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5/19/2003 Page 1 of 21 3:29PM

After recording return to:

Kaitlin A. Hallett
WINTHROP & WEINSTINE, P.A.
3000 Dain Rauscher Plaza
60 South Sixth Street
Minneapolis, Minnesota 55402

FIRST AMERICAN TITLE CO.

73940

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

Grantors: Jerry L. Smith and Molly A. Smith

Trustee: First American Title Insurance Company

Grantee/Beneficiary: Wells Fargo Bank, National Association

Abbreviated Legal Description: Parcel 1: Section 3, Township 34, Range 2; Ptn. NW ¼ and SW ¼ aka Lot 1 of Short Plat #95-020

Parcel 2: Lot 16 "Burlington Hill Business Park (Binding Site Plan)"

Tax Parcel Numbers: Parcel 1: 340203-2-004-0100 P19719

Parcel 2: 8002-000-016-0005 P105951

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

THIS DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Deed of Trust"), is made as of the 19th day of May, 2003, by JERRY L. SMITH and MOLLY A. SMITH (collectively, the "Smiths") (the Smiths shall collectively be referred to herein as the "Grantors" and each shall be referred to as the "Grantor"), in favor of First American Title Insurance Company (the "Trustee") for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the "Beneficiary").

WITNESSETH:

WHEREAS, the Grantors own the real property more particularly described in Exhibit A in accordance with the ownership set forth on Schedule I hereof.

WHEREAS, the Beneficiary has agreed to make a real estate loan to the Grantors in the amount of \$4,700,000.00 (the "Loan"), pursuant to the terms and subject to the conditions set forth in that certain Term Loan Agreement of even date herewith by and among the Beneficiary and the Grantors (the "Loan Agreement"); and

WHEREAS, the Grantors have executed and delivered that certain \$4,700,000.00 Real Estate Note of even date herewith and payable to the order of the Beneficiary (the "Note") which Note is due and payable in full on May 19, 2008; and

WHEREAS, the Beneficiary has required as an express condition precedent to making the Loan that the Grantors secure the Note by this Deed of Trust.

NOW THEREFORE, THIS DEED OF TRUST FURTHER WITNESSETH, that in consideration of the Beneficiary making a loan to the Grantor pursuant to the Note in the principal amount of Four Million Seven Hundred Thousand and 00/100 Dollars (\$4,700,000.00) (the "Deed of Trust Amount") and other good and lawful consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure, and as security for, the payment of principal and interest and other premiums, penalties and charges on the Note and the performance and observance by the Grantors of all of the covenants, agreements, representations, warranties and conditions contained herein, and payment of any sums which may hereafter be owing by the Grantors, or any of them, to the Beneficiary or any of their affiliates under the terms of any interest rate swap agreement, interest rate cap agreement, basis swap agreement, forward rate agreement, interest collar agreement or interest floor agreement to which the Grantors, or any of them, may be a party, or under any other agreement or arrangement to which the Grantors, or any of them, may be a party, which in case is designed to protect the Grantors, or any of them, as the case may be, against fluctuations in interest rates or currency exchange rates with respect to any indebtedness secured by this Deed of Trust (collectively, the "Swap Agreements"), the Grantors do hereby mortgage, grant, bargain, sell, convey, assign, transfer, pledge, set over and confirm unto the Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession,



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all of their present and future estate, right, title and interest in and to that certain real property more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Land");

Together with all of the Grantors' right, title and interest in and to (a) all of the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land as described on Exhibit B attached hereto; (b) all heating, plumbing and lighting apparatus, elevators and motors, engines and machinery, electrical equipment, incinerator apparatus, air-conditioning apparatus, water and gas apparatus, pipes, water heaters, refrigerating plant and refrigerators, water softeners, carpets, carpeting, storm windows and doors, window screens, screen doors, storm sash, window shades or blinds, awnings, locks, fences, trees, shrubs, and all other furniture, fixtures, machinery, equipment, appliances and personal property of every kind and nature whatsoever now or hereafter owned by the Grantors and attached or affixed or located on or in or used or intended to be used in connection with the ownership, use, operation or maintenance of, the Land and any improvements located thereon, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing; (c) all hereditaments, easements, rights, privileges and appurtenances now or hereafter belonging, attached or in any way pertaining to the Land or to any building, structure or improvement now or hereafter located thereon; (d) the immediate and continuing right to receive and collect all rents, income, issues and profits now due and which may hereafter become due under or by virtue of any lease or agreement (oral or written) (collectively, the "Rents") for the leasing, subleasing, use or occupancy of all or part of the Land now, heretofore or hereafter made or agreed to by the Grantors (collectively, the "Leases"); (e) all of the leases and agreements described in (d) above, together with all guarantees therefor and any renewals or extensions thereof; and (f) all insurance and other proceeds of, and all condemnation awards with respect to, the foregoing (all of the foregoing is hereinafter collectively referred to as the "Mortgaged Property").

The filing of this Deed of Trust shall constitute a fixture filing in the office where it is filed and a carbon, photographic or other reproduction of this document may also be filed as a financing statement:

Name and Address of
the Smiths:

Jerry L. Smith
Molly A. Smith
11626 Coronado Drive
Anacortes, Washington 98221
Social Security Number: 533-60-1488
Social Security Number: 533-62-1518

Name and Address of
Secured Party:

Wells Fargo Bank, National Association
3033 Elder Street
P.O. Box 7069
MAC U1851-033
Boise, Idaho 83705
Attn: Auto Finance Group



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Description of the Types
(or items) of property
covered by this
financing statement:

See above

Description of real estate
to which all or a part
of the collateral is
attached or upon which
it is located:

See Exhibit A attached
hereto.

Some of the above described collateral is or is to become fixtures upon or minerals and mineral rights located upon the real estate described on Exhibit A, and this financing statement is to be filed for record in the public real estate records.

AND THE GRANTORS, for themselves, their successors and assigns, do covenant with the Beneficiary, its successors and assigns, that they are lawfully seized of the Mortgaged Property and has good right to sell and convey the same; that the Mortgaged Property is free from all encumbrances except as may be further stated in this Deed of Trust; that the Beneficiary, its successors and assigns, shall quietly enjoy and possess the Mortgaged Property; and that the Grantors will WARRANT AND DEFEND the title to the same against all lawful claims not specifically excepted in this Deed of Trust.

PROVIDED, NEVERTHELESS, that if the Grantors shall pay the principal balance of the Note in full, plus interest at the rate set forth in the Note, on the unpaid principal balance, as computed in accordance with the terms and conditions of the Note, and any other sums due and owing under the Note and the Loan Agreement and shall also pay or cause to be paid all other sums, with interest thereon, as may be advanced by the Beneficiary in accordance with this Deed of Trust either to protect the lien of this Deed of Trust, or by way of additional loan or for any other purpose, and shall also keep and perform all and singular the covenants herein, required on the part of the Grantors to be kept and performed (the Note, including any and all renewals, amendments, extensions and modifications thereof, and all such sums, together with interest thereon, and such covenants herein collectively referred to as the "Indebtedness Secured Hereby"), then this Deed of Trust shall be null and void, and the Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantors and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

ARTICLE I

GENERAL COVENANTS, AGREEMENTS, WARRANTIES

SECTION 1.1. PAYMENT OF INDEBTEDNESS; OBSERVANCE OF COVENANTS. The Grantors shall duly and punctually pay each and every payment of principal, interest and all prepayment premiums and late charges, if any, required by the Note or the Loan Agreement and



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all other Indebtedness Secured Hereby, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Loan Agreement or in any other instrument given as security for the payment of the Note.

SECTION 1.2. MAINTENANCE; REPAIRS. Subject to the provisions of Section 2.3 hereof, the Grantors shall keep and maintain the Mortgaged Property in good condition, repair and operating condition free from any waste or misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Mortgaged Property and its use, and will promptly repair or restore any building, improvements or structures now or hereafter located on the Land which may become damaged or destroyed to their condition prior to any such damage or destruction. The Grantors shall not acquiesce in any rezoning classification, modification or restriction affecting the Land, without the prior written consent of the Beneficiary, which consent shall not be unreasonably withheld nor delayed. The Grantors shall not vacate or abandon the Mortgaged Property.

SECTION 1.3. PAYMENT OF UTILITY CHARGES, TAXES AND ASSESSMENTS. The Grantors shall, before any penalty attaches thereto, pay or cause to be paid all charges made for electricity, gas, heat, water, sewer and other utilities furnished or used in connection with the Mortgaged Property, and all taxes, assessments and levies of every nature heretofore or hereafter assessed against the Mortgaged Property and, upon demand, will furnish the Beneficiary receipted bills evidencing such payment.

Nothing in this Section 1.3 shall require the payment or discharge of any obligations imposed upon the Grantors by this Section so long as the Grantors shall diligently and in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided, however, that during such contest the Grantors shall, at the reasonable request of the Beneficiary, provide security satisfactory to the Beneficiary, assuring the discharge of the Grantors' obligation under this Section and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, however, that if at any time payment of any obligation imposed upon the Grantors by this Section shall become necessary to prevent the delivery of a tax deed conveying the Land or any portion thereof because of nonpayment, then the Grantors shall pay the same in sufficient time to prevent the delivery of such tax deed.

SECTION 1.4. LIENS. Except for liens and encumbrances, if any, listed on Exhibit B attached hereto or consented to in writing by or granted to the Beneficiary ("Permitted Encumbrances"), the Grantors will keep the Mortgaged Property free from all liens (other than liens for taxes, assessments and mechanics' liens not yet due and payable) and encumbrances of every nature whatsoever heretofore or hereafter arising and, upon written demand of the Beneficiary, the Grantors will pay and procure the release of any such lien or encumbrance.

SECTION 1.5. COMPLIANCE WITH LAW. The Grantors will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property unless the same is being diligently contested by the Grantors in good faith and by proper proceedings.



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SECTION 1.6. RIGHT OF THE BENEFICIARY TO ENTER. The Grantors will permit the Beneficiary and its agents to enter, and to authorize others to enter, upon any or all of the Land, at any time and from time to time, during normal business hours, to inspect the Mortgaged Property to perform or observe any covenants, conditions or terms hereunder which the Grantors shall fail to perform, meet or comply with, or for any other purpose in connection with the protection or preservation of the Beneficiary's security, without thereby becoming liable to the Grantors or any person in possession under the Deed of Trust.

SECTION 1.7. RIGHT OF THE BENEFICIARY TO PERFORM. If the Grantors fail to pay all and singular any taxes, assessments, levies or other similar charges or encumbrances heretofore or hereafter assessed against the Mortgaged Property or fails to obtain the release of any lien or encumbrance (other than a Permitted Encumbrance) of any nature heretofore or hereafter arising upon the Mortgaged Property or fails to perform any other covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which adversely affects or questions the title to or possession of the Mortgaged Property or the interest of the Grantors or the Beneficiary therein, then the Beneficiary, at the Beneficiary's option, without notice to the Grantors, may perform such covenants and agreements, investigate and defend against such action or proceeding, and take such other action as the Beneficiary deems necessary to protect the Beneficiary's interest. Any amounts disbursed by the Beneficiary pursuant to this Section 1.7, including without limitation court costs and expenses and attorneys' fees, with interest thereon, shall become additional indebtedness of the Grantors and shall be secured by this Deed of Trust. Such amount shall be payable upon written notice from the Beneficiary to the Grantors requesting payment thereof, and shall bear interest from the date of disbursement at a rate equal to the greater of (i) the rate of interest then in effect under the Note or, (ii) eighteen percent (18%) per annum or, if such rate is illegal or usurious, at the maximum rate then permitted by law. Nothing contained in this Section 1.7 shall require the Beneficiary to incur any expense or to do any act or thing hereunder.

SECTION 1.8. ASSUMPTION. Except pursuant to the Leases (as defined in the Loan Agreement), none of the Grantors shall sell, assign, lease, convey, mortgage or otherwise encumber or dispose of either the legal or equitable title or both to all or any portion of the Mortgaged Property or any other interest therein without the prior written consent of the Beneficiary. A sale, transfer or assignment of any ownership interest in the Grantors shall constitute a sale for the purposes of this Section 1.8.

SECTION 1.9. ASSIGNMENT OF RENTS.

(1) Subject to Subsection (4) below, (i) the immediate and continuing right to receive and collect all Rents from the leasing, subleasing, use or occupancy of all or any part of the Mortgaged Property now, heretofore or hereafter made or agreed to by the Grantors, and (ii) all of the Leases and agreements, together with all guarantees therefor and any renewals or extensions thereof, for the purpose of securing payment of the indebtedness of the Grantors under the Note and the documents related thereto (collectively, the "Additional Leases"), if any, are hereby assigned to Beneficiary, which assignments of the Additional Leases are and shall be present, absolute and irrevocable assignments by



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the Grantors to the Beneficiary and, subject to the license to the Grantors under Subsection (2) hereof, the Beneficiary or a receiver appointed pursuant to Section 3.1 hereof (as the case may be as to the person exercising the rights under this Section) shall have the absolute, immediate and continuing right to collect and receive all Rents now or hereafter, including during any period of redemption, accruing with respect to the Mortgaged Property. At the request of the Beneficiary or such receiver, the Grantors shall promptly execute, acknowledge, deliver, record, register and file any additional general assignment of the Additional Leases and the Rents or specific assignment of any of the Additional Leases and the Rents which the Beneficiary or such receiver may require from time to time (all in form and substance reasonably satisfactory to Beneficiary or such receiver) to effectuate, complete, perfect, continue or preserve the assignments of the Additional Leases and the Rents.

(2) As long as no Event of Default has occurred, the Grantors shall have the right under a license granted hereby, subject to Subsection (3) hereof, to collect all Rents, if any, upon, but not prior to fifteen (15) days before the due date thereof.

(3) If any Event of Default has occurred, the Beneficiary or receiver appointed pursuant to Section 3.1 hereof (as the case may be as to the person exercising the rights under this Section) shall have the right to do any of the following: (i) terminate the license granted under Subsection (2) hereof by notice to the Grantors; (ii) exercise the rights and remedies provided to Grantors under the Leases; (iii) exercise the rights and remedies provided in this Deed of Trust or under applicable law; (iv) as attorney in-fact or agent of the Grantors, or in its own name as the person exercising the rights under this Section and under the powers herein granted, hold, operate, manage and control the Mortgaged Property, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper and necessary to enforce the payment of any Rents, the Leases and other Property relating thereto (including actions for the recovery of Rent, actions in forcible detainer and actions in distress of Rent); (v) cancel or terminate any Leases or sublease for any cause or on any ground which would entitle the Grantors to cancel the same; (vi) elect to disaffirm any Leases or sublease made subsequent hereto or subordinated to the lien hereof; and (vii) perform such other acts in connection with the management and operation of the Property as the person exercising the rights under this Section in its discretion may deem proper, the Grantors hereby granting full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any time and all times while an Event of Default exists without notice to the Grantors.

(4) Nothing in this Section shall be construed to be an assumption by the Beneficiary or receiver, as the case may be, exercising the rights under this Section, or to otherwise make the Beneficiary or receiver, as the case may be, liable for the performance, of any of the obligations of the Grantors under the Additional Leases.

The Grantors represent and agree that no rent has been or will be paid in advance by any persons in possession of all or any portion of the Mortgaged Property for a period of more than one month and that the payment of none of the rents to accrue for all or any portion of the Mortgaged



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Property has or will be waived, released, reduced or discounted, or otherwise discharged or compromised, by the Grantors. The Grantors waive any right of setoff against any person in possession of all or any portion of the Mortgaged Property. The Grantors represent that they have not assigned any of said rents or profits to any third party and agrees that they will not so assign any of said rents or profits without the prior written consent of the Beneficiary.

Nothing contained herein shall be construed as constituting the Beneficiary "a mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Beneficiary. In the exercise of the powers herein granted to the Beneficiary, no liability shall be asserted or enforced against the Beneficiary, all such liability being expressly waived and released by the Grantors.

The Grantors further agree to assign and transfer to the Beneficiary all rents from future Leases upon all or any part of the Mortgaged Property and to execute and deliver, immediately upon request of the Beneficiary, as such further assurances and assignments in the Mortgaged Property as the Beneficiary from time to time shall require.

The Beneficiary shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases or rental agreements relating to the Mortgaged Property, and the Grantors shall and do hereby agree to indemnify and hold the Beneficiary harmless from and against any and all liability, loss or damage which it may or might incur under any such Lease or agreement or under or by reason of the assignment of the rents thereof and from and against any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of such Leases, provided that the Grantors shall not indemnify and hold harmless the Beneficiary from any liability loss or damage resulting from acts or omissions of the Beneficiary which first occur on or after the date the Beneficiary takes possession of the Mortgaged Property. Should the Beneficiary incur any liability, loss or damage by reason of this assignment of leases and rents, or in the defense of any claim or demand, the Grantors agree to reimburse the Beneficiary for the amount thereof, including costs, expenses and attorneys' fees, immediately upon demand.

The Grantors do further specifically authorize and instruct each and every present and future lessee, sublessee, tenant or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any Lease to the Beneficiary upon receipt of demand from the Beneficiary so to pay the same.

Any tenants, subtenants or other occupants of all or any part of the Mortgaged Property are hereby authorized to recognize the claims of the Beneficiary hereunder without investigating the reason for any action taken by the Beneficiary, or the validity or the amount of indebtedness owing to the Beneficiary, or the occurrence or existence of any Event of Default, or the application to be made by the Beneficiary of any amounts to be paid to the Beneficiary. The sole signature of any officer or attorney of the Beneficiary shall be sufficient for the exercise of any rights under this assignment of leases and rents and the sole receipt of the Beneficiary for any sums received by such tenants, subtenants or other occupants shall be a full discharge and release



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therefor. Checks for all or any part of the rentals collected under this Assignment of Leases and Rents shall be drawn to the exclusive order of the Beneficiary.

SECTION 1.10. FURTHER ASSURANCES. At any time and from time to time, upon request by the Beneficiary, the Grantors will make, execute and deliver or cause to be made, executed and delivered, to the Beneficiary, any and all other further instruments, certificates and other documents as may, in the reasonable opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, the obligations of the Grantors hereunder and under the Note, the Loan Agreement and the mortgage and security interest granted by this Deed of Trust. Upon any failure by the Grantors so to do, the Beneficiary may make, execute and record any and all such instruments, certificates and documents for and in the name of the Grantors and the Grantors hereby irrevocably appoint the Beneficiary its agent and attorney in fact of the Grantors so to do.

SECTION 1.11. EXPENSES. The Grantors will pay or reimburse the Beneficiary for all attorneys' fees, costs and expenses incurred by the Beneficiary in any legal proceeding or dispute of any kind in which the Beneficiary is made a party, or appears as party plaintiff or defendant, affecting the Indebtedness Secured Hereby, this Deed of Trust, the interest created herein or the Mortgaged Property, including but not limited to the exercise of the power of sale set forth in this Deed of Trust, any condemnation action involving the Mortgaged Property or any action to protect the security hereof and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by this Deed of Trust.

SECTION 1.12. BOOKS AND RECORDS, FINANCIAL STATEMENTS. The Grantors will keep and maintain full, true and accurate books of account adequate to reflect correctly the results of the operation of the Mortgaged Property, all of which books and records relating thereto shall be open to inspection by the Beneficiary or its representative during normal business hours.

SECTION 1.13. HAZARDOUS SUBSTANCES. The Grantors warrant, covenant and represent that there does not exist in or under the Mortgaged Property any pollutant, toxic or hazardous waste or substance, or any other material the release or disposal of which is regulated by any law, regulation, ordinance or code related to pollution or environmental contamination, and, that no part of the Mortgaged Property was ever used for any industrial or manufacturing purpose or as a dump, sanitary landfill, or gasoline service station, and that there exists on the Mortgaged Property no storage tanks, electrical transformers or other equipment containing PCBs or material amounts of asbestos. The Grantors represent that they has received no summons, citations, directives, letters or other communications, written or oral, from any federal, state or local agency or department concerning the storing, releasing, pumping, pouring, emitting, emptying or dumping of any pollutant, toxic or hazardous waste or substance on the Mortgaged Property.

The Grantors covenant and agree that they shall not, nor shall it permit others to, use the Mortgaged Property for the business of generating, transporting, storing, treating or disposing of any pollutant, toxic or hazardous waste or substance, nor shall they either take or fail to take any action which may result in a release of any hazardous substance from or onto the Mortgaged



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Property. In addition to all rights of access granted the Beneficiary pursuant to Section 1.6 hereof, during the term of the loan contemplated hereby, the Beneficiary, or any authorized agent, contractor or representative of the Beneficiary, is hereby irrevocably authorized to enter upon the Mortgaged Property at any time and from time to time for the purpose of performing inspections, taking soil borings or other borings, or conducting any other tests or procedures on, in or about the Mortgaged Property as the Beneficiary deems necessary or appropriate to determine whether any hazardous or toxic substances, including without limitation asbestos or PCBs, are present on, under or about the Mortgaged Property. Notwithstanding the foregoing, the Grantors shall be entitled to store, use and dispose of hazardous materials on the Mortgaged Property in the ordinary course of their business provided such storage, use and disposal is in accordance with all applicable local, state and federal laws and regulations.

The Grantors agree to indemnify and to hold the Beneficiary harmless from any and all claims, causes of action, damages, penalties, and costs (including, but not limited to, attorneys' fees, consultants' fees and related expenses) which may be asserted against, or incurred by, the Beneficiary resulting from or due to release of any hazardous substance or waste on the Mortgaged Property or arising out of any injury to human health or the environment by reason of the condition of or past activity upon the Mortgaged Property. The Grantors' duty to indemnify and hold harmless includes, but is not limited to, proceedings or actions commenced by any person (including, but not limited to, any federal, state, or local governmental agency or entity) before any court or administrative agency. The Grantors further agree that pursuant to their duty to indemnify under this section, the Grantors shall indemnify the Beneficiary against all expenses incurred by the Beneficiary as they become due and not waiting for the ultimate outcome of the litigation or administrative proceeding. The Grantors' obligations to indemnify and hold the Beneficiary harmless hereunder shall survive repayment of the Deed of Trust Amount and satisfaction or foreclosure of this Deed of Trust.

SECTION 1.14. TAX ESCROW. Upon request by the Beneficiary, the Grantors shall pay to the Beneficiary, on each day monthly installments of principal and/or interest are payable under the Note, until the Note is paid in full, a sum equal to one-twelfth (1/12th) of the annual taxes and assessments payable with respect to the Mortgaged Property, all as estimated initially and from time to time determined by the Beneficiary, to be applied by the Beneficiary to pay said taxes and assessments (such amounts being hereinafter referred to as the "Funds"). The Beneficiary shall apply the funds to pay said taxes and assessments prior to the date that penalty attaches for non-payment. The Funds are hereby pledged as additional security for the Indebtedness Secured Hereby. No interest shall accrue on the Funds.

If the amount of the Funds held by the Beneficiary shall exceed at any time the amount deemed necessary by the Beneficiary to provide for the payment of taxes and assessments, such excess shall, at the option of the Beneficiary, either be promptly repaid to the Grantors or be credited to the Grantors on the next monthly installment of Funds due. If at any time the Funds are less than the amount deemed necessary by the Beneficiary to pay taxes and assessments as they fall due, the Grantors shall promptly pay to the Beneficiary any amount necessary to make up the deficiency upon written notice from the Beneficiary to the Grantors requesting payment thereof.



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Upon the occurrence of an Event of Default, the Beneficiary may apply in any order as the Beneficiary shall determine in its sole discretion, any Funds held by the Beneficiary at the time of application to pay taxes and assessments which are then or will thereafter become due or as a credit against the Indebtedness Secured Hereby. Upon payment in full of all Indebtedness Secured Hereby, the Beneficiary shall promptly refund to the Grantors any Funds held by the Beneficiary.

ARTICLE II

INSURANCE, CONDEMNATION AND USE OF PROCEEDS

SECTION 2.1. INSURANCE. Until the Indebtedness Secured Hereby has been paid in full, the Grantors shall obtain and maintain the following:

(1) The Grantors shall keep the buildings, structures, fixtures and other improvements now existing or hereafter erected on the Land insured against loss by fire, vandalism, and malicious mischief, perils of extended coverage, and such other hazards, casualties and contingencies as may be specified by the Beneficiary, in an amount not less than the greater of (a) the full replacement cost thereof and (b) the full insurable value thereof, which in no event shall be less than the amount of Indebtedness Secured Hereby, and naming the Beneficiary as Beneficiary and lender's loss payee. The Grantors shall also maintain rent loss or business interruption insurance with respect to such exposures and perils in an amount sufficient to enable the Grantors to make the required monthly payments under the Note, to pay taxes and insurance and to continue operations during an assumed reconstruction period of one (1) year, naming the Beneficiary as Beneficiary and lender's loss payee. The Grantors shall also maintain comprehensive general public liability insurance providing for limits of coverage of not less than \$2,000,000 combined single limit coverage, and naming the Beneficiary as an additional insured. The Grantors shall also maintain such insurance as is required by the Loan Agreement.

(2) The Grantors shall also maintain flood insurance in the event the Beneficiary notifies the Grantor that the Federal Emergency Management Agency ("FEMA") has determined that the Mortgaged Property is located in a flood hazard area. Such insurance must meet FEMA coverage requirements, must name the Beneficiary as loss payee, and must be in an amount equal to the lesser of the Deed of Trust Amount or the maximum insurance available under the National Flood Insurance Program. The Grantors understand and agree that even though the Mortgaged Property may not be currently located within a FEMA designated flood hazard area or that the community in which the Mortgaged Property is located does not currently participate in the federal flood insurance program, this may change in the future. In the event of the change of such designation, the Grantors agree to obtain the flood insurance required above within forty-five (45) days after receipt of notice thereof from the Beneficiary. The Grantors shall reimburse the Beneficiary for all costs and expenses incurred by the Beneficiary in ascertaining from time to time whether the Mortgaged Property is located in a flood hazard area.



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(3) All insurance shall be carried in companies licensed to do business in the State of Washington and approved by the Beneficiary and the policies and renewals thereof shall (i) contain a waiver of defense based on coinsurance, (ii) be constantly assigned and pledged to and held by the Beneficiary as additional security for the Indebtedness Secured Hereby, (iii) have attached thereto loss-payable clauses in favor of and in form acceptable to the Beneficiary, and (iv) provide that the Beneficiary shall receive at least thirty (30) days' prior written notice of cancellation or any substantial modification of the policy. The Grantors shall provide the Beneficiary with written evidence acceptable to the Beneficiary of all such insurance on the date hereof and prior to each renewal date of such policies of insurance. In default thereof, the Beneficiary may effect any insurance required to be maintained by the Grantors pursuant to this Section 2.1 and the amount paid therefor shall become immediately due and payable with interest at a rate equal to the greater of (i) eighteen percent (18%) per annum, or, (ii) the rate of interest then in effect under the Note or, if such rate is illegal or usurious, at the maximum rate permitted by law, and shall be secured by this Deed of Trust. The Grantors acknowledge that any insurance obtained by the Beneficiary hereunder may be more expensive than the insurance which could be obtained by the Grantors and that such coverage may not be as inclusive as the coverage obtained by the Grantors due to the fact that it may not include contents coverage or liability coverage. In the event of loss or damage to the Mortgaged Property, the Grantors will give immediate written notice thereof to the Beneficiary, who may make proof of loss or damage if not made promptly by the Grantors. The Grantors hereby authorize the Beneficiary to settle and compromise all claims on such policies and hereby authorizes and directs each insurance company concerned to make payment for any such loss to the Grantors and the Beneficiary jointly. In the event of foreclosure of this Deed of Trust, all right, title and interest of the Grantors in and to any property insurance policies then in force shall pass to the purchaser at the foreclosure sale.

SECTION 2.2. CONDEMNATION. The Grantors shall give the Beneficiary immediate written notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Property or any easement therein or appurtenance thereof. If all or any part of the Mortgaged Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking, acquisition or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to the Beneficiary, who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Grantors and the same shall be paid forthwith to the Beneficiary, to be applied to the Indebtedness Secured Hereby, and any excess shall be paid to the Grantors.

SECTION 2.3. THE GRANTORS TO REPAIR, REPLACE, REBUILD OR RESTORE. If any Indebtedness Secured Hereby is outstanding when all or any part of the Mortgaged Property is destroyed or damaged, unless the Beneficiary elects, at its option, which option is hereby irrevocably granted by the Grantors to the Beneficiary, to apply such proceeds as a prepayment of the Note:



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(1) the Grantors shall either prepay the Note in full or proceed promptly, subject to the provisions of subsection (2) of this Section 2.3, to replace, repair, rebuild and restore the Mortgaged Property to substantially the same condition as existed before the taking or event causing the damage or destruction;

(2) all proceeds of any insurance claim shall be paid directly to the Beneficiary. The Beneficiary shall apply the proceeds, less such sum, if any, required for payment of all expenses incurred in collecting the same ("Net Proceeds"), to payment of the costs of repair, replacement, rebuilding or restoration of the Mortgaged Property upon compliance with such construction and disbursement terms as the Beneficiary may deem reasonably necessary, including deposit by the Grantors with the Beneficiary of such funds of the Grantors as may be required to insure payment of all costs of rebuilding, restoration, repair or replacement. If such deposit is not made when requested by the Beneficiary, or if an Event of Default occurs while the Beneficiary is retaining the Net Proceeds, the Beneficiary may apply the Net Proceeds to the Indebtedness Secured Hereby. The balance of the Net Proceeds remaining after payment of all costs of any repair, rebuilding, replacement or restoration of the Mortgaged Property shall be applied as a prepayment of the Indebtedness Secured Hereby, and any excess shall be paid to the Grantors; and

(3) the Grantors shall not, by reason of the payment of any costs of repair, rebuilding, replacement or restoration, be entitled to any reimbursement from the Beneficiary or any abatement or diminution of the amounts payable under the Note, the Loan Agreement or on any other Indebtedness Secured Hereby.

ARTICLE III

REMEDIES

SECTION 3.1. RIGHTS AND REMEDIES. Upon the occurrence of an Event of Default, and at any time thereafter, Beneficiary and Trustee shall have all the following rights and remedies in addition to the rights and remedies available to the Beneficiary under the Loan Agreement:

(1) With or without notice, to declare all Indebtedness Secured Hereby immediately due and payable in full.

(2) With or without notice, without releasing Grantors from any Indebtedness Secured Hereby and without becoming a mortgagee in possession, to cure any Default of Grantors and, in connection therewith: (i) to enter upon the Mortgaged Property and to do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security of this Deed of Trust, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of either Beneficiary or Trustee, is senior in priority to this Deed of Trust, the judgment of



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Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate persons to assist them.

(3) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to obtain specific enforcement of the covenants of Grantors under this Deed of Trust, and Grantors agree that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subsection, Grantors waive the defenses of laches and any applicable statute of limitations.

(4) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Mortgaged Property as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Indebtedness Secured Hereby; (ii) the existence of a declaration that the Indebtedness Secured Hereby is immediately due and payable; or (iii) the filing of a notice of default; and Grantors consent to such appointment.

(5) To take and possess all documents, books, records, papers and accounts of Grantors or the then owner of the Mortgaged Property; to make or modify Leases of, and other agreements with respect to, the Mortgaged Property upon such terms and conditions as Beneficiary deems proper; and to make repairs, alterations and improvements to the Mortgaged Property deemed necessary, in Trustee's or Beneficiary's judgment, to protect or enhance the security hereof.

(6) To execute or cause Trustee to execute a written notice of such Default and of its election to cause the Mortgaged Property to be sold in accordance with the Washington Deed of Trust Act at Ch. 61.24 RCW to satisfy the Indebtedness Secured Hereby. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Grantors, except as otherwise required by law, shall sell the Mortgaged Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as directed by Beneficiary in its sole discretion, at public auction to the highest bidder for cash, in lawful money of the United States, payable at the time of sale. Except as required by law, neither Grantors nor any other person or entity shall have the right to direct the order in which the Mortgaged Property is sold. Subject to requirements and limits imposed by law, Trustee may postpone any sale of the Mortgaged Property by public announcement at such time and place of sale, and from time to time may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale a deed conveying the Mortgaged Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in said deed of any matters or facts



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shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Grantors or Beneficiary, may purchase at such sale.

(7) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received to payment of the Indebtedness Secured Hereby, all in such order and manner as Beneficiary shall determine in its sole discretion.

SECTION 3.2. APPLICATION OF FORECLOSURE SALE PROCEEDS. After deducting all costs, fees and expenses of Trustee, and of this trust, including costs of evidence of title and attorneys' fees in connection with a sale all proceeds of any foreclosure sale shall be applied first, to payment of all Indebtedness Secured Hereby (including without limitation, all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the highest rate per annum payable under any Indebtedness Secured Hereby), in such order and amounts as Beneficiary in its sole discretion shall determine; and the remainder, if any, to the person or persons legally entitled thereto.

SECTION 3.3. APPLICATION OF OTHER SUMS. All Rents or other sums received by Beneficiary hereunder, less all costs and expenses incurred by Beneficiary or any receiver, including reasonable attorneys' fees, shall be applied to payment of the Indebtedness Secured Hereby in such order as Beneficiary shall determine in its sole discretion; provided however, that Beneficiary shall have no liability for funds not actually received by Beneficiary.

SECTION 3.4. NO CURE OR WAIVER. Neither Beneficiary's, Trustee's or any receiver's entry upon and taking possession of the Mortgaged Property, nor any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Indebtedness Secured Hereby, nor the exercise of any other right or remedy by Beneficiary, Trustee or any receiver shall impair the status of the security of this Deed of Trust, or cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Indebtedness Secured Hereby and any other sums then due hereunder have been paid in full and Grantor has cured all other Defaults), or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option of the Mortgaged Property or a subordination of the lien of this Deed of Trust.

SECTION 3.5. COSTS, EXPENSES AND ATTORNEYS' FEES. Grantors agree to pay to Beneficiary immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including court costs and reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Beneficiary's in-house counsel), expended or incurred by Trustee or Beneficiary pursuant to this Article, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Beneficiary or any other person) reacting to Grantors or in any way affecting any of the Mortgaged Property or Beneficiary's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Grantors with



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interest from the date of demand until paid in full at the highest rate per annum payable under any Indebtedness Secured Hereby.

SECTION 3.6. POWER TO FILE NOTICES AND CURE DEFAULTS. Grantors hereby irrevocably appoint Beneficiary and their successors and assigns as Grantors' true attorney-in-fact to perform any of the following powers, which agency is coupled with an interest: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest; and (b) upon the occurrence of any event, act or omission which with the giving of notice or the passage of time, or both, would constitute an Event of Default, to perform any obligation of Grantors hereunder; provided however, that Beneficiary, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Beneficiary, and Beneficiary shall not be liable to Grantors or any other person or entity for any failure to act under this Section.

SECTION 3.7. REMEDIES CUMULATIVE; NO WAIVER. All rights, powers and remedies of Beneficiary and Trustee hereunder are cumulative and are in addition to all rights, powers and remedies provided by law or in any other agreements between Grantors and Beneficiary. No delay, failure or discontinuance of Beneficiary in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 3.8. PURCHASE OF MORTGAGED PROPERTY. In case of any sale of the Mortgaged Property pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Deed of Trust, the Beneficiary, its successors and assigns, may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Note and any claims for interest, late charges and prepayment premiums matured and unpaid thereon, together with any other Indebtedness Secured Hereby, if any, in order that there may be credited as paid on the purchase price the sum, or any part thereof, then due under the Note, including principal thereof and interest, late charges and prepayment premiums, if any, thereon, and any other Indebtedness Secured Hereby.

ARTICLE IV

MISCELLANEOUS

SECTION 4.1. SUCCESSORS AND ASSIGNS. The covenants and agreements contained herein, including, without limitation, the provision of Section 1.8 hereof, shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the Grantors and the Beneficiary, including among the Grantors' assigns any purchasers or transferees of the Mortgaged Property.



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SECTION 4.2. NOTICES. Any notice, request, demand or other communication permitted or required hereunder shall be deemed duly given if delivered or mailed postage prepaid, certified or registered, addressed to the address of such party on page 3 of this Deed of Trust.

SECTION 4.3. HEADINGS. The headings of the sections contained herein are for convenience only and are not to be construed to be a part of or limit or affect the terms hereof.

SECTION 4.4. EXPENSES. The Grantors shall reimburse the Beneficiary and any participant, upon demand, for all costs and expenses, including without limitation attorneys' fees, appraisal fees, survey fees, closing charges, documentary or tax stamps, recording and filing fees, insurance premiums and service charges, paid or incurred by the Beneficiary in connection with (i) the preparation, negotiation, approval, execution and delivery of the Note, the Loan Agreement, this Deed of Trust and any other documents and instruments related hereto or thereto; (ii) the negotiation of any amendments or modifications to any of the foregoing documents, instruments or agreements and the preparation of any and all documents necessary or desirable to effect such amendments or modifications; and (iii) the enforcement by the Beneficiary during the term hereof or thereafter of any of the rights or remedies of the Beneficiary or any participant hereunder or under any of the foregoing documents, instruments or agreements, including without limitation costs and expenses of collection, whether or not suit is filed with respect thereto and whether such costs are paid or incurred, or to be paid or incurred, prior to or after entry of judgment.

SECTION 4.5. DEFINITIONS. As used herein, the term "Event of Default" shall have the meaning assigned to such term in the Loan Agreement.

SECTION 4.6. WAIVER OF STATUTE OF LIMITATIONS. Grantors waive to the full extent permitted by law, the right to plead any and all statutes of limitation as a defense to any demand secured by or made pursuant to this Deed of Trust.

SECTION 4.7. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each 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. Every power or remedy given by this instrument to Trustee or Beneficiary or to which either of them may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies.

SECTION 4.8. RECORDATION. Trustee covenants to perform and fulfill the trusts created hereby when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

SECTION 4.9. SUBSTITUTION OF TRUSTEE. Beneficiary may from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county and counties where the Property is located and by otherwise complying with applicable statutory provisions, substitute a successor or successors for the Trustee named herein or acting hereunder.



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EXHIBIT A

(Legal Description)

PARCEL 1 Lot 1 of Short Plat No. 95-020, as approved May 6, 1996 and recorded May 13, 1996 in Volume 12 of Short Plat, pages 96 and 97, under Auditor's File No. 9605130078, records of Skagit County, Washington.

PARCEL 2 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 $\frac{1}{4}$ of Section 29, Township 35 North, Range 4 East, W.M.



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EXHIBIT B

(Permitted Encumbrances)

PARCEL 1

1. Condemnation of rights of access by State of Washington as contained in decree entered May 22, 1961 in Skagit County Court Cause No. SC-26054.
2. Easement for ingress and egress in favor of adjacent property owner as contained in Deed filed of record as Auditor's No. 9408160065.
3. Easement for electrical transmission line purposes in favor of Puget Sound Power & Light Company as contained in Easement dated February 21, 1995 and filed of record Mach 17, 1995 as Auditor's No. 9503170095.
4. Agreement regarding Annexation between Jerry and Molly Smith and Charles and Margaret Olson and the City of Anacortes as contained in the Agreement dated December 12, 1997 and filed of record December 22, 1997 as Auditor's No. 9712220117.
5. Matters disclosed on the Short Plat No. 95-020 filed of record May 13, 1996 as Auditor's No. 9605130078. Such Matters include:
6. Highway Right of Way as based upon Highway Plans dated August 2, 1960, Sheet 4 of 11 sheets.
7. 10-foot Easement for drainage purposes as per Skagit County Drainage Ordinance 14.26.
8. Agreement for ingress, egress and utilities between Jerry and Molly Smith and Charles and Margaret Olson as contained in the Agreement dated October 17, 1995 filed of record May 13, 1996 as Auditor's No. 9605130079.
9. Terms and Provisions as contained in City of Anacortes Ordinance No. 2475 "Annexation - South March Point/SR20" filed of record January 4, 1999 as Skagit County Auditor's File No. 9901040105.

PARCEL 2

1. Easement for erection and maintenance of telephone poles in favor of Pacific Telephone and Telegraph Company as contained in Easement dated January 23, 1911, filed of record February 16, 1911, as Auditor's No. 83397.
2. Reservation of all ores and mineral rights in favor of Glacier Park Company as contained in instrument filed of record December 21, 1989 as Auditor's No. 8912210037.
3. Easement for underground electric system purposes in favor of Puget Sound Power & Light Company dated December 9, 1991, filed of record December 19, 1991 as Auditor's No. 9112190028.
4. Easement for underground electric system purposes in favor of Puget Sound Power & Light Company dated June 27, 1994, filed of record June 27, 1994 as Auditor's No. 9407270078.
5. Protective Covenants in favor of Gear Road Investors, a partnership as contained in instrument dated August 31, 1994, filed of record September 8, 1994, as Auditor's No. 9409080053.
6. Easement in favor of Cascade Natural Gas Corporation as contained in Easement dated May 17, 1996, filed of record June 5, 1996 as Auditor's No. 9606050093.



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SCHEDULE I

(Ownership)

PARCEL 1 Jerry Smith and Molly Smith, husband and wife

PARCEL 2 Jerry L. Smith and Molly Smith, husband and wife



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