

**WHEN RECORDED RETURN TO:**

**J. Parker Mason**  
**Alston, Courtnage & Bassetti LLP**  
**1000 Second Avenue, Suite 3900**  
**Seattle, WA 98104-1045**



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Skagit County Auditor

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**FIRST AMERICAN TITLE CO.**

76066-2

**Document Title:** Deed of Trust  
**Grantor:** Gumbo Nursery, LLC  
**Grantee:** Powell-Anacortes LLC, a Washington limited liability company

**Legal Description:**

**Abbreviated Legal Description:** 14-35-2 ptn to V LOT 2

**Full Legal Description:** See Exhibit A attached

**Assessor's Tax Parcel Nos.:** P32939

**Reference Nos. of Related Documents:** n/a

**DEED OF TRUST**

THIS DEED OF TRUST is made as of the 20 day of November, 2003, between **GUMBO NURSERY, LLC**, a Washington limited liability company ("**Grantor**"), whose address is 1720 "Q" Avenue, Anacortes, WA 98271; and **FIRST AMERICAN TITLE INSURANCE COMPANY**, as Trustee, whose address is 2101 Fourth Avenue, Suite 800, Seattle, WA 98121; and **POWELL-ANACORTES LLC**, a Washington limited liability company ("**Beneficiary**"), whose address is 737 Market Street, P. O. Box 97070, Kirkland, WA 98033-9770.

1. **CONVEYANCE.** Grantor hereby irrevocably grants, bargains, sells and conveys to Trustee, in trust, with power of sale, all of Grantor's right, title and interest in the real property legally described in Exhibit A attached ("**Property**"), whether now owned or later acquired by Grantor, together with all buildings, structures, improvements, equipment, fixtures and articles of property, now or later attached to, or used or adapted for use in the ownership, operation or maintenance of, the Property; all tenements, hereditaments and appurtenances, now or later in any way appertaining to the Property; and all leasehold interests, rents, payments, issues and profits derived from or in any way connected with the Property. The Property is not used principally for agricultural or farming purposes. This Deed of Trust also constitutes a security agreement under the Uniform Commercial Code granting to Beneficiary a security interest in the property, both

tangible and intangible, described in any UCC Financing Statement filed in connection with the Note or this Deed of Trust.

**THIS DEED OF TRUST IS FOR THE PURPOSE OF SECURING the following (the "Secured Obligations"):**

(a) Payment of the sum of One Hundred Fifty Five Thousand and No/100 Dollars (\$155,000.00), together with interest thereon according to the terms of a Promissory Note of even date herewith, payable to Beneficiary or order and made by Grantor (the "Note", which term shall include all notes evidencing the indebtedness secured by this Deed of Trust, including all renewals, modifications, or extensions thereof);

(b) Payment of any further sums advanced or loaned by Beneficiary to Grantor, or any of its successors or assigns, if (1) the Note or other writing evidencing the future advance or loan specifically states that it is secured by this Deed of Trust or (2) the advance, including costs and expenses incurred by Beneficiary, is made pursuant to this Deed of Trust or any other documents executed by Grantor evidencing, securing, or relating to the Note, whether executed prior to, contemporaneously with, or subsequent to this Deed of Trust (this Deed of Trust, the Note, and such other documents are hereafter collectively referred to as the "Loan Documents"), and regardless of whether the total amount advanced exceeds the face amount of the Note, together with interest thereon at the rate set forth in the Note unless otherwise specified in the Loan Documents or agreed in writing;

(c) Performance of each agreement, term, and condition set forth or incorporated by reference in the Loan Documents which are incorporated herein by reference, or contained herein.

2. **AFFIRMATIVE COVENANTS.** Grantor shall, unless waived in writing by Beneficiary:

(a) **MAINTENANCE OF PROPERTY AND TITLE.** Maintain and preserve the Property in good condition and repair, and not commit or permit any waste thereof; complete any improvement which may be constructed on the Property; restore any improvement which may be damaged or destroyed; and maintain the Property free and clear of all liens and encumbrances other than the encumbrance of this Deed of Trust and any lien for taxes or assessments not delinquent.

(b) **COMPLIANCE WITH LAWS.** Comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property;

(c) **REAL ESTATE INTERESTS.** Perform all obligations to be performed by Grantor under the Contracts;



(d) **PAYMENT OF DEBTS AND TAXES.** Pay promptly all obligations secured by the Property; all taxes, assessments and governmental liens or charges levied against the Property; and all claims for labor, materials, supplies or otherwise which, if unpaid, might become a lien or charge upon the Property. If required by Beneficiary and at the time of making each payment to Beneficiary under the Note, Grantor shall deposit into a non-interest-bearing reserve account with a bank designated by Beneficiary, hereby pledged to Beneficiary as security for the Secured Obligations, a sum estimated by Beneficiary sufficient to pay when due taxes and assessments on the Property and premiums on required insurance;

(e) **INSURANCE.**

(i) **CASUALTY.** Insure continuously with premiums prepaid, with financially sound and reputable insurers acceptable to Beneficiary, any improvements on the Property against all risks, casualties and losses through standard fire and extended coverage insurance or otherwise, including, without limitation, insurance against fire, theft, casualty, vandalism, loss of rents and business interruption and any other risk Beneficiary may reasonably request. The insurance policies shall be in an aggregate amount of not less than the full replacement cost of all improvements on the Property, including the cost of demolition and removal of debris, and shall name Beneficiary as loss payee under a lender loss payable endorsement in form satisfactory to Beneficiary. All deductibles shall be in amounts acceptable to Beneficiary. The amounts collected under the insurance policies may be applied to the Secured Obligations in any manner as Beneficiary determines, and such application shall not cause discontinuance of any proceeding to foreclose upon this Deed of Trust. In the event of foreclosure, all of Grantor's rights in the insurance policies shall pass to purchaser at the foreclosure sale;

(ii) **LIABILITY.** Maintain comprehensive general public liability insurance insuring against liability from risks associated with the use, ownership and operation of the property.

(f) **HAZARDOUS SUBSTANCES.** Notify Beneficiary within 24 hours of any release of a reportable quantity of any Hazardous Substance, or of the receipt by Grantor of any notice, order or communication from any governmental authority which relates to the existence or potential for environmental pollution of any kind existing on the Property, or results from the use of the Property or any surrounding property. Grantor shall indemnify, defend and hold Beneficiary and its successors and assigns harmless from and against any and all claims, demands, penalties, fees, liens, damages, losses, expenses, and liabilities arising out of or in any way connected with any alleged or actual past or future presence on or under the Property of any Hazardous Substance from any cause whatsoever; it being intended that Grantor shall be strictly and absolutely liable to Beneficiary without regard to any fault by Grantor; provided that this indemnification shall not apply to any



Hazardous Substances which originated on or under the Property after the date Beneficiary or any third party acquires fee title to the Property by foreclosure or deed in lieu of foreclosure. "**Hazardous Substances**" shall mean any substance or material which may be hazardous to the health or safety of any person; including without limitation any substance or material which is now or hereafter becomes regulated under any federal, state, or local statute, ordinance, rule, regulation or other law relating to environmental protection, contamination or cleanup; and

(g) **SITE VISITS, OBSERVATION AND TESTING.** Permit Beneficiary and its agents and representatives, at any reasonable time, to enter and visit the Property for the purpose of performing appraisals and/or inspecting the Property, taking and removing soil, groundwater and other samples, and conducting tests on any part of the Property.

(h) **COSTS AND EXPENSES.** Pay, reimburse and indemnify Beneficiary for all of Beneficiary's reasonable costs and expenses incurred in connection with the enforcement of Beneficiary's rights and Grantor's obligations under this Deed of Trust, foreclosing upon this Deed of Trust, defending any action or proceeding purporting to affect the rights or duties of Beneficiary or Trustee under this Deed of Trust, or managing the Property and collecting the Payments, including, without limitation, all reasonable attorneys' fees and value of the services of staff counsel, legal expenses, collection costs, costs of title search, and trustee's and receiver's fees.

3. **NEGATIVE COVENANTS.** Grantor shall not, without Beneficiary's prior written consent:

(a) **USE.** Change the present use of the Property or permit or consent to any restriction that would prevent or otherwise impair the use or development of the Property, or permit thereon the generation, processing, storage or disposal of any Hazardous Substance; or

(b) **RESTRICTIONS ON CONVEYANCES.** Transfer or convey any interest in the Property other than leases of space on market terms without options or rights of first refusal to purchase the Property, except transfers by will or intestacy, or transfer a controlling interest in any corporation, partnership or trust the principal purpose of which is ownership of the Property.

4. **EMINENT DOMAIN.** In the event any portion of the Property is taken through eminent domain, the amount of the award to which Grantor is entitled shall be applied to the Secured Obligations.

5. **PROTECTION OF BENEFICIARY'S INTEREST.** If Grantor shall fail to pay any amounts which may become a lien on the Property, pursuant to Section 3.(b), or fail



to maintain adequate insurance on the Property, Beneficiary may at its sole option pay such obligations and/or obtain such insurance.

6. **ADDITIONS TO SECURED OBLIGATIONS.** Any payments made by Beneficiary to cure a default by Grantor shall immediately be deemed added to the Secured Obligations, and shall accrue interest at the highest rate of interest accruing from time to time under the Secured Obligations.

7. **RECONVEYANCE.** Trustee shall reconvey such portion of the Property to the person entitled thereto upon written request of Beneficiary, or upon satisfaction of the Secured Obligations and written request for reconveyance made by Beneficiary or any person interested in the Property, accompanied by Trustee's standard reconveyance fee, which fee shall be Grantor's obligation.

8. **SUCCESSOR TRUSTEE.** In the event of death, incapacity, disability, dissolution, resignation or refusal to act by the Trustee, Beneficiary may appoint a successor trustee and, upon the recording of such appointment in the records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original Trustee.

9. **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, at Beneficiary's option, and at any time without regard to any previous knowledge on Beneficiary's part, constitute a default under the terms of this Deed of Trust, the Note, the Secured Obligations, and all related loan documents:

(a) **NON-PAYMENT OF PRINCIPAL OR INTEREST.** Any payment of principal or interest on the Secured Obligations is not made when due; or

(b) **FAILURE TO PERFORM.** Any tax, assessment, insurance premium, lien, encumbrance or other charge against the Property is not paid when due; or any other term, covenant or agreement of Grantor contained in this Deed of Trust, the Note, or in any other document with Beneficiary, or in which Grantor grants a security interest in the Property, is not promptly performed or satisfied.

10. **REMEDIES UPON DEFAULT.** If any default occurs and is continuing, and subject to any applicable notice and cure period provided for in the Note, Beneficiary may, at its option:

(a) **TERMINATE COMMITMENT.** Terminate any outstanding and unfulfilled commitment to Grantor;



(b) **ACCELERATE.** Declare any or all of the Secured Obligations, together with all accrued interest, to be immediately due and payable without presentment, demand, protest or notice of any kind, all of which are expressly waived by Grantor;

(c) **PAYMENTS.** Pay such sums as may be necessary to obtain a current appraisal, to inspect and test the Property, and to pay any tax, assessment, insurance premium, lien, encumbrance or other charge against the Property, all without prejudice to Beneficiary's right to accelerate the Secured Obligations and foreclose upon this Deed of Trust. Grantor shall reimburse Beneficiary upon demand, for all such amounts paid by Beneficiary, with interest thereon from the date of such payment at the highest rate that is, from time to time, applicable on any of the Secured Obligations. All unreimbursed amounts shall be added to and become a part of the Secured Obligations;

(d) **COLLECTION OF PAYMENTS.** Terminate the license granted to Grantor to collect the Payments; take possession of, manage and operate the Property under the terms of the Contracts; and demand and collect all Payments, including endorsing any check, draft or other instrument given as payment, either by itself or through an agent or judicially-appointed receiver. The Payments shall be applied first to payment of the costs of managing the Property and collecting the Payments, and then to the Secured Obligations;

(e) **TRUSTEE'S SALE.** Direct the Trustee, upon written request, to sell the Property and apply the sale proceeds in accordance with Washington's Deed of Trust Act (RCW §61.24.010, *et seq.*). Any person, except Trustee, may bid at the Trustee's sale; and

(f) **OTHER REMEDIES.** Pursue all other available legal and equitable remedies, including, without limitation, foreclosing upon this Deed of Trust as a mortgage.

Grantor expressly waives any defense or right, in any action or proceeding in connection with the Secured Obligations, that Beneficiary must first resort to any other security or person.

11. **WAIVER.** No waiver by Beneficiary of any deviation by Grantor from full performance of this Deed of Trust or the Secured Obligations, as the case may be, shall constitute a waiver of Beneficiary's right to require prompt payment or to assert any other right or remedy provided for in this Deed of Trust or the Secured Obligations on the basis of the same or similar failure to perform.

12. **SUCCESSORS AND ASSIGNS.** This Deed of Trust inures to the benefit of and is binding upon the respective heirs, devisees, legatees, administrators, executors, successors and assigns of the parties hereto.

[Grantor's signature on Page 7]  
**GRANTOR:**



**GUMBO NURSERY, LLC**

By Patricia E. Stahl  
Its MANAGING MEMBER

UNOFFICIAL DOCUMENT



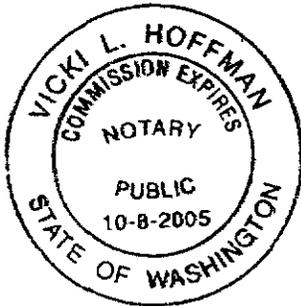
200311240051  
Skagit County Auditor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

On this 20TH day of NOVEMBER, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared PATRICIA STRAND, known to me to be the MANAGING MEMBER of **GUMBO NURSERY, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Vicki L. Hoffman  
Signature

VICKI L. HOFFMAN  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at ANACORTES  
My commission expires 10-8-05.



REQUEST FOR FULL RECONVEYANCE

To be used only when all obligations have been paid  
under the Note and this Deed of Trust

TO TRUSTEE:

The undersigned is the legal owner and holder of the Note and the obligations secured by this Deed of Trust. All obligations under the Note and this Deed of Trust have been paid or otherwise satisfied and you are hereby requested and directed to reconvey, without warranty, to the person or persons entitled thereto, all of the estate now held by you hereunder.

Dated \_\_\_\_\_

Mail reconveyance to: \_\_\_\_\_



Exhibit "A"

The land referred to in this report/policy is situated in the State of Washington, County of Skagit, and is described as follows:

That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at a point on the North side of 18th Street produced in the City of Anacortes, Skagit County, Washington, according to the original plat of said City on file and of record in the Office of the Auditor of Skagit County, Washington, and 90.00 feet East of the East line of Commercial Avenue; thence running South 180.00 feet; thence running East, 85.00 feet; thence running North to the West line of the right-of-way of the Seattle and Montana Railway (now Great Northern Railroad); thence running Northwesterly along the said right-of-way to a point due East of the place of beginning; thence West to the point of beginning.

EXCEPT that portion described as follows:

Beginning at the intersection of the North line of 18th Street, if produced Easterly from 18th Street as shown on the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington, and the East line of Commercial Avenue; thence North along the East line of Commercial Avenue, 63.00 feet; thence East parallel with the North line of 18th Street produced, a distance of 70.00 feet; thence South parallel with the East line of Commercial Avenue, 63.00 feet to the North line of 18th Street produced; thence West along the North line of 18th Street produced, a distance of 70.00 feet to the point of beginning.

AND EXCEPT that portion conveyed to the City of Anacortes by instrument recorded May 12, 1999, under Skagit County Auditor's File No. 9905120020.

(The above described property delineated as a portion of that Survey filed in Volume 15 of Surveys, at pages 45 and 46, and recorded December 1, 1993, under Auditor's File No. 9312010077, all records of Skagit County, Washington).



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