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Skagit County Auditor

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FIRST AMERICAN TITLE CO.

A70697E-2

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

Grantor: 1. Jerry L. Smith
2. Molly A. Smith

Grantee: General Motors Acceptance Corporation, a Delaware corporation

Trustee: First American Title Insurance Company

Legal Description:

TRACT 16/ BURLINGTON HILL BUSINESS PARK BINDING SITE
PLAT/ VOLUME 11 OF SHORT PLATS/ RECORDS OF SKAGIT
COUNTY WASHINGTON.

Complete legal description contained in Exhibit A

Assessors Tax Parcel No.: 8002-000-016-0005

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

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (hereinafter called the "Deed of Trust") is made as this ___ day of November, 2002, between and among **JERRY L. SMITH** and **MOLLY A. SMITH**, husband and wife, ("Grantor"), whose mailing address is 1246 Reservation Road, Anacortes, Washington 98221, or their substitutes, successors and assigns as hereinafter permitted; **FIRST AMERICAN TITLE INSURANCE COMPANY** ("Trustee") whose address is 1419 Commercial Avenue, Anacortes, WA 98221, for the benefit of General Motors Acceptance Corporation; and **GENERAL MOTORS ACCEPTANCE CORPORATION**, organized and existing under the laws of the State of Delaware, and authorized to do business in the State of Washington, whose mailing address is P.O. Box 5627, Denver, Colorado 80217 ("Beneficiary").

WHEREAS, a Promissory Note of even date herewith has been duly executed by Grantor in the principal amount of ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,500,000.00) (the "Note"); and

WHEREAS, Grantor owns, or concurrently herewith is taking title to, that certain property located in Skagit County, Washington, legally described on the attached Exhibit A; and

WHEREAS, as an inducement to the lending of money or value, and as security for present and future obligations of Grantor to Beneficiary, the Grantor has unconditionally agreed to execute, deliver and perform all provisions, terms and conditions of this Deed of Trust;

NOW, THEREFORE, in order to secure the payment of all amounts due and payable under the Note, as the same shall become due and payable according to its tenor, and to secure the performance and observance of all the provisions therein, and to secure the payment and performance of all other direct, indirect or contingent obligations of Grantor to Beneficiary, whether now existing (and whether or not specifically referenced herein) or hereafter incurred, and for and in consideration of the loan made pursuant to the Note, Grantor by these covenants hereby irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, the Property, which is described in Exhibit A attached hereto and by reference included herein.

TOGETHER with:

(a) All the singular lands, tenements, privileges, water rights, hereditaments and appurtenances thereto belonging or in anyway appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, rights, title, claim, interest and demand whatsoever of the Grantor, either in law or equity, of, in and to the



bargained property; TO HAVE AND TO HOLD said property bargained and described, together with all and singular the lands, tenements, privileges, water rights, hereditaments and appurtenances thereto belonging or in anyway appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profit thereof, and all of the estate, right, title, claims and demands whatsoever of the Grantor, either in law or in equity, of, in and to the above bargained property, forever as security for the faithful performance of the Note secured hereby and as security for the faithful performance of each and all of the covenants, agreements, terms and conditions of this Deed of Trust, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits; and

(b) All the estate and rights of Grantor in and to said property and in and to land lying in streets and roads adjoining said property, and all access rights and easements appertaining thereto; and

(c) All buildings, structures, improvements, fixtures and articles of property now or hereafter attached to, or used or adapted for use in the operation of, the said property, including but without being limited to, all heating and incinerating apparatus and equipment whatsoever, all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, cooking, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings or public spaces, halls and lobbies, and shrubbery and plants; and including also all interest of any owner of the said property in any of such items hereafter at any time acquired under conditional sale contract, security agreement or other title retaining or security instrument, all of which property mentioned in this paragraph shall be deemed part of the realty and not severable wholly or in part without material injury to the freehold; and

(d) All of Grantor's rights further to encumber said property for debt; Grantor hereby (i) representing as a special inducement to Beneficiary to make this loan that as of the date hereof there are no encumbrances to secure debt senior to this Deed of Trust (ii) covenanting that there will be none as of the date when this Deed of Trust becomes of record, and (iii) covenanting that there will be none for as long as the Note is outstanding, other than the Permitted Encumbrances, if any, which shall be deemed to be those encumbrances of which the Beneficiary was made aware prior to the execution of the Note; and all of Grantor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this Deed of Trust.

All of the above described property and interest(s) therein are hereinafter referred to as the "Premises."

Without limiting the foregoing, Grantor also hereby grants to the Beneficiary a security interest in all of the following described property, whether Grantor now has or hereafter obtains



any right, title, estate of interest therein:

(e) All goods located on the Premises and used in the operation or occupancy of the Premises or in any construction on the Premises but which are not effectively made real property under the preceding provisions of this Deed of Trust, (but excluding any personal property owned by a general contractor) including but not limited to all building materials, supplies and equipment; and

(f) All general intangibles relating to the development or use of the Premises, including but not limited to all governmental permits relating to construction on the Premises, all names under or by which the Premises or any improvements on the Premises may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Premises; and

(g) All personal property of every kind and description owned by (but excluding any personal property owned by the general contractor) and now or at any time hereafter located on or appurtenant to the Premises and used in connection with the management or operation of the Premises; and

(h) Any portion of the Premises which at any time is or is construed to be, personal property; and

(i) Insofar as permitted by applicable law, any licenses (including but not limited to any operating licenses or similar matters), contracts, management contracts or agreements, franchise agreements, permits, authorities or certificates required or used in connection with the ownership of, or the operation or maintenance of, the Premises or any improvements thereon or any of the property described in clauses (e) and (f) hereinabove; and

(j) All of Grantor's interest in and to any and all contracts or agreements with contractors or architects, or otherwise with respect to the development or construction of improvements on the Premises and in and to all plans, specifications, studies, drawings, and other design documents and data with respect to the Premises prepared by or for Grantor; and

(k) Any and all proceeds of any or all of the foregoing described property. As used herein, the term proceeds shall be construed in its broadest sense and shall include whatever is receivable or received when any of the foregoing property or any proceeds thereof is sold, collected, exchanged or otherwise disposed of, whether voluntarily or involuntarily, and shall include without limitation all rights to payment, including interest and premiums, with respect to any of the foregoing property or any proceeds thereof.

(l) Any and all awards of payments, including interest thereon, and the right to receive the same, which may be made with respect to the land, the fixtures, the improvements or the other properties as a result of (a) the exercise of the right to eminent domain, or (b) the alteration of the grade of any street or (c) any other injury to or decrease in the value of the



Premises, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by the Beneficiary, and of the reasonable counsel fees, costs and disbursements incurred by the Beneficiary in connection with the collection of such award or payment. The Grantor agrees to execute and deliver, from time to time, such further instruments as may be requested by the Beneficiary to confirm such assignment to the Beneficiary of any such award or payment.

(m) All right, title and interest of Grantor now owned or hereafter acquired in and to all and singular tenements, hereditaments, privileges, easements, franchises, leases and subleases, licenses and appurtenances belonging or in any way appertaining to the property described in Exhibit A attached hereto and incorporated by this reference, including without limitation its leasehold interests, and the reversions, remainders, rents, issues and profits thereof, including all interest of the Grantor as landlord in and to all present and future leases, licenses, tenancies and occupancies of space in the improvements and in each and every sublease of the entire or any part of the Premises, and all the estate, rights, title and interest, claim and demand whatsoever in law or in equity which the Grantor now has or may hereafter acquire in and to such property, including, without limiting the generality of the foregoing, any award and condemnation and the proceeds of any policy of insurance relating to the Premises.

All of the above-described property and interests therein set forth in clauses (e) through (m) are hereinafter referred to collectively as the "Personal Property."

THIS DEED IS GIVEN FOR THE PURPOSE OF SECURING PERFORMANCE: (i) of each agreement of Grantor incorporated by reference or contained herein, (ii) performance or payment of all other direct, indirect or contingent obligations of Grantor to Beneficiary including, without limitation, obligations arising under or in connection with the Note, and any and all documents executed in connection therewith, (iii) payment of the sums according to the terms of the Note, (iv) such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of its successors or assigns, together with interest thereon at such rate as shall be agreed upon, and (v) any amounts outstanding under any other agreements now or hereafter executed by the Grantor in favor of the Beneficiary.

The Grantor represents, warrants, covenants and agrees as follows:

1. Deed of Trust/Security Agreement.

1.1 This Deed of Trust constitutes a security agreement with respect to all Personal Property in which Beneficiary is granted a security interest hereunder, and Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State of Washington as well as all other rights and remedies available hereunder or at law or in equity or by judicial decision. Grantor hereby agrees, at Grantor's cost and expense, to execute and deliver and, if appropriate, to file with the appropriate filing officer or office, such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of, or



protect, the lien and security interest created by this Deed of Trust.

Grantor and Beneficiary agree that the filing of any such financing or continuation statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Premises and/or adopted for use therein and which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment or items capable of being thus identified in a recital contained in this Deed of Trust or in any list filed with the Beneficiary, or (iii) any such item is referred to or reflected in any such financing or continuation agreement so filed at any time.

1.2 Upon any default of the Grantor, the Beneficiary may use any of the Personal Property for any purpose for which the Grantor could have used it or with respect to the construction, financing, management, use, operation or occupancy of any improvements on the Premises, and the Grantor hereby irrevocably appoints the Beneficiary as its attorney-in-fact to exercise (but the Beneficiary shall not be obligated to and shall incur no liability to the Grantor or any third party for failure so to exercise) any and all rights and powers which the Grantor might exercise with respect to any of the Personal Property. The Grantor agrees to reimburse the Beneficiary on demand for any and all costs and expenses, including without limitation reasonable attorneys' fees, which the Beneficiary may incur while acting as the Grantor's attorney-in-fact hereunder, together with interest thereon at the rate provided in the Note, all of which costs and expenses and interest thereon shall be secured by this Deed of Trust and any other documents or agreements now or hereafter securing the Note. The Beneficiary shall also have all other rights and remedies with respect to any of the Personal Property or the enforcement of its security interest upon default by the Grantor as is provided under applicable law to a secured creditor, including without limitation the right to notify any account holder, account debtor or depository to make payment directly to the Beneficiary, and the right to foreclose or otherwise enforce the Beneficiary's security interest in any manner permitted by applicable law or provided for herein, all of which rights and remedies shall be cumulative and in addition to all rights, powers, and remedies which the Beneficiary at any time may have under the other instruments, agreements or documents now or hereafter securing or relating to the Note. Without limiting the foregoing, in the event that the Beneficiary elects to sell or dispose of or cause to be sold or disposed of any of the Personal Property at any one or more public or private sales as permitted by applicable law, such sale or disposition may, in the discretion of Beneficiary, be made together with or separately from any sale of any real property encumbered hereby, and any such sale or disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any person, including both Grantor and Beneficiary, shall be eligible to purchase any part or all of the Personal Property at any such sale or disposition.

1.3 Expenses of retaking, holding, preparing for sale, selling and the like shall be borne by Grantor and shall include Beneficiary's and Trustee's attorneys' fees and legal



expenses. Grantor, upon demand of Beneficiary and at Grantor's cost and expense, shall assemble any Personal Property and make it available to Beneficiary at the Premises, a place which is hereby deemed to be reasonably convenient to Beneficiary and Grantor. Beneficiary shall give Grantor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of any Personal Property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Grantor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Grantor.

2. Payment of Debts, Secured Assessments and Liens. To pay all debts and moneys secured hereby, when from any cause the same shall become due. To keep the Premises free from statutory and governmental liens of any kind, except those liens which are payable in installments as provided in paragraph 3. That the Grantor is seized in fee simple of the Premises and owns outright every part thereof, that there are no liens or encumbrances against or upon the same except for Permitted Encumbrances described in Exhibit B, if one is attached hereto, and herein incorporated by reference, and none will be created or suffered to be created by the Grantor during the life of this Deed of Trust, that it has good right to make this Deed of Trust and that it will forever warrant and defend said Premises unto the Beneficiary, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. The Grantor upon request will furnish a written statement duly acknowledged of the amount due on this Deed of Trust and whether any offsets or defenses exist against the debt secured hereby.

3. Reserve for Taxes, Insurance and Special Assessments. To pay to Beneficiary, if Beneficiary so requires, together with and in addition to the payments of principal and interest payable under the terms of the Note, on the date set forth therein for the making of payments until said Note is fully paid, a sum, as estimated by the Beneficiary, equal to one-twelfth (1/12th) of the yearly ground rents, insurance, premiums, taxes, assessments and other charges, fines, and impositions attributable to the premises, all of which are hereinafter referred to as "Reserves," Grantor agreeing to deliver promptly to Beneficiary all bills and notices thereof, such sums to be held by the Beneficiary to pay said Reserves. Upon demand of Beneficiary, Grantor shall promptly deliver to Beneficiary such additional sums as are necessary to make up any deficiency in the amount necessary to pay such Reserves in a timely manner, and any deficiency in such amounts shall constitute an event of default under this Deed of Trust. The arrangement provided for in this paragraph 3 is solely for the added protection of the Beneficiary and entails no responsibility on the Beneficiary's part beyond the allowing of due credit, without payment of interest or income to the Grantor, for the sums actually received by it. Those sums received, but not immediately required for payment of the items set forth above, may be invested or otherwise used by the Beneficiary without payment to or on behalf of the Grantor until such time as payment of the items set forth above is required. Upon assignment of this Deed of Trust by the Beneficiary, any funds on hand shall be turned over to the Assignee and any responsibility of the assignor with respect thereto shall terminate. Each transfer of the Premises shall automatically transfer to the grantee all rights of the Grantor with respect to any funds accumulated hereunder.



4. Excess or Insufficient Reserves for Taxes, Insurance and Special Assessments. If the total of the Reserves made under paragraph 3 hereof, relating to reserves for ground rents, taxes, special assessments, and premiums on insurance policies, shall exceed the amount of payments actually made by Beneficiary for the purposes set forth in paragraph 3, plus such amounts as have been reasonably accumulated in such Reserves toward payments therefrom next to become due, such excess may, provided no default then exists under the terms of this instrument nor under the terms of the Note hereby secured, but not otherwise, be credited by Beneficiary in payment of subsequent aggregate, but not partial, payments required to be made under paragraph 3, or, at the option of the Beneficiary, refunded to the Grantor or its successor in interest as may appear upon the records of the Beneficiary. If, however, at any time, in Beneficiary's judgment, the amount of the Reserves shall be insufficient to pay at least thirty (30) days before due all ground rents, insurance premiums, taxes and assessments, then the Grantor shall pay to Beneficiary any amount necessary to make up the deficiency within thirty (30) days after notice to Grantor stating the amount of the deficiency. In the event there is a default under any of the provisions of the Note or this Deed of Trust and thereafter a sale of the Premises in accordance with the provisions hereof, or if the Beneficiary at its option acquires the Premises otherwise after default, the Beneficiary may, at its option, at the time of acceleration of the indebtedness or at the time of commencement of such proceedings or at the time the Premises are otherwise acquired, apply the balance then remaining in the Reserves accumulated under paragraph 3, less such sums as will become due and payable during the pendency of the proceedings, as a credit against the amounts secured hereby.

5. Direct Payment of Taxes, Etc. At the Beneficiary's option the Grantor shall either (1) pay all charges described in paragraph 3 in the manner provided in paragraph 3 hereof or (2) pay said charges directly to the party entitled thereto.

In the event Beneficiary allows Grantor to make direct payments for such charges, the Grantor agrees to pay in full at least thirty (30) days before delinquent all such charges, with interest, that may now or hereafter be levied, assessed or claimed upon the property that is the subject of this Deed of Trust or any part thereof, which may at any time appear to be prior or superior hereto for which provision has not been made heretofore, and upon request will exhibit to Beneficiary official receipts therefor, and Grantor agrees to pay all taxes imposed upon, reasonable costs, fees and expenses of this trust. On default under this paragraph Beneficiary may, at its option, pay, or pay out of reserves accumulated under paragraph 3, any such sums, without waiver of any other right of Beneficiary by reason of such default of Grantor, and Beneficiary shall not be liable to Grantor for a failure to exercise any such option.

6. Contesting Validity of Taxes, Assessments, Liens and Encumbrances. Grantor may, in good faith, contest, by proper legal proceedings, and at its own expense, the validity or amount of any such tax or assessment, provided that Grantor shall deposit with the Beneficiary a sum which shall be at least ten percent (10%) greater than the amount so contested, and also, from time to time, on demand of Beneficiary, such additional sums as may be reasonably required to cover interest or penalties accrued or to accrue on any such item or items, and the Beneficiary may upon reasonable notice to Grantor to pay such contested item or items out of



any sums so deposited in case of undue delay in the prosecution of such proceedings, or if the protection of the property or of the Beneficiary's interest therein shall, in the reasonable judgment of the Beneficiary, require such payment. On default under this paragraph Beneficiary may, at its option, pay, or pay out of Reserves accumulated under paragraph 3, any such sums, without waiver of any other right of Beneficiary by reason of such default of Grantor, and Beneficiary shall not be liable to Grantor for a failure to exercise any such option.

7. Late Charge. In the event that any payment or portion thereof is not paid within 10 calendar days of the day the payment is due, Beneficiary may collect, and the Grantor agrees to pay with such payment, a late charge of \$0.03 for each dollar so overdue, as liquidated damages for the additional expense of handling such delinquent payments. Such late charge represents the reasonable estimate of the Beneficiary and the Grantor of a fair average compensation due to the failure of the Grantor to make timely payments. Such late charge shall be paid without prejudice to the right of the Beneficiary to collect any other amounts provided to be paid or to declare a default hereunder.

8. Maintenance and Preservation of Premises. To maintain the buildings and other improvements on the Premises in a rentable and tenantable condition and state of repair, to neither commit nor suffer any waste, to promptly comply with all requirements of the federal, state and municipal authorities and all other laws, ordinances, regulations, covenants, conditions and restrictions respecting said Premises or the use thereof, and pay all fees or charges of any kind in connection therewith. The Beneficiary may recover as damages for any breach of this covenant the amount it would cost to put the Premises in the condition called for herein. In the event of breach of any requirement of this paragraph, the Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable. Proof of impairment of security shall be unnecessary in any suit or proceeding under this paragraph. Grantor shall permit Beneficiary or its agents the opportunity to inspect the Premises, including the interior of any structures, at reasonable times and after reasonable notice.

9. Restoration. To complete or complete promptly and in good workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.

10. Alteration or Removal of Property. No building or other improvement on the Premises shall be structurally altered, removed or demolished without the Beneficiary's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the proper use and enjoyment of the Premises be removed at any time without like consent unless actually replaced by an article of equal suitability owned by the Grantor free and clear of any lien or security interest except such as may be approved in writing by the Beneficiary.

11. Insurance. To provide to and deliver to Beneficiary, insurance on the Premises, the Personal Property and the business of the Grantor as follows:



11.1 All improvements on the Premises shall be insured against loss by fire, windstorm, tornado or hail and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by the standard extended coverage forms or endorsements. In each case, the minimum amount of insurance shall be for 100% of replacement costs, with the replacement cost endorsement without deduction for depreciation;

11.2 Comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises, or the elevators or escalators therein, including among other things, coverage against so-called "occurrences" in an amount of not less than \$1 million for bodily injury or death of any one person, \$2 million for any one occurrence and not less than \$500,000 for property damage;

11.3 Rental insurance in an amount sufficient to cover loss of rental income from the Premises for a period of six months;

11.4 If the property is in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, the improvements shall be insured by flood insurance that is provided under the National Flood Insurance Program in an amount of at least equal to either the outstanding balance of the Note or the maximum balance of flood insurance under the National Flood Insurance Program that is available, whichever is less. Such flood insurance shall be maintained during such time as the National Flood Insurance Program insurance is available.

All policies are to be issued by a solvent and responsible insurance companies acceptable to Beneficiary and, where applicable, shall contain a special mortgage clause in favor of Beneficiary. All policies and renewals are to contain no co-insurance provision and are to be written for not less than one year, with premium prepaid. Grantor shall deliver to Beneficiary certificates of insurance from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of thirty (30) days' written notice to Beneficiary.

12. Defense of Action and Indemnification and Attorneys' Fees and Costs. To appear in and defend any suit, action or proceeding that might affect the value of this security instrument or the security itself or the rights and powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect also to appear in or defend any such action or proceedings, be made a party to such by reason of this Deed of Trust, or elect to prosecute such action as appears necessary to preserve said value, the Grantor will at all times indemnify from, and on demand, reimburse Beneficiary or Trustee for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Deed of Trust with interest as provided in the Note secured hereby and shall be due and payable on demand. To pay costs of suit, cost of evidence of title and attorneys' fees in any proceeding or suit brought by Beneficiary to enforce this Deed of Trust or any portion hereof.

13. 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 thereon at the taxable rate of interest provided in the Note until paid, 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 attorneys' fee.

14. Beneficiary's Right to Defend Action and Cure of Certain Defaults. The Beneficiary may appear in and defend any action or proceeding at law or in equity or in bankruptcy purporting to affect the Premises or the security hereof and in such event (except where the purported defect affecting the security hereof arises or results from any act or omission of the Beneficiary), the Beneficiary shall be allowed and paid all the Beneficiary's costs, charges and expenses, including cost of evidence of title and attorneys' fees incurred in such action or proceeding in which the Beneficiary may appear.

Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Premises for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior to or superior hereto; and in exercising any such power, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor including costs of evidence of title, employ an attorney, and pay said attorneys' fees.

The Grantor hereby agrees to pay on demand with interest at the taxable rate of interest provided in the Note, all of the Beneficiary's costs, charges, expenses and amounts referred to above in this paragraph, including cost of evidence of title and attorneys' fees incurred in such action or proceeding in which the Beneficiary may appear. All costs, charges and expenses so incurred, together with interest thereon as aforesaid, shall be secured by the lien of this Deed of Trust.

15. Leases.

15.1 To fully comply with all of the terms, conditions and provisions of all leases on said Premises so that the same shall not become in default and to do all that is needful to preserve all said leases in force.

15.2 To permit no assignment of any lease, or any subletting thereunder unless

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Skagit County Auditor

the right to assign or sublet is expressly reserved by the lessee under such lease.

15.3 To submit to Beneficiary for approval all leases covering all or any part of the Premises prior to execution of the leases.

15.4 That save and except for taxes and assessments provided to be paid by Grantor as specified in paragraph 2 hereof, Grantor will not create or suffer or permit to be created, subsequent to the date of the execution and delivery of this Deed of Trust, any lien or encumbrance which may be or become superior to any lease affecting said Premises.

15.5 That if any part of the automobile parking areas included within said Premises is taken by condemnation, or before said areas are otherwise reduced, Grantor will provide parking facilities in kind, size and location to comply with all leases, and before making any contract for such substitute parking facilities, Grantor will furnish to Beneficiary satisfactory assurance of completion thereof free of liens and in conformity with all governmental zoning and regulations.

16. Condemnation and Casualty Loss. Should the Premises or any part or appurtenance thereof or right or interest therein be taken or damaged by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake or other casualty, or in any other manner, Grantor shall immediately notify Beneficiary. Beneficiary shall have the right, but not the obligation to commence, appear in and prosecute any action or proceeding, or make any compromise or settlement, in connection with such taking or damage, and obtain all compensation, awards or other relief therefor and apply such toward reimbursement of all costs and expenses in collecting said proceeds, the reduction of the indebtedness secured hereby, or the restoration or repair of the Premises or any part or appurtenance thereof or right or interest therein which is damaged or taken. Grantor also agrees to execute such further assignments of any such compensation, award, damages, rebates, return of premiums, repayments, rights of action and proceeds as Beneficiary or Trustee may require.

17. Time Is of the Essence. Time is of the essence hereof in connection with all obligations of the Grantor herein or in the Note. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

18. Plats, Easements, Reconveyance and Other Agreements. At any time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the Note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness, Trustee may (a) consent to the making of any map or plat of said Premises; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the Premises. The Grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the



truthfulness thereof. Grantor agrees to pay a reasonable Trustee's fee for full or partial reconveyance, together with a recording fee, if Trustee, at its option, elects to record said reconveyance.

19. Sale of Premises Pursuant to a Foreclosure. In case of a sale pursuant to a foreclosure of this Deed of Trust, the said Premises, real, personal or mixed, may be sole as an entirety or in parcels, by one sale or by several sales held at one time or at different times, all as Trustee in its unrestricted discretion may elect, and the Grantor for and on behalf of themselves and all persons claiming by, through or under them, waive any and all rights to have the property and estates comprising the Premises marshaled upon any foreclosure sale and agree that upon foreclosure the Premises may be sole as an entirety and not in parcels.

20. Prohibition of Rent Assignment or Zoning Change. The Grantor shall not, without first obtaining the Beneficiary's written consent, assign any of the rents or profits of the Premises or collect any rent for more than one month in advance or change the general nature of the occupancy or initiate or acquiesce in any zoning reclassification, or do or suffer any act or thing which would impair the security for said debt or the Beneficiary's lien upon said Premises or the rents thereof. In the event of breach of any requirement of this paragraph, the Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum secured hereby immediately due and payable.

21. Assignment of Leases and Rents. Grantor absolutely and irrevocably assigns to Beneficiary the rents, issues, and profits of the Premises, and all of the right, title and interest of the Grantor in and under all leases, rental agreements, and guarantees of tenant's performance now or hereafter affecting said Premises are hereby assigned and transferred to the Beneficiary. So long as no default shall exist in compliance with any covenants, terms, conditions or obligations hereof or of any other instrument at any time executed with respect to this Deed of Trust, Beneficiary hereby grants Grantor a license to collect assigned rents and profits as the same fall due, but upon the occurrence of any such default, all right of Grantor to collect or receive rents or profits shall wholly terminate. All rents, issues, or profits receivable from or in respect to said Premises which Grantor shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and the taxes upon, said Premises and the sums owing to Beneficiary as they become due and payable as provided in this Deed of Trust or in the Note or in any modification of either.

Grantor hereby agrees:

21.1 It will promptly perform and observe all the terms, covenants and conditions required to be performed and observed by it, as landlord under all leases and rental agreements and will do all things necessary to preserve and keep unimpaired its rights thereunder and will maintain all leases and rental agreements in full force and effect and will enforce the same and will take such action to that end as Beneficiary may request provided, however, that this shall not prevent Grantor from terminating a lease or rental agreement where the lessee is in default.



21.2 It will not create, nor permit any lien, charge or encumbrance upon its interest as landlord of the leases or rental agreements except the lien of this Deed of Trust and except as provided in this Deed of Trust;

21.3 It will not, without the written consent of the Beneficiary, collect or permit the collection of any rental payment under any of the leases or rental agreements for a period of more than one (1) month in advance of the date on which such payment is due.

All leases or rental agreements of the whole or any part of the Premises shall be subject and subordinate to the lien of this Deed of Trust unless Beneficiary consents in writing to the priority of certain leases or rental agreements. Beneficiary may, at its option, require that specific leases be made superior to the lien of this Deed of Trust. Grantor shall pay all costs incidental to making such leases superior to such lien, including attorneys' fees. In the event of any default hereunder and the exercise by Beneficiary of its rights hereby granted, Grantor agrees that payments made by tenants or occupants to Beneficiary shall, as to such tenants, be considered as though made to Grantor and in discharge of tenants' obligations as such to Grantor. Nothing herein contained shall be construed as obliging Beneficiary to perform any of Grantor's covenants under any lease or rental agreement. Grantor shall execute and deliver to Beneficiary upon demand any further or supplemental assignments deemed desirable by Beneficiary in order to further carry out and confirm the intentions of this paragraph and upon failure of the Grantor to so comply, Beneficiary may, in addition to any other right or remedies, at its option, declare all obligations secured by this Deed of Trust to be immediately due and payable.

22. Appointment of Receiver. The holder of this Deed of Trust, in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for said debt) to the appointment of a receiver of the rents and profits of the Premises and such receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receiver, all the rights and powers granted to the Beneficiary by the covenants contained in paragraph 23 hereof.

23. Default, Entry and Possession. In the event of default in compliance with any requirement of this Deed of Trust or of any further instrument at any time executed with respect to this Deed of Trust, and the continuance thereof for such period as would entitle the Beneficiary to declare said debt due and payable, or for ten (10) days if no such period be applicable the Beneficiary may, at its option, enter upon and take possession of the said Premises and let the same or any part thereof, making therefor such alterations as it finds necessary, and may terminate in any lawful manner any tenancy or occupancy of said Premises, exercising with respect thereto any right or option available to the Grantor. From and after the occurrence of any such default, if any owner of said Premises shall occupy said Premises or part thereof such owners shall pay to the Beneficiary in advance on the first day of each month to the Beneficiary in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do the Beneficiary shall be entitled to remove such owner from the Premises by any appropriate action or proceedings.



24. Default, Nonwaiver. The entering upon and taking possession of said Premises, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Premises, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

25. Events of Default. If any one or more of the following events (hereinafter referred to as "Events of Default") shall occur, to-wit:

25.1 if the Grantor or any guarantor of the obligations of Grantor hereunder or under the Note, shall, on a voluntary or involuntary petition filed under any federal or state insolvency law, have an order for relief entered or if a court of competent jurisdiction shall enter an order or decree appointing without the consent of the Grantor or any guarantor of the obligations of Grantor hereunder or under the Note, a receiver, custodian, liquidator or trustee of the Grantor or any guarantor of the obligations of Grantor hereunder or under the Note or of the whole or substantially all of its property, or approving a petition filed against it seeking reorganization or arrangement of the Grantor or any guarantor of the obligations of Grantor hereunder or under the Note under the federal bankruptcy laws or any other applicable law or statute of the United States or any state thereof, and such order or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof; or

25.2 if there is any abandonment of the Premises by the Grantor; or

25.3 the occurrence and continuation of an event of default under the Note or any other document or instrument entered into by the Grantor pursuant to the Note; or

25.4 the failure of the Grantor to perform or observe any of the covenants, agreements, or conditions on the part of the Grantor under this Deed of Trust; or

25.5 the failure of Grantor to perform any other obligation secured by this Deed of Trust;

then, and in any such event, the Beneficiary shall be entitled to exercise all rights, and shall have the benefit of all remedies provided by law or set forth in this Deed of Trust or in any other instrument given to secure the indebtedness evidenced by the Note, including the right to declare all sums secured hereby immediately due and payable.

26. Foreclosure. No waiver by Beneficiary of any default on the part of Grantor shall be construed as a waiver of any subsequent default hereunder. In event of any such default and upon written request of Beneficiary, Trustee shall sell the Premises in accordance with applicable Washington State law and the Uniform Commercial Code of the State of Washington where applicable, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale,



including a reasonable Trustee's fee and attorneys' fee; (2) to all the indebtedness evidenced by the Notes and all other indebtedness secured by this Deed of Trust or any other instrument; (3) the surplus, if any, shall be distributed in accordance with Washington State law. Trustee shall deliver to the purchaser at the sale of its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to convey at the time of its execution of this Deed of Trust, and such as it may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law, and such recitals shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value. The power of sale conferred by this Deed of Trust and by the laws of the State of Washington is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. At any time Beneficiary may appoint in writing a successor trustee, or discharge and appoint a new trustee in the place of any Trustee named herein, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original Trustee. The Trustee is not obligated to notify any party hereto of 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.

27. Due on Sale. The undersigned Grantor further agrees and acknowledges that the indebtedness evidenced by the Note of even date herewith is personal, and that Grantor's personal responsibility and/or control of the Premises given to secure this indebtedness is a material inducement to the Beneficiary hereunder to agree to enter into this transaction. Accordingly, Grantor covenants that for so long as there is any indebtedness outstanding under the Note Grantor will not permit (a) any conveyance of the whole or any part of the Premises securing this debt, whether by deed, contract, or otherwise, or lease of the same (other than a lease of any portion of the space in the improvements without an option to purchase) or any further encumbrance of same without the Beneficiary's prior written consent; or (b) any transfer of a material ownership interest in the Grantor without the prior written consent of Beneficiary; and Grantor agrees that if any event described in subparagraphs (a) or (b) shall occur, the Beneficiary or other holder may declare the entire unpaid balance outstanding under the Note immediately due and payable. 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 Premises, 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 the Grantor's interest in the Premises for the purposes of this section, and shall require the prior written consent of the Beneficiary.

28. Nonagricultural Use. The Premises, which are the subject of this Deed of Trust, are not used principally for agricultural or farming purposes. The property will be used for business or commercial purposes and not for Grantor's personal, family or household purposes.

29. Additional Taxes -- Change of Law. If at any time the United States of America



or any state thereof including the State of Washington shall require documentary stamps to be affixed to this Deed of Trust, or shall impose any ad valorem or other tax upon this Deed of Trust or the interest of the Beneficiary hereunder, or if any law is enacted deducting mortgage liens from the value of Washington land for the purpose of the real estate taxation or requiring mortgagee to pay a portion of the real estate taxes, or pay any tax levied in substitution (in whole or in part) therefor, which has the practical effect of requiring Beneficiary to pay any real estate taxes or the equivalent thereof in respect of the Premises, or if there occurs a change in the taxation of mortgages so as to require the Beneficiary to pay a tax by reason of its ownership of this Deed of Trust, the Grantor shall pay for the documentary stamps or shall pay such tax together with any interest or penalties imposed in connection therewith, provided that if for any reason payment by Grantor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the Note, or the within Deed of Trust or otherwise, Beneficiary may, at its option, without demand or notice, declare the whole sum secured by this Deed of Trust with interest thereon to be immediately due and payable, or Beneficiary may, at its option, pay that amount or portion of such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event Grantor shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said taxes.

30. Foreclosure Sale. In the event this Deed of Trust is foreclosed as a mortgage and the Premises sold at a foreclosure sale, the purchaser may, during the statutory redemption period make such repairs or alterations on said Premises as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the highest lawful rate shall be added to and become a part of the amount required to be paid for redemption from such sale.

31. Accounting. The Grantor will keep and maintain or will cause to be kept and maintained in accordance with Generally Accepted Accounting Principles accurate and proper books of record and account relating to the Premises. The Grantor shall permit the Beneficiary to examine the books of account and other records of the Grantor, to discuss the affairs, finances and accounts of the Grantor and to be informed as to the same by the Grantor, all at such reasonable times and intervals as the Beneficiary may desire. The Grantor will furnish to the Beneficiary within ninety (90) days after the end of the Grantor's fiscal year, copies of the balance sheet and operating statements relating to the Premises for such year, in reasonable detail; and, with such financial statements for each calendar year, the Grantor will furnish to the Beneficiary a written statement of such accountants to the effect that in making the examination necessary for the certification of such financial statements, it has not obtained knowledge of any default hereunder or under any other instrument, or if it has obtained knowledge of any such default, it shall disclose in such statement such default or defaults and the nature thereof. In addition, the Grantor shall also furnish the Beneficiary within ninety (90) days after the end of each calendar year evidence of the insurable value of the Premises. The Grantor shall also furnish to the Beneficiary, within thirty (30) days after the end of each calendar quarter, unaudited statements setting forth rental income and expenditures relating to the Premises for



such quarter, certified to as being correct by the Grantor.

32. Right of Foreclosure. Beneficiary shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the said Premises and the failure to make any such tenant or tenants a party defendant to any such suit or action or to foreclose its rights will not be asserted by the Grantor as a defense in any action or suit instituted to collect the indebtedness secured hereby or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the said Premises, any statute or rule of law at any time existing to the contrary.

33. Subrogation. The Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Deed of Trust.

34. Duty to Execute Instruments (Further Assurances). Grantor from time to time, within ten (10) days after request for Beneficiary, shall execute, acknowledge and deliver to Beneficiary, such chattel mortgages, security agreements or other similar security instruments, in form and substance satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Grantor or in which Grantor has any interest which, in the sole opinion of Beneficiary, is essential to the operation of the said Premises covered by this Deed of Trust. Grantor shall further, from time to time, within ten (10) days after request by Beneficiary, execute, acknowledge and deliver any financing statement, renewal, affidavit, certificate, continuation statement or other document as Beneficiary may request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of, this Deed of Trust and the priority of such chattel mortgage or other security instrument as a first lien. Grantor further agrees to pay to Beneficiary on demand all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing and refiling of any such instrument or document including the charges for examining title and the attorney's fee for rendering an opinion as to the priority of this Deed of Trust and of such chattel mortgage or other security instrument as a valid first and subsisting lien. However, neither a request so made by Beneficiary nor the failure of Beneficiary to make such request shall be construed as a release of such Premises, or any part thereof, from the conveyance of title by this Deed of Trust, it being understood and agreed that this covenant and any such chattel mortgage, security agreement or other similar security instrument, delivered to Beneficiary, are cumulative and given as additional security.

35. Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant of the terms of this Deed of Trust shall be in writing and be given to or made upon the respective parties at the addresses set forth below.

TO GRANTOR:

Jerry L. Smith and Molly A. Smith
c/o Jerry L. Smith, Incorporated
1246 Reservation Road
Anacortes, WA 98221



TO BENEFICIARY:

General Motors Acceptance Corporation
P.O. Box 5627
Denver, Colorado 80217

or to such other address as either party shall designate for itself in writing to the other party. Notice shall be deemed received on the earlier of (a) receipt, whether by mail, including overnight, regular or certified mail, personal delivery, facsimile or otherwise, or (b) three days following deposit in the United States Mail if sent certified, return receipt requested, postage prepaid.

36. No Change Without Writing. No change, amendment, modification, cancellation or discharge hereof shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

37. Nonwaiver. A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof, or of the Note, shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver; but all of the terms, covenants, conditions and other provisions of this Deed of Trust and of the Note, shall survive and continue to remain in full force and effect. No delay on Beneficiary's part in exercising any right shall be deemed a waiver. All waivers shall be in writing.

38. Cumulative Remedies. No remedy herein reserved to the Beneficiary is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

39. Washington State Law Governs. This Deed of Trust is to be governed by and construed in accordance with the laws of the State of Washington. The venue of any action to enforce the provisions hereof may be laid in Skagit County, Washington or King County, Washington at the option of Beneficiary.

40. Severability. If any provision of this Deed of Trust, or its application to any person or circumstance, is held invalid, the other provisions hereof, or the application of the provision to other persons or circumstances, shall not be affected.

41. Repayment Guaranteed. If the repayment of all amounts due and payable by the Grantor under the Note has been guaranteed, then the guarantor of the amounts due and payable under the Note is subject to the terms and provisions of this instrument.

42. Miscellaneous. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors, successors and assigns. All obligations of Grantor hereunder are joint and several. The term "Beneficiary" shall mean the holder and owner, including pledgees, of the Note secured



hereby, whether or not named as Beneficiary herein. Without affecting the liability of any other person for the payment of any obligation herein mentioned (including Grantor should it convey the Premises) and without affecting the lien hereof upon any portion of the Premises not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or part of the said Premises described herein, take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or thereafter, and sell same or otherwise realize thereon, either before, concurrently with, or after sale hereunder. This Deed of Trust shall be so construed that wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of any gender shall be applicable to all genders and shall likewise be so construed as applicable to and including a corporation.

(SIGNATURE PAGE FOLLOWS)



REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the Beneficiary of this Deed of Trust and hereby states that all indebtedness secured by this Deed of Trust has been paid in full, or Beneficiary has otherwise decided to release its interest in the property subject to this Deed of Trust. You are hereby directed to cancel this Deed of Trust, which is delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date: _____

Date: _____



EXHIBIT A

TRACT 16 OF BURLINGTON HILL BUSINESS PARK BINDING SITE PLAN, APPROVED SEPTEMBER 7, 1994, RECORDED SEPTEMBER 8, 1994, IN VOLUME 11 OF SHORT PLATS, PAGES 109 THROUGH 112, UNDER AUDITOR'S FILE NO. 9409080052, RECORDS OF SKAGIT COUNTY, WASHINGTON, BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M., IN SKAGIT COUNTY, WASHINGTON.