafter any balance shall be remitted to the Trustor.



- (j) If, pursuant to Subsection 365(h)(1)(B) of the Bankruptcy Code, the Trustor seeks to offset against the ground rent the amount of any damages caused by the nonperformance by the Port of its obligations under the Site Lease after rejection or disaffirmance thereof under the Bankruptcy Code, the Trustor shall, prior to effecting such offset, notify the Beneficiary of the Trustor's intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. The Beneficiary shall have the right to object to all or any part of such offset and, in the event of such objection, the Trustor shall not effect any offset of the amounts so objected to by the Beneficiary. If the Beneficiary shall have failed to object within ten (10) days after such notice, the Trustor may proceed to effect such offset in the amounts set forth in such notice. The Beneficiary's failure to object to such offset shall not constitute an approval by the Beneficiary of any such offset. The Trustor shall defend, indemnify and hold the Beneficiary harmless from and against any and all claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including, without limitation, reasonable legal fees) arising from or relating to any such offset by the Trustor, except and to the extent the same are caused by the gross negligence or willful misconduct of the Beneficiary.
- (k) The Trustor shall, promptly after obtaining knowledge thereof, give written notice to the Beneficiary of any actual or contemplated filing by or against the Port of a petition under the Bankruptcy Code, and use its best efforts to give prompt oral notice to the Beneficiary of such actual or contemplated filing. The aforesaid written notice shall set forth any information available to the Trustor concerning the date or anticipated date of such filing, the court in which such petition was filed or is expected to be filed, and the relief sought therein. The Trustor shall, promptly after receipt thereof, deliver to the Beneficiary any and all notices, summonses, pleadings, applications and other documents received by the Trustor in connection with any such petition and any proceedings related thereto.
- (l) If any action, proceeding, motion or notice is commenced or filed with respect to the Port under the Site Lease or the real property encumbered thereby or any part thereof under the Bankruptcy Code, the Beneficiary shall have, and is hereby granted, the option, to the exclusion of the Trustor, exercisable upon notice from the Beneficiary to the Trustor, to conduct and control any such litigation with counsel of the Beneficiary's choice. The Beneficiary may proceed in its own name or in the name of the Trustor in connection with any such litigation, and the Trustor agrees to execute any and all powers, authorizations, consents and other documents reasonably required by the Beneficiary in connection therewith. The Trustor shall, upon demand, pay to the Beneficiary all reasonable costs and expenses (including, without limitation, reasonable legal fees) paid or incurred by the Beneficiary in connection with the prosecution or conduct of any such proceedings and, to the extent permitted by law, such costs and expenses shall be added to the Secured Obligations secured by this Deed of Trust. The Trustor shall not, without the prior written consent of the Beneficiary (which consent shall not be unreasonably withheld), commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Site Lease in any such case under the Bankruptcy Code.



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- (m) If a petition under the Bankruptcy Code is filed by or against the Trustor, and the Trustor or any trustee of the Trustor shall decide to reject the Site Lease pursuant to Section 365(1) of the Bankruptcy Code, the Trustor shall give the Beneficiary at least ten (10) days prior written notice of the date on which application shall be made to the court for authority to reject the Site Lease. The Beneficiary shall have the right, but not the obligation, to serve upon the Trustor or such trustee within such ten (10) day period a notice stating that (A) the Beneficiary demands that the Trustor or such trustee assume and assign the Site Lease to the Beneficiary pursuant to Section 365 of the Bankruptcy Code, and (B) the Beneficiary covenants to cure, or provide adequate assurance of prompt cure of, all defaults and to provide adequate assurance of future performance under the Site Lease. If the Beneficiary serves such notice upon the Trustor or such trustee, neither the Trustor nor such trustee shall seek to reject the Site Lease, and the Trustor and such trustee shall comply with such demand within thirty (30) days after such notice is given.
- (n) If a petition under the Bankruptcy Code is filed by or against the Trustor, and if within thirty (30) days after the date of filing of such petition neither the Trustor nor any trustee of the Trustor takes any action to assume or reject the Site Lease pursuant to Subsection 365(a) of the Bankruptcy Code, the Beneficiary shall have the right, but not the obligation, to serve upon the Trustor or such trustee a notice stating that (A) the Beneficiary demands that the Trustor or such trustee assume and assign the Site Lease to the Beneficiary pursuant to Section 365 of the Bankruptcy Code, and (B) the Beneficiary covenants to cure, or provide adequate assurance of prompt cure of, all defaults and to provide adequate assurance of future performance under the Site Lease. If the Beneficiary serves such notice upon the Trustor or such trustee, neither the Trustor nor such trustee will seek to reject the Site Lease, and the Trustor and such trustee shall comply with such demand within fifteen (15) days after such notice is given.
- (o) The Trustor hereby assigns, transfers and sets over to the Beneficiary a nonexclusive right to apply to the Bankruptcy Court under Subsection 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Site Lease may be rejected or assumed after the entry of any order for relief in respect to the Trustor under Chapter 7 or Chapter 11 of the Bankruptcy Code.

25.2. So long as any portion of the Secured Obligations remain unpaid or have not been performed, and unless Beneficiary shall otherwise specifically agree in writing, the fee title to the Premises and the leasehold estate therein created pursuant to the provisions of the Site Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Trustor or in any other person by purchase, operation of law or otherwise. If Beneficiary shall acquire the fee title to the Premises and the leasehold estate therein created pursuant to the provisions of the Site Lease, by foreclosure of this Deed of Trust or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until Beneficiary shall elect to merge such estate.

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



The undersigned Trustor requests that a copy of any notice of default and of any notice of sale under this Deed of Trust be mailed to Trustor at Trustor's address set forth above.

TRUSTOR:

ADVANCED H2O, INC., a Washington corporation

By: 

Printed Name: JAMES J. DURFY

Title: COO / SEN

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



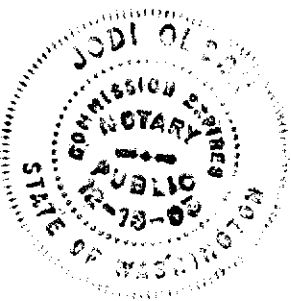
STATE OF WASHINGTON )

COUNTY OF King )

)ss.

On this 31st day of May, 2002, before me personally appeared James J. Duffy, to me known to be the COO/Secretary of ADVANCED H2O, INC., the Washington corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Signature: Jodi Olson

Name:(print) Jodi Olson

OLSON J395B4

NOTARY PUBLIC in and for the State  
of Washington, residing at Seattle

My appointment expires: 12/15/03

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

)ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of ADVANCED H2O, INC., the Washington corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature: \_\_\_\_\_

Name:(print) \_\_\_\_\_

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_

My appointment expires: \_\_\_\_\_



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EXHIBIT A

Legal Description

Lot 22, "HOPPER ROAD BUSINESS PARK", approved February 17, 2000, recorded February 23, 2000, under Skagit County Auditor's File No. 200002230067, being a portion of the Northwest ¼ of Section 8, Township 34 North, Range 4 East, W.M.

TOGETHER WITH an easement for vehicular ingress and egress over the North forty-five (45) feet of Lot 21 of Hopper Road Business Park Binding Site Plan, Northwest ¼ of Section 8, Township 34 North, Range 4 East, W.M.



SCHEDULE A

1. PERSONAL PROPERTY TAXES:

Year: 2002 (1<sup>st</sup> half paid)  
Amount Billed: \$ 18,499.08  
Amount Paid: \$ 9,249.54  
Amount Due: \$ 9,249.54  
Tax Account No: 5002382 (L109760)

Last 1/2 taxes will not become delinquent if paid on or before October 31st.

2. Municipal assessments, if any, levied by the City of Burlington.

3. EASEMENTS, INCLUDING THE TERMS AND PROVISIONS THEREOF:

Grantee: Puget Sound Power & Light Company  
Dated: July 16, 1951  
Recorded: July 23, 1951  
Auditor's No: 463556  
Purpose: Right to construct, operate, maintain, repair, replace and enlarge one or more electric transmission and/or distribution lines over and/or under the right-of-way

Area Affected:

A strip of land the exact width of which is not disclosed on the record, the centerline of which is described as follows:

Beginning at a point on the East line of above tract, 100.6 feet South of the North line thereof; thence due West, a distance of 200 feet.

4. PROTECTIVE COVENANTS AND/OR EASEMENTS, BUT OMITTING RESTRICTIONS, IF ANY, BASED ON RACE, COLOR, RELIGION OR NATIONAL ORIGIN:

Dated: June 24, 1970  
Recorded: July 7, 1970  
Auditor's No: 740925  
Executed by: Port of Skagit County, a Municipal Corporation

5. EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF:

Grantee: Cascade Natural Gas Corporation  
Dated: October 3, 1972  
Recorded: October 24, 1972  
Auditor's No: 775767  
Purpose: A pipeline for the transportation of oil, gas and the products thereof  
Area Affected: East 10 feet of the North 225.64 feet



6. EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF:

Grantee: Seeatt Realty Company  
Dated: August 11, 1972  
Recorded: October 20, 1972  
Auditor's No: 775651  
Purpose: Ingress and egress necessary for all lawful uses of the tract herein conveyed to the Grantee  
Area Affected: North 60 feet of the West 176.94 feet

7. EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF:

Grantee: Public Utility District No. 1 of Skagit County, Washington, a Municipal Corporation  
Recorded: April 5, 1990  
Auditor's No: 9004050044  
Purpose: Construction and maintenance of a water line, lines or related facilities  
Area Affected: Portion in Tract "X" of Short Plat No. Burl-1-91

8. Matters as disclosed and/or delineated on the face on the following Binding Site Plan:

Binding Site Plan: Hopper Road Business Park Binding Site Plan  
Recorded: February 23, 2000  
Auditor's No: 200002230067

9. AN EASEMENT AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES, RESERVED BY INSTRUMENT:

For: Fire truck ingress and egress  
In Favor of: City of Burlington  
Recorded: August 14, 1992  
Auditor's No: 9208140092  
Affects: Over and across the West 275 feet of Tract "X" of Short Plat No. Burl-1-91

10. EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF:

Grantee: Cascade Natural Gas Corporation, a Washington corporation  
Dated: December 20, 1994  
Recorded: January 6, 1995  
Auditor's No: 9501060061  
Purpose: A natural gas pipeline or pipelines  
Area Affected: The North 10 feet of the property

11. EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF:



200206040067

Skagit County Auditor

Grantee: Puget Sound Power & Light Company  
Dated: December 20, 1994  
Recorded: January 12, 1995  
Auditor's No: 9501120046  
Purpose: Right to construct, operate, maintain, repair, replace  
and enlarge one or more electric transmission and/or  
distribution lines over and/or under the right-of-way  
Area Affected: The North 15 feet

12. EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF:

Grantee: Public Utility District No. 1  
Dated: November 19, 1996  
Recorded: December 4, 1996  
Auditor's No: 9612040091  
Purpose: Construction and maintenance of underground  
waterline or lines, or related underground facilities  
Area Affected: A 20 foot wide strip of land



200206040067

Skagit County Auditor