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Skagit County Auditor

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This Instrument Prepared By
And After Recording Return To:

David M. Pederson
Chapman and Cutler
111 West Monroe
Chicago, Illinois 60603

LAND TITLE COMPANY OF SKAGIT COUNTY

90727

AMENDED AND RESTATED DEED OF TRUST, FIXTURE FILING
AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

Coversheet Recording Information:

GRANTOR:	SKAGIT GARDENS, INC. a Delaware corporation
BENEFICIARY:	HARRIS TRUST AND SAVINGS BANK
TRUSTEE:	LAND TITLE COMPANY OF SKAGIT COUNTY

ABBREVIATED LEGAL DESCRIPTION: Ptn NW $\frac{1}{4}$ NW $\frac{1}{4}$, 32-34-4; Ptn Gov. Lots 6 & 7, 12-34-3; Ptn NE $\frac{1}{4}$ NE $\frac{1}{4}$, 13-34-3

Full Legal Description located in Schedule I: Legal Description

COUNTY OF SKAGIT TAX PARCEL NUMBERS:

340432-2-011-0400, 340432-2-011-0300, 340432-2-017-0005,
340432-2-014-0008, 340432-2-015-0007, 340312-0-002-0001,
340313-0-058-0003, 340312-0-004-0009

Line of Credit Trust Deed:
Maximum principal amount to be advance
Under the Credit Agreement hereinafter defined
is \$50,000,000.
Credit Agreement matures on June 30, 2006.

**AMENDED AND RESTATED DEED OF TRUST, FIXTURE FILING
AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS**

This Amended and Restated Deed of Trust, Fixture Filing and Security Agreement with Assignment of Rents (this "*Deed of Trust*") dated as of June 30, 2003 from SKAGIT GARDENS, INC., a Delaware corporation, with a address at 1719 Old Highway 99 South, Mount Vernon, Washington 98273 (hereinafter referred to as "*Grantor*") to Land Title Company of Skagit County, as Trustee (hereinafter "*Trustee*"), with a mailing address at P.O. Box 445, 111 East George Hopper Road, Burlington, Washington 98233, in trust for the benefit of Harris Trust and Savings Bank, an Illinois banking corporation with its mailing address at 111 West Monroe Street, Chicago, Illinois 60603 ("*Harris*"), as Agent for the Lenders hereinafter defined (Harris, acting as such agent and any successor to Harris in such capacity hereinafter referred to as "*Beneficiary*");

WITNESSETH THAT:

WHEREAS, International Garden Products, Inc., a Delaware corporation ("*IGP*") and its Domestic Subsidiaries, as defined in the Credit Agreement referred to below (collectively, the "*Borrowers*"), are currently parties to a Second Amended and Restated Credit Agreement dated as of January 10, 2003 with Harris, as a lender and as Beneficiary, and the other lenders party thereto and as described therein (such Second Amended and Restated Credit Agreement being hereinafter referred to as the "*Existing Credit Agreement*"); and

WHEREAS, as security for all Obligations (including, but not limited to, indebtedness evidenced by promissory notes issued pursuant to the *Existing Credit Agreement*), Hedging Liability and Funds Transfer and Deposit Account Liability under, and as defined in, the *Existing Credit Agreement*, the Grantor heretofore granted to the Trustee for the benefit of the Beneficiary a lien on and a security interest in certain real and personal property of the Grantor pursuant to that certain *Deed of Trust, Fixture Filing and Security Agreement with Assignment of Rents* dated as of September 14, 1999 and recorded September 14, 1999, as Document No. 199909140054, as supplemented by that certain First Supplement to Deed of Trust, Fixture

Until Further notice, all tax
notices shall be sent to:

c/o International Garden Products, Inc.
30590 S.E. Kelso Road
Boring, OR 97009
Attention: Chief Financial Officer



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Filing and Security Agreement with Assignment of Rents dated as of February 8, 2001 and recorded March 5, 2001, as Document No. 200103050176, that certain Second Supplement to Deed of Trust, Fixture Filing and Security Agreement with Assignment of Rents dated as of January 24, 2002 and recorded January 28, 2003, as Document No. 200201280224, and that certain Third Supplement to Deed of Trust, Fixture Filing and Security Agreement with Assignment of Rents dated as of January 10, 2003 and recorded January 15, 2003, as Document No. 200301150103 (collectively, the "*Existing Deed of Trust*"); and

WHEREAS, the Borrowers have entered into a Third Amended and Restated Credit Agreement of even date herewith (such Third Amended and Restated Credit Agreement, as the same may from time to time hereafter be modified or amended, including amendments and restatements thereof in its entirety, being hereinafter referred to as the "*Credit Agreement*") with Harris and the other lenders party thereto (such lenders, including Harris, being hereinafter referred to individually as a "*Lender*" and collectively as the "*Lenders*") and Harris, as Beneficiary, and pursuant thereto the Grantor desires to amend the Existing Deed of Trust and for the sake of clarity and convenience, to restate the Existing Deed of Trust in its entirety; and

WHEREAS, the Grantor agrees that this Deed of Trust amends and replaces the Existing Deed of Trust in its entirety; and

WHEREAS, pursuant to the Credit Agreement the Lenders commit, subject to certain terms and conditions, to make a revolving credit (the "*Revolving Credit*") in the principal amount not to exceed \$50,000,000 at any one time outstanding available to the Borrowers through June 30, 2006 (the "*Termination Date*"); and

WHEREAS, advances from time to time made under the Revolving Credit are evidenced by one or more revolving credit notes (such revolving credit notes and any and all notes issued in substitution or replacement therefor or in extension or renewal thereof in whole or in part, as any of the foregoing may from time to time be modified or amended, being hereinafter referred to as the "*Notes*") payable to the order of the respective Lenders, whereby the Borrowers promise to pay the advances evidenced thereby on the Termination Date with interest as set forth in the Credit Agreement, and with such Revolving Credit to also be available by way of letters of credit issued by the Beneficiary or one or more of the Lenders with expiry dates not later than the Termination Date (the "*Letters of Credit*") pursuant to one or more applications therefor (the "*L/C Applications*"); and

WHEREAS, one or more of the Borrowers and/or their Domestic Subsidiaries may from time to time enter into one or more interest rate, foreign currency, and/or commodity swap, exchange, cap, collar, floor, forward, future, or option agreements, or any similar interest rate, currency or commodity hedging agreements with one or more of the Lenders or their affiliates



(the liability in respect of such hedging agreements being hereinafter referred to as the "*Hedging Liability*"); and

WHEREAS, one or more of the Borrowers and/or their Domestic Subsidiaries may from time to time incur liability to any of the Lenders or their affiliates arising out of (a) the execution or processing of electronic transfer of funds by automatic clearing house transfer, wire transfer or otherwise to or from any deposit account of any such Borrower or any such subsidiary now or hereafter maintained with any of the Lenders, (b) the acceptance for deposit or the honoring for payment of any check, draft or other item with respect to any such deposit accounts by any such Lenders, and (c) any other deposit, disbursement, and cash management services afforded to any such Borrower or any such subsidiary by any Lenders (the liability in respect of such arrangements being hereinafter referred to as "*Funds Transfer and Deposit Account Liability*"); and

WHEREAS, pursuant to the Credit Agreement, each Borrower has guarantied the obligations of the other Borrowers arising under or relating to the Credit Agreement and the other instruments and documents executed and delivered in connection therewith, including, without limitation, those evidenced by the Notes and Applications, Hedging Liability, and Funds Transfer and Deposit Account Liability; and

WHEREAS, the Grantor is one of the Borrowers; and

WHEREAS, as a condition to extending the credit facilities to the Borrowers under the Credit Agreement, Lenders have required, among other things, that Grantor execute and deliver this Deed of Trust; and

WHEREAS, Grantor will directly and substantially benefit from credit and other financial accommodations extended and to be extended by the Lenders to the other Borrowers,

NOW, THEREFORE, to secure (i) the payment of the principal and premium, if any, of and interest on the Notes as and when the same becomes due and payable (whether by lapse of time, acceleration or otherwise) and all advances now or hereafter evidenced thereby, (ii) the payment of all sums due or owing with respect to Hedging Liability, (iii) the payment of all sums due or owing with respect to Funds Transfer and Deposit Account Liability, (iv) the payment of all obligations arising under any L/C Applications, including the obligation of the Borrowers to reimburse the Lenders for any draws under the Letters of Credit, (v) the payment of all amounts guaranteed by Grantor pursuant to the Credit Agreement, (vi) the payment of all fees and other amounts due and payable under the Credit Agreement and the other instruments and documents executed and delivered in connection therewith, (vii) the payment of all other indebtedness, obligations and liabilities which this Deed of Trust secures pursuant to any of its terms and (viii) the observance and performance of all covenants and agreements contained herein or in the



Notes or the L/C Applications or Credit Agreement or in any other instrument or document at any time evidencing or securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations and liabilities described in clauses (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above being hereinafter collectively referred to as the "indebtedness hereby secured"), Grantor does by these presents grant, transfer, set over and convey unto Trustee, its successors and assigns, in TRUST WITH POWER OF SALE, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI and VII below, all of the same being collectively referred to herein as the "Mortgaged Premises":

GRANTING CLAUSE I

That certain real estate lying and being in Mount Vernon, County of Skagit and State of Washington more particularly described in *Schedule I* attached hereto and made a part hereof.

GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, and sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said real estate, buildings or improvements in any manner, and all proceeds thereof; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and, for the purpose of this Deed of Trust, to be real estate and covered by this Deed of Trust; and as to the balance of



the property aforesaid, this Deed of Trust is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code of the State of Washington for the purpose of creating hereby a security interest in said property, which is hereby granted by Grantor as debtor to Beneficiary as secured party, securing the indebtedness hereby secured. The addresses of Grantor (debtor) and Beneficiary (secured party) appear at the beginning hereof.

GRANTING CLAUSE III

All right, title and interest of Grantor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Grantor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Grantor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Beneficiary. By acceptance of this Deed of Trust, Trustee agrees, not as a limitation or condition hereof, but as a personal covenant available only to Grantor that until an Event of Default (as hereinafter defined) shall occur giving Trustee the right to foreclose this Deed of Trust, Grantor may collect, receive (but not more than 30 days in advance) and enjoy such rents.

GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant



thereto, including severance and consequential damage, and any award for change of grade of streets (collectively, "Condemnation Awards").

GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this Deed of Trust required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subjected to the lien hereof by Grantor or by anyone in Grantor's behalf.

GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Grantor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

GRANTING CLAUSE VII

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, warranted, pledged and assigned, and in which a security interest is granted, or intended so to be, unto Trustee, its successors and assigns, forever; *provided, however*, that this Deed of Trust is upon the express condition that if the principal of and interest on the Notes and all sums from time to time advanced thereon shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed and the commitments of the Lenders to extend credit or other financial accommodations to the Borrowers under the Credit Agreement have expired or otherwise have been terminated, then this Deed of Trust and the estate and rights hereby granted shall cease, determine and be void and this Deed of Trust shall be released by Trustee upon the written request and at the expense of Grantor, otherwise to remain in full force and effect.

Grantor hereby covenants and agrees with Trustee and Beneficiary as follows:

1. *Payment of the Indebtedness.* The indebtedness hereby secured will be promptly paid as and when the same becomes due.



2. *Further Assurances.* Grantor will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Deed of Trust and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be.

3. *Possession.* Provided no Event of Default has occurred and is continuing hereunder, Grantor shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Premises, subject always to the observance and performance of the terms of this Deed of Trust.

4. *Payment of Taxes.* Grantor shall pay when due all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall, upon written request, exhibit to Beneficiary official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Beneficiary, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Grantor shall have furnished such security, if any, as may be required in the proceedings or requested by Trustee or Beneficiary.

5. *Payment of Taxes on Notes, L/C Applications, Deed of Trust or Interest of Trustee, Beneficiary or Lender.* Grantor agrees that if any tax, assessment or imposition upon this Deed of Trust or the indebtedness hereby secured or the Notes or any of the L/C Applications or the interest of Trustee, Beneficiary or any Lender in the Mortgaged Premises or upon Trustee, Beneficiary or any Lender by reason of or as a holder of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any state) is levied, assessed or charged, then, unless all such taxes are paid by Grantor to, for or on behalf of Trustee, Beneficiary or the relevant Lenders as they become due and payable (which Grantor agrees to do upon demand of Trustee, Beneficiary or the relevant Lender, to the extent permitted by law), or Trustee, Beneficiary or the relevant Lender is reimbursed for any such sum advanced by Trustee, Beneficiary or the relevant Lender, all sums hereby secured shall become immediately due and payable, at the option of Trustee, Beneficiary upon thirty (30) days' notice to Grantor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision thereof forbidding Grantor from making any such payment. Grantor agrees to exhibit to Trustee, Beneficiary or any Lender, upon



request, official receipts showing payment of all taxes and charges which Grantor is required to pay hereunder.

6. *Recordation and Payment of Taxes and Expenses Incident Thereto.* Grantor will cause this Deed of Trust, all mortgages supplemental hereto and any financing statement or other notice of a security interest required by Trustee or Beneficiary at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refiling of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Trustee and Beneficiary hereunder and, without limiting the foregoing, Grantor will pay or reimburse Trustee and Beneficiary for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or rerecording, including any documentary stamp tax or tax imposed upon the privilege of having this Deed of Trust or any instrument issued pursuant hereto recorded.

7. *Insurance.* Grantor will, at its expense, keep all buildings, improvements, equipment and other property now or hereafter constituting part of the Mortgaged Premises insured against loss or damage by fire, lightning, windstorm, explosion and such other risks as are usually included under extended coverage policies, or which are usually insured against by owners of like property, in amount sufficient to prevent Grantor or Trustee and Beneficiary from becoming a co-insurer of any partial loss under applicable policies and in any event not less than the then full insurable value (actual replacement value without deduction for physical depreciation) thereof, as determined at the request of Beneficiary and at Grantor's expense by the insurer or insurers or by an expert approved by Beneficiary, all under insurance policies payable, in case of loss or damage, to Beneficiary, such rights to be evidenced by the usual standard non-contributory form of mortgage clause to be attached to each policy. Grantor shall not carry separate insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereby. Grantor shall also obtain and maintain public liability, property damage and workmen's compensation insurance in each case in form and content satisfactory to Beneficiary and in amounts as are customarily carried by owners of like property and approved by Beneficiary. Grantor shall also obtain and maintain such other insurance with respect to the Mortgaged Premises in such amounts and against such insurable hazards as Beneficiary from time to time may require, including, without limitation, boiler and machinery insurance, insurance against flood risks, host liquor liability, war risk insurance when and to the extent obtainable from the United States Government or any agency thereof, and insurance against loss of rent due to fire and risks now or hereafter embraced by so-called "extended coverage". All insurance required hereby shall be maintained with good and responsible insurance companies satisfactory to Beneficiary and shall not provide for any deductible amount in excess of \$50,000 not approved in writing by Beneficiary, shall provide that any losses shall be payable notwithstanding any act or negligence of Grantor, shall provide that no cancellation thereof shall be effective until at least thirty (30) days after receipt by Grantor and Beneficiary of written



notice thereof, and shall be satisfactory to Beneficiary in all other respects. Upon the execution of this Deed of Trust and thereafter not less than fifteen (15) days prior to the expiration date of any policy delivered pursuant to this Deed of Trust, Grantor will deliver to Beneficiary originals of any policy or renewal policy, as the case may be, required by this Deed of Trust, bearing notations evidencing the payment of all premiums. In the event of foreclosure, Grantor authorizes and empowers Beneficiary to effect insurance upon the Mortgaged Premises in amounts aforesaid for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor to cancel any or all existing insurance policies.

UNLESS GRANTOR PROVIDES BENEFICIARY WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS DEED OF TRUST, BENEFICIARY MAY PURCHASE INSURANCE AT GRANTOR'S EXPENSE TO PROTECT BENEFICIARY'S INTERESTS IN THE MORTGAGED PREMISES. THIS INSURANCE MAY, BUT NEED NOT, PROTECT GRANTOR'S INTERESTS IN THE MORTGAGED PREMISES. THE COVERAGE PURCHASED BY BENEFICIARY MAY NOT PAY ANY CLAIMS THAT GRANTOR MAKES OR ANY CLAIM THAT IS MADE AGAINST GRANTOR IN CONNECTION WITH THE MORTGAGED PREMISES. GRANTOR MAY LATER CANCEL ANY SUCH INSURANCE PURCHASED BY BENEFICIARY, BUT ONLY AFTER PROVIDING BENEFICIARY WITH EVIDENCE THAT GRANTOR HAS OBTAINED INSURANCE AS REQUIRED BY THIS DEED OF TRUST. IF BENEFICIARY PURCHASES INSURANCE FOR THE MORTGAGED PREMISES, GRANTOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT BENEFICIARY MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE INDEBTEDNESS HEREBY SECURED. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE GRANTOR MAY BE ABLE TO OBTAIN ON ITS OWN.

8. *Damage to or Destruction of Mortgaged Premises.*

(a) *Notice.* In case of any material damage to or destruction of the Mortgaged Premises or any part thereof, Grantor shall promptly give written notice thereof to Beneficiary, generally describing the nature and extent of such damage or destruction.

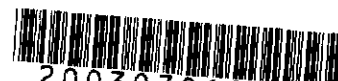
(b) *Restoration.* In case of any damage to or destruction of the Mortgaged Premises or any part thereof, Grantor, whether or not the insurance proceeds, if any, received on account of such damage or destruction have been made available to Grantor (subject to the provision of 8(d) hereof) or shall be sufficient for the purpose, at Grantor's expense, will promptly commence and complete (subject to unavoidable delays occasioned by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions and similar causes beyond the reasonable control of Grantor) the restoration, replacement or rebuilding of the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such damage or



destruction; *provided, however*, that Grantor need not restore, replace or rebuild the Mortgaged Premises so damaged or destroyed to the extent Grantor could have demolished and not replaced such property without Beneficiary's consent in compliance with Section 10 hereof.

(c) *Adjustment of Loss.* Grantor hereby authorizes Beneficiary, at Beneficiary's option, to adjust and compromise any losses under any insurance afforded, but unless Beneficiary elects to adjust the losses as aforesaid, said adjustment and/or compromise shall be made by Grantor, subject to final approval of Beneficiary in the case of losses exceeding \$100,000.

(d) *Application of Insurance Proceeds.* Net insurance proceeds received by Beneficiary under the provisions of this Deed of Trust or any instruments supplemental hereto or thereto or under any policy or policies of insurance covering the Mortgaged Premises or any part thereof shall first be applied as a prepayment on the Notes (and Beneficiary is hereby irrevocably authorized and directed to make such an application whether or not the Notes may then be due or otherwise adequately secured) and shall thereafter be applied to the reduction of any other indebtedness hereby secured; *provided, however*, that such proceeds shall be made available for the restoration of the portion of the Mortgaged Premises damaged or destroyed if written application for such use is made within thirty (30) days of receipt of such proceeds and the following conditions are satisfied: (i) Grantor has in effect business interruption insurance covering the income to be lost during the restoration period as a result of the damage or destruction to the Mortgaged Premises or provides Beneficiary with other evidence satisfactory to it that Grantor has cash resources sufficient to pay its obligations during the restoration period; (ii) the effect of the damage to or destruction of the Mortgaged Premises giving rise to receipt of the insurance proceeds is not to terminate, or give a lessee the option to terminate, any lease of all or any portion of the Mortgaged Premises; (iii) no Event of Default, or event which, with the lapse of time, the giving of notice, or both, would constitute an Event of Default, shall have occurred or be continuing (and if such an event shall occur during restoration Beneficiary may, at its election, apply any insurance proceeds then remaining in its hands to the reduction of the indebtedness evidenced by the Notes and the other indebtedness hereby secured); (iv) Grantor shall have submitted to Beneficiary plans and specifications for the restoration which shall be reasonably satisfactory to it; (v) Grantor shall submit to Beneficiary fixed price contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration and providing for a total completion price not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, Grantor shall have deposited the amount of such deficiency with Beneficiary or shall have provided evidence satisfactory to the Beneficiary in its sole discretion of availability of funds to cover such deficiency and (vi) Grantor shall have obtained a waiver of the



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right of subrogation from any insurer under such policies of insurance who at that time claims that no liability exists as to Grantor or the insured under such policies. Any insurance proceeds to be released pursuant to the foregoing provisions may at the option of Beneficiary be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements may at Beneficiary's option be made directly to Grantor or to or through any contractor or materialman to whom payment is due or to or through a construction escrow to be maintained by a title insurer acceptable to Beneficiary. Beneficiary may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. All title insurance charges and other costs and expenses paid to or for the account of Grantor in connection with the release of such insurance proceeds shall constitute so much additional indebtedness hereby secured to be payable upon demand with interest at the Base Rate plus the Applicable Margin for Revolving Loans (as such terms are defined in the Credit Agreement) as in effect from time to time. Beneficiary may deduct any such costs and expenses from insurance proceeds at any time standing in its hands. If Grantor fails to request that insurance proceeds be applied to the restoration of the improvements or if Grantor makes such a request but fails to complete restoration within a reasonable time, Beneficiary shall have the right, but not the duty, to restore or rebuild said Mortgaged Premises or any part thereof for or on behalf of Grantor in lieu of applying said proceeds to the indebtedness hereby secured and for such purpose may do all necessary acts, including using funds deposited by Grantor as aforesaid and advancing additional funds for the purpose of restoration, all such additional funds to constitute part of the indebtedness hereby secured payable upon demand with interest as set forth above.

9. *Eminent Domain.* Grantor acknowledges that Condemnation Awards have been assigned to Beneficiary, which awards Beneficiary is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and at Beneficiary's option, to apply the same toward the payment of the amount owing on account of the indebtedness hereby secured in such order of application as Beneficiary may elect and whether or not the same may then be due and payable or otherwise adequately secured; *provided, however,* that a Condemnation Award in respect of any taking of a portion (but not all or any material portion) of the Mortgaged Premises shall be made available for the restoration of such Mortgaged Premises in the same manner and subject to the same conditions as are imposed on the release of insurance proceeds set forth in Section 8(d) hereof as if the Mortgaged Premises so taken were destroyed and the Condemnation Award for such taking was actually insurance proceeds in respect of the Mortgaged Premises so deemed as having been destroyed. In the event that any proceeds of a Condemnation Award shall be made available to Grantor for restoring the Mortgaged Premises so taken, Grantor hereby covenants to promptly commence and complete such restoration of the Mortgaged Premises as nearly as possible to its value,



condition and character immediately prior to such taking. Grantor covenants and agrees that Grantor will give Beneficiary immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Beneficiary copies of any and all papers served in connection with any such proceedings. Grantor further covenants and agrees to make, execute and deliver to Beneficiary, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Beneficiary for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Grantor for any taking, either permanent or temporary, under any such proceeding.

10. *Construction, Repair, Waste, Etc.* Grantor agrees that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be materially altered, removed or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Beneficiary and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, Grantor covenants that the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto other than the Permitted Exceptions (as hereinafter defined); *provided, however*, that Grantor may effect alterations to the improvements not costing over \$50,000 in any given year and Grantor may alter, remove or demolish any such building, improvement, fixture or appliance, and need not replace any such fixtures or personal property, in each case to the extent such action (i) is desirable to the proper conduct of the business of Grantor in the ordinary course as presently conducted and otherwise in the best interest of Grantor, (ii) does not impair the overall value or utility of the Mortgaged Premises and Grantor's other related properties as an integrated facility, (iii) does not decrease the efficiency or capacity of the Mortgaged Premises and (iv) does not impair the rights and benefits under this Deed of Trust of the Beneficiary; to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof; to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition (ordinary wear and tear excepted); to effect such repairs as Beneficiary may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good and first class condition (ordinary wear and tear excepted), fit and proper for the respective purposes for which they were originally erected or installed; to comply with all statutes, orders, requirements or decrees relating to the Mortgaged Premises by any federal, state or municipal authority; to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which



have been granted to or contracted for by Grantor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part thereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Beneficiary; and to make no material alterations in or improvements or additions to the Mortgaged Premises except as required by governmental authority or as permitted by Beneficiary.

11. *Liens and Encumbrances.* Grantor will not, without the prior written consent of Beneficiary, directly or indirectly, create or suffer to be created or to remain and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this Deed of Trust and liens permitted by Section 8.8 of the Credit Agreement (the "*Permitted Exceptions*").

12. *Right of Beneficiary or any Lender to Perform Grantor's Covenants, Etc.* If Grantor shall fail to make any payment or perform any act required to be made or performed hereunder, Beneficiary or any Lender, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Grantor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Beneficiary, may be necessary or appropriate therefor. All sums so paid by Beneficiary or such Lender and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Grantor to such party on demand. Beneficiary or Lender, in making any payment authorized under this Section relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof. Beneficiary or Lender, in performing any act hereunder, shall be the sole judge of whether Grantor is required to perform same under the terms of this Deed of Trust.

13. *After-Acquired Property.* Any and all property hereafter acquired which is of the kind or nature herein provided, or intended to be and become subject to the lien hereof, shall *ipso facto*, and without any further conveyance, assignment or act on the part of Grantor, become and be subject to the lien of this Deed of Trust as fully and completely as though specifically described herein; but nevertheless Grantor shall from time to time, if requested by Trustee or Beneficiary, execute and deliver any and all such further assurances, conveyances and assignments as Trustee or Beneficiary may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Deed of Trust all such property.



14. *Inspection by Beneficiary.* Beneficiary, Lenders and any participant in the indebtedness hereby secured shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

15. *Information Reports.* Grantor will furnish to the Trustee or Beneficiary such information and data with respect to the Mortgaged Premises as may be reasonably requested.

16. *Subrogation.* Grantor acknowledges and agrees that Beneficiary shall be subrogated to any lien discharged out of the proceeds of any extension of credit evidenced by the Notes, L/C Applications or Credit Agreement or out of any advance by Trustee or Beneficiary hereunder, irrespective of whether or not any such lien may have been released of record.

17. *Events of Default.* Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) any event occurs or condition exists which is specified as an Event of Default under the Credit Agreement; or

(b) the Mortgaged Premises or any part thereof shall be sold, transferred, or conveyed, whether voluntarily or involuntarily, by operation of law or otherwise, except for sales of obsolete, worn out or unusable fixtures or personal property which are concurrently replaced with similar fixtures or personal property at least equal in quality and condition to those sold and owned by Grantor free of any lien, charge or encumbrance other than the lien hereof; or

(c) any indebtedness secured by a lien or charge on the Mortgaged Premises or any part thereof is not paid when due or proceedings are commenced to foreclose or otherwise realize upon any such lien or charge or to have a receiver appointed for the property subject thereto or to place the holder of such indebtedness or its representative in possession thereof; or

(d) the Mortgaged Premises is abandoned.

18. *Remedies.* When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Grantor from complying with the terms of this Deed of Trust and of the adequacy of the security for the indebtedness hereby secured) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements:

(a) *Acceleration.* Beneficiary may, by written notice to Grantor, declare the Notes and all unpaid indebtedness hereby secured, including the reimbursement



obligations in connection with the Letters of Credit and any interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) *Uniform Commercial Code.* Beneficiary shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Washington, including without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Uniform Commercial Code for reasonable notification shall be met by mailing written notice to Grantor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The costs and expenses of retaking, selling, and otherwise disposing of said property, including attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Rate.

(c) *Foreclosure.* Beneficiary may proceed to protect and enforce the rights of Beneficiary hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Deed of Trust.

(d) *Trustee's Sale.* Upon the occurrence of an Event of Default, Beneficiary may deliver written notice of default and of election to cause the Mortgaged Premises to be sold, in accordance with the Deed of Trust Act of the State of Washington (R.C.W. Chapter 61.24 as existing or now or hereafter amended) which notice Trustee shall cause to be filed for record and be served in accordance with RCW Chapter 61.24 to preserve any deficiency against grantor and all guarantors. After Trustee shall have given and recorded such other notice as the law then requires as a condition precedent to a Trustee's sale under power of sale, after the lapse of such time as may then be required by law following the recordation of said notice of default and notice of sale having been given as then required by law, Trustee, without notice to or demand upon Grantor except as otherwise required by law, may sell the Mortgaged Premises at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it or Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale (the indebtedness hereby secured being the equivalent of cash for purposes of said sale). Grantor shall have no right to direct the order in which the Mortgaged Premises are sold. Trustee may postpone sale of all or any portion of the Mortgaged Premises by public announcement at such



time and place of sale and from time to time thereafter may postpone such sale by public announcement at such time fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale a deed conveying the Mortgaged Premises or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof absent manifest error. Any person, including Grantor or Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee, and of this Trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale as prescribed in Section 21 hereof. Before any such Trustee's sale under power, Beneficiary may rescind such notices of default and of election to cause the Mortgaged Premises or any part thereof to be sold by delivering to Trustee a written notice of rescission, which notice, when recorded, shall cancel any prior declaration of default, demand for sale and acceleration of maturity. The exercise of such right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, or impair the right of Beneficiary to deliver to Trustee other declarations of default and demands for sale or notices of default and of election to cause the Mortgaged Premises or any part thereof to be sold, or otherwise affect any provision of the Notes or of this Deed of Trust or any of the rights, obligations or remedies of Beneficiary or Trustee hereunder.

(e) *Appointment of Receiver.* Beneficiary shall, as a matter of right, without notice and without giving bond to Grantor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Grantor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Grantor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Grantor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(f) *Taking Possession, Collecting Rents, Etc.* Beneficiary or its agents may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate, insure, repair and improve the same and take any action which, in Trustee or Beneficiary's judgment, is necessary or proper to conserve the value of the Mortgaged Premises. Beneficiary or its agents may also take possession of, and for these purposes use, any and all personal property contained in the Mortgaged Premises and used in the



operation, rental or leasing thereof or any part thereof. Beneficiary or its agents shall be entitled to collect and receive all earnings, revenues, rents, issues and profits of the Mortgaged Premises or any part thereof (and for such purpose Grantor does hereby irrevocably constitute and appoint Beneficiary its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Grantor irrevocably acknowledging that any payment made to Beneficiary hereunder shall be a good receipt and acquittance against Grantor to the extent so made) and to apply same to the reduction of the indebtedness hereby secured. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Beneficiary hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsels' fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be so much additional indebtedness hereby secured which Grantor promises to pay upon demand together with interest at the Default Rate. Trustee or Beneficiary shall not be liable to account to Grantor for any action taken pursuant hereto other than to account for any rents actually received by Trustee or Beneficiary. Without taking possession of the Mortgaged Premises, Trustee or Beneficiary may, in the event the Mortgaged Premises becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate.

19. *Waiver of Right to Redeem From Sale - Waiver of Appraisement, Valuation, Etc.* Grantor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws to the extent not prohibited by applicable law. Grantor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this Deed of Trust, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Beneficiary may determine. Beneficiary or any Lender shall have the right to become the purchaser at any sale made under or by virtue of this Deed of Trust and Beneficiary or such Lender so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Beneficiary or such Lender with the amount payable to Beneficiary or such Lender out of the net proceeds of such sale. In the event of any such sale, the Notes and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice



of any kind. Grantor hereby waives any and all rights of redemption prior to or from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Grantor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Deed of Trust, and on behalf of all other persons to the extent permitted by applicable law.

20. *Costs and Expenses of Foreclosure.* In case of any sale of the Mortgaged Premises, or any part thereof, pursuant to any judgment or decree of any court or pursuant to the power of sale herein contained or in connection with the enforcement of any of the terms of this Deed of Trust or otherwise under or by virtue of this Deed of Trust, there shall be allowed and included as so much additional indebtedness hereby secured to be paid out of the proceeds of such sale, Trustee's fees incurred in connection with any exercise of the power of sale granted hereunder for all services rendered by Trustee, its agents, attorneys and counsel in and about foreclosure, enforcement or other protection of this Deed of Trust and all expenditures and expenses which may be paid or incurred by or on behalf of Trustee and/or Beneficiary and any Lender for attorneys' fees, appraisers' fees, environmental auditors' fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after such Trustee's sale or the entry of any foreclosure order or decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Trustee or Beneficiary may deem to be reasonably necessary either to prosecute any foreclosure or sale proceeding or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, all of which compensation and expenditures shall become so much additional indebtedness hereby secured which Grantor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

21. *Application of Proceeds.* The proceeds of any foreclosure or trustee's sale of the Mortgaged Premises or of any sale of property pursuant to Section 18(b) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 18(b) and 20 hereof; Second, to all other items which under the terms hereof constitute indebtedness hereby secured (including, without limitation, all principal of and interest on the Notes and L/C Applications) as set forth in the Credit Agreement, with any overplus to whomsoever the Beneficiary shall reasonably determine to be lawfully entitled to the same.

22. *Deficiency Decree.* If at any foreclosure proceeding the Mortgaged Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall, subject to applicable law, be entitled to the entry of a deficiency decree against Grantor and against the property of Grantor for the amount of such deficiency; and Grantor does hereby irrevocably consent to the appointment of a receiver for the Mortgaged



Premises and the property of Grantor and of the rents, issues and profits thereof after such sale and until such deficiency decree is satisfied in full.

23. *Beneficiary's and Lender's Remedies Cumulative - No Waiver.* No remedy or right of Beneficiary or any Lender shall be exclusive of but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Beneficiary or such Lender.

24. *Trustee, Beneficiary and Lenders Party to Suits.* If Trustee, Beneficiary or any Lender shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Trustee, Beneficiary or any Lender under this Deed of Trust (including probate and bankruptcy proceedings), or if Trustee, Beneficiary or any Lender employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Trustee, Beneficiary or any Lender shall incur any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Grantor agrees to pay to Trustee, Beneficiary or such Lender, immediately and without demand, all reasonable costs, charges, expenses and attorney's fees incurred by Trustee, Beneficiary or such Lender in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Rate.

25. *Modifications Not to Affect Lien.* Trustee and Beneficiary, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may at the direction of the Lenders in accordance with the Credit Agreement release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, and may agree with Grantor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto), without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Deed of Trust upon all of the Mortgaged Premises not expressly released, and any party acquiring any direct or indirect interest in the Mortgaged Premises shall take same subject to all of the provisions hereof.



26. *Notices.* All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or mailed by first class mail, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Deed of Trust or to such other and different address as Grantor or Beneficiary may designate pursuant to a written notice sent in accordance with the provisions of this Section.

27. *Default Rate.* For purposes of this Deed of Trust, the term "Default Rate" shall mean the rate per annum determined by adding 2% to the Base Rate plus the Applicable Margin for Base Rate Loans as in effect from time to time (as such terms are defined in the Credit Agreement), with any change in such rate per annum as so determined by reason of a change in such prime commercial rate to become effective on the date of such change in said prime commercial rate.

28. *Partial Invalidity.* All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Deed of Trust invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Deed of Trust shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Deed of Trust shall in no way be affected thereby.

29. *Successors and Assigns.* Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Deed of Trust contained by or on behalf of Grantor, or by or on behalf of Trustee, Beneficiary or the Lenders, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not. If more than one party signs this instrument as Grantor, then the term "Grantor" as used herein shall mean all of such parties, jointly and severally.

30. *Headings.* The headings in this Deed of Trust are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

31. *Changes, Etc.* This Deed of Trust and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought; it being understood that so long as the Trustee protective provisions hereof are not being changed, waived, discharged or terminated, the signature of Trustee shall not be required on any such change, waiver, discharge or termination.

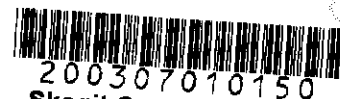
32. *Governing Law.* The creation of this Deed of Trust, the perfection of the lien and security interest in the Mortgaged Premises, and the rights and remedies of Beneficiary and the Lenders with respect to the Mortgaged Premises, as provided herein and by the laws of the state in which the Mortgaged Premises is located, shall be governed by and construed in accordance



with the internal laws of the state in which the Mortgaged Premises are located without regard to principles of conflicts of law. Otherwise, all other obligations of Grantor (including, but not limited to, the liability of Grantor for any deficiency following a foreclosure of all or any part of the Mortgaged Premises) hereunder shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to principles of conflicts of laws.

33. *Liens Absolute, Etc.* Grantor acknowledges and agrees that the lien and security interest hereby created and provided for are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary, any Lender or any other holder of any of the indebtedness hereby secured, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by Beneficiary, any Lender or any other holder of any of the indebtedness hereby secured of any other security for or guarantors upon any of the indebtedness hereby secured or by any failure, neglect or omission on the part of Beneficiary, any Lender or any other holder of any of the indebtedness hereby secured to realize upon or protect any of the indebtedness hereby secured or any collateral or security therefor. The lien and security interest hereof shall not in any manner be impaired or affected by (and Trustee and Beneficiary, without notice to anyone, is hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the indebtedness hereby secured, or of any collateral or security therefor, or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. Beneficiary may at its discretion at any time grant credit to any of the Borrowers without notice to Grantor in such amounts and on such terms as Beneficiary may elect without in any manner impairing the lien and security interest created and provided for herein. In order to realize hereon and to exercise the rights granted Beneficiary hereby and under applicable law, there shall be no obligation on the part of Beneficiary or any other holder of any of the indebtedness hereby secured at any time to first resort for payment to any of the Borrowers or to any guaranty of any of the indebtedness hereby secured or any portion thereof or to resort to any other collateral, security, property, liens or any other rights or remedies whatsoever, and Beneficiary shall have the right to enforce this Deed of Trust irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending.

34. *Direct and Primary Security - No Subrogation.* The lien and security interest herein created and provided for stand as direct and primary security for the indebtedness hereby secured. No application of any sums received by Beneficiary in respect of the Mortgaged Premises or any disposition thereof to the reduction of the indebtedness hereby secured or any part thereof shall in any manner entitle Grantor to any right, title or interest in or to the indebtedness hereby secured or any collateral or security therefor, whether by subrogation or otherwise, unless and until all indebtedness hereby secured has been fully paid and satisfied and



the commitments of Beneficiary and the Lenders to extend credit to the Borrowers under the Credit Agreement have expired or otherwise have been terminated.

35. *Revolving Credit.* This Deed of Trust is given to secure, among other things, a revolving line of credit and shall secure not only presently existing indebtedness under the Credit Agreement but also future advances, whether such advances are obligatory or to be made at the option of Beneficiary or any Lender, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Deed of Trust, although there may be no advance made at the time of execution of this Deed of Trust and although there may be no indebtedness hereby secured outstanding at the time any advance is made. The lien of this Deed of Trust shall be valid as to all indebtedness hereby secured, including future advances. The total amount of indebtedness hereby secured may increase or decrease from time to time, but the total unpaid balance of indebtedness hereby secured (including disbursements which Beneficiary or any Lender may make under this Deed of Trust, the Credit Agreement or any other documents related thereto) at any one time outstanding shall not exceed a maximum principal amount of Fifty Million Dollars (\$50,000,000) plus interest thereon and any disbursements made for payment of taxes, special assessments or insurance on the Mortgaged Premises and interest on such disbursements (all such indebtedness being hereinafter referred to as the "*maximum amount secured hereby*"). This Deed of Trust shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Premises, to the extent of the maximum amount secured hereby.

36. *Right of Recovery.* Notwithstanding anything herein to the contrary, the right of recovery against Grantor under this Deed of Trust shall not exceed \$1 less than the lowest amount which would render Grantor's obligations under this Deed of Trust void or voidable under applicable law, including fraudulent conveyance law.

37. *Agent.* Beneficiary has been appointed as agent pursuant to the Credit Agreement. In acting under or by virtue of this Deed of Trust, Beneficiary shall be entitled to all the rights, authority, privileges and immunities provided in the Credit Agreement, all of which provisions of the Credit Agreement (including, without limitation, Section 11 thereof) are incorporated by reference herein with the same force and effect as if set forth herein. Beneficiary hereby disclaims any representation or warranty to the Lenders concerning the perfection of the security interest granted hereunder or the value of the Mortgaged Premises.

38. *Restrictions on Lenders' Right to Enforce.* No Lender shall have the right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Deed of Trust or for the execution of any trust or power hereof or for the appointment of a receiver, or for the enforcement of any other remedy under or upon this Deed of Trust; it being understood and intended that no one or more of the Lenders shall have any right in any manner whatsoever to



affect, disturb or prejudice the lien of this Deed of Trust by its or their action or to enforce any right hereunder, and that all proceedings at law or in equity shall be instituted, had and maintained by the Beneficiary in the manner herein provided and for the benefit of the Lenders.

39. *Security Agreement.* This Deed of Trust shall constitute a security agreement under Article 9 of the Uniform Commercial Code of the State of Washington with the Beneficiary having the rights of a secured party under Article 9 thereof. The mailing address of Grantor and the address of Beneficiary from which information may be obtained are set forth in the introductory paragraph of this Deed of Trust.

40. *Fixture Filing.* Certain of the personal property covered by this Deed of Trust is or will become fixtures on the real property which is a part of the Mortgaged Premises described on *Schedule I*, and this Trust Deed upon being filed for record in the real estate records of the county wherein such fixtures are situated shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the Uniform Commercial Code upon such of the properties which are or may become fixtures. The mailing address of Grantor and the address of Beneficiary from which information may be obtained are set forth in the introductory paragraph of this Deed of Trust. The Grantor has an interest of record in such real property.

41. *Statutory Notice.* **ORAL COMMITMENTS OR ORAL AGREEMENTS TO LEND MONEY, EXTEND CREDIT, OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

42. *Multisite Real Estate Transaction.* Grantor acknowledges that this Deed of Trust is one of several mortgages and other security documents (the aforesaid being together called the "Other Security Documents") which secure the indebtedness evidenced by the Notes, the Credit Agreement, the L/C Applications and the Letters of Credit. Grantor agrees that the lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of the Trustee or Beneficiary and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Trustee or Beneficiary of any security for or guarantees upon any of the indebtedness hereby secured, or by any failure, neglect or omission on the part of the Trustee or Beneficiary to realize upon or protect any of the indebtedness hereby secured or any security therefor including the Other Security Documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromises, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the indebtedness hereby secured or of any of the collateral security therefor, including, without limitation, the Other Security Documents or of any guarantee thereof, and the Trustee or Beneficiary may at their discretion foreclose, exercise any power of sale, or exercise any other remedy available to them under any or all of the Other Security Documents without first



exercising or enforcing any of its rights and remedies hereunder. Such exercise of Trustee's or Beneficiary's rights and remedies under any or all of the Other Security Documents shall not in any manner impair the indebtedness hereby secured, except to the extent of its reduction by payment, or the lien of this Deed of Trust and any exercise of the rights or remedies of Trustee or Beneficiary hereunder shall not impair the lien of any of the Other Security Documents or any of Trustee's or Beneficiary's rights and remedies thereunder. Grantor specifically consents and agrees that Beneficiary may exercise its rights and remedies hereunder and under the Other Security Documents separately or concurrently and in any order that it may deem appropriate.

43. *Continuance of Existing Liens.* Grantor has heretofore executed and delivered to the Trustee and the Beneficiary the Existing Deed of Trust. The Grantor hereby agrees that, notwithstanding the execution and delivery hereof, the Existing Deed of Trust (as amended and restated hereby) shall be and remains in full force and effect for the benefit and security of the indebtedness hereby secured and that any rights and remedies of the Trustee and the Beneficiary thereunder, obligations of the Grantor thereunder and any liens or security interests created or provided for thereunder shall be and remain in full force and effect for the benefit and security of the indebtedness hereby secured and shall not be discharged hereby, it being specifically understood and agreed that this Deed of Trust shall constitute and be a continuation (as amended and restated hereby) of the rights, remedies, liens and security interests in favor of the Trustee and the Beneficiary, and the obligations of the Grantor to the Trustee and the Beneficiary, in each case which exist under the Existing Deed of Trust. However, to the extent that the Existing Deed of Trust is inconsistent with any terms hereof, the Existing Deed of Trust shall to such extent be deemed amended hereby and this Deed of Trust shall govern and control over any such provisions of the Existing Deed of Trust which are inconsistent with the provisions hereof. No reference to this Deed of Trust need be made in the Existing Deed of Trust or in any other instrument or document making reference to the Existing Deed of Trust, any reference to the Existing Deed of Trust in any of such to be deemed a reference to the Existing Deed of Trust as amended and restated hereby. Nothing contained herein shall in any manner affect or impair the priority of the liens and security interests created and provided for by the Existing Deed of Trust as to the indebtedness which would be secured thereby prior to giving effect to this Deed of Trust.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, Grantor has caused these presents to be signed the day and year first above written.

GRANTOR HEREBY REPRESENTS AND ACKNOWLEDGES THAT THE GRANTOR HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS DEED OF TRUST.

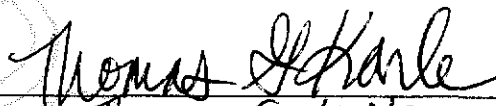
SKAGIT GARDENS, INC

By 

Name Donald R. Ridout
Title CFO

Accepted and Agreed to

HARRIS TRUST AND SAVINGS BANK, as Agent,
as Beneficiary

By 
Name Thomas G. Kane
Title Vice President



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Skagit County Auditor

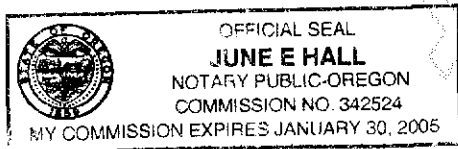
STATE OF OREGON)

COUNTY OF Multnomah)

SS

I, June E. Hall, a Notary Public in and for said County in the State aforesaid, do hereby certify that Ronald R. Ridout, Chief Financial Officer of Skagit Gardens, Inc., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such C. F. O., appeared before me this day in person and acknowledged that he signed and delivered the same instrument as his own free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 26th day of June, 2003.



June E. Hall
Notary Public

June E. Hall
(Type or Print Name)

(SEAL)

Commission expires:

1/30/05



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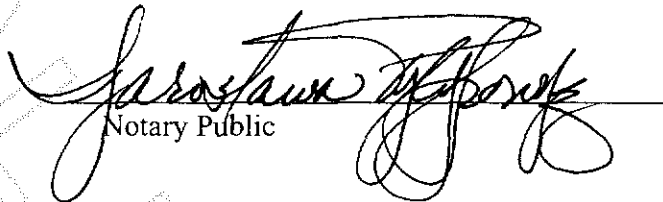
Skagit County Auditor

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, JAROSLAWA PYLYPOWYCZ Notary Public in and for said County in the State aforesaid, do hereby certify that THOMAS G. KARLE, VICE PRESIDENT of Harris Trust and Savings Bank, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he signed and delivered the same instrument as his own free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

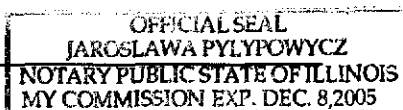
Given under my hand and notarial seal this 27th day of June, 2003.


Notary Public

JAROSLAWA PYLYPOWYCZ
(Type or Print Name)

(SEAL)

Commission expires:



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Skagit County Auditor

SCHEDULE I

PARCEL "A":

LEGAL DESCRIPTION

Lots 2 and 3 of Skagit County Short Plat No. 94-033, approved September 26, 1994, and recorded September 30, 1994, in Volume 11 of Short Plats, pages 121 and 122, under Auditor's File No. 9409300084, records of Skagit County, Washington; being a portion of the North $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

That portion of the North $\frac{1}{4}$ of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at a point on the South line of said North $\frac{1}{4}$ of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, 30 feet East of the Southwest corner thereof, said point being the East line of the State Highway "99" right of way, as said highway existed on January 7, 1954;
thence East along the South line of said North $\frac{1}{4}$ of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, 188 feet;
thence North parallel with the West line of said subdivision, 200 feet;
thence West 188 feet to the East line of said State Highway right of way;
thence South along the East line of said highway right of way, 200 feet to the point of beginning.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

That portion of the North $\frac{1}{4}$ of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 34 North, Range 4 East, W.M., described as follows:



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PARCEL "C" continued:

Beginning at a point on the South line of said North $\frac{1}{2}$ of the South $\frac{1}{4}$ of said Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, 30 feet East of the Southwest corner thereof, said point being on the East line of the State Highway "99" right of way, as said highway existed on January 7, 1954;

thence North along the East line of said State Highway right of way, 200 feet;

thence East 144 feet to the true point of beginning;

thence continue East 44 feet;

thence North parallel to the West line of said Northwest $\frac{1}{4}$, 8.0 feet;

thence West 44 feet;

thence South 8.0 feet to the true point of beginning,

EXCEPT the North 6.13 feet thereof.

Situate in the County of Skagit, State of Washington.

PARCEL "D":

The South 1.87 feet of the West 144.00 feet of that portion of the North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at a point on the East line of the State Highway 200 feet North of the South line of said North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 32;

thence East 144 feet;

thence North parallel to the West line of said Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, 8 feet;

thence East 44 feet, more or less, to a line which is distant 218 feet East of and parallel to the West line of said Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$;

thence North along said parallel line 122 feet, more or less, to the North line of said North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$;

thence West along said North line 188 feet, more or less, to the East line of said State Highway;

thence South along said East line 130 feet to the point of beginning.

Situate in the County of Skagit, State of Washington.



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PARCEL "E":

The South 330 feet of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 34 North, Range 4 East, W.M., EXCEPT Drainage District No. 17 right of way, EXCEPT Old State Highway 99 along the West line thereof, EXCEPT that portion conveyed to the State of Washington for Primary State Highway No. 1 along the East line thereof, by deed dated February 3, 1953, recorded March 12, 1953, under Auditor's File No. 485839, AND EXCEPT that portion, if any, lying within the North $\frac{1}{4}$ of the South $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, ALSO EXCEPT that portion thereof condemned by the State of Washington for highway purposes in Skagit County Superior Court Cause No. 33040.

Situate in the County of Skagit, State of Washington.

PARCEL "F":

The North $\frac{1}{4}$ of the South $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 34 North, Range 4 East, W.M., EXCEPT the West 218 feet thereof, AND EXCEPT that portion thereof conveyed to the State of Washington for highway purposes by deed dated January 29, 1953 and recorded February 12, 1953, under Auditor's File No. 485836, and deed recorded December 21, 1971, under Auditor's File No. 762101, records of said County, AND EXCEPT Drainage Ditch right of way, if any.

Situate in the County of Skagit, State of Washington.

PARCEL "G":

Government Lot 7 of Section 12, Township 34 North, Range 3 East, W.M., and a tract of land in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 13, Township 34 North, Range 3 East, W.M., described as follows:

Beginning at the Northeast corner of said Section 13; thence South $83^{\circ}31'$ West along the North line of said Section 13, a distance of 1,273.6 feet, more or less, to the Northwest corner of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 13; thence South along the West line of said Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, a distance of 160.6 feet;



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PARCEL "G" Continued:

thence South 89°33' East, a distance of 1,275 feet, more or less, to the East line of said Section 13; thence North along the East line of said Section, a distance of 314.8 feet, more or less, to the point of beginning, EXCEPT the East 40 feet of that portion of the subject property lying within Government Lot 7 in Section 12, Township 34 North, Range 3 East, W.M., and as conveyed to Skagit County for road purposes by deed recorded April 5, 1911 in Volume 83 of Deeds, page 536, ALSO EXCEPT the East 40 feet of that portion of the subject property lying within Section 13, Township 34 North, Range 3 East, W.M., as conveyed to John Krangness by deed recorded April 4, 1924, in Volume 132 of Deeds, page 576, ALSO EXCEPT therefrom all rights of ways for Diking District No. 17 and for County roads, AND ALSO EXCEPT the North 2 acres of the West 10 acres of the remainder.

Situate in the County of Skagit, State of Washington.

PARCEL "H":

That portion of Government Lot 6, Section 12, Township 34 North, Range 3 East, W.M., described as follows:

Beginning at the Southwest corner of said Lot; thence North 83°40'02" East 1,193.75 feet along the South line of said Section 12, to a point that is South 83°40'02" West 1,285.18 feet from the Southeast corner of said Section 12 said point being the true point of beginning; thence North 0°19'30" West 204.05 feet; thence South 88°38'19" East 48.51 feet to the East line of said Lot; thence South 0°33'18" West 197.86 feet along said East line to the Southeast corner thereof; thence South 83°40'02" West 45.71 feet along said South line to the true point of beginning.

Being a portion of Lot 2, Short Plat No. 79-80, recorded in Book 5 of Short Plats, page 125, under Skagit County Auditor's File No. 8109110008.

Situate in the County of Skagit, State of Washington.



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