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Skagit County Auditor

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LAND TITLE OF SKAGIT COUNTY
After Recording Return to:

Karen Taylor-Lewis, Esq.
Schnader Harrison Segal & Lewis
1600 Market Street
Suite 3600
Philadelphia, Pennsylvania 19103

Document Title or Titles:
Deed of Trust and Security Agreement

Reference Nos. Documents Assigned or Released:
None

Name of Grantor:
Newman Development Group of Burlington, LLC

Name of Grantee:
Land Title Company of Skagit County, Trustee, and Wachovia Bank, National Association,
Beneficiary

Pages referencing additional names:
None

Abbreviated Legal Description:

Lots 2 – 11, inclusive & Lots 13 – 15 inclusive, BU BSP 01-04 in 7-34-4 L W.M.
Lots 13 & 14, BU BSP 01-04 in 7-34-4E W.M.

Additional Legal Description Found On:
Exhibit A

Assessor's Property Tax Parcel Number or Account Number:

8048-000-002-0000/P121437; 8048-000-005-0000/P121440; 8048-000-008-0000/P121443;
8048-000-008-0000/P121446; 8048-000-011-0000/P121450; 8048-000-003-0000/P121438;
8048-000-006-0000/P121441; 8048-000-09-0000/P121444; 8048-000-013-0000/P121448

8048-000-004-0000/P121439; 8048-000-007-0000/P121442; 8048-000-010-0000/P121445;
8048-000-014-0000/P121449

DEED OF TRUST AND SECURITY AGREEMENT

DEED OF TRUST AND SECURITY AGREEMENT dated ~~April~~ ^{May} 3, 2004 (together with any amendments or modifications hereto in effect from time to time, the "**Deed of Trust**"), by **NEWMAN DEVELOPMENT GROUP OF BURLINGTON, LLC**, a Washington limited liability company, having an office at 3101 Shippers Road, Vestal, New York 13850 ("**Trustor**"), to **LAND TITLE COMPANY OF SKAGIT COUNTY**, having an office at 111 East George Hopper Road, Burlington, Washington 98233 ("**Trustee**"), for the benefit of **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association, having an office at PA 1245, 123 South Broad Street, Philadelphia, Pennsylvania 19109 ("**Beneficiary**").

WITNESSETH:

WHEREAS, Trustor is indebted to Beneficiary in the aggregate principal sum of Twenty- Nine Million One Hundred Sixty-Four Thousand Eighty-Eight Dollars (\$29,164,088) (the "**Loan**"), together with interest thereon, as evidenced by a certain Promissory Note dated March 11, 2004 and a certain Promissory Note dated ~~April~~ ^{May} 3, 2004 (collectively, the "**Note**"); and

WHEREAS, Trustor is the owner of fee simple title to those certain tracts of land located in the City of Burlington, County of Skagit, State of Washington, as more particularly described in Schedule "A" attached hereto and made a part hereof (the "**Real Estate**"); and

WHEREAS, to induce Beneficiary to make the Advances of the Loan and to secure payment of the Note and the other obligations described below, Trustor has agreed to execute and deliver this Deed of Trust.

GRANTING CLAUSES

NOW, THEREFORE, to secure to Beneficiary (i) the repayment of all sums due under this Deed of Trust, the Note (and all extensions, renewals, replacements and amendments thereof) and the other Loan Documents (as such term is defined in the Note, the "**Loan Documents**"); (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all sums due or that may become due under or in connection with any present or future swap agreements (as defined in 11 U.S.C. §101) between Trustor and Beneficiary; (iv) the repayment of all reimbursement obligations due or that may become due under or in connection with any present or future letters of credit issued by Beneficiary for the account of Trustor; and (v) all other obligations or indebtedness of Trustor to Beneficiary of whatever kind or character and whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including reasonable attorneys' fees (subsections (i), (ii), (iii), (iv) and (v) collectively, the "**Liabilities**"), Trustor has granted and conveyed and by these presents **DOES HEREBY GRANT, BARGAIN, SELL, DEED, MORTGAGE, ASSIGN, WARRANT, TRANSFER AND CONVEY TO TRUSTEE, ITS SUCCESSORS AND ASSIGNS, in trust**, all of Trustor's right, title and interest now owned or hereafter acquired in and to each of the following (collective)



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(A) The Real Estate;

(B) Any and all buildings and improvements now or hereafter erected on, under or over the Real Estate (the "**Improvements**");

(C) Any and all fixtures, machinery, equipment and other articles of real, personal or mixed property, belonging to Trustor, at any time now or hereafter installed in, attached to or situated in or upon the Real Estate, or the buildings and improvements now or hereafter erected thereon, or used or intended to be used in connection with the Real Estate, or in the operation of the buildings and improvements, plant, business or dwelling situate thereon, whether or not such real, personal or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing (all of the foregoing herein called the "**Service Equipment**"), including without limitation: (i) all appliances, furniture and furnishings; all articles of interior decoration, floor, wall and window coverings; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers and generators; (iii) all building materials, building machinery and building equipment delivered on site to the Real Estate during the course of, or in connection with any construction or repair or renovation of the buildings and improvements; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports and records relating to any of the foregoing;

(D) Any and all leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the "**Leases**"); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Real Estate, Improvements, Service Equipment or all or any other portion of the Property including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents (collectively, the "**Rents**"); all of the following personal property (collectively referred to as the "**Contracts**"): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) of any nature relating to the Real Estate, Improvements, Service Equipment or all or any other portion of the Property or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts and architect's agreements; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon occupancy,



leasing, sale or operation of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property;

(E) Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders and appurtenances of any kind benefiting or appurtenant to the Real Estate, Improvements or all or any other portion of the Property; all means of access to and from the Real Estate, Improvements or all or any other portion of the Property, whether public or private; all streets, alleys, passages, ways, water courses, water and mineral rights relating to the Real Estate, Improvements or all or any other portion of the Property; all rights of Trustor as declarant or unit owner under any declaration of condominium or association applicable to the Real Estate, Improvements or all or any other portion of the Property including, without limitation, all development rights and special declarant rights; and all other claims or demands of Trustor, either at law or in equity, in possession or expectancy of, in, or to the Real Estate, Improvements or all or any other portion of the Property (all of the foregoing described in this subsection E herein called the "**Appurtenances**"); and

(F) Any and all "proceeds" of any of the above-described Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, which term "proceeds" shall have the meaning given to it in the Uniform Commercial Code (the "**Code**") of the State in which the Property is located (collectively, the "**Proceeds**") and shall additionally include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

TO HAVE AND TO HOLD the above granted and conveyed Property unto and to the proper use and benefit of Trustee, its successors and assigns, in fee simple, forever.

IN TRUST, HOWEVER, that if (i) all the Liabilities, including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements secured hereunder, are paid in full, (ii) each and every representation, warranty, agreement and covenant of this Deed of Trust and the other Loan Documents are complied with and abided by, and (iii) any swap agreements secured hereunder have matured or been terminated, then this Deed of Trust and the estate hereby created shall cease and be null and void and canceled of record.

The terms of the Loan Documents are hereby made a part of this Deed of Trust to the same extent and with the same effect as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

AND Trustor covenants and agrees with and represents to Beneficiary as follows:

1. **FUTURE ADVANCES; PROTECTION OF PROPERTY.** This Deed of Trust shall secure any and all present or future advances and readvances under the Liabilities made by Beneficiary to or for the benefit of Trustor or the Property, in



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principal, up to the amount of the Note, interest, late charges, fees and other amounts due under the Liabilities or this Deed of Trust; (b) all advances by Beneficiary to Trustor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Beneficiary for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, and costs incurred by Beneficiary for the enforcement and protection of the Property or the lien of this Deed of Trust; and (d) all reasonable legal fees, costs and other expenses incurred by Beneficiary by reason of any default or otherwise in connection with the Liabilities. Trustor agrees that if, at any time during the term of this Deed of Trust or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Trustor fails to perform or observe any covenant or obligation under this Deed of Trust including, without limitation, payment of any of the foregoing, Beneficiary may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Beneficiary shall be added to the amount secured by this Deed of Trust and the other Loan Documents (and, if advanced after the entry of a judgment of foreclosure, by such judgment of foreclosure), and shall be due and payable on demand, together with interest at the Default Rate set forth in the Note, such interest to be calculated from the date of such advance to the date of repayment thereof.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS.

2.1. **Payment and Performance.** Trustor shall (a) pay to Beneficiary all sums required to be paid by Trustor under the Loan Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions and covenants set forth in each of the Loan Documents by which Trustor is bound; and (c) perform and comply with all of Trustor's material obligations and duties as landlord under any Leases.

2.2. **Seisin and Warranty.** Trustor hereby warrants that (a) Trustor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property; (b) Trustor has the right, full power and lawful authority to grant, convey and assign the same to Trustee in the manner and form set forth herein; and (c) this Deed of Trust is a valid and enforceable first lien on the Property. Trustor hereby covenants that Trustor shall (a) preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Trustee against all lawful claims whatsoever; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Trustee or Beneficiary to protect fully the lien of this Deed of Trust.

2.3. **Insurance.** (a) Trustor shall obtain and maintain at all times throughout the term of this Deed of Trust the following insurance: (i) comprehensive general public liability insurance covering all operations of Trustor; (ii) "All-Risk" fire and extended coverage hazard insurance (non-reporting Commercial Property Policy with Special Cause of Loss form) covering the Property in an aggregate amount not less than 100% of the agreed upon full insurable replacement value of the Property, including coverage for loss of rents or business interruption; (iii) during the course of any construction, reconstruction, remodeling or repair of any Improvements, builders' all-risk extended coverage insurance (non-reporting Completed Value with Special Cause of Loss form) in amounts based upon the completed replacement value



of the Improvements (excluding roads, foundations, parking areas, paths, walkways and like improvements) and endorsed to provide that occupancy by any person shall not void such coverage; (iv) if the Property is required to be insured pursuant to the National Flood Insurance Reform Act of 1994, and the regulations promulgated thereunder, flood insurance in an amount at least equal to the lesser of the agreed upon full insurable replacement value of the Property (less any value attributable to the Real Estate) or the maximum limit of coverage available; (v) insurance which complies with the workers' compensation and employers' liability laws of all states in which Trustor shall be required to maintain such insurance; and (vi) such other insurance as Beneficiary may reasonably require.

(b) Each insurance policy required under this Section shall: (i) be written by an insurance company authorized or licensed to do business in the state within which the Property is located having an Alfred M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than IX; (ii) be for terms of a least one year, with premium prepaid; (iii) be subject to the reasonable approval of Beneficiary as to insurance companies, amounts, content, forms of policies and expiration dates; and (iv) name Beneficiary, its successors and assigns: (1) as an additional insured under all liability insurance policies, and (2) as the first mortgagee, under a standard non-contributory mortgagee clause, on all property insurance policies and all loss of rents or loss of business income insurance policies.

(c) Trustor further agrees that each insurance policy: (i) shall provide at least thirty (30) days' prior written notice to Beneficiary prior to any policy reduction or cancellation for any reason; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Beneficiary in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of setoff, counterclaim, deduction or subrogation against Trustor; and (iv) shall exclude Beneficiary from the operation of any coinsurance clause.

(d) At least thirty (30) days prior to the expiration of any insurance policy, Trustor shall furnish evidence satisfactory to Beneficiary that such policy has been renewed or replaced or is no longer required.

(e) Notwithstanding the foregoing, in the event that Trustor fails to maintain insurance in accordance with this Section 2.3., and Beneficiary elects to obtain insurance to protect its interests hereunder, Beneficiary may obtain insurance in any amount and of any type Beneficiary deems appropriate to protect Beneficiary's interest only and Beneficiary shall have no duty or obligation to Trustor to maintain insurance in any greater amount or of any other type for the benefit of Trustor. All insurance premiums incurred or paid by Beneficiary shall be at Trustor's sole cost and expense in accordance with Section 1 hereof. Beneficiary's election to obtain insurance shall not be deemed to waive any Event of Default (as hereinafter defined) hereunder.

2.4. Taxes and Other Charges. Trustor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Property. Notwithstanding the foregoing, Trustor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in



diligence, the amount or validity of such taxes, assessments, water and sewer rents, or other governmental charges, provided that: (a) Trustor has established on its books or by deposit of cash with Beneficiary, at the option of Beneficiary, a reserve for the payment thereof in such amount as Beneficiary may require; and (b) such contest operates to prevent collection, stay any proceedings which may be instituted to enforce payment of such item, and prevent a sale of the Property to pay such item. Trustor shall promptly provide to Beneficiary, upon request, copies of receipted tax bills, canceled checks or other evidence satisfactory to Beneficiary evidencing that such taxes, assessments, water and sewer rents, and other governmental charges have been timely paid. Trustor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Deed of Trust.

2.5. **Escrows.** If required by Beneficiary after the occurrence of an Event of Default, Trustor shall pay to Beneficiary at the time of each installment of principal and interest due under the Note, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of taxes and assessments levied or assessed against the Property, and/or (b) the premiums which will next become due on the insurance policies required by this Deed of Trust, all in amounts as estimated by Beneficiary, less all sums already paid therefor or deposited with Beneficiary for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Beneficiary to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, as the same become due, Trustor shall pay to Beneficiary, upon request, such additional amounts as Beneficiary shall estimate to be sufficient to make up any deficiency. No amount paid to Beneficiary hereunder shall be deemed to be trust funds but may be commingled with general funds of Beneficiary and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Beneficiary shall have the right, at its sole discretion, to apply any amounts so held against the Liabilities.

2.6. **Transfer of Title.** Without the prior written consent of Beneficiary in each instance, Trustor shall not cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, nor shall Trustor enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Trustor, or any general partner or member of Trustor, is a corporation, partnership, limited liability company or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity; (d) if Trustor, or any general partner or member of Trustor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Trustor leasing all or a substantial part of the Property for other than actual occupancy by a tenant thereunder in the ordinary course of business or a sale, assignment or other transfer of or the grant of a security interest in and to the Property. Leases.



2.7. **No Encumbrances.** Trustor shall not create or permit to exist any mortgage, deed of trust, pledge, lien, security interest (including, without limitation, a purchase money security interest), encumbrance, attachment, levy, distraint or other judicial process on or against the Property or any part thereof (including, without limitation, fixtures and other personalty), whether superior or inferior to the lien of this Deed of Trust, without the prior written consent of Beneficiary. If any lien or encumbrance is filed or entered without Trustor's consent, Trustor shall have it removed of record within fifteen (15) days after it is filed or entered.

2.8. **Removal of Fixtures.** Trustor shall not remove or permit to be removed from the Property any fixtures presently or in the future owned by Trustor as the term "fixtures" is defined by the law of the state where the Property is located (unless such fixtures have been replaced with similar fixtures of equal or greater utility and value).

2.9. **Maintenance and Repair; Alterations.** (a) Trustor shall (i) abstain from and not permit the commission of waste in or about the Property; (ii) keep the Property, at Trustor's own cost and expense, in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements, whether or not insurance proceeds are available therefor; and (iv) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Property. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Deed of Trust.

(b) Beneficiary, and any persons authorized by Beneficiary, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals, in the sole discretion of Beneficiary, the necessity for any repair, alteration, replacement, clean-up or maintenance, Trustor shall, at the discretion of Beneficiary, either: (i) cause such work to be effected immediately; or (ii) promptly establish an interest bearing reserve fund with Beneficiary in an amount determined by Beneficiary for the purpose of effecting such work.

2.10. **Compliance with Applicable Laws.** Trustor agrees to observe, conform and comply, and to cause its tenants to observe, conform and comply with all federal, state, county, municipal and other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Environmental Laws (as defined below) and the Americans with Disabilities Act of 1990 (collectively, the "**Legal Requirements**"), now or hereafter affecting all or any part of the Property, its occupancy or the business or operations now or hereafter conducted thereon and the personalty contained therein, within such time as required by such Legal Requirements. Trustor represents and warrants that it has caused the Property to be designed, and the Property currently is, in compliance with all Legal Requirements applicable to the Property.

2.11. **Damage, Destruction and Condemnation.** (a) If all or any part of the Property shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Property shall be taken or condemned by a competent authority for any public or quasi-public



use or purpose, there shall be no abatement or reduction in the amounts payable by Trustor under the Loan Documents and Trustor shall continue to be obligated to make such payments.

(b) If all or any part of the Property is partially or totally damaged or destroyed, Trustor shall give prompt notice thereof to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Trustor hereby authorizes and directs any affected insurance company to make payment under such insurance, including return of unearned premiums, to Beneficiary instead of to Trustor and Beneficiary jointly, and Trustor appoints Beneficiary as Trustor's attorney-in-fact to endorse any draft thereof, which appointment, being for security, is coupled with an interest and irrevocable until the Loan is paid in full. Beneficiary is hereby authorized and empowered by Trustor to settle, adjust or compromise, in consultation with Trustor, any claims for loss, damage or destruction to the Property. Trustor shall pay all costs of collection of insurance proceeds payable on account of such damage or destruction. Trustor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Beneficiary as security for payment of the Liabilities. Beneficiary shall have the option, in its sole discretion, of paying or applying all or any part of the insurance proceeds to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Property in accordance with Beneficiary's standard construction loan disbursement conditions and requirements; or (iii) Trustor.

(c) Immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of all or any part of the Property, Trustor shall give notice to Beneficiary. Trustor shall, at its sole cost and expense, diligently prosecute any such proceeding and shall consult with Beneficiary, its attorneys and experts, and shall cooperate with it in the defense of any such proceeding. Beneficiary and Trustor may participate in any such proceeding and Trustor shall from time to time deliver to Beneficiary all instruments requested by it to permit such participation. Trustor shall not, without Beneficiary's prior written consent, enter into any agreement (i) for the taking or conveyance in lieu thereof of all or any part of the Property, or (ii) to compromise, settle or adjust any such proceeding. All awards and proceeds of condemnation are hereby assigned to Beneficiary, and Trustor, upon request by Beneficiary, agrees to make, execute and deliver any additional assignments or documents necessary from time to time to enable Beneficiary to collect the same. Such awards and proceeds shall be paid or applied by Beneficiary, in its sole discretion, to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Property in accordance with Beneficiary's standard construction loan disbursement conditions and requirements; or (iii) Trustor.

(d) Nothing herein shall relieve Trustor of its duty to repair, restore, rebuild or replace the Property following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding or replacement.

(e) Notwithstanding the provisions of subparagraphs (b) and (c) above, in the event that all or any part of the Property is damaged by fire or other casualty, and Trustor promptly notifies Beneficiary of its desire to repair and restore the same, then provided that the following terms and conditions are and remain fully satisfied by Trustor, Beneficiary shall disburse insurance proceeds for repair and restoration of the Property against completed work in accordance with the provisions of the Loan Documents; othe



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excess proceeds, Beneficiary shall have the right to apply the proceeds toward reduction of the Liabilities:

(i) no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under any of the Loan Documents shall have occurred;

(ii) Trustor shall have delivered evidence satisfactory to Beneficiary that the Property can be fully repaired and restored at least six (6) months prior to the maturity of the Note;

(iii) no Lease is cancelable or terminable by the tenant or Trustor on account of the casualty or, if it is, the tenant or Trustor, as applicable, has waived in writing its right to cancel;

(iv) the work is performed under a stipulated sum or guaranteed maximum price contract satisfactory to Beneficiary in accordance with plans and specifications and a budget satisfactory to Beneficiary and in compliance with all Legal Requirements;

(v) Trustor shall have deposited with Beneficiary for disbursement in connection with the restoration the greater of: (1) the applicable deductible under the insurance policies covering the loss; or (2) the amount by which the cost of restoration of the Property to substantially the same value, condition and character as existed prior to such damage is estimated by Beneficiary to exceed the net insurance proceeds available for restoration; and

(vi) Trustor has paid as and when due all of Beneficiary's costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering and legal fees. If not paid on demand, and at Beneficiary's option, such costs may be deducted from the disbursements made by Beneficiary or added to the sums secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

2.12. **Required Notices.** Trustor shall notify Beneficiary within three (3) days of: (a) receipt of any notice from any governmental or quasi-governmental authority relating to the structure, use or occupancy of the Property or alleging a violation of any Legal Requirement; (b) a substantial change in the occupancy or use of all or any part of the Property; (c) receipt of any notice from the holder of any lien or security interest in all or any part of the Property; (d) commencement of any litigation affecting or potentially affecting the financial ability of Trustor or the value of the Property; (e) a pending or threatened condemnation of all or any part of the Property; (f) a fire or other casualty causing damage to all or any part of the Property; (g) receipt of any notice with regard to any Release of Hazardous Substances (as such terms are defined below) or any other environmental matter affecting the Property or Trustor's interest therein; (h) receipt of any request for information, demand letter or notification of potential liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Substances on the Property or at any other site owned or operated by Trustor; (i) receipt of any notice from any tenant of all or any part of the Property alleging a default, failure to perform or any right to terminate its lease or to set-off rents; or (j) receipt of any notice of the imposition of



or of threatened or actual execution on, any lien on or security interest in all or any part of the Property.

2.13. **Books and Records; Inspection.** Trustor shall keep and maintain (a) complete and accurate books and records, in accordance with generally accepted accounting principles consistently applied, reflecting all items of income and expense in connection with the operation of the Property, and (b) copies of all written contracts, leases and other agreements affecting the Property. Beneficiary or its designated representatives shall, upon reasonable prior notice to Trustor, have (a) the right of entry and free access to the Property during business hours (which may be without notice in any case of emergency) to inspect the Property, and (b) the right to examine and audit all books, contracts and records of Trustor relating to the Property.

2.14. **Right to Reappraise.** Beneficiary shall have the right to conduct or have conducted by an independent appraiser acceptable to Beneficiary appraisals of the Property in form and substance satisfactory to Beneficiary at the sole cost and expense of Trustor; **provided, however,** that Trustor shall not be obligated to bear the expense of such appraisals so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule or regulation of any governmental authority having jurisdiction over Beneficiary. The cost of such appraisals, if chargeable to Trustor as aforesaid, shall be added to the Liabilities and shall be secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

3. **SECURITY AGREEMENT.** This Deed of Trust constitutes a security agreement and an authenticated document under the Code and shall be deemed to constitute a fixture financing statement. Trustor hereby grants to Beneficiary a security interest in the personal and other property (other than real property) included in the Property, and all replacements of, substitutions for, and additions to, such property, and the proceeds thereof and authorizes Beneficiary, at Trustor's own expense, to file and refile any financing or continuation statements or other security agreements Beneficiary may require from time to time to perfect, confirm or maintain the lien of this Deed of Trust with respect to such property. A photocopy of an executed financing statement shall be effective as an original. Without limiting the foregoing, Trustor hereby irrevocably appoints Beneficiary attorney-in-fact for Trustor to execute, deliver and file such instruments for or on behalf of Trustor at Trustor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable until the Loan is paid in full. With respect to goods that become fixtures after the recording of this Deed of Trust and before the completion of construction of the Improvements, this Deed of Trust is, and shall be construed to be, a "Construction Mortgage" under the Code, and any deed of trust given to refinance this Deed of Trust shall be, and shall be construed to be, a deed of trust given to refinance a construction mortgage.

4. **ASSIGNMENT OF LEASES.**

4.1. Trustor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Beneficiary all of Trustor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Trustor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not prior to accrual, the Rents. Trustor shall receive and hold such Rents in trust as a fund to be



applied, and Trustor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property and the payment of interest, principal and other sums becoming due under the Liabilities, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Trustor shall automatically, without notice or any other action by Beneficiary, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Beneficiary. Nothing contained in this Section 4.1, and no collection by Beneficiary of Rents, shall be construed as imposing on Beneficiary any of the obligations of the lessor under the Leases.

4.2. Trustor shall timely perform all of its obligations under the Leases. Trustor represents and warrants that: (a) Trustor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; (b) no other assignment of any interest in any of the Leases or Rents has been made; (c) there are no leases or agreements to lease all or any portion of the Property now in effect except the Leases, true and complete copies of which have been furnished to Beneficiary, and no written or oral modifications have been made thereto; (d) there is no existing default by Trustor or by any tenant under any of the Leases, nor has any event occurred which due to the passage of time, the giving or failure to give notice, or both, would constitute a default under any of the Leases and, to the best of Trustor's knowledge, no tenant has any defenses, set-offs or counterclaims against Trustor; (e) the Leases are in full force and effect; and (f) Trustor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised.

4.3. Trustor shall not, without the prior written consent of Beneficiary: (a) enter into any lease of all or any portion of the Property; (b) amend, modify, terminate or accept a surrender of any Lease; or (c) collect or accept rent from any tenant of the Property for a period of more than one month in advance. Any of the foregoing acts, if done without the prior written consent of Assignee in each instance, shall be null and void.

5. **DECLARATION OF NO OFFSET.** Trustor represents to Beneficiary that Trustor has no knowledge of any offsets, counterclaims or defenses to the Liabilities either at law or in equity. Trustor shall, within three (3) days upon request in person or within seven (7) days upon request by mail, furnish to Beneficiary or Beneficiary's designee a written statement in form satisfactory to Beneficiary stating the amount due under the Liabilities and whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

6. **ENVIRONMENTAL MATTERS.**

6.1. **Definitions.** As used herein, "**Environmental Laws**" shall mean all existing or future federal, state and local statutes, ordinances, regulations, rules, executive orders, standards and requirements, including the requirements imposed by common law, concerning or relating to industrial hygiene and the protection of health and the environment including but not limited to: (a) those relating to the generation, manufacture, storage, transportation, disposal, release, emission or discharge of Hazardous Substances (as hereinafter defined); (b) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property; and (c) those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about



the Property. Any terms mentioned herein which are defined in any Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

6.2. **Representations, Warranties and Covenants.** Trustor represents, warrants, covenants and agrees as follows:

(a) Neither Trustor nor the Property or any occupant thereof is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to any Environmental Law. Trustor shall not cause or permit the Property to be in violation of, or do anything which would subject the Property to any remedial obligations under, any Environmental Law, and shall promptly notify Beneficiary in writing of any existing, pending or threatened investigation or inquiry by any governmental authority in connection with any Environmental Law. In addition, Trustor shall provide Beneficiary with copies of any and all material written communications with any governmental authority in connection with any Environmental Law, concurrently with Trustor's giving or receiving of same.

(b) To the knowledge of Trustor, which knowledge is based entirely upon the Phase I Environmental Site Assessment for the George Hopper Road Property in Burlington, Washington, prepared by Materials Testing & Consulting, Inc., dated September 5, 2001 and updated on March 3, 2004 (collectively, the "Environmental Report") there has been no release, spill, discharge, leak, disposal or emission (individually a "**Release**" and collectively, "**Releases**") of any Hazardous Material, Hazardous Substance or Hazardous Waste, including gasoline, petroleum products, explosives, toxic substances, solid wastes and radioactive materials (collectively, "**Hazardous Substances**") at, upon, under or within the Property. The use which Trustor or any other occupant of the Property makes or intends to make of the Property will not result in Release of any Hazardous Substances on or to the Property. During the term of this Deed of Trust, Trustor shall take all steps necessary to determine whether there has been a Release of any Hazardous Substances on or to the Property and if Trustor finds a Release has occurred, Trustor shall remove or remediate the same promptly upon discovery at its sole cost and expense.

(c) The Property has never been used by the present owner or, to Trustor's knowledge, the previous owners and/or operators nor will the Property be used in the future to refine, produce, store, handle, transfer, process, transport, generate, manufacture, heat, treat, recycle or dispose of Hazardous Substances. The prior owners of a portion of the land of which the Property is a part and their related entities may have used pesticides, fertilizers, herbicides, insecticides, related products and petroleum products on the land as part of the agricultural use of the land. Trustor has not inquired, investigated or tested for such substances except as set forth in the Environmental Report.

(d) The Property: (i) is being and to Trustor's knowledge, which knowledge is based entirely on the Environmental Report has been operated in compliance with all Environmental Laws, and all permits required thereunder have been obtained and complied with in all respects; and (ii) does not have any Hazardous Substances present excepting small quantities of petroleum and chemical products, in proper storage containers, that are necessary



for the construction or operation of the commercial business of Trustor and its tenants, and the usual waste products therefrom ("**Permitted Substances**").

(e) Trustor will and will cause its tenants to operate the Property in compliance with all Environmental Laws and, other than Permitted Substances, will not place or permit to be placed Any Hazardous Substances on the Property.

(f) No lien has been attached to or threatened to be imposed upon the Property, and to Trustor's knowledge there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. Neither Trustor nor any other person has been, is or will be involved in operations at the Property which could lead to the imposition of environmental liability on Trustor, or on any subsequent or former owner of the Property, or the creation of an environmental lien on the Property. In the event that any such lien is filed, Trustor shall, within (30) days from the date that the Trustor is given notice of such lien (or within such shorter period of time as is appropriate in the event that steps have commenced to have the Property sold), either: (i) pay the claim and remove the lien from the Property; or (ii) furnish a cash deposit, bond or other security satisfactory in form and substance to Beneficiary in an amount sufficient to discharge the claim out of which the lien arises.

6.3. **Right to Inspect and Cure.** Beneficiary shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits and tests as Beneficiary shall deem necessary or advisable from time to time at the sole cost and expense of Trustor; **provided, however**, that Trustor shall not be obligated to bear the expense of such environmental inspections, audits and tests so long as (i) no Event of Default exists, and (ii) Beneficiary has no cause to believe in its sole reasonable judgment that there has been a Release or threatened Release of Hazardous Substances at the Property or that Trustor or the Property is in violation of any Environmental Law. The cost of such inspections, audits and tests, if chargeable to Trustor as aforesaid, shall be added to the Liabilities and shall be secured by this Deed of Trust. Trustor shall, and shall cause each tenant of the Property to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Property. In the event that Trustor fails to comply with any Environmental Law, Beneficiary may, in addition to any of its other remedies under this Deed of Trust, cause the Property to be in compliance with such laws and the cost of such compliance shall be added to the sums secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

7. **EVENTS OF DEFAULT.** Each of the following shall constitute a default (each, an "**Event of Default**") hereunder:

7.1. Non-payment when due of any sum required to be paid to Beneficiary under any of the Loan Documents, including without limitation, principal and interest, subject to any applicable grace period contained therein;

7.2. A breach of any covenant contained in Sections 2.6. or 2.7;

7.3. A breach by Trustor of any other term, covenant, condition, obligation or agreement under this Deed of Trust, and the continuance of such breach for a period of fifteen (15) days after written notice thereof shall have been given to Trustor;

7.4. An Event of Default under any of the other Loan Documents;

7.5. Any representation or warranty made by Trustor or by any Guarantor in any Loan Document or to induce Beneficiary to enter into the transactions contemplated hereunder shall prove to be false, incorrect or misleading in any material respect as of the date when made;

7.6. The filing by or against Trustor or any Guarantor of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Trustor or any Guarantor; the appointment of a custodian, receiver, liquidator or trustee for Trustor or any Guarantor or for any of the property of Trustor or such Guarantor, or any action by Trustor or any Guarantor to effect any of the foregoing; or if Trustor or any Guarantor becomes insolvent (however defined) or is not paying its debts generally as they become due;

7.7. The dissolution, liquidation, merger, consolidation or reorganization of Trustor, or the institution of any proceeding to effect any of the foregoing;

7.8. A default under any other obligation by Trustor or any Guarantor in favor of Beneficiary, including obligations arising under swap agreements (as defined in 11 U.S.C. §101), or under any document securing or evidencing such obligation, whether or not such obligation is secured by the Property;

7.9. The filing, entry or issuance of any judgment, execution, garnishment, attachment, distraint or lien against Trustor or any Guarantor or their property, subject to the provisions of Section 2.7 hereof, if applicable; or

7.10. A default under any other obligation secured by the Property or any part thereof.

8. **REMEDIES.** If an Event of Default shall have occurred, Beneficiary may take any of the following actions:

8.1. **Acceleration.** Beneficiary may declare the entire amount of the Liabilities (but excluding any sums due or to become due under any swap agreements (as defined in 11 U.S.C. § 101) unless Beneficiary elects otherwise by written notice to Grantor) immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Beneficiary may charge and collect interest from the date of default on the unpaid balance of the Liabilities, at the Default Rate set forth in the Note.

8.2. **Possession.** Beneficiary may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Beneficiary, in its sole discretion, may elect: the payment of any sums due under any



rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Liabilities. Beneficiary is given full authority to do any act which Trustor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Deed of Trust and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Trustor shall pay monthly in advance to Beneficiary or to any receiver appointed to collect said rents the fair and reasonable rental value for Trustor's use and occupation of the Property, and upon default in any such payment Trustor shall vacate and surrender the possession of the Property to Beneficiary or to such receiver. If Trustor does not vacate and surrender the Property then Trustor may be evicted by summary proceedings.

8.3. **Foreclosure and Sale.** Beneficiary may, after giving to Trustor such notice of default and other notices as may be required by applicable law, (a) direct Trustee to sell (and Trustee is hereby empowered to sell) all or any part of the Property at public auction to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, courtesy or other exemption, all of which are expressly waived by Trustor) at such time and place and upon such terms and conditions as shall be determined by Trustee, in its discretion, in accordance with applicable law or rule of court; (b) elect to foreclose this Deed of Trust pursuant to a judicial foreclosure action; or (c) take such other action at law, equity or by contract for the enforcement of this Deed of Trust and realization on the security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Liabilities, together with all future advances and any other sums due by Trustor in accordance with the provisions of this Deed of Trust, together with interest from the date of default at the Default Rate set forth in the Note and all expenses of sale and of all proceedings in connection therewith, including reasonable Trustee's fees (not to exceed the maximum fee allowed by law) and reasonable attorneys' fees. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the Default Rate. Any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by Trustee of less than the whole of the Property shall not exhaust the right to sell any remainder of the Property and Trustee is specifically empowered to make a successive sale or sales until the whole of the Property shall be sold; and if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Liabilities, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made. Beneficiary may bid and become the purchaser at any sale under this Deed of Trust. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and Trustee shall sell the Property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. In case of a sale under this Deed of Trust, the Property, including the fixtures and the Personal Property, may be sold in one parcel. Any person except Trustee may bid at the Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a Trustee's fee and reasonable attorney's fee; (2) to interest due under the Deed of Trust; (3) to principal due under this Deed of Trust; (4) the surplus, if any, shall be distributed either to the persons entitled thereto or such surplus, less the clerk's filing fee, shall be deposited with the clerk of the Superior Court as provided by law. Trustee shall deliver to the purchaser at the sale its deed without warranty, which shall convey to the purchaser the interest



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had or has the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of trust as a mortgage.

8.4. **Judicial Foreclosure.** With respect to all or any part of the Property, Beneficiary shall have the right, in lieu of foreclosure by power of sale, to foreclose by judicial foreclosure in accordance with and to the full extent provided by Washington law.

8.5. **Appointment of Receiver.** Beneficiary may petition a court of competent jurisdiction to appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Trustor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Trustor has committed waste or allowed deterioration of the Property, and Beneficiary or any agent of Beneficiary may be appointed as such receiver. Trustor hereby agrees that Beneficiary has a special interest in the Property and absent the appointment of such receiver the Property shall suffer waste and deterioration and Trustor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Beneficiary pursuant to Section 8.2 above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Property during such period.

8.6. **Rights as a Secured Party.** Beneficiary shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Code. Beneficiary may elect to foreclose such of the Property as then comprise fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Code. To the extent permitted by law, Trustor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

8.7. **Excess Monies.** Beneficiary may apply on account of the Liabilities any unexpended monies still retained by Beneficiary that were paid by Trustor to Beneficiary: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Trustor.

8.8. **Other Remedies.** Beneficiary shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Trustor under the terms of this Deed of Trust, as they become due, without regard to whether or not any other Liabilities shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for any default by Trustor existing at the time the earlier action was commenced. In addition, Beneficiary shall have the right to set-off all or any part of any amount due by Trustor to Beneficiary under any of the Liabilities, against any indebtedness, liabilities or obligations owing by Beneficiary in any capacity to



obligation to disburse to Trustor any funds or other property on deposit with or otherwise in the possession, control or custody of Beneficiary. To the extent permitted by applicable law, Trustor hereby waives any and all rights to have the Property marshaled.

9. **MISCELLANEOUS.**

9.1. **Substitute Trustee.** Beneficiary may, at any time and from time to time, without notice, at the Beneficiary's discretion, remove Trustee and appoint a substitute trustee (the "**Substitute Trustee**") by filing in the records where this Deed of Trust is recorded an instrument affecting such removal and appointment. A Substitute Trustee shall be vested with title to the Property and with all rights, powers, and duties of the original Trustee herein and all provisions hereof pertaining to the Trustee shall similarly affect any Substitute Trustee. The necessity of Trustee, or any Substitute Trustee, making oath or giving bond is expressly waived.

9.2. **Notices.** Except as otherwise required by statute, all notices and communications under this Deed of Trust shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in this Deed of Trust. Notice shall be deemed to have been given and received: (a) if by hand delivery, upon delivery; (b) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (c) if by overnight courier, on the date scheduled for delivery (but if such is not a business day, then on the next business day thereafter). A party may change its address by giving written notice to the other party as specified herein.

9.3. **Remedies Cumulative.** The rights and remedies of Beneficiary as provided in this Deed of Trust or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Beneficiary at law or in equity. The failure, at any one or more times, of Beneficiary to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Deed of Trust or the rights of Beneficiary.

9.4. **No Implied Waiver.** Beneficiary shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Beneficiary, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

9.5. **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Deed of Trust shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.



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9.6. **Binding Effect.** The covenants, conditions, waivers, releases and agreements contained in this Deed of Trust shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Deed of Trust cannot be assigned by Trustor without the prior written consent of Beneficiary, and any such assignment or attempted assignment by Trustor shall be void and of no effect with respect to Beneficiary.

9.7. **Modifications.** This Deed of Trust may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.8. **Commercial Loan.** Trustor represents and warrants that the loans or other financial accommodations included as Liabilities secured by this Deed of Trust were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

9.9. **Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the substantive laws of the State of Washington without reference to conflict of laws principles.

9.10. **Non-Agricultural.** The property which is the subject of this Deed of Trust (the Trust Estate) is not used principally for agricultural purposes.

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IN WITNESS WHEREOF, Trustor, intending to be legally bound, has duly executed and delivered this Deed of Trust and Security Agreement Note under seal as of the day and year first above written.

BORROWER:

NEWMAN DEVELOPMENT GROUP OF BURLINGTON, LLC

WITNESS:

Pamela C. Walling
Name:
Pamela C. Walling

By:

Marc Newman
Name: Marc Newman
Title: Authorized Member



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STATE OF NEW YORK)
) ss.
COUNTY OF BROOME)

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.

On this 27th day of April, 2004, before me personally appeared Marc Newman, to me known to be the Authorized Member of Newman Development Group of Burlington, LLC, the Trustor that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Authorized Member, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

Pamela C Walling

Notary Public in and for the State of New York
residing at _____

My commission expires: _____

[Typed or Printed Notary Name]

PAMELA C. WALLING
Notary Public, State Of New York
No. 01WA6092883
Licensed In Broome County
My Commission Expires May 27, 2 007



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Exhibit A

Lots 2 – 11, inclusive, and Lots 13 – 15, inclusive, City of Burlington Binding Site Plan No. Burl-01-04, entitled Newman Development of Burlington, LLC, Retail/Commercial Center, approved March 8, 2004 and recorded March 15, 2004 under Skagit County Auditor's File No. 200403150156, and being a portion of Government Lot 8 and the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, Section 7, Township 34 North, Range 4 East, W.M.



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