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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:**

Collateral Assignment of Agreements Affecting Real Estate

**Reference Nos. Documents Assigned or Released:**

None 200405030152

**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

**COLLATERAL ASSIGNMENT OF  
AGREEMENTS AFFECTING REAL ESTATE**

THIS COLLATERAL ASSIGNMENT OF AGREEMENTS AFFECTING REAL ESTATE, made on <sup>May</sup> ~~April~~ 3, 2004 (together with any amendments or modifications hereto in effect from time to time, the "Assignment"), between **NEWMAN DEVELOPMENT GROUP OF BURLINGTON, LLC**, a Washington limited liability company, with an office at 3101 Shippers Road, P.O. Box 578, Vestal, New York 13851 (hereinafter "**Assignor**") and **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association, having an office at PA 1245, 123 South Broad Street, Philadelphia, Pennsylvania 19109 ("**Assignee**").

**WITNESSETH:**

Assignee has agreed to make a loan (the "**Loan**") to Assignor pursuant to a certain Construction Loan Agreement of even date herewith by and between Assignor and Assignee ("**Loan Agreement**"). The Loan is evidenced by a Mortgage Note of Assignor in the amount of \$29,164,088 (the "**Note**") and is secured by, inter alia, a Deed of Trust and Security Agreement of even date herewith ("**Deed of Trust**") from Assignor to Assignee upon certain real property ("**Premises**") situate in Burlington, Skagit County, Washington, as more particularly described in Exhibit "A" attached hereto. The Loan is further evidenced and secured by other collateral documents by and between Assignee and Assignor. The Loan Agreement, Note, Deed of Trust and other collateral documents described in or accompanying the Loan Agreement are hereinafter sometimes collectively referred to as the "**Loan Documents**". As an additional condition to granting the Loans, Assignee has required Assignor to execute and deliver this Assignment.

NOW, THEREFORE, in consideration of the Loans, and intending to be legally bound, Assignor hereby covenants, agrees, warrants, represents, assigns, sets over and transfers with and to Assignee as set forth herein:

1. **Grant of Assignment.** Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor's right, title, privileges and interest in and to the "**Additional Collateral**" (as hereinafter defined), and all rights and benefits therefrom as security for the full, timely and faithful repayment by Assignor of the Loan and performance by Assignor of all of its obligations under the Loan Documents to the fullest extent permitted by law and by the terms of the Additional Collateral.

2. **Additional Collateral Defined.** The following constitute the "**Additional Collateral**" hereby assigned, transferred and set over to Assignee:

2.1. All licenses, permits, approvals, certificates and agreements with or from all boards, agencies, departments, authorities and commissions, whether governmental or quasi-governmental (hereinafter collectively referred to as "**Governmental Authorities**"), relating directly or indirectly to the ownership, use, operation and maintenance of the Premises, the "**Improvements**" (as defined in the Loan Agreement) or the construction, use, development, renovation and installation of the Improvements, whether heretofore or hereafter issued or executed (collectively the "**Licenses**").

2.2. All contracts, subcontracts, agreements, service agreements, rights, warranties and purchase orders which have heretofore been or will hereinafter be executed by or on behalf of Assignor, or which have been or will hereafter be assigned to Assignor, as well as all promotional sales and/or marketing materials, products or documents in connection with or relating to the development, construction, renovation or improvement of the



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sale and maintenance of the Premises. All of such contracts, agreements and other items referred to in this Section 2.2 and in Sections 2.3 and 2.4 below are hereinafter referred to as the "**Contracts**", and the parties with whom or to whom such Contracts have been or are given are hereinafter collectively referred to as the "**Contractors**".

2.3. All other Contracts, including without limitation architects' and engineers' agreements, development agreements and management agreements, if any, and all plans and specifications prepared for Assignor with respect to the construction of any improvements on the Premises.

2.4. All and any agreements of purchase and sale between Assignor and a bona fide third party, now existing or hereafter made, for all or any portion or portions of the Premises, as such agreements of purchase and sale may have been, or may from time to time be hereafter, modified or extended.

3. **License to Use.** Until the occurrence of an "**Event of Default**" (as defined below), Assignor may retain, use and enjoy Assignor's benefits of the Additional Collateral. After the occurrence of an Event of Default as aforesaid, Assignee may enforce this Assignment immediately without notice to Assignor. The affidavit or written statement of an officer, agent or attorney of Assignee stating that there has been an Event of Default shall constitute sufficient evidence thereof, and any of the Governmental Authorities and Contractors or any other person are authorized and directed to rely thereon, and Assignor hereby agrees to hold each Governmental Authority and Contractor harmless against all claims, losses, damages, costs and expenses (including reasonable attorney's fees) incurred by them as a result of such reliance.

4. **Covenant to Perform.** Assignor agrees faithfully to observe and perform all of the obligations and agreements imposed upon it under, and to satisfy all conditions contained in, the Licenses and Contracts. From and after the date hereof, no License may be altered, amended or cancelled, by Assignor, except with the prior written approval of Bank, and no Contract may be amended, cancelled or executed by Assignor, other than in the ordinary course of Assignor's business without the prior written approval of Lender, subject to such other limitations as may be provided for in the Loan Documents.

5. **No Assumption by Assignee.** Assignee will not be deemed in any manner to have assumed any of the Additional Collateral, nor shall Assignee be liable to Governmental Authorities or Contractors by reason of any default by any party under the Licenses or Contracts, unless and until Assignee expressly in writing assumes an obligation or obligations. Assignor indemnifies and agrees to hold Assignee harmless of and from any and all liability, loss or damage (including, without limitation, reasonable attorneys' fees) which it may or might incur by reason of any claims or demands against Assignee based on Assignee's alleged assumption of Assignor's duties or obligations to perform and discharge the terms, covenants and agreements in said Licenses and Contracts. Nothing herein contained, and no action taken by Assignee pursuant to this Agreement, shall be construed as (i) making Assignee a mortgagee in possession, (ii) a waiver or suspension by Assignee of its right to enforce payment of Assignor's indebtedness under the terms of the Loan Documents or (iii) a cure of any Event of Default. Assignee is not the agent, partner, or joint venturer of the Assignor or of any of the Contractors or Governmental Authorities.

6. **Events of Default.** It shall be an "**Event of Default**" hereunder if:

6.1. Assignor shall default in the performance of any of its covenants or agreements hereunder and such default shall continue for a period of fifteen (15) business days after Assignee has given notice in writing of such default to Assignor; provided that if such default is susceptible to being cured but cannot reasonably be cured within such period.



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not be an Event of Default if Assignor commences such cure within such fifteen (15) day period and thereafter diligently seeks to cure such default.

6.2. Assignor has made or hereafter makes a material misrepresentation under this Agreement; or

6.3. There shall have occurred an "Event of Default" as defined in any of the Loan Documents.

Any Event of Default hereunder shall constitute an Event of Default under the Loan Documents.

7. **Remedies.** After the occurrence of an Event of Default:

7.1. Assignee may elect to exercise any and all of the rights and remedies of Assignor with respect to the Additional Collateral, without any interference or objection from Assignor, and Assignor shall cooperate in causing the Contractors to comply with all the terms and conditions of the Contracts.

7.2. If and to the extent permitted by law, Assignee may, with or without entry upon the Premises, at its option, take over and enjoy the benefits of any one or more of the Licenses and Contracts, exercise the rights of Assignor under the Additional Collateral, and perform all acts in the same manner and to the same extent as Assignor might do. In connection with any and all of the foregoing powers, and without limiting the same, Assignee may effect new Contracts and Licenses, cancel or surrender existing Contracts and Licenses, alter and amend the terms of and renew existing Contracts and Licenses, and make reasonable concessions to Governmental Authorities and Contractors. Assignor hereby releases any and all claims which it has or might have against Assignee arising out of such performance by Assignee, unless arising from a willful default under or breach of such Contract or License caused by Assignee.

7.3. This Assignment may be enforced from time to time by Assignee in its discretion, with or without order of any court and with or without appointment of a receiver, as Assignee shall determine, provided an Event of Default has occurred. Assignee may also at any time cease to enforce this Assignment. Any failure on the part of Assignee promptly to exercise any right, remedy or power herein given or reserved shall not prevent the exercise of such right, remedy or power at any time thereafter.

8. **Delivery of Contracts and Licenses.** Assignor shall, within ten (10) business days of any written request by Assignee, furnish Assignee with a complete list of all Contracts and Licenses entered into or obtained by Assignor and deliver to Assignee executed or certified copies of all Contracts and Licenses and other written agreements, correspondence and memoranda between Assignor and Contractors or Governmental Authorities setting forth the contractual arrangements between them. To the extent that Assignor does not have executed or certified copies of the foregoing in its possession, it shall deliver copies of those of the foregoing which are in its possession, with a certification that to the best of its knowledge and belief, the documents actually delivered are true and correct copies of the aforesaid original documents. Assignee's requests pursuant to this Section may be made at any time.

9. **Representations and Warranties.** Assignor warrants and represents:

9.1. that it has the right to execute and deliver this Assignment subject to the limitations of law and of the Additional Collateral itself;



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9.2. that it has made no prior assignments of the Additional Collateral, except in favor of Assignee;

9.3. that to the best of its knowledge and belief, after due inquiry, all of the Additional Collateral is in full force and effect on the date hereof and is enforceable by Assignor, subject to no defenses, setoffs or counterclaim whatsoever; and

9.4. as of the date hereof, there exists no event, condition or occurrence which constitutes, or which with notice or the passage of time, or both, would constitute, a breach of or default under any term or condition of any of the Additional Collateral. Assignor hereby covenants and agrees not to do any act which would destroy or impair the security to the Assignee of this Assignment.

10. **MISCELLANEOUS.**

10.1. **Notices.** All notices and communications under this Assignment shall be in writing and shall be given by either (a) hand-delivery, (b) certified first class mail (postage prepaid), return receipt requested or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in the Mortgage. Notice shall be deemed to have been given on the first to occur of delivery or refusal to accept delivery. A party may change its address by giving written notice to the other party as specified herein.

10.2. **Remedies Cumulative.** The rights and remedies of Assignee as provided in this Assignment 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 Assignee at law or in equity. The failure, at any one or more times, of Assignee to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take 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 Assignment or the rights of Assignee.

10.3. **No Implied Waiver.** Assignee shall not be deemed to have waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Assignee, 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.

10.4. **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Assignment 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.

10.5. **Binding Effect.** The covenants, conditions, waivers, releases and agreements contained in this Assignment 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 Assignment cannot be assigned by Assignor without the prior written consent of Assignee in each instance, and any such assignment or attempted assignment by Assignor shall be void and of no effect with respect to Assignee.

10.6. **Modifications.** This Assignment 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.



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10.7. **Governing Law.** This Assignment shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania without reference to conflict of laws principles.

10.8. **Waiver of Jury Trial.** ASSIGNOR AND ASSIGNEE AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY ASSIGNEE OR ASSIGNOR, ON OR WITH RESPECT TO THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. ASSIGNEE AND ASSIGNOR EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY, AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. ASSIGNOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS ASSIGNMENT AND THAT ASSIGNEE WOULD NOT EXTEND CREDIT TO ASSIGNOR IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS ASSIGNMENT.

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IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed under seal on the day and year first above written.

WITNESS:

NEWMAN DEVELOPMENT GROUP OF BURLINGTON,  
LLC, a Washington limited liability company

Pamela C. Walling  
Name:  
Pamela C. Walling

By:

Marc Newman  
Marc Newman, Member



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STATE OF NEW YORK

COUNTY OF BROOME

SS.

On this, the 27<sup>th</sup> day of April, 2004, before me, the undersigned officer, personally appeared Marc Newman, who acknowledged himself/herself to be a Member of NEWMAN DEVELOPMENT GROUP OF BURLINGTON, LLC, a Washington limited liability company, and that he/she as such Member executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself/herself as Member and received a true and correct copy of this instrument and of all other documents referred to therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Pamela C. Walling*  
Notary Public

My Commission Expires:

PAMELA C. WALLING  
Notary Public, State Of New York  
No. 01WA6092883  
Licensed In Broome County  
My Commission Expires May 27, 2007



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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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