

After Filing Return to:  
Moffatt Thomas Barrett Rock & Fields, Chartered  
P.O. Box 829  
Boise, ID 83701  
Attention: David S. Jensen



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Skagit County Auditor  
10/14/2002 Page 1 of 8 11:26AM

LAND TITLE COMPANY OF SKAGIT COUNTY

P-102993-S

### WASHINGTON COLLATERAL MORTGAGE

Date: October 3, 2002

**GRANTOR(S):**

1. **HULBERT FARMS, INC.**

☐ Additional names on page \_\_\_\_\_ of document

**GRANTEE(S):**

1. **TELMARK LLC**

☐ Additional names on page \_\_\_\_\_ of document

Abbreviated Legal Description (lot, block and plat name, or section-township-range):

a ptn of Gov. Lot 8, 31-34-3 E. W.M.

☒ Additional legal description is in Schedule A

Assessor's Property Tax Parcel Account Number(s): 34 0331-0-018-0000

Reference Numbers of Documents Assigned or Released (if applicable):

☐ Additional reference numbers on page \_\_\_\_\_ of document

**WASHINGTON COLLATERAL MORTGAGE - 1**

100202 1130

BOI MT1:414978.1

## WASHINGTON COLLATERAL MORTGAGE

This Mortgage is made effective as of October 3, 2002, by Hulbert Farms, Inc., a Washington corporation ("Mortgagor"), whose address is 17297 Hulbert Road, Mount Vernon, Washington 98273, to Telmark LLC, a Delaware limited liability company ("Mortgagee"), whose address is 333 Butternut Drive, Dewitt, NY 13214.

The Mortgagor promises and agrees as follows:

### TRANSFER OF RIGHTS IN THE PROPERTY

1. The Mortgagor mortgages to the Mortgagee the Property described in paragraph 3 of this mortgage to secure the payment of the lease payments and any other obligations under that Building Lease dated October 3, 2002, between the mortgagor as Lessee and Telmark LLC as Lessor. Mortgagor can lose the Property for failure to keep the promises in this Mortgage. This mortgage creates a legally enforceable lien upon the property.

### OBLIGATION SECURED BY MORTGAGE

2. This mortgage secures a lease agreement between the Mortgagor and the Telmark LLC dated October 3, 2002 (the "Lease").

This Mortgage shall also collateralize any and all additional extensions, renewals, modifications, and replacements of the obligations evidenced with respect to or under the Lease and any additional or future lease agreements made by the parties hereto (the "Future Lease Agreements"), and the obligations of the Mortgagor in this Mortgage.

### PROPERTY MORTGAGED

3. The property mortgaged (hereinafter the "Property") by the Mortgagor to the Mortgagee is described as follows:

SEE SCHEDULE "A" ATTACHED HERETO AND MADE A PART HEREOF  
THIS IS A COMMERCIAL MORTGAGE

This mortgage is given as additional collateral security for the Lease Agreement and/or Future Lease Agreements, and also any other obligations of the Mortgagor to Mortgagee in any form or fashion whatsoever, and shall also be secured by all improvements now or hereafter existing on the Property and all easements, rights, appurtenances, rents, royalties,



minerals, oil, gas rights, profits, water rights, and all fixtures now or hereafter located thereon or associated therewith.

#### PAYMENT

4. Mortgagor will pay the Lease as promised in the Lease according to its terms.

#### INSURANCE

5. Mortgagor will keep the buildings on the Property insured against loss by fire and other risks included in the standard form of extended coverage insurance. The amount shall be approved by Mortgagee. The policies shall contain the standard New York Mortgage clause in the name of the Mortgagee. Within thirty (30) days after notice and demand, Mortgagor must insure the Property against any risk reasonably required by Mortgagee. If Mortgagor fails to obtain the required insurance or keep the buildings or the Property insured, Mortgagee may obtain the insurance and charge the Mortgagor for said insurance.

Unless Mortgagee and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not in the Mortgagee's determination economically feasible or Mortgagee's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Mortgagor.

All insurance proceeds shall be initially disbursed to Mortgagee, unless Mortgagee and Mortgagor otherwise agree, to be released by Mortgagee to Mortgagor as repair or restoration is completed according to Mortgagee's sole determination.

Unless Mortgagee and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in the Lease Agreement or change the amount of the payments. If the Property is acquired by the Mortgagee, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

#### TAXES

6. Mortgagor will pay all taxes, assessments, sewer rents or water rates, and other utility charges which may become liens on the Property within thirty (30) days after they are due.

Mortgagor must show receipts for these payments with ten (10) days of Mortgagee's demand for them.

#### **MORTGAGEE'S RIGHT TO CURE**

7. The Mortgagor authorizes the Mortgagee to make any payments necessary to correct any failure by the Mortgagor to provide insurance or pay taxes or other items listed in paragraphs 5 and 6 of the Mortgage.

The Mortgagee charges interest at the highest legal rate of interest or 15% whichever is lower at the time of the payment on any payments of this kind and if the Mortgagor does not pay the advances and interest to the Mortgagee within ten (10) days after being asked to do so, the Mortgagee may declare the Mortgagor in default under this Mortgage and the Lease Agreement and commence proceedings to foreclose this Mortgage and/or pursue any remedies allowed under the Lease Agreement.

#### **MAINTENANCE**

8. Mortgagor will keep the Property in reasonably good repair.

#### **OIL AND HAZARDOUS MATERIALS**

9. Mortgagor agrees that there has been no release of oil or other hazardous materials on the premises, nor has it ever been used for the treatment, storage or disposal of oil or other hazardous materials nor shall it be so used.

#### **ENVIRONMENTAL AUDIT**

10. That if the Mortgagee shall be required to pay for an environmental audit, the Mortgagor shall reimburse the Mortgagee, within 30 days after demand, for the cost of the same, and if a lien is filed against the premises by any Federal, State and/or Local Authority pertaining to oil or hazardous materials, Mortgagor shall pay and remove the lien within 30 days of the date of filing.

#### **ENVIRONMENTAL LIABILITY**

11. Mortgagor shall indemnify and hold the Mortgagee harmless from any loss, liability or expense, including without limitation, costs associated therewith for all proceedings, engineering expenses and attorney's fees as incurred by Mortgagee as a result of any release of oil or hazardous material onto the premises.



### **NO SALE OR ALTERATION**

12. The Mortgagor may not, without the consent of the Mortgagee (a) alter, demolish, or remove the buildings and improvements on the Property, or (b) sell the Property or any part of it. The Mortgagee shall have the right to inspect the property upon reasonable notice to the Mortgagor.

### **TITLE**

13. Mortgagor warrants that Mortgagor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Mortgagee in connection with this Mortgage. Mortgagor further warrants that Mortgagor has the full right, power, and authority to execute and deliver this Mortgage to Mortgagee.

### **DEFAULT WHEN FULL AMOUNT OF OBLIGATION DUE IMMEDIATELY**

14. At the option of the Mortgagee, the full amount of the Lease payments may be declared to be due and payable immediately for any default.

### **SALE**

15. If Mortgagor defaults under this Mortgage, and the Property is to be sold at a foreclosure sale, the Property may be sold in one parcel.

### **RECEIVER**

16. If Mortgagee sues to foreclose the Mortgage, Mortgagee shall have the right to have a receiver appointed to take control of the Property.

### **NOTICES**

17. Notices, demands or requests may be in writing and may be delivered in person or sent by mail.



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### **ATTORNEY'S FEES**

18. Mortgagor shall be liable for the payment of any and all reasonable attorneys' fees and costs incurred in any action to foreclose this Mortgage, or to collect the obligation pursuant to the Lease Agreement and/or Lease Agreements, as may be permitted by law to be charged, or incurred in any bankruptcy or other insolvency proceeding affecting this property, or any other litigation or proceeding affecting Mortgagee's security, including any and all additional statutory costs and other expenses.

### **WHO IS BOUND**

19. If there is more than one Mortgagor, each shall be jointly and severally liable. The words "Mortgagor" and "Mortgagee" shall include their heirs, executors, administrators, successors and assigns. If there are more than one, the word "Mortgagee" used in this Mortgage shall include them.

### **ASSIGNMENT**

20. Mortgagee shall have the right to assign this Mortgage or any part thereof.

### **INSPECTION**

21. Mortgagor or its agent may make reasonable entries upon and inspections of the property. Mortgagor shall give Borrower notice at the time or prior to inspection specifying cause for the inspection.

### **NO ORAL CHANGES**

22. This Mortgage cannot be changed or ended except in writing signed by the Mortgagee.

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

[Signature Page Follows]

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor.

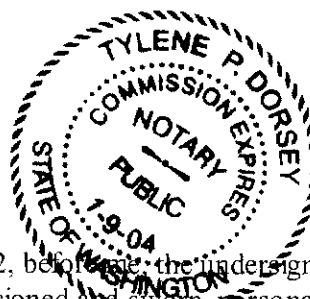
**MORTGAGOR:**

Hulbert Farms, Inc.

By Thomas B Hulbert  
Name \_\_\_\_\_  
Title CEO

STATE OF WASHINGTON )

) ss.  
COUNTY OF Skagit



On this 7 day of October, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Thomas B Hulbert, to me known to be the CEO of Hulbert Farms, Inc., the corporation that executed the foregoing instrument, and acknowledged such 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/she was authorized to execute such instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Tylen P Dorsey  
NOTARY PUBLIC in and for the State of Washington  
Residing at Sedro Woolley  
My Commission Expires: 1-9-04



**SCHEDULE A  
TO  
WASHINGTON COLLATERAL MORTGAGE**

**Description of the Property**

That portion of Government Lot 8, in Section 31, Township 34 North, Range 3 East W.M., more particularly described as follows:

Beginning at the Southeast corner of said Government Lot 8; thence running along the South line of said subdivision a distance of 410 feet; thence North 358 feet; thence West to the Easterly boundary of Sullivan's Slough; thence Southwesterly along the Easterly boundary of said Sullivan's Slough to the South line of said Government Lot 8; thence Easterly along the Southerly boundary of said Government Lot 8 to the true point of beginning, EXCEPTING therefrom any portion of said property lying West of the Easterly base of the existing dike upon said premises, EXCEPT county road and EXCEPT dike right of way.

(Also known as a portion of Lot 4, Short Plat No. 18-90, recorded November 1, 1990, under Auditor's File No. 9011010030.)

Situate in the County of Skagit, State of Washington.

