



200303210235

Skagit County Auditor

3/21/2003 Page

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30 12:29PM

**ORIGINAL**

**After recording mail to:**

Timothy C. Potts  
2722 South Park Drive  
Bellingham, WA 98225

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**Document Title:** Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing

**Grantor:** The Ruhlman Family Trust, U/A Dated February 20, 1996  
John Jay Ruhlman and Nancy Dorian Ruhlman, Trustees

**Grantee:** John and Grayce Potts, Timothy C. Potts and Other Participants

**Trustee:** Land Title Company of Skagit County

**Legal Description (abbreviated):**  
A ptn of NE ¼ of SE 1/4, S 30 T34N R4E W.M.

**Assessor's Property Tax Parcel Account Number(s):**  
340430-0-068-0009  
340430-4-003-0009

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

Dated as of March 21, 2003

The Ruhlman Family Trust Under Agreement dated February 20, 1996

John Jay Ruhlman and Nancy Dorian Ruhlman, Trustees

("Grantor")

to

**LAND TITLE COMPANY OF SKAGIT COUNTY**

("Trustee")

for the benefit of

John E. and Grayce E. Potts, Timothy C. and Bonnie K. Potts, Colin C. Potts as custodian  
for Jennifer J. Potts under the Washington Uniform Gifts to Minor's Act and Leopard  
Bow, LLC, a Washington limited liability company

("Beneficiary")

NOTICE: THIS INSTRUMENT COVERS REAL PROPERTY AND PERSONAL PROPERTY AND GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. IN ADDITION, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FINANCING STATEMENT COVERING PERSONAL PROPERTY AND GOODS THAT ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESS OF THE GRANTOR (DEBTOR) AND BENEFICIARY (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.



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Ruhlman Deed of Trust

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Deed of Trust") is made as of March 21, 2003, John Jay Ruhlman and Nancy Dorian Ruhlman, Trustees of the Ruhlman Family Trust under Agreement dated February 20, 1996, as the Grantor, whose address is 18314 Beaver Marsh Road, Mt. Vernon, Washington 98273, to Land Title Company of Skagit County whose address is 111 E. George Hopper Road, Burlington, WA 98233, as the Trustee, in trust for John E. and Grayce E. Potts, Timothy C. and Bonnie K. Potts, Colin C. Potts as custodian for Jennifer J. Potts under the Washington Uniform Gifts to Minors Act, and Leopard Bow, LLC, a Washington limited liability company (together with their successors and assigns, "Beneficiary") whose address is 2722 South Park Drive, Bellingham, WA 98225.

**WITNESSETH:**

WHEREAS, on March 21, 2003, Beneficiary and Grantor entered into that certain arrangement whereby Beneficiary has made a loan to Grantor in the principal amount of **\$230,000.00** or such other amount as may be advanced pursuant to the Promissory Note (the "Loan");

WHEREAS, to evidence the Loan, Grantor has executed and delivered to Beneficiary a Promissory Note, dated March 21, 2003 in the principal amount of **\$230,000.00**, payable to the order of Beneficiary, being fully due and payable on March 31, 2006, unless otherwise extended (the "Note");

WHEREAS, as a condition to making the Loan, Beneficiary has required, and the Grantor has agreed, to grant a lien and security interest in the Collateral (defined below) to secure the Loan.

NOW THEREFORE, in order to secure (a) the indebtedness of Grantor hereinafter set forth; (b) all amounts, sums and expenses paid hereunder by Beneficiary according to the terms hereof; and (c) all other indebtedness and liabilities of Grantor hereunder, together with interest on the said indebtedness, liabilities, amounts, sums and expenses paid hereunder by the Beneficiary according to the terms hereof and (d) all Obligations, indebtedness and liabilities of Grantor under the Note and the Loan and all other Loan Documents, together with all interest on said indebtedness, including liabilities, amounts, sums and expenses under the Note (all of the aforesaid, as more particularly described hereinbelow, are hereinafter collectively referred to as the "Indebtedness"), GRANTOR HEREBY IRREVOCABLY GRANTS, BARGAINS, SELLS, WARRANTS, CONVEYS, ALIENATES, REMISES, RELEASES, ASSIGNS, SETS OVER AND CONFIRMS UNTO TRUSTEE, WITH POWER OF SALE AND RIGHT OF ENTRY AND



POSSESSION, all of Grantor's right, title and interest in and to the following property, whether such property or interest therein is now owned or existing or hereafter acquired or arising (collectively, the "Collateral"):

ALL THOSE CERTAIN lot(s), piece(s) or parcel(s) of land described in Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof (herein, the "Real Property");

TOGETHER WITH the buildings, structures and improvements now or hereafter located on said land and all right, title and interest, if any, of Grantor in and to the streets and roads abutting said land to the center lines thereof, the strips and gores within or adjoining said land, the air space and right to use said air space above said land, all rights of ingress and egress by pedestrians and motor vehicles on or within said land, and all easements now or hereafter affecting said land, royalties and all rights appertaining to the use and enjoyment of said land, including, without limitation, alley, drainage, sewer, mineral, water, wells and well rights, oil and gas rights, mining claims, rights-of-way, ways, passages, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the land or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Grantor and the reversion and reversions, remainder and remainders (said Real Property, together with said buildings, structures and improvements, the property and other rights, privileges and interests encumbered and conveyed hereby, are hereinafter collectively referred to as the "Premises");

TOGETHER WITH all right, title, and interest now held or hereafter acquired by Grantor in and to all fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, now or hereafter attached to, contained in, used or intended to be incorporated in or used in connection with the Premises or placed on any part thereof, though not attached thereto, including, but not limited to, all building materials, furniture and furnishings, machinery, equipment, fittings, fixtures and articles of personal property, all of which are hereby declared and shall be deemed to be fixtures and accessions to the freehold and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Indebtedness secured by this Deed of Trust, and all service contracts, computers and computer software, telephone equipment and systems, warranties, guarantees, business and building licenses and permits, architects' and engineers' plans, blueprints and drawings; together with all proceeds of all of the foregoing; together with all of Grantor's present and future "fixtures," "equipment," "contract rights," "accounts," "general intangibles," "deposit accounts," "instruments," "investment property," "commercial tort claims," "letter-of-credit rights," "letters of credit," "money," "documents" and "chattel paper" relating to or generated by the operation of the Premises (as said quoted terms are defined in the Uniform Commercial Code as adopted in the State of Washington) and Beneficiary shall have, in addition to all



rights and remedies provided herein, and in any other agreements, commitments and undertakings made by Grantor to Beneficiary, all of the rights and remedies of a "secured party" under the said Uniform Commercial Code; and if the lien of this Deed of Trust is subject to a security interest or lease covering any such personal property, then together with all of the right, title and interest of Grantor in and to any and all such property, together with the benefits of all deposits and payments now or hereafter made thereon by Grantor;

TOGETHER WITH all building materials and equipment now or hereafter delivered to and intended to be installed in or on the Premises, and all permits, licenses, certificates and other rights and privileges obtained in connection with the Premises, and all of Grantor's rights (but not its indebtedness) under all contracts relating to the Premises, including, but not limited to, Grantor's rights under any management agreement relating to the Premises;

TOGETHER WITH all leases, lettings and licenses of the Premises or any part thereof now or hereafter entered into and all right, title and interest of Grantor thereunder, and the rents, issues, profits, accounts receivable and revenues of the Premises from time to time accruing (including without limitation all payments under leases or tenancies, tenant security deposits and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Grantor of, in and to the same and including, without limitation, the right to receive and collect the rents, issues and profits payable thereunder;

TOGETHER WITH all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Grantor and all proceeds of the conversion, voluntary or involuntary, of the Collateral or any part thereof into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Collateral by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Collateral or any easement therein, including awards for any change of grade of streets;

TOGETHER WITH all right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Collateral, hereafter acquired by, or released to the, Grantor, or constructed, assembled or placed by Grantor or by others for Grantor's benefit on the Collateral, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further conveyance, assignment or other act by Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein;



TO HAVE AND TO HOLD the Collateral and all parts, rights, members and appurtenances thereof, to the use and benefit of Trustee, its successors and assigns, according to the terms hereof.

GRANTOR HEREBY FURTHER GRANTS to beneficiary a security interest in that portion of the Collateral which is personal property, general intangibles and/or is otherwise covered by the Uniform Commercial Code of the State of Washington.

THIS DEED OF TRUST is given to secure the following described Indebtedness:

(a) The debt evidenced from time to time by the Note with the principal face amount of **\$230,000.00**, together with any and all renewal or renewals and extension or extensions of the indebtedness evidenced by the Note, and together with any and all interest thereon;

(b) Any and all additional advances made by Beneficiary to protect or preserve the Collateral or the lien hereof on the Collateral, or to pay taxes, to pay premiums on insurance on the Collateral or to repair or maintain the Collateral, or to complete improvements on the Collateral (whether or not the original Grantor remains the owner of the Collateral at the time of such advances and whether or not the original Beneficiary remains the owner of the Indebtedness and this instrument);

(c) Any and all expenses incident to the collection of the Indebtedness secured hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained; and

(d) The full and prompt payment and performance of any and all Obligations or covenants of Grantor to Beneficiary under the terms of any other agreements, assignments or other instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note and the Loan (any and all such other agreements, assignments and other instruments, together with the Note, the Loan this Deed of Trust.

When the Indebtedness secured by this Deed of Trust has been paid in full, the Beneficiary shall promptly cause this Deed of Trust to be released at Grantor's sole cost and expense.

AND Grantor covenants and agrees as follows:

## ARTICLE I

### COVENANTS OF GRANTOR



**Section 1.01. *Payment of the Indebtedness.*** Grantor shall punctually pay the Indebtedness in immediately available funds as provided herein and in the Note, all in the coin and currency of the United States of America which is legal tender for the payment of public and private debts.

**Section 1.02. *Title to the Collateral.*** Grantor warrants that: (a) it has title to the Collateral subject only to the matters enumerated on Exhibit B attached hereto and by this reference incorporated herein and made a part hereof; (b) it has full power and lawful authority to encumber the Collateral in the manner and form herein set forth; (c) it owns or will own all fixtures and articles of personal property now or hereafter affixed and/or used in connection with the Premises, including any substitutions or replacements thereof, free and clear of liens, security interests and claims, subject only to the matters enumerated on Exhibit B hereto; (d) this Deed of Trust is and will remain a valid and enforceable deed of trust, security interest and lien on the Collateral; and (e) it will preserve such title, and will forever warrant and defend the same to Beneficiary and will forever warrant and defend the validity and priority of the lien hereof, against the claims of all persons and parties whomsoever, except only for the matters described on Exhibit B hereto.

**Section 1.03. *Maintenance of the Collateral.*** Grantor shall maintain the Collateral in good repair, shall comply with the requirements of any governmental authority having or claiming jurisdiction over the Collateral within thirty (30) days after an order containing such requirement has been issued by any such authority and shall permit Beneficiary to enter upon the Premises and inspect the Collateral at all reasonable hours and without prior notice. Grantor shall not, without the prior written consent of the Beneficiary, threaten, commit, permit or suffer to occur any waste, material alteration, demolition or removal of the Collateral or any part thereof; provided, however, that fixtures and articles of personal property constituting Collateral may be removed from the Premises if Grantor concurrently therewith replaces the same with similar items of equal or greater value, free of any lien, security interest, charge or claim of superior title, except for the matters enumerated on Exhibit B hereto.

**Section 1.04. *Insurance; Restoration.*** The Grantor shall procure and maintain continuously in effect until the Indebtedness is paid in full, hazard and liability insurance in such amounts and types of coverages as approved by Beneficiary from time to time, and shall punctually pay all insurance premiums associated therewith. Beneficiary shall be named as an additional insured in the hazard insurance policy and such policy shall not be cancelled or the amount of coverage reduced without a thirty (30) day prior written notice being provided to Beneficiary by the applicable insurance carrier. Beneficiary shall receive at least annually an insurance certificate disclosing the insurance coverages applicable to such policies.



**Section 1.05. *Taxes and Other Charges.***

(a) Grantor shall pay and discharge when due all taxes of every kind and nature, water rates, sewer rents and assessments, levies, permits, inspection and license fees and all other charges imposed upon or assessed against the Collateral or any part thereof or upon the revenues, rents, issues, income and profits of the Premises or arising in respect of the occupancy, uses or possession thereof. Should Grantor default in the payment of any of the foregoing taxes, assessments, water rates, sewer rents, or other charges, Beneficiary may, but shall not be obligated to, pay the same or any part thereof, and amounts so paid shall be secured by this Deed of Trust, and Grantor shall, on demand, reimburse Beneficiary for all amounts so paid.

**Section 1.06. *Mechanics' and Other Liens.*** Grantor shall pay from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien or claim of lien on the Collateral or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom and, in general, Grantor shall do, or cause to be done, at the cost of Grantor and without expense to Beneficiary, everything necessary to fully preserve the lien of this Deed of Trust. Grantor may exercise any right it may have at law to post a bond as security for any lien which is filed against the Collateral in order to remove such lien from effect on title to the Collateral. In the event Grantor fails to make payment of such claims and demands, Beneficiary may, but shall not be obligated to, make payment thereof, all sums so expended shall be secured by this Deed of Trust, and Grantor shall, on demand, reimburse Beneficiary for all sums so expended.

**Section 1.07. *Condemnation Awards and Insurance Proceeds.*** Grantor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting the Premises, or any portion thereof, or the institution of any proceedings for eminent domain or for the condemnation of the Premises, or any portion thereof. All of Grantor's rights with respect to all insurance proceeds on the Premises, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Premises or for any damage or injury to it or for any loss or diminution in value of the Premises, are hereby assigned to and shall be paid to Beneficiary. Beneficiary shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums, and then either: (a) without regard to the adequacy of its security, to the payment of the indebtedness secured hereby in whatever order Beneficiary directs in its absolute discretion, with any remainder being paid to Grantor; or (b) for restoration or repair of the Premises upon such terms and conditions as would be required by a prudent interim construction lender including, but not limited to, the prior approval of plans and specifications and the furnishing of lien waivers, invoices, receipts and bills paid affidavits, and Grantor shall promptly, at Grantor's cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the





purpose, promptly and diligently restore, repair, replace and rebuild the Premises in accordance with the aforementioned plans and specifications approved by Beneficiary. Grantor agrees to execute and deliver, from time to time, such further instruments as may be requested by Beneficiary to confirm the foregoing assignment to Beneficiary of any award, damage, insurance proceeds, payment or other compensation. Beneficiary is hereby irrevocably constituted and appointed the attorney-in-fact of Grantor (which power of attorney shall be irrevocable, shall be deemed coupled with an interest, shall not be affected by any disability or incapacity suffered by Grantor subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefore and to give receipts and acquittances therefore.

**Section 1.08. Deed of Trust Authorized.** Grantor hereby warrants and represents that: the execution and delivery of this Deed of Trust and the Note and any other Loan Documents to which Grantor is a party have been duly authorized and that there is no provision in the trust documents relating to the formation or existence of the Ruhlman Family Trust (collectively, the "Entity Documents"), as same may have been amended, requiring further consent for such action by any other entity or person; it is duly organized, validly existing and in good standing under the laws of the State of Washington and has (a) all necessary licenses, authorizations, registrations and approvals and (b) full power and authority to own its properties and carry on its business as presently conducted; and the execution and delivery by and performance of its Indebtedness under this Deed of Trust, the Note, and any other Loan Documents to which Grantor is a party will not result in Grantor being in default under any provision of its Entity Documents, as the same may have been amended, or of any other note, security deed, mortgage, deed of trust or security, credit or other agreement to which Grantor is a party.

**Section 1.09. Costs of Defending and Upholding the Lien.** If any action or proceeding is commenced to which action or proceeding Beneficiary or Trustee is made a party or in which it becomes necessary to defend or uphold the lien of this Deed of Trust, Grantor shall, on demand, reimburse Beneficiary and Trustee for all expenses (including, without limitation, reasonable attorneys' fees and appellate attorneys' fees) incurred by Beneficiary or Trustee in any such action or proceeding and all such expenses shall be secured by this Deed of Trust. In any action or proceeding to foreclose this Deed of Trust or to recover or collect the Indebtedness, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

**Section 1.10. Additional Advances and Disbursements.** Grantor shall pay when due all payments and charges on all security deeds, mortgages, deeds of trust, deeds to secure debt, security agreements, liens, encumbrances, ground and other leases, and security interests which may be or become superior or inferior to the lien of this Deed of Trust, and in default thereof, Beneficiary shall have the right, but shall not be obligated, to pay, without notice to Grantor, such payments and charges and Grantor shall, on demand,



reimburse Beneficiary for amounts so paid and all costs and expenses incurred in connection therewith. In addition, upon default of Grantor in the performance of any other terms, covenants, conditions or Indebtedness by it to be performed under any such prior or subordinate lien, encumbrance, lease or security interest, Beneficiary shall have the right, but shall not be obligated, to cure such default in the name and on behalf of Grantor. All sums advanced and reasonable costs and expenses incurred at any time by Beneficiary or Trustee pursuant to this Section 1.11 or as otherwise provided under the terms and provisions of this Deed of Trust or under applicable law shall bear interest from the date that such sum is advanced or cost or expense incurred, to and including the date of Loan, computed at an interest rate equal to the "Default Rate" provided in the Note, if not prohibited by law, otherwise at the highest lawful contract rate, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

**Section 1.11. Costs of Enforcement.** Grantor agrees to bear and pay all expenses (including reasonable attorneys' fees and appellate attorneys' fees) of or incidental to the perfection and enforcement of any provision hereof, or the enforcement, compromise or settlement of this Deed of Trust or the Indebtedness, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise. All rights and remedies of Beneficiary shall be cumulative and may be exercised singly or concurrently.

**Section 1.12. Additional Covenants.** Without the prior written consent of Beneficiary, Grantor shall not: (i) execute or permit to exist any lease of or extend any existing Lease related to all or any portion of the Premises; (ii) modify or vary, surrender or terminate, either orally or in writing, any Lease affecting the Premises except in the case of the tenant's default thereunder and then only in accordance with sound business judgment; (iii) (1) discount any rents or collect the same for a period of more than two months in advance, except for security or damage, or (2) except in the ordinary course of business, cancel any Lease affecting the Premises except in the case of the tenant's default thereunder; (iv) execute any conditional bill of sale, chattel mortgage, security agreement or other security instruments covering any of the Collateral (other than the matters set forth on Exhibit "B") on delivery to the Premises; (v) further assign the Leases and rents affecting the Premises; (vi) further encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Collateral, or any part thereof except with the prior written approval of Beneficiary in its sole and absolute discretion; (vii) sell, transfer, convey or assign any interest in the Collateral, except with respect to personal property disposed in the ordinary course of business; (viii) enter into any agreement whereby the holder of any prior or subordinate mortgage, deed of trust, deed to secure debt or security agreement, waives, extends or modifies any of the terms of the prior or subordinate security instrument except with the prior written approval of Beneficiary in its sole and absolute discretion; or (ix) sell, convey or transfer, or permit the sale, conveyance or transfer, whether directly or indirectly, of all or any portion of, or any legal, equitable or beneficial interest in Grantor.



**Section 1.13. Estoppel Certificates.** Grantor, within three (3) days upon request in person or within five (5) Business Days upon request by mail, shall furnish to Beneficiary a written statement, duly acknowledged, setting forth the amount due under this Deed of Trust, the terms of payment and maturity date of the Note, the date to which interest has been paid, whether any offsets or defenses are known to exist against the Indebtedness and, if any are alleged to exist, the nature thereof shall be set forth in detail.

**Section 1.14. Assignment of Leases and Rents.** Grantor hereby assigns to Beneficiary, as further security for the payment of the Indebtedness, the rents, issues and profits of the Premises, together with all Leases and other documents evidencing such rents, issues and profits now or hereafter in effect and any and all deposits held as security under said Leases and shall, upon demand, deliver to the Beneficiary a true copy of each such Lease or other document. Nothing contained in the foregoing sentence shall be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any such lease or other document or otherwise to impose any obligation on Beneficiary (including, without limitation, any liability under the covenant of quiet enjoyment contained in any Lease or in any law of any applicable state in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises). Grantor hereby further grants to Beneficiary the right, in its own name, in the name of Grantor, or by a court appointed receiver, (i) to enter upon and take possession of the Premises for the purpose of collecting the said rents, issues and profits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Beneficiary, (iii) to let the Premises, or any part thereof, and (iv) to apply said rents, issues and profits, after payment of all necessary charges and expenses, on account of said Indebtedness. Such assignment and grant shall continue in effect until the Indebtedness is paid, the execution of this Deed of Trust constituting and evidencing the irrevocable consent of Grantor to the entry upon and taking possession of the Premises by Beneficiary or a receiver pursuant to such grant, whether foreclosure has been instituted or not. Until the occurrence of an Event of Default, Grantor shall be entitled to collect and receive said rents, issues and profits. Grantor agrees to use said rents, issues and profits in payment of costs of maintenance and operation of the Collateral, principal and interest becoming due under this Deed of Trust and in payment of taxes, assessments, water rates, sewer rents and carrying charges becoming due against the Premises. Such right of Grantor to collect and receive such rents, issues and profits may be revoked by Beneficiary upon the occurrence of an Event of Default by giving written notice of such revocation, served personally upon or sent by registered or certified mail to the record owner of the Premises. If Grantor has executed a separate assignment of rents and leases, then the provisions of such separate assignment (to the extent conflicting herewith) shall supersede the provisions of this Section. Notwithstanding any provision in this Deed of Trust to the contrary, the term "Lease" shall not include leases or licenses which by their terms are terminable by the grantor thereof upon thirty (30) days notice.



**Section 1.15. Leases and Other Agreements Affecting Property.** Grantor will duly and punctually perform all terms, covenants, conditions and agreements binding upon it under any lease or any other agreement of any nature whatsoever which involves or affects the Collateral or any part thereof. Grantor will, at the request of Beneficiary, furnish Beneficiary with executed copies of all leases now or hereafter created upon the Collateral or any part thereof.

**Section 1.16. Indemnity.** Grantor shall indemnify and hold Beneficiary and its directors, officers, commissioners, employees, and agents (collectively, the "Indemnified Parties," and individually, an "Indemnified Party"), harmless from and against any and all suits, actions, claims, proceedings (including third party proceedings) damages, losses, liabilities and expenses (including, without limitation, reasonable attorneys' fees and disbursements) which may be incurred by or asserted against any Indemnified Party, without gross negligence or willful misconduct on the part of the Indemnified Party, as the result of its having made a loan to Grantor or having committed to extend credit to Grantor, including, but not limited to, claims for brokerage commissions or finder's fees for arranging the loan secured by this Deed of Trust, claims of persons claiming mechanics' or similar liens, claims of tenants of the Premises and claims for recording taxes, filing fees, transfer taxes and similar claims relating to this Deed of Trust. The provisions of this Section shall survive the repayment of the Indebtedness secured hereby.

**Section 1.17. Security Agreement.**

(a) Insofar as the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, articles of personal property, contract rights, accounts and general intangibles either referred to or described in this Deed of Trust, or in any way connected with the use and enjoyment of the Collateral is concerned, this Deed of Trust shall be construed as a deed of trust on real property, and it shall also constitute and serve as a security agreement on personal property within the meaning of, and shall constitute until the grant of this Deed of Trust shall terminate as provided herein, a first and prior pledge and assignment and a first and prior lien security interest, encumbering each and every item of personal property included in the Collateral, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Washington. A financing statement or statements perfecting the security interest in all of said personal property aforementioned, shall be executed by Grantor in favor of Beneficiary as the secured party, and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Beneficiary's sole election. Grantor and Beneficiary agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention



of Grantor and Beneficiary that everything used in connection with the production of income from the Collateral and/or adapted for use therein and/or 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 (a) any such item is physically attached to the Premises, (b) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (aa) the proceeds of any fire, casualty and/or hazard insurance policy, or (bb) any award in condemnation proceedings for a taking or for loss of value, or (cc) Grantor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Collateral, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of Beneficiary in the event any court shall at any time hold with respect to the foregoing (aa), (bb) or (cc), that notice of Beneficiary's priority of interest to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

(b) Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such "financing statements" and such further assurances as Beneficiary may from time to time reasonably consider necessary to create, perfect and preserve Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

(c) The assignment and security interest herein granted shall not be deemed or construed to constitute Beneficiary as a "mortgagee in possession" of the Collateral, to obligate Beneficiary to lease the Collateral or attempt to do same, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the leases or otherwise.

**Section 1.18. Zoning.** Without the prior written consent of Beneficiary which consent will not be unreasonably withheld or delayed, Grantor shall not seek, make, suffer or consent to or acquiesce in any change in the zoning or conditions of use of the Premises. Grantor shall comply with and make all payment required under the provisions of any covenants, conditions or restrictions affecting the Premises. Grantor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Premises. If, under applicable zoning provisions, the use of all or any part of the Premises is or becomes a nonconforming use, Grantor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Beneficiary.



**Section 1.19. Easements and Rights-of-Way.** Grantor shall not grant any easement or right-of-way with respect to all or any portion of the Premises without the prior written consent of Beneficiary which consent will not be unreasonably withheld or delayed.

## ARTICLE II

### DEFAULT AND REMEDIES

**Section 2.01. Events of Default.** The occurrence of any "Event of Default" (as defined in the Loan Agreement) shall constitute an Event of Default under this Deed of Trust.

**Section 2.02. Remedies.**

(a) **General.** Upon the occurrence and continuance of any Event of Default, Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Collateral, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary: (1) declare the entire unpaid Indebtedness to be immediately due and payable ("Acceleration"); or (2) notify all tenants of the Premises and all others obligated on leases of any part of the Premises that all rents and other sums owing on leases have been assigned to Beneficiary and are to be paid directly to Beneficiary, and to enforce payment of all Indebtedness owing on leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Beneficiary has taken possession of the Premises, and to exercise whatever rights and remedies Beneficiary may have under any assignment of rents and leases; or (3) enter into or upon the Premises, either personally or by its agents, nominees or attorneys, or by a receiver appointed by a court (which appointment may be ex parte, without notice to Grantor; provided, that if such appointment is being sought based on a monetary Event of Default, notice shall be provided to Grantor), and dispossess Grantor and its agents and servants therefrom, and thereupon may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (ii) complete any construction on the Premises in such manner and form as Beneficiary deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Collateral; (iv) exercise all rights and powers of Grantor with respect to the Premises, whether in the name of Grantor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof; and (v) apply the receipts from the Premises to the payment of



the Indebtedness, after deducting therefrom all expenses (including attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Collateral, as well as compensation for the services of Beneficiary and any receiver, their counsel, agents and employees; or (4) institute proceedings for the complete or partial foreclosure of this Deed of Trust; or (5) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Indebtedness not then due; or (6) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or Loan Documents; or (7) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Deed of Trust; or (8) apply for the appointment of a trustee, receiver, liquidator or conservator of the Collateral, without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of Grantor, any guarantor or of any person, firm or other entity liable for the payment of the Indebtedness; or (9) pursue such other remedies as Beneficiary may have under applicable law. Whenever Beneficiary is given the option to Accelerate the maturity of all or part of the Indebtedness, Beneficiary may do so without presentment, protest, notice or demand, all of which are hereby waived by Grantor, other than any notice otherwise expressly required hereunder.

**(b) Sale by Trustee.** In case of an Event of Default as defined in Section 2.01 hereof, the Beneficiary or the legal holder of the indebtedness secured hereby may declare a violation of any of the covenants herein contained and elect to invoke the power of sale and any other remedies permitted by law. If Beneficiary invokes the power of sale, Beneficiary shall give written notice to Trustee of such election. Trustee shall give such notice to Grantor of Grantor's rights as is provided by law. Trustee shall record and give such notices as required by law. After the lapse of such time as may be required by law, Trustee, without demand on Grantor, shall sell the Premises at public auction to the highest bidder for cash at the time and at the place (which may be on the Premises or any part thereof as permitted by law) then authorized by law as may be specified in the notice of sale, in one or more parcels as Trustee may think best and in such order as Trustee may determine. Trustee shall apply the proceeds of the sale in the following order: (i) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (ii) to reduce or discharge the Indebtedness in such order as Beneficiary may elect; and (iii) the excess, if any, to the person or persons legally entitled thereto. Beneficiary or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Premises after Acceleration, and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any, and shall be entitled thereto as a



matter of right without regard to the solvency or insolvency of Grantor or of the then owner of the Premises, and without regard to the value thereof. Nothing in this section dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by State of Washington law, and any such inconsistency shall be resolved in favor of State of Washington law applicable at the time of foreclosure. The Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges and costs of making said sale, pay to the Beneficiary hereunder or the legal holder of the Indebtedness the principal and interest due on the Indebtedness according to the tenor and effect thereof, and all moneys advanced by such Beneficiary or legal holder of the Indebtedness for insurance, taxes and assessments, or other money advanced pursuant to the terms hereof, with interest thereon at the Alternate Rate rendering the overplus, if any, unto the Grantor, its successors or assigns; which sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against the Grantor, its successors or assigns, and all other persons claiming the said property, or any part under Grantor. The holder or holders of the Indebtedness may purchase said property or any part thereof; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money. If a release deed is required, it is agreed that the Grantor, its successors or assigns, will pay the expense thereof.

And the Grantor, for itself and for its successors and assigns covenants and agrees to and with the Trustee, that at the time of the ensembling of and delivery of these presents, it is well seized of the lands and tenements in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid; hereby fully and absolutely waiving and releasing all rights and claims it may have in or to said lands, tenements, and property as a Homestead Exemption, or other exemption, under and by virtue of any act of the Legislature of the State of Washington now existing or which may hereafter be passed in relation thereto; and that the same are free and clear of all liens and encumbrances whatever (except the matters set forth on Exhibit "B"), and the above-bargained property in the quiet and peaceable possession of the Trustee, his successors and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the Grantor shall and will warrant and forever defend.

**(c) Purchase Property.** Upon any sale made under or by virtue of this Article II (whether made under a trustee's sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Beneficiary may bid for and acquire the Collateral or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness the net sale price after deducting therefrom the expenses of the sale





and the costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust.

**(d) Deed of Trust Unimpaired.** No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Collateral or upon any other property of Grantor shall affect in any manner or to any extent, the lien of this Deed of Trust upon the Collateral or any part thereof, or any liens, rights, powers or remedies of Beneficiary hereunder, but such liens, rights, powers and remedies of Beneficiary shall continue unimpaired as before.

**(e) Indebtedness Due.** In the event of any sale made under or by virtue of this Article II (whether made under a trustee's sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) the entire Indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Note or in this Deed of Trust to the contrary notwithstanding, become due and payable.

**(f) Appointment of Receiver.** If an Event of Default shall have occurred, Beneficiary, without regard to the then value of the Collateral or the interest of the Grantor therein, or the insolvency of Grantor or the then-owner of the Collateral, may seek the appointment of a receiver for the Collateral upon ex parte application to any court of competent jurisdiction. Grantor will have a right to a hearing or notice of hearing to the extent required under applicable law. Such receiver and his agents shall be empowered (i) to take possession of the Premises and any businesses conducted by Grantor or any other person thereon and any business assets used in connection therewith, (ii) to exclude Grantor and Grantor's agents, servants and employees from the Premises, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Premises, (iii) to collect the rents, issues, profits and income therefrom, (iv) to complete any construction which may be in progress, (v) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (vi) to use all stores of materials, supplies and maintenance equipment on the Premises and replace such items at the expense of the receivership estate, (vii) to pay all taxes and assessments against the Premises and the chattels, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (viii) to borrow from Beneficiary such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Beneficiary, and (ix) generally to do anything which Grantor could legally do if Grantor were in possession of the Collateral. All expenses incurred by the receiver or his agents, including Indebtedness to repay funds borrowed by the receiver, shall constitute a part of the Indebtedness. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Beneficiary, together with interest thereon at the



Alternate Rate from the date incurred until repaid, and the balance shall be applied toward the Indebtedness or in such other manner as the court may direct. Unless sooner terminated with the express consent of Beneficiary, any such receivership will continue until the Indebtedness has been discharged in full, or until title to the Premises has passed after foreclosure sale and all applicable periods of redemption have expired, or until a court of competent jurisdiction orders the receiver discharged.

**(g) Partial Foreclosure.** Upon the occurrence and continuance of an Event of Default, Beneficiary shall have the option to proceed with foreclosure of the liens and security interests evidenced hereby in satisfaction of such item either through the courts or by proceeding or by directing Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided, all without declaring the entire secured indebtedness due, and provided, however, that if the sale of the Premises is made because of default in the payment of a part of the secured indebtedness, such sale may be made subject to the unmatured part of the secured indebtedness; and such sale, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Deed of Trust shall remain in full force and effect just as though no sale had been made. The proceeds of any sale shall be applied as provided in Section 2.02(b) hereof except that the amount paid under subsection (ii) thereof shall be only the matured portion of the secured indebtedness and any proceeds of such sale in excess of those provided for in subsections (i) and (ii) (modified as provided above) shall be applied to installments of principal on the Note in the inverse order of maturity, or, if no installments of principal are payable under the Note to prepay the principal balance of the Note in whatever order Beneficiary shall subjectively determine. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the secured indebtedness. It is the purpose thereof to provide for a foreclosure and sale of the Premises for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the Premises for any other part of the secured indebtedness whether matured at the time or subsequently maturing.

**(h)** Beneficiary shall have the right to foreclose this Deed of Trust as a mortgage by judicial foreclosure in accordance with applicable law. If this Deed of Trust is foreclosed as a mortgage by judicial procedure, Beneficiary will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the obligations secured by this Deed of Trust exceeds the net sale proceeds payable to Beneficiary.

**Section 2.03. Interest After Acceleration.** If Beneficiary shall declare the entire unpaid Indebtedness to be immediately due and payable as provided in Section 2.02, then and in such event, Grantor shall pay interest thereon from and after the date of such



declaration at the Alternate Rate and such interest shall be due and payable, on demand, at such rate until the entire amount due is paid to Beneficiary, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Deed of Trust. Nothing in this Section 2.03 or in any other provision of this Deed of Trust shall constitute an extension of the time of payment of the Indebtedness.

**Section 2.04. Grantor's Actions After Default.** After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Beneficiary to obtain judgment for the Indebtedness, or of any other nature in aid of the enforcement of the Note or of this Deed of Trust, Grantor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, and (b) if required by Beneficiary, consent to the appointment of a receiver or receivers of the Collateral and of all the earnings, revenues, rents, issues, profits and income thereof. Nothing herein shall be deemed to require the commencement of a suit or the consent of Grantor as a condition precedent for Beneficiary's right to the appointment of a receiver or the exercise of any other rights or remedies available to Beneficiary.

**Section 2.05. Control by Beneficiary After Default.** Notwithstanding the appointment of any receiver, liquidator or trustee of Grantor as provided herein, or of any of its property, or of the Collateral or any part thereof, Trustee or Beneficiary shall be entitled (but not obligated) to retain possession and control of all property now and hereafter covered by this Deed of Trust.

**Section 2.06. Waiver of Rights.** Grantor waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisal before sale of any portion of the Collateral, or (ii) in any way extending the time for the enforcement of the collection of the Indebtedness or creating or extending a period of redemption from any sale made in collecting the Indebtedness. Grantor agrees that Grantor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption or homestead exemption, and Grantor, for Grantor, Grantor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Collateral, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Indebtedness and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Grantor, Grantor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Grantor expressly waives and relinquishes any and all rights, remedies and defenses that Grantor may have or be able to assert by reason of the laws of the State of Washington pertaining to the rights, remedies and defenses of sureties.



## ARTICLE III

### MISCELLANEOUS

**Section 3.01. Credits Waived.** Grantor will not claim nor demand nor be entitled to any credit or credits against the Indebtedness for so much of the taxes assessed against the Collateral or any part thereof as is equal to the tax rate applied to the amount due on this Deed of Trust or any part thereof, and no deductions shall otherwise be made or claimed from the taxable value of the Collateral or any part thereof by reason of this Deed of Trust or the Indebtedness.

**Section 3.02. No Release.** Subject to the limitations of liability set forth in the Loan Documents, Grantor agrees, that in the event the Collateral is sold and Beneficiary enters into any agreement with the then owner of the Collateral extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof, Grantor shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Beneficiary.

**Section 3.03. Notices.** Except as otherwise expressly stated in this Deed of Trust, any notice required or permitted to be given under or in connection with this Deed of Trust shall be in writing and shall be mailed by express mail, postage prepaid, or sent by nationally recognized overnight courier service, or sent by telecopy or other similar form of rapid transmission confirmed by mailing (by first class or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below:

If to Grantor:

John J. and Nancy D. Ruhlman  
18314 Beaver Marsh Road  
Mt. Vernon, Washington 98273  
Phone:(360)  
Facsimile: (360)

If to Beneficiary:

Timothy C. Potts  
2722 South Park Drive  
Bellingham, WA 98225  
Phone: (360) 671-3058  
Facsimile: (360) 738-6898



Any communication so addressed and mailed shall be deemed to be given when delivered to the address of the intended addressee, except that any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Beneficiary or Grantor, as the case may be. Either party may designate a change of address by written notices to the other by giving at least ten (10) days prior written notice of such change of address.

**Section 3.04. *Binding Indebtedness.*** The provisions and covenants of this Deed of Trust shall run with the land, shall be binding upon Grantor and shall inure to the benefit of Beneficiary, subsequent holders of this Deed of Trust and their respective successors and assigns. For the purpose of this Deed of Trust, the term "Grantor" shall mean Grantor named herein, any subsequent owner of the Collateral, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Grantor, all their undertakings hereunder shall be deemed joint and several.

**Section 3.05. *Captions.*** The captions of the Sections of this Deed of Trust are for the purpose of convenience only and are not intended to be a part of this Deed of Trust and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

**Section 3.06. *Further Assurances.*** Grantor shall do, execute, acknowledge and deliver, at the sole cost and expense of Grantor, all and every such further acts, deeds, conveyances, assignments, estoppel certificates, notices of assignment, transfers, assurances and financing statements as Beneficiary may reasonably require from time to time in order to better assure, convey, assign, transfer, perfect and confirm unto Beneficiary, the rights now or hereafter intended to be granted to Beneficiary under this Deed of Trust, any other instrument executed in connection with this Deed of Trust or any other instrument under which Grantor may be or may hereafter become bound to convey, transfer or assign to Beneficiary for carrying out the intention of facilitating the performance of the terms of this Deed of Trust.

**Section 3.07. *Severability.*** Any provision of this Deed of Trust which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

**Section 3.08. *General Conditions.***

(a) All covenants hereof shall be construed as affording to Beneficiary rights additional to and not exclusive of the rights conferred under the provisions of applicable laws of the State of Washington.



(b) This Deed of Trust cannot be altered, amended, modified or discharged orally and no agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment or discharge is sought.

(c) No remedy herein conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Beneficiary in exercising any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default, or any acquiescence therein. Acceptance of any payment after the occurrence of an Event of Default shall not be deemed to waive or cure such Event of Default; and every power and remedy given by this Deed of Trust to Beneficiary may be exercised from time to time as often as may be deemed expedient by Beneficiary. Nothing in this Deed of Trust or in the Note shall affect the obligation of Grantor to pay the Indebtedness in the manner and at the time and place therein respectively expressed.

(d) No waiver by Beneficiary will be effective unless it is in writing and then only to the extent specifically stated. Without limiting the generality of the foregoing, any payment made by Beneficiary for insurance premiums, taxes, assessments, water rates, sewer rentals or any other charges affecting the Collateral, shall not constitute a waiver of Grantor's default in making such payments and shall not obligate Beneficiary to make any further payments.

(e) Beneficiary shall have the right to appear in and defend any action or proceeding, in the name and on behalf of Grantor which Beneficiary, in its discretion, believes may adversely affect the Collateral or this Deed of Trust. Beneficiary shall also have the right to institute any action or proceeding which Beneficiary, in its discretion, believes should be brought to protect its interest in the Collateral or its rights hereunder. All costs and expenses incurred by Beneficiary in connection with such actions or proceedings, including, without limitation, reasonable attorneys' fees and appellate attorneys' fees, shall be paid by Grantor, on demand.

(f) In the event of the passage after the date of this Deed of Trust of any law of any governmental authority having jurisdiction, deducting the Indebtedness from the value of the Premises for the purpose of taxation, affecting any lien thereon or changing in any way the laws of the taxation of deeds of trust or debts secured by deeds of trust for federal, state or local purposes, or the manner of the collection of any such taxes, so as to adversely affect this Deed of Trust, Grantor shall promptly pay to Beneficiary, on demand, all taxes, costs and charges for which Beneficiary is or may be liable as a result thereof, provided said payment



shall not be prohibited by law or render the Note usurious, in which event Beneficiary may declare the Indebtedness to be immediately due and payable.

(g) For the purposes of this Deed of Trust, all defined terms and personal pronouns contained herein shall be construed, whenever the context of this Deed of Trust so requires, so that the singular shall be construed as the plural and vice versa and so that the masculine, feminine or neuter gender shall be construed to include all other genders.

(h) Whenever any payment to be made hereunder or under the Note or any other Loan Document shall be stated to be due on a Saturday, Sunday or a public holiday under the laws of the State of Washington, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest hereunder or under the Note or such other Loan Document.

(i) Upon receipt of evidence reasonably satisfactory to Grantor of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Grantor or, in the case of any such mutilation, upon surrender and cancellation of the Note, Grantor shall execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Deed of Trust and the other Loan Documents to the Note shall be deemed to refer to such replacement Note.

(j) Time is of the essence with respect to each and every covenant, agreement and obligation of Grantor and any guarantor under this Deed of Trust, the Note and the other Loan Documents.

**Section 3.09. Choice of Law. Forum.** This Deed of Trust shall be governed by the internal laws of the State of Washington, without regard to its principles of conflicts of law. In the event that the payment of any interest due hereunder or under the Note or any such other agreement would subject Beneficiary to any penalty under applicable law, then automatically the Indebtedness of Grantor to make such payment shall be reduced to the highest rate authorized under applicable law. Disputes arising under this Deed of Trust or the Note shall be settled in courts of applicable jurisdiction or by arbitration in Skagit County, Washington.

**Section 3.10. No Partnership or Joint Venture.** Nothing contained herein or in the Note or any other Loan Documents, nor the acts of the parties hereto, shall be construed to create a partnership or joint venture between Grantor and Beneficiary. The relationship between Grantor and Beneficiary is the relationship of "debtor" and "creditor."



**Section 3.11. Construction of this Document.** This document may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

**Section 3.12. No Merger.** It is the desire and intention of the parties hereto that this Deed of Trust and the lien hereof do not merge in fee simple title to the Premises. It is hereby understood and agreed that should Beneficiary acquire any additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Beneficiary as evidenced by an appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in such other or additional interests in or to the Premises, toward the end that this Deed of trust may be foreclosed as if owned by a stranger to said other or additional interests.

**Section 3.13. After Acquired Property.** All property acquired by Grantor after the date of this Deed of Trust which by the terms of this Deed of Trust shall be subject to the lien and/or the security interest created hereby, shall immediately upon the acquisition thereof by Grantor and without any further mortgage, conveyance or assignment become subject to the lien and security interest created by this Deed of Trust. Nevertheless, Grantor shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements and assurances as Beneficiary shall require for accomplishing the purposes of this Deed of Trust.

**Section 3.14. No Representation.** By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Beneficiary.

**Section 3.15. Special State Law Provisions.** In the event of any conflict between the terms and provisions of this Section and any other provision of this Deed of Trust, the terms and provisions of this Section shall govern and control.

(a) Power of Sale. The Collateral is hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated to Trustee, IN TRUST, WITH POWER OF SALE.

(b) Exercise of Power of Sale. For any sale under the power of sale granted by this Deed of Trust, Grantor or Trustee shall record and give all notices required by law and, upon the expiration of such time as is required by law, Trustee may sell





the Collateral upon any terms and conditions specified by Grantor and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place noticed for the sale. If the Collateral includes several lots or parcels, Grantor in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Collateral, real, personal and mixed may be sold in one parcel. To the extent any of the Collateral sold by Trustee is personal property, the Trustee shall be acting as the agent of Grantor in selling such Collateral. Any person permitted by law to do so may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Collateral sold, but without any covenant or warranty, express or implied, and the recitals in Trustee's deed showing that the sale was conducted in compliance with the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

(c) Application of Sale Proceeds. Proceeds of any sale under this Deed of Trust will be applied in the following manner:

First: Payment of the costs and expenses of the sale, including without limitation Trustee's fees, legal fees and disbursements, title charges and transfer fees, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the lesser of the default rate under the Note or the maximum rate permitted by law.

Second: Payment of all sums expended by Grantor under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the lesser of the default rate under the Note or the maximum rate permitted by law.

Third: Payment of all other obligations secured by this Deed of Trust in any order that Grantor chooses.

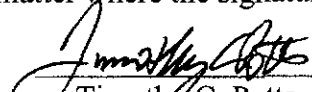
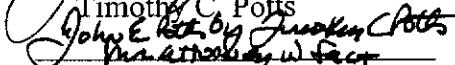
Fourth: The remainder, if any, to the person or persons legally entitled to it.

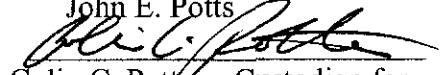
(d) Expenses During Redemption. If this Deed of Trust is foreclosed as a mortgage and the Collateral sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Collateral as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sum so paid, together with interest thereon from the time of such expenditure at the lesser of the default rate under the Note or the maximum rate permitted by law, shall be added to and become a part of the amount required to be paid for redemption from such sale.

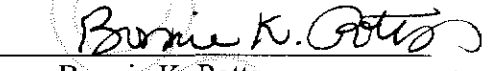


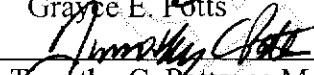
(e) Reconveyances. Upon payment of the entire Indebtedness at the time and in the manner provided in the Note and this Deed of Trust, and the full and timely performance of each obligation and covenant set forth herein in the Guaranty, the Note and the Loan Documents, Grantor shall request Trustee to reconvey the Collateral and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Collateral without warranty to the person or persons legally entitled thereto. 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. Such person or persons shall pay Grantor's and Trustee's reasonable costs and expenses in so reconveying the Collateral.

**Section 3.16 Beneficiaries' Appointment of Representative.** Each beneficiary who signs below approves of the appointment of Timothy C. Potts as his, her or its attorney in fact to represent such party and all Beneficiaries as to all matters pertaining to this Deed of Trust and the Note, including any amendments, extensions, waivers or other modifications thereto. Each party signing below agrees that the payments made by Grantor shall be accounted for and applied to the respective participation account of each participant by Timothy C. Potts in a fiduciary capacity, and that the Grantor shall have no responsibility for such application. Further, each party signing below agrees to all provisions of this Deed of Trust that do or may affect the rights of such party. The signature of Timothy C. Potts shall be the only signature required to request a full or partial reconveyance of this Deed of Trust and no co-beneficiary shall have any claim or recourse against the Trustee for failure to obtain the signature of such beneficiary as to any such matter where the signature of Timothy C. Potts has been obtained.

  
\_\_\_\_\_  
Timothy C. Potts  
  
\_\_\_\_\_  
John E. Potts

  
\_\_\_\_\_  
Colin C. Potts as Custodian for  
Jennifer J. Potts under the  
Washington Uniform Gifts to Minors Act.

  
\_\_\_\_\_  
Bonnie K. Potts  
  
\_\_\_\_\_  
Grayce E. Potts

  
\_\_\_\_\_  
Timothy C. Potts, as Manager of  
Leopard Bow, LLC

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

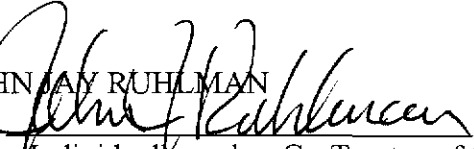
IN WITNESS WHEREOF, Grantor has duly executed and delivered this Deed of Trust under seal as of the day and year first above written.

**GRANTOR:**

THE RUHLMAN FAMILY TRUST, U/A DATED FEBRUARY 20, 1996

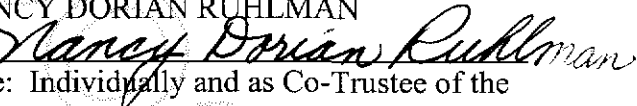
JOHN JAY RUHLMAN AND NANCY DORIAN RUHLMAN, TRUSTEES

JOHN JAY RUHLMAN

By: 

Title: Individually and as Co-Trustee of the  
Ruhlman Family Trust

NANCY DORIAN RUHLMAN

By: 

Title: Individually and as Co-Trustee of the  
Ruhlman Family Trust



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Skagit County Auditor

ACKNOWLEDGMENTS

STATE OF WASHINGTON )

) ss:

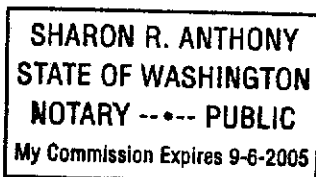
COUNTY OF SKAGIT )

On this 21<sup>st</sup> day of March, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared John Jay Ruhlman and Nancy Dorian Ruhlman, to me known to be the person who signed as a Co-Trustees of the Ruhlman Family Trust, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said trust for the uses and purposes therein mentioned, and on oath stated that they were duly elected, qualified and acting as the Co-Trustees of said trust, that they were authorized to execute said instrument.

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

Sharon R. Anthony  
(Signature of Notary)

Sharon R. Anthony  
(Print or stamp name of Notary)



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

Mount Vernon

My appointment expires: 9-6-2005



200303210235

Skagit County Auditor

## EXHIBIT A

### Legal Description

THE SOUTH 200 FEET OF THE NORTH 743 FEET OF THE NORTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 30, TOWNSHIP 34 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, LYING EAST OF GREAT NORTHERN RAILWAY RIGHT-OF-WAY, **EXCEPT** STATE HIGHWAY ALONG THE EAST LINE THEREOF.

SITUATE IN SKAGIT COUNTY, WASHINGTON



200303210235

Skagit County Auditor

3/21/2003 Page 29 of 30 12:29PM

## EXHIBIT B

### Permitted Encumbrances

General taxes, together with interest, penalty and statutory foreclosure costs, if any, first half delinquent May 1, 2003, if unpaid, second half delinquent November 1, 2003, if unpaid:

| <u>Account No.</u>        | <u>Year</u> | <u>Amount Billed</u> | <u>Amount Paid</u> | <u>Balance Owning</u> |
|---------------------------|-------------|----------------------|--------------------|-----------------------|
| 340430-0-068-0009         | 2003        | \$ 6,154.10          | \$ -0-             | \$6,154.10            |
| Property I.D. No.: P28880 |             |                      |                    |                       |
| 340430-4-003-0009         | 2003        | \$ 750.61            | \$ -0-             | \$ 750.61             |
| Property I.D. No.: P29216 |             |                      |                    |                       |

### EASEMENT AND THE TERMS AND CONDITIONS THEREOF:

Grantee: Pacific Northwest Traction Company, a corporation  
Purpose: The right to construct its pole line over and along the said disputed strip of land above described for a distance of eight hundred feet for the purpose of furnishing first parties electric light and energy  
Area Affected: Undisclosed width along highway  
Dated: December 29, 1922  
Recorded: February 17, 1923  
Auditor's No.: 162084

### TERMS AND CONDITIONS OF VARIANCE:

Recorded: October 5, 1993  
Auditor's No.: 9310050094

### DEED OF TRUST AND THE TERMS AND CONDITIONS THEREOF

Grantor: John Jay Ruhlman, Trustee and Nancy Dorian Ruhlman, Trustee, Trustees of the Ruhlman Family Trust U/A dated February 20, 1996  
Trustee: PRLAP, Inc.  
Beneficiary: Bank of America, N.A.  
Amount: \$100,000.00  
Dated: December 15, 2000  
Recorded: January 29, 2001  
Auditor's No.: 200101290045

This trust deed to be reconveyed and removed as an encumbrance from the subject property by September 1, 2003



200303210235  
Skagit County Auditor