



200403260091

Skagit County Auditor

3/26/2004 Page 1 of 24 3:10PM

**CHICAGO TITLE CO.**

IC 30311 ✓

This Instrument Was Prepared By  
And After Recording Please Return To:

LOTS 2-8 & 16-19, BLOCK 3,  
STEWART'S FIRST ADD. TO ANA  
P60416, P60417, P60420, P60421,  
P60422, P58104, P58105

Michael J. Wolfe  
Meltzer, Purtill & Stelle LLC  
1515 E. Woodfield Road, 2nd Floor  
Schaumburg, IL 60173

**MORTGAGE**

**Anacortes, Skagit County, Washington**

THIS MORTGAGE is made as of the 19th day of March, 2004, by **SAN JUAN NH PROPERTY, L.L.C.**, a Delaware limited liability company ("Borrower"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("Lender"):

**RECITALS:**

A. Lender has agreed to loan to Borrower the principal amount of \$900,000.00 (the "Loan"). The Loan shall be evidenced by a certain Term Note of even date herewith (the "Note") made by Borrower payable to Lender.

B. A condition precedent to Lender's extension of the Loan to Borrower is the execution and delivery by Borrower of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

Borrower hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, the real estate legally described on Exhibit A attached hereto (the "Real Estate"), including all rights, interests and privileges appertaining to land beneath the surface and all air rights to space above the surface, together with the other property described in the following paragraph (the Real Estate and such other property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Note or any of the other Loan Documents (as defined

in the Note) and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefitting Lender which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement of Lender for any and all sums expended or advanced by Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein.

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements now or hereafter constructed or erected upon or located on or under the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, revenue, proceeds, profits, security deposits and all accounts relating to the Premises and all other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Borrower may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and all proceeds thereof, now or hereafter located thereon or therein and which is owned by Borrower. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed also to be a Security Agreement under the Uniform Commercial Code of the States of Illinois and Washington (the "Code") for purposes of granting a security interest in such property, which Borrower hereby grants to Lender, as secured party (as defined in the Code).

TO HAVE AND TO HOLD the Premises unto Lender, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

**IT IS FURTHER UNDERSTOOD AND AGREED THAT:**

1. **Title.** Borrower represents, warrants and covenants that (a) Borrower is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances of record (the "Permitted Exceptions"); and (b) Borrower has legal power and authority to mortgage and convey the Premises.

2. **Maintenance; Repair and Restoration of Improvements; Payment of Prior Liens.** Borrower shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in



good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Borrower shall have the right to contest by appropriate proceedings the validity or amount of any such lien if and only if Borrower shall, within fifteen days after the filing thereof, (i) place a bond with Lender in an amount, form, content and issued by a surety reasonably acceptable to Lender for the payment of any such lien or (ii) cause the title company which has issued the loan policy of title insurance to Lender insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Lender; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no material alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Lender; (g) not suffer or permit any change in the general nature of the occupancy of the Premises without the prior written consent of Lender; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of Lender; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms of the Note and the other Loan Documents; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note and in the other Loan Documents on the part of Borrower to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Lender thereunder, and all other sums at any time secured by this Mortgage.

3. **Payment of Taxes and Assessments.** Borrower shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest is assessed, and, at the request of Lender, shall furnish to Lender duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Borrower shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Borrower shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Borrower shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Lender, insuring over any exception created by such protest.

4. **Tax Deposits.** Upon the occurrence of an Event of Default, Borrower covenants to deposit with Lender on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of 100% of the annual taxes and assessments (general and special) on the Premises, as reasonably determined by Lender. If requested by Lender, Borrower shall also deposit with Lender an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on



which the next installment of annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full such installment of annual taxes and assessments, as estimated by Lender. Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments on the Premises next due and payable when they become due. Lender may, at its option, pay such taxes and assessments when the same become due and payable (upon submission of appropriate bills therefor from Borrower) or shall release sufficient funds to Borrower for the payment thereof. If the funds so deposited are insufficient to pay any such taxes or assessments for any year (or installments thereof, as applicable) when the same shall become due and payable, Borrower shall, within ten days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments in full. If the funds so deposited exceed the amount required to pay such taxes and assessments for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Lender.

5. **Lender's Interest In and Use of Deposits.** Upon the occurrence of an Event of Default, Lender may, at its option, apply any monies at the time on deposit pursuant to Paragraph 4 hereof toward any of the indebtedness secured hereby in such order and manner as Lender may elect. When such indebtedness has been fully paid, any remaining deposits shall be returned to Borrower. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall not be subject to the direction or control of Borrower. Lender shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Borrower, prior to the occurrence of an Event of Default, shall have requested Lender in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such taxes, assessments and insurance premiums. Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. **Insurance.**

(a) Borrower shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, including without limitation: (i) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation protection endorsements; (ii) if there are tenants under leases at the Premises, rent and rental value or business loss insurance for the same perils described in clause (i) above payable at the rate per month and for the period specified from time to time by Lender; (iii) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Lender, if and so long as the Premises shall contain a boiler and/or sprinkler system, respectively; (iv) if the Premises are located in a flood hazard area, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (v) such other insurance as Lender may from time to time require. Borrower also shall at all times maintain comprehensive public liability, property damage and workmen's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Lender may require. Borrower shall be the named insured under such policies and Lender shall be identified as an additional insured



party. All policies of insurance to be furnished hereunder shall be in forms, with companies, in amounts and with deductibles reasonably satisfactory to Lender, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Lender, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty days prior written notice to Lender and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Lender. Borrower shall deliver all policies, including additional and renewal policies, to Lender, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty days prior to their respective dates of expiration.

(b) Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Lender is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Lender and such separate insurance is otherwise acceptable to Lender.

(c) In the event of loss, Borrower shall give immediate notice thereof to Lender, who shall have the sole and absolute right to make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender (rather than to Borrower and Lender jointly). Lender shall have the right, at its option and in its sole discretion, to apply any insurance proceeds so received after the payment of all of Lender's expenses, either (i) on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable, whereupon Lender may declare the whole of the balance of indebtedness hereby secured to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. If insurance proceeds are delivered to Borrower by Lender as hereinafter provided, Borrower shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event Lender permits the application of such insurance proceeds to the cost of restoration and repair of the Premises, any surplus which may remain out of said insurance proceeds after payment of such costs shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. In the event of foreclosure of this Mortgage, all right, title and interest of Borrower in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. At the request of Lender, from time to time, Borrower shall furnish Lender, without cost to Lender, evidence of the replacement value of the Premises.

7. **Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, is hereby assigned to Lender, who is empowered to collect and receive the same



and to give proper receipts therefor in the name of Borrower and the same shall be paid forthwith to Lender. Such award or monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking Lender may declare the whole of the balance of the indebtedness hereby secured to be due and payable.

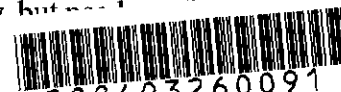
8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Borrower, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Borrower covenants and agrees to pay such tax in the manner required by any such law. Borrower further covenants to reimburse Lender for any sums which Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise taxes of Lender.

9. **Lease Assignment.** Borrower acknowledges that, concurrently herewith, Borrower is delivering to Lender, as additional security for the repayment of the Loan, an Assignment of Rents (the "Assignment") pursuant to which Borrower has assigned to Lender interests in the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Borrower agrees to abide by all of the provisions of the Assignment.

10. **Effect of Extensions of Time.** If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Borrower, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation or release.

11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (ii) the imposition upon Lender of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Borrower, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then Borrower, upon demand by Lender, shall pay such taxes or assessments, or reimburse Lender therefor; provided, however, that Borrower shall not be deemed to be required to pay any income or franchise taxes of Lender. Notwithstanding the foregoing, if in the opinion of counsel for Lender it may be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may declare all of the indebtedness secured hereby to be immediately due and payable.

12. **Lender's Performance of Defaulted Acts and Expenses Incurred by Lender.** If an Event of Default has occurred and is continuing, Lender may but need not



or perform any act herein required of Borrower in any form and manner deemed expedient by Lender, (ii) make full or partial payments of principal or interest on prior encumbrances, if any, (iii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, (iv) redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or (v) cure any default of Borrower in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Lender's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Borrower to Lender, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Lender's failure to act shall never be considered as a waiver of any right accruing to Lender on account of any Event of Default. Should any amount paid out or advanced by Lender hereunder, or pursuant to any agreement executed by Borrower in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed By any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. **Lender's Reliance on Tax Bills and Claims for Liens.** Lender, in making any payment hereby authorized: (a) relating to taxes and 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; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. **Event of Default; Acceleration.** Each of the following shall constitute an "Event of Default" for purposes of this Mortgage, if such event or events remain uncured within five (5) days after Lender sends a notice thereof regarding monetary defaults, or within thirty (30) days after Lender sends a notice thereof regarding non-monetary defaults, except for subparagraphs (c), (e) or (g), for which no notice or right to cure shall be given or required:



(a) Borrower fails to pay on the date when due (i) any installment of principal or interest payable pursuant to the Note, or (ii) any other amount payable pursuant to the Note, this Mortgage, or any other mortgage made by Borrower to secure the Note, or any of the other Loan Documents;

(b) Borrower fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower under the Note, this Mortgage, or any other mortgage made by Borrower to secure the Note, or any of the other Loan Documents;

(c) The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage, or any other mortgage made by Borrower to secure the Note, or any of the other Loan Documents or of any statement or certification as to facts delivered to Lender by Borrower or any guarantor of the Note;

(d) an Event of Default under the Note or any of the other Loan Documents;

(e) Borrower or any guarantor of the Note files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Borrower or of all or any substantial part of the property of Borrower or any guarantor of the Note or any of the Premises;

(f) The commencement of any involuntary petition in bankruptcy against Borrower or any guarantor of the Note or the institution against Borrower or any guarantor of the Note of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Borrower or any guarantor of the Note which shall remain undismissed or undischarged for a period of sixty days;

(g) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 27 of this Mortgage; or

(h) Termination of the existing Lease (as defined in the Loan Agreement) or any subsequent leases of the Premises, unless Borrower is not otherwise in default under this Mortgage and, within six (6) months from the date of such termination (during which time Borrower shall cause the affected portions of the Premises to be operated in the same manner as they had been operated), shall either (i) elect to operate the affected portions of the Premises itself or by a reputable operator with sufficient experience to operate the Premises, or (ii) enter into a new lease for a new term equal to or greater than the unexpired portion of the term of the Loan, for a minimum rent which satisfies the Minimum Debt Service Coverage covenant under the Term Loan Agreement of





time to time, and with a substitute tenant which, in the reasonable judgment of Borrower, has sufficient experience to operate the Premises.

If an Event of Default occurs, Lender may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Borrower, with interest thereon from the date of such Event of Default at the Default Rate.

15. **Foreclosure; Expense of Litigation.**

(a) Upon the occurrence of an Event of Default, Lender shall have the right to foreclose the lien hereof to satisfy the obligations secured hereby (or any part thereof) and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if an Event of Default occurs, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Lender shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness. It is further agreed that such sale pursuant to a partial foreclosure shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale in connection therewith, Lender may elect at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the entire secured indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness. In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, environmental audits, property inspections, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the property.



expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon at the Default Rate and shall be secured by this Mortgage.

16. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied in the following order of priority: first, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 above; second, to all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as provided herein or in the other Loan Documents; third, to all principal and interest remaining unpaid on the Note; and fourth, any surplus to Borrower, its successors or assigns, as their rights may appear or to any other party legally entitled thereto.

17. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed shall, upon petition by Lender, appoint a receiver for the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

18. **Lender's Right of Possession in Case of Default.**

(a) At any time after an Event of Default has occurred, Borrower shall, upon demand of Lender, surrender to Lender possession of the Premises. Lender, in its discretion, may, with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts



relating thereto and may exclude Borrower and its employees, agents or servants therefrom, and Lender may then hold, operate, manage, develop and control the Premises, either personally or by its agents, and, in connection therewith but not in limitation thereof, exercise any or all of its rights and remedies set forth in the Loan Documents. Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Lender shall have full power to:

- (i) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same;
- (ii) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (iii) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (iv) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Lender deems are necessary;
- (v) insure and reinsure the Premises and all risks incidental to Lender's possession, operation and management thereof; and
- (vi) receive all of such avails, rents, issues and profits.

19. **Application of Income Received by Lender.** Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Lender may determine:

- (a) to the payment of the operating expenses of the Premises, including cost of management, marketing, sale and leasing thereof (which shall include compensation to Lender and its agent or agents for management and marketing activities, and lease and sales commissions and other compensation and expenses;



200403260091

Skagit County Auditor

purchasers and entering into leases and sales contracts), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any indebtedness secured hereby, including any deficiency which may result from any foreclosure sale.

20. **Rights Cumulative.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

21. **Lender's Right of Inspection.** Lender and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times, and access thereto shall be permitted for that purpose.

22. **Disbursement of Insurance or Eminent Domain Proceeds.**

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty or by a taking under the power of eminent domain, Borrower shall obtain from Lender its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(b) Prior to each payment or application of any insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Premises to the extent permitted in Paragraphs 6 and 7 above (which payment or application may be made, at Lender's option, through an escrow, the terms and conditions of which are satisfactory to Lender and the cost of which is to be borne by Borrower), Lender shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred;

(ii) Either (A) such improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage.



the Permitted Exceptions, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Premises, Borrower has deposited with Lender such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises; and

(iii) Prior to each disbursement of any such proceeds held by Lender in accordance with the terms of this Paragraph 22 for the cost of any repair, restoration or rebuilding, Lender shall be furnished with a statement of Lender's architect (the cost of which shall be borne by Borrower), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Lender and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Lender shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Premises to the extent permitted in Paragraphs 6 and 7 above, there shall have been delivered to Lender the following:

(i) A waiver of subrogation from any insurer with respect to Borrower or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Lender.

(d) In the event Borrower shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed satisfactory by Lender, then Lender, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Borrower. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Loan irrespective of whether such balance is then due and payable.

(e) In the event Borrower commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 22, or Borrower shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed satisfactory by Lender, and if Lender does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.

23. **Release Upon Payment and Discharge of Borrower's Obligations.** Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all indebtedness and other obligations secured hereby, including payment of all reasonable expenses incurred by Lender in connection with the execution of such release.

24. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express courier, addressed in each case as follows:

To Lender: LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attn: Amy K. Hallberg

With copy to: Meltzer, Purtill & Stelle LLC  
1515 E. Woodfield Road, Second Floor  
Schaumburg, IL 60173  
Attn: Michael J. Wolfe, Esq.

To Borrower: San Juan NH Property, L.L.C.  
2 North LaSalle Street, Suite 725  
Chicago, Illinois 60602  
Attn: Zev Karkomi

With copy to: Mason, Silver, Wenk & Mishkin, L.L.C.  
1033 Skokie Blvd., Suite 250  
Northbrook, Illinois 60062  
Attn: Keith Wenk

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

25. **Waiver of Defenses.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

26. **Waiver of Rights.** Borrower hereby covenants and agrees that Borrower shall not apply for or avail itself of any appraisalment, valuation, stay extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter en



enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Borrower, for itself and all who may claim through or under it, waives any claims based on allegations that Lender has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

27. **Transfer of Premises and Other Interests; Further Encumbrance.**

(a) Neither all nor any portion of (i) the Premises or (ii) any interest in Borrower except as permitted under Section 6(q) of the Term Loan Agreement dated of even date herewith, or (iii) any interest of Borrower in the Premises shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of Lender, which consent may be given or withheld in Lender's sole and absolute discretion, and may be conditioned in any manner that Lender desires, including, without limitation, increases in the rate of interest charged on the Loan and payment of assumption fees. Any violation or attempted violation of the provisions of this Paragraph 27 shall be an Event of Default for purposes of all of the Loan Documents.

(b) Any consent by Lender, or any waiver by Lender of an Event of Default under this Paragraph 27 shall not constitute a consent to or waiver of any right, remedy or power of Lender upon a continuing or subsequent Event of Default under this Paragraph 27. Borrower acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 27 shall be void and of no force or effect. Borrower agrees that if any provision of this Paragraph 27 is deemed a restraint on alienation, that such restraint is a reasonable one.

28. **Expenses Relating to Note and Mortgage.**

(a) Borrower will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Lender's attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Borrower shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Borrower recognizes that, during the term of this Mortgage, Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure arrangements, insolvency, housing authority an



kind, to which Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Lender's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Borrower or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Borrower or any of its agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Borrower which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Borrower forthwith upon demand.

29. **Financial Statements.** To the best of Borrower's knowledge, Borrower hereby represents and warrants that the financial statements for Borrower and the Premises previously submitted to Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Borrower or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of Borrower or the Premises from the dates of said financial statements until the date hereof. Borrower hereby covenants that Lender shall be furnished (i) quarterly financial statements for Borrower, Lessee and the Premises promptly upon Lender's reasonable request, all in form, scope and detail satisfactory to Lender and certified by Borrower, and (ii) annual internally prepared financial statements for Borrower, Lessee and the Premises promptly upon Lender's reasonable request, in a form satisfactory to Lender.

30. **Statement of Indebtedness.** Borrower, within seven days after being so requested by Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt





secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

31. **Further Instruments.** Upon request of Lender, Borrower shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

32. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by Lender to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

33. **Indemnity.** Borrower hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in this Mortgage, and Borrower hereby expressly waives and releases any such liability. Borrower shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) (collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Lender in accordance with the terms of this Mortgage; provided, however, that Borrower shall not be obligated to indemnify or hold Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Lender. All costs provided for herein and paid for by Lender shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

34. **Waiver of Rights of Redemption and Reinstatement.** Borrower hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption as may be provided in the Washington Mortgage Foreclosure Law.

35. **Subordination of Property Manager's Lien.** Any property management agreement for the Premises entered into hereafter with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have and shall provide that Lender may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, upon request, shall be recorded with the Recorder of Deeds of "



In addition, if the property management agreement in existence as of the date hereof does not contain a "no lien" provision, Borrower shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

36. **Fixture Filing.** Borrower and Lender agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all "fixtures" (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Lender. For purposes of the foregoing, Lender is the secured party and Borrower is the debtor and the collateral covered by this financing statement shall be all items of property contained within the definition of the "Premises" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

37. **Compliance with Environmental Laws.** In addition to all other provisions of this Mortgage, Borrower, at its cost and expense, shall comply with all laws, and all rules and regulations of any governmental authority ("Agency") having jurisdiction, concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant". Lender and its agents and representatives shall have access to the Premises and to the books and records of Borrower and any occupant of the Premises claiming by, through or under Borrower for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Borrower and all occupants of the Premises claiming under Borrower shall provide to Lender copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to any Agency or as such are received from any Agency. Lender and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Borrower or an occupant claiming by, through or under Borrower or otherwise present on the Premises.

38. **Compliance with Washington Mortgage Foreclosure Law.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Washington Mortgage Foreclosure Law (herein called "WMFL") the provisions of WMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with WMFL.

(b) If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 17 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such re



said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in WMFL to the full extent permitted by law.

39. **Miscellaneous.**

(a) **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Borrower and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Lender, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) **Invalidity of Provisions; Governing Law.** In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Washington.

(c) **Municipal and Zoning Requirements.** Borrower shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower hereby assigns to Lender any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Borrower shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof, nor shall Borrower impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Borrower which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) **Rights of Tenants.** Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Lender. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) **Option of Lender to Subordinate.** At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part, to the lien of any mortgage or other lien with respect to priority of entitlement to insurance proceeds or any condemnation



all leases of all or any part of the Premises upon the execution by Lender of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) **Lender in Possession.** Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Premises by Lender pursuant to this Mortgage.

(g) **Relationship of Lender and Borrower.** Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of their respective businesses, and, without limiting the foregoing, Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of Lender becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(h) **Time of the Essence.** Time is of the essence of the payment by Borrower of all amounts due and owing to Lender under the Note and the other Loan Documents and the performance and observance by Borrower of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(i) **No Merger.** It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Lender acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to \$9,000,000.00.

(k) **Jurisdiction and Venue.** MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF WHITMAN COUNTY, WASHINGTON, OR IF MORTGAGEE INITIATES SUCH ACTION, ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR P/ AGREES THAT SERVICE OF SUCH SUMMON



200403260091

Skagit County Auditor

PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. MORTGAGOR WAIVES ANY CLAIM THAT WHITMAN COUNTY, WASHINGTON IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(1) Waiver of Right to Jury Trial. MORTGAGEE AND MORTGAGOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[Signature Page to Follow]



200403260091

Skagit County Auditor

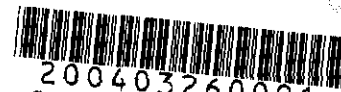
IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

**SAN JUAN NH PROPERTY, L.L.C.**, a Delaware limited liability company

By: Zev Klarkomi  
Zev Klarkomi, Manager

By: Jerold Ruskin  
Jerold Ruskin, Manager

F:\Clients\31595\057 - San Juan NH Property\Draft 2\Mortgage.doc



200403260091  
Skagit County Auditor

3/26/2004 Page 22 of 24 3:10PM

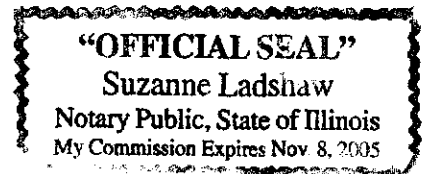
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Suzanne Ladshaw, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Zev Karkomi, a Manager of San Juan NH Property, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 18<sup>th</sup> day of March, 2004.

Suzanne Ladshaw  
NOTARY PUBLIC

(SEAL)



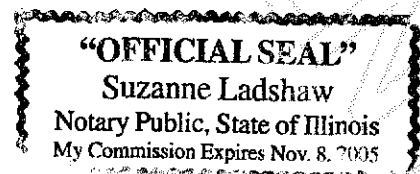
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Suzanne Ladshaw, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jerrold Ruskin, a Manager of San Juan NH Property, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 18<sup>th</sup> day of March, 2004.

Suzanne Ladshaw  
NOTARY PUBLIC

(SEAL)



200403260091  
Skagit County Auditor

**EXHIBIT A**

**Legal Description**

Lots 2 through 7, inclusive, the East 1/2 of Lot 8 and Lots 16 through 19, inclusive, all in Block 3, "STEWART'S FIRST ADDITION TO THE CITY OF ANACORTES, WASH.," as per plat recorded in Volume 2 of Plats, page 14, records of Skagit County, Washington.

Tracts 26 and 27, "NELSON'S ADDITION TO ANACORTES, WASH.," as per plat recorded in Volume 2 of Plats, page 102, records of Skagit County, Washington.

PROPERTY ADDRESS: 911 21st Street, Anacortes, Washington



200403260091

Skagit County Auditor

3/26/2004 Page 24 of 24 3:10PM