



200412280137

Skagit County Auditor

AFTER RECORDING RETURN TO:

12/28/2004 Page

1 of

25 11:21AM

Washington Mutual Bank, a Washington corporation
National Commercial Operations Center
ATTN: MFL Closing
P.O. Box 9011
Coppell, TX 75019-9011

CHICAGO TITLE CO.

Loan No.: 625498151

Order No.: IC 33178 ✓

P25600; P25601, P52631

BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS DEED OF TRUST MAY PROVIDE FOR ONE OR MORE OF THE FOLLOWING: (1) A VARIABLE RATE OF INTEREST; (2) A BALLOON PAYMENT AT MATURITY; (3) DEFERRAL OF A PORTION OF ACCRUED INTEREST UNDER CERTAIN CIRCUMSTANCES WITH INTEREST SO DEFERRED ADDED TO THE UNPAID PRINCIPAL BALANCE OF THE NOTE AND SECURED HEREBY.

**DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS,
AND FIXTURE FILING**

Grantor (Borrower):

Somerset Place, LLC, a Washington limited liability company

Grantee (Lender):

WASHINGTON MUTUAL BANK, A WASHINGTON CORPORATION

Grantee (Trustee):

Chicago Title

Legal Description:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF - Ptn. NE SE, Sec. 17, T34N, R4EWM, Ptn. Tract A CORREDIG ADD. Vol. 7, pg. 14 Additional Legal(s) on Exhibit A

Loan No.: 625498151

Order No.: IC 33178

Assessor's Tax Parcel ID Number: P25600; P25601; P32631

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING ("Deed of Trust") is made this 20th day of December, 2004 among:

Somerset Place, LLC, a Washington limited liability company,

the address of which is 2220 Hickory Drive, Anacortes, WA 98221 ("Grantor"); Chicago Title TITLE INSURANCE COMPANY, the address of which is 425 Commercial St, Mt Vernon, WA 98273 and its successors in trust and assigns ("Trustee"), and WASHINGTON MUTUAL BANK, A WASHINGTON CORPORATION, the address of which is National Commercial Operations Center, P.O. Box 9178, Coppell, Texas 75019-9178, Attention: Portfolio Administration ("Beneficiary").

1. GRANTING CLAUSE. Grantor, in consideration of the acceptance by Trustee of the trust hereunder, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the obligations described in Section 3 below, grants, bargains, sells, assigns and conveys to Trustee and its successors in trust and assigns, forever, in trust, with power of sale, all of Grantor's estate, right, title, interest, claim, and demand in and to the property in the county of Skagit, state of Washington, with a street address of 1516 North 19th Street, Mount Vernon, WA 98273, described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 is herein called the "Property"):

1.1 Land and Appurtenances. The land described on Exhibit A hereto, and all tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances thereto belonging or in any way appertaining, including without limitation all of the right, title and interest of Grantor in and to any avenues, streets, ways, alleys, vaults, strips, or gores of land adjoining that property, all rights to water, water stock, drains, drainage and air rights relating to that property and all claims or demands of Grantor either in law or in equity in possession or expectancy of, in, and to that property; and

1.2 Improvements and Fixtures. All buildings, structures, and other improvements now or hereafter erected on the property described in 1.1 above, and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, inventory, furniture, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with that property, it being the intention of the parties that all property of the character hereinabove described that is now owned or hereafter acquired by Grantor and that is affixed or attached to, stored upon, or used in connection with the property described in 1.1 above shall be, remain, or become a portion of that property and shall be covered by and subject to the lien of this Deed of Trust, together with all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports, and other work products relating to the construction of the existing or any future improvements on the Property, any and all rights of Grantor in, to, or under any architect's contracts or construction contracts relating to the construction of the existing or any future improvements on the Property, and any performance and/or payment bonds issued in connection therewith, together with all trademarks, trade names, copyrights, computer software, and other intellectual property used by Grantor in connection with the Property; and

1.3 Enforcement and Collection. Any and all rights of Grantor without limitation to make claim for, collect, receive, and receipt for any and all rents, income, revenues, issues, royalties, and profits, including mineral, oil, and gas rights and profits, insurance proceeds of any kind (whether or not



Loan No.: 625498151

Order No.: IC 33178

Beneficiary requires such insurance and whether or not Beneficiary is named as an additional insured or loss payee of such insurance), condemnation awards, and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement (including those described in Section 1.2 above) affecting or relating to any of the Property, to bring any suit in equity, action at law, or other proceeding for the collection of such moneys or for the specific or other enforcement of any such agreement, award, or judgment, in the name of Grantor or otherwise, and to do any and all things that Grantor is or may be or become entitled to do with respect thereto, provided, however, that no obligation of Grantor under the provisions of any such agreements, awards, or judgments shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon Trustee or Beneficiary; and

1.4 Accounts and Income. Any and all rights of Grantor in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements, and general intangibles relating to any of the Property, including, without limitation, income and profits derived from the operation of any business on the Property or attributable to services that occur or are provided on the Property or generated from the use and operation of the Property; and

1.5 Leases. All of Grantor's rights as landlord in and to all existing and future leases and tenancies, whether written or oral and whether for a definite term or month to month or otherwise, now or hereafter demising all or any portion of the property described in 1.1 and 1.2 above, including all renewals and extensions thereof and all rents, deposits, and other amounts received or receivable thereunder. In accepting this Deed of Trust neither Beneficiary nor Trustee assumes any liability for the performance of any such lease.

1.6 Books and Records. All books and records of Grantor relating to the foregoing in any form.

2. SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS.

2.1 Security Agreement. To the extent any of the property described in Section 1 is personal property, Grantor, as debtor, grants to Beneficiary, as secured party, a security interest therein together with a security interest in all other personal property of whatsoever nature that is located on or used or to be used in connection with any of the property described in Section 1, and any products or proceeds of any thereof, pursuant to the Uniform Commercial Code of the state of Washington (the "UCC"), on the terms and conditions contained herein. Beneficiary hereby assigns such security interest to Trustee, in trust, for the benefit of Beneficiary to be dealt with as a portion of the "Property" except as otherwise specified herein. Grantor hereby authorizes Beneficiary to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Deed of Trust without Grantor's signature.

2.2 Assignment of Leases and Rents.

(a) **Absolute Assignment.** Grantor hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Beneficiary all of Grantor's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Grantor's interest therein or any



Loan No.: 625498151

Order No.: IC 33178

improvements located thereon, together with any and all security deposits, guarantees of the lessees' or tenants' obligations (including any and all security thereunder) and other security under any such leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Beneficiary the right to collect all the income, rents, issues, profits, royalties and proceeds from the Leases and any business conducted on the Property and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). This Deed of Trust is intended by Beneficiary and Grantor to create and shall be construed to create an absolute assignment to Beneficiary of all of Grantor's right, title and interest in and to the Leases and the Rents and shall not be deemed merely to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as hereinafter defined). Grantor irrevocably appoints Beneficiary its true and lawful attorney at the option of Beneficiary at any time to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Grantor or in the name of Beneficiary, for all such Rents and apply the same to the obligations secured by this Deed of Trust.

(b) **Revocable License to Collect.** Notwithstanding the foregoing assignment of Rents, so long as no Event of Default (as hereinafter defined) remains uncured, Grantor shall have a revocable license, to collect all Rents, and to retain the same. Upon any Event of Default, Grantor's license to collect and retain Rents shall terminate automatically and without the necessity for any notice.

(c) **Collection and Application of Rents by Beneficiary.** While any Event of Default remains uncured, (i) Beneficiary may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Deed of Trust, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts), and (ii) without demand by Beneficiary therefor, Grantor shall promptly deliver to Beneficiary all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Grantor, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Beneficiary may be applied by Beneficiary against the obligations secured by this Deed of Trust, less all expenses, including attorneys' fees and disbursements, in such order as Beneficiary shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Deed of Trust or other action taken by Beneficiary under this Section 2.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Beneficiary a mortgagee-in-possession of the Property.

(d) **Direction to Tenants.** Grantor hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Grantor thereunder to Beneficiary following receipt of any written notice from Beneficiary that states that an Event of Default remains uncured and that all such amounts are to be paid to Beneficiary. Grantor further authorizes and directs all such tenants to pay all such amounts to Beneficiary without any right or obligation to inquire as to the validity of Beneficiary's notice and regardless of the fact that Grantor has notified any such tenants that Beneficiary's notice is invalid or has directed any such tenants not to pay such amounts to Beneficiary.

3. **OBLIGATIONS SECURED.** This Deed of Trust is given for the purpose of securing:



Loan No.: 625498151

Order No.: IC 33178

3.1 Performance and Payment. The performance of the obligations contained herein and the payment of One Million Nine Hundred Sixty Thousand And 00/100 dollars (\$1,960,000.00) with interest thereon and all other amounts payable according to the terms of a promissory note of even date herewith made by Grantor, payable to Beneficiary or order, and any and all extensions, renewals, modifications, or replacements thereof, whether the same be in greater or lesser amounts (the "Note"), which Note may provide for one or more of the following: (a) a variable rate of interest, (b) a balloon payment at maturity or (c) deferral of a portion of accrued interest under certain circumstances with interest so deferred added to the unpaid principal balance of the Note and secured hereby; and

3.2 Future Advances. The repayment of any and all sums advanced or expenditures made by Beneficiary subsequent to the execution of this Deed of Trust for the maintenance or preservation of the Property or advanced or expended by Beneficiary pursuant to any provision of this Deed of Trust subsequent to its execution, together with interest thereon.

3.3 Exclusion From Secured Obligations. Notwithstanding anything to the contrary set forth herein or in any other Loan Document (as hereinafter defined), this Deed of Trust shall not secure the obligations of Grantor under that certain Certificate and Indemnity Agreement Regarding Hazardous Materials dated as of even date herewith made by Grantor in favor of Beneficiary (the "Indemnity Agreement") or the substantial equivalent of the obligations arising under the Indemnity Agreement. All of such obligations (and substantial equivalents thereof) shall constitute the separate, unsecured recourse obligations of Grantor and shall not be deemed to be evidenced by the Note or secured by this Deed of Trust.

4. WARRANTIES AND COVENANTS OF GRANTOR. Grantor warrants, covenants, and agrees:

4.1 Warranties

(a) Grantor has full power and authority to grant the Property to Trustee and warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those appearing of record on the date hereof.

(b) None of the Property is used principally or at all for agricultural or farming purposes.

(c) The Property is free from damage and no matter has come to Grantor's attention (including, but not limited to, knowledge of any construction defects or nonconforming work) that would materially impair the value of the Property as security.

(d) The loan evidenced by the Note and secured by this Deed of Trust is primarily for commercial, industrial, or business purposes and is not primarily for personal, family, or household purposes.

4.2 Preservation of Lien. Grantor will preserve and protect the priority of this Deed of Trust as a first lien on the Property. If Grantor fails to do so, Beneficiary may take any and all steps necessary or appropriate to do so and all sums expended by Beneficiary in so doing shall be treated as part of the obligations secured by this Deed of Trust, shall be paid by Grantor upon demand by



Loan No.: 625498151

Order No.: IC 33178

Beneficiary and shall bear interest at the highest rate borne by any of the obligations secured by this Deed of Trust.

4.3 Repair and Maintenance of Property. Grantor will keep the Property in good condition and repair, which duty shall include but is not limited to continual cleaning, painting, landscaping, repairing, and refurbishing of the Property; will complete and not remove or demolish, alter, or make additions to any building or other improvement that is part of the Property, or construct any new structure on the Property, without the express written consent of Beneficiary; will underpin and support when necessary any such building or other improvement and protect and preserve the same; will complete or restore promptly and in good and workmanlike manner any such building or other improvement that may be damaged or destroyed and pay when due all claims for labor performed and materials furnished therefor; will not commit, suffer, or permit any act upon the Property in violation of law; and will do all other acts that from the character or use of the Property may be reasonably necessary for the continued operation of the Property in a safe and legal manner, the specific enumerations herein not excluding the general.

4.4 Insurance

4.4.1 All Risk/Hazard. Grantor will provide, maintain and deliver to Beneficiary, as further security for the faithful performance of this Deed of Trust, all risk insurance covering fire, casualty and such other hazards as may be specified by Beneficiary (including insurance against flood, if the Property is situated in a designated flood zone) in an amount equal to one hundred percent (100%) of the replacement cost of the Property and including a building upgrade and municipal ordinance endorsement. Such insurance policy or policies shall include rental or business interruption and extra expense coverage as more specifically described in Section 4.4.3 below. All policies of insurance on the Property, whether or not required by the terms of this Deed of Trust, shall name Beneficiary as first loss payee pursuant to a standard first-mortgage endorsement on Form 438BFU or on a loss-payee form substantially equivalent to the New York standard mortgage endorsement, with such deductibles as approved by Beneficiary but that are, in any event, not more than Ten Thousand Dollars (\$10,000). Grantor shall be responsible for any uninsured losses and any deductibles. All existing and future policies for all insurance required by this Deed of Trust and all other insurance obtained by Grantor with respect to the Property, whether or not required by Beneficiary (including, but not limited to, earthquake insurance), and the proceeds of all of the foregoing, are hereby assigned to Beneficiary, but no such assignment shall be effective to invalidate or impair any insurance policy.

4.4.2 Liability. Grantor will maintain comprehensive general liability insurance covering the legal liability of Grantor against claims for bodily injury, personal injury, death, property damage or advertising injury occurring on, in, or about the Property with coverage of One Million Dollars (\$1,000,000) combined single limit, and naming Beneficiary an additional insured.

4.4.3 Rental Interruption. Grantor will maintain rental or business interruption and extra expense insurance in an amount equal to at least twelve (12) months' gross rental income from the Property, and naming Beneficiary as first loss payee. The amount collected under any insurance coverage required to be maintained by Grantor pursuant to this Section 4.4.3 shall be applied as provided in Section 4.4.6.



Loan No.: 625498151

Order No.: IC 33178

4.4.4 **Insurance Survey.** Grantor shall from time to time obtain such additional coverages or make such increases in the amounts of existing coverage as may reasonably be requested by Beneficiary.

4.4.5 **General Provisions.** All policies of insurance required to be maintained by Grantor pursuant to this Section 4.4 shall: (i) be primary and noncontributory with any other insurance Grantor may carry; (ii) be in form and substance and with companies acceptable to Beneficiary which are authorized to conduct business in the state in which the Property is located and which have a current rating of A-/X or better from the current Best Key Rating Guide; (iii) contain a mortgagee endorsement acceptable to Beneficiary; and (iv) contain waivers of subrogation and of any co-insurance clauses. Beneficiary reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time. Grantor shall deliver to Beneficiary an original of all policies of insurance and shall obtain renewals of any policies which expire and deliver evidence of such renewals to Beneficiary no later than ten (10) days prior to the expiration date of the policy being replaced. All policies and renewals thereof shall contain provision for thirty (30) days' notice to Beneficiary prior to any cancellation thereof or material change thereto. In the event of any loss covered by such policies, Grantor shall give immediate written notice to the insurance carrier and to Beneficiary. Grantor hereby authorizes and empowers Beneficiary as attorney-in-fact for Grantor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section 4.4.5 shall require Beneficiary to incur any expense or take any action hereunder. Notwithstanding any of the foregoing, neither Trustee nor Beneficiary shall be responsible for any such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of and pass to the purchaser of the Property at any trustee's or sheriff's sale held hereunder.

4.4.6 **Damage and Destruction.**

(a) **Grantor's Obligations.** In the event of any damage to or loss or destruction of the Property, Grantor shall: (i) promptly notify Beneficiary of such event if the damage to or loss or destruction of the Property is of a value in excess of Twenty-Five Thousand Dollars (\$25,000); (ii) take such steps as shall be necessary to preserve any undamaged portion of the Property; and (iii) unless otherwise instructed by Beneficiary shall, regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, promptly commence and diligently pursue to completion the restoration, replacement and rebuilding (collectively, "Restoration") of the Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction and in accordance the plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by Beneficiary, which approval shall not be unreasonably withheld or delayed.

(b) **Beneficiary's Rights: Application of Proceeds.** In the event that any portion of the Property is so damaged, destroyed or lost, and any such damage, destruction or loss is covered in whole or in part, by insurance described in subsection 4.4.1, whether or not such insurance is specifically required by the terms of this Deed of Trust, then the following provisions shall apply:



Loan No.: 625498151

Order No.: IC 33178

(i) If an Event of Default (as defined in Section 5.1) has occurred hereunder and is continuing: (A) Beneficiary may, but shall not be obligated to, make proof of loss to any insurer if not made promptly by Grantor, and Beneficiary is hereby authorized and empowered by Grantor to settle, adjust or compromise any claims for damage, destruction or loss thereunder unless the proposed amount of proceeds from such claims exceeds the then outstanding amount of the indebtedness secured hereby, and (B) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Beneficiary, to be applied, at Beneficiary's option, to the indebtedness secured hereby in such order as Beneficiary may determine, in its sole discretion or to be held by Beneficiary for future application to the obligations secured hereby. Unless otherwise required by law, any application to the indebtedness secured hereby by Beneficiary of such payments shall not, by itself, cure or waive any Event of Default hereunder or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice or waive any collateral encumbered hereby or otherwise securing the Note.

(ii) If no Event of Default hereunder has occurred and is continuing, and if the amount of proceeds from any claim for damage, destruction or loss is reasonably expected to be Twenty-Five Thousand Dollars (\$25,000) or less, Grantor shall be entitled to receive all such proceeds and shall apply such proceeds to the Restoration of that portion of the Property so damaged, destroyed or lost to as nearly the same condition, character and value as may have existed prior to such damage, destruction or loss, with such changes or alterations as may be required to conform to applicable law.

(iii) If such proceeds are reasonably expected to exceed Twenty-Five Thousand Dollars (\$25,000), and if an Event of Default has not occurred hereunder and is not continuing, Beneficiary shall apply all such insurance proceeds to the Restoration of the damaged portion of the Property, and such Restoration shall be accomplished as provided in this Section 4.4.6 so long as such Restoration can, in the reasonable judgment of Beneficiary, be completed (A) no later than two (2) years prior to the maturity date of the Note, (B) within one (1) year after the date of the casualty, and (C) in such a manner so that the Property will have a value at least equal to its value prior to the casualty. Otherwise, Beneficiary may elect in its sole discretion to apply all such insurance proceeds to reduction of the indebtedness secured hereby.

(c) **Disbursement of Insurance Proceeds** Insurance proceeds held by Beneficiary for Restoration shall be disbursed from time to time as the Restoration progresses by Beneficiary (or at Beneficiary's election by a disbursing or escrow agent who shall be selected by Beneficiary and whose fees shall be paid by Grantor), upon delivery to Beneficiary of the following: (i) evidence reasonably satisfactory to Beneficiary of the estimated cost of Restoration; (ii) funds (or assurances reasonably satisfactory to Beneficiary that such funds are available) sufficient in addition to the proceeds of insurance to complete and fully pay for the Restoration; and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Beneficiary may reasonably require and approve. No payment made prior to the final completion of Restoration shall exceed ninety percent of the value of the work performed from time to time, as such value shall be determined by Beneficiary in its reasonable judgment. Prior to commencement of the work, and from time to time thereafter, if so requested by Beneficiary, Grantor shall deposit with Beneficiary an amount of funds in excess of the insurance proceeds which, together with such proceeds, shall at all times be at least sufficient in the reasonable judgment of Beneficiary to pay the entire unpaid cost of the Restoration, free and clear of all

Loan No.: 625498151

Order No.: IC 33178

liens or claims of lien. Funds so deposited by Grantor shall be disbursed prior to the disbursement of any insurance proceeds. Any surplus which may remain out of insurance proceeds held by Beneficiary after payment of all costs of the Restoration shall be paid to Grantor. No interest shall be allowed to Grantor on account of any insurance proceeds or other funds held by Beneficiary, but Beneficiary agrees that, at Grantor's request, Beneficiary will deposit any proceeds of insurance held by it for Restoration into a blocked interest-bearing account with Beneficiary over which Beneficiary has sole possession, authority and control, in which Beneficiary has a perfected first-priority security interest to secure the indebtedness secured by this Deed of Trust, and otherwise on terms and conditions satisfactory to Beneficiary in its sole discretion. Notwithstanding the above, if an Event of Default occurs prior to full disbursement of the insurance proceeds and any other funds held by Beneficiary to be disbursed to Grantor any undisbursed portion of the insurance proceeds or other such funds may, at Beneficiary's option, be applied against the indebtedness secured by this Deed of Trust, whether or not then due, in such order and manner as Beneficiary shall select.

(d) **Effect on the Indebtedness.** Any reduction in the indebtedness secured hereby resulting from the application to the indebtedness secured hereby of insurance proceeds pursuant to this subsection 4.4.6 shall be deemed to take effect only on the date of receipt by Beneficiary of such proceeds and application thereof to the indebtedness secured hereby; provided that, if, prior to the receipt by Beneficiary of such proceeds, the Property shall have been sold in connection with a trustee's sale under, or foreclosure of this Deed of Trust, or shall have been transferred by deed in lieu of foreclosure of this Deed of Trust, notwithstanding any limitation on Grantor's liability contained herein or in the Note, Beneficiary shall have the right to receive the same to the extent of any deficiency following such sale or conveyance, together with attorneys' fees and disbursements incurred by Beneficiary in connection with the collection thereof.

4.5 Right of Inspection. Grantor shall permit Beneficiary or its agents or independent contractors (including, but not limited to, appraisers, environmental consultants and construction consultants), at all reasonable times, to enter upon and inspect the Property.

4.6 Compliance with Laws, Etc.; Preservation of Licenses.

4.6.1 Grantor shall comply in all material respects with (a) all laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities relating to the Property or Grantor's use thereof, and (b) all easements, licenses and agreements relating to the Property or Grantor's use thereof.

4.6.2 Grantor shall observe and comply with all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises, and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions, and nonconforming use permits.

4.7 Further Assurances. Grantor will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Trustee or Beneficiary deems necessary or advisable to grant to Trustee the Property or to carry out more effectively the purposes of this Deed of Trust.



Loan No.: 625498151

Order No.: IC 33178

4.8 Legal Actions. Grantor will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and will pay all costs and expenses, including cost of evidence of title, title insurance premiums, and any fees of attorneys, appraisers, environmental inspectors, and others, incurred by Beneficiary or Trustee, in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust and in any nonjudicial foreclosure of this Deed of Trust.

4.9 Taxes, Assessments, and Other Liens. Grantor will pay not later than when due all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof, which at any time appear to be or are alleged to be prior and superior hereto, including but not limited to any tax on or measured by rents of the Property, the Note, this Deed of Trust, or any obligation or part thereof secured hereby.

4.10 Expenses. Grantor will pay all costs, fees, and expenses reasonably incurred by Beneficiary or Trustee in connection with this Deed of Trust.

4.11 Repayment of Expenditures. Grantor will pay within five (5) days after written demand all amounts secured by this Deed of Trust, other than principal of and interest on the Note, with interest from date of expenditure at the default rate of interest specified in the Note (the "Default Rate") and the repayment thereof shall be secured hereby.

4.12 Financial and Operating Information. Grantor will, within ninety (90) days of the close of Grantor's fiscal year, furnish to Beneficiary in such form as it may request, financial statements and balance sheets of Grantor and the entities and individuals who are liable for repayment of the Note, and itemized annual statements of income and expense in connection with the operation of the Property, including but not limited to utilization and property inspection reports, and such other financial and operating statements of Grantor as Beneficiary may from time to time require and such operating statements, occupancy reports, variance reports, and financial information for the Property as Beneficiary may from time to time require.

If Grantor defaults in its obligation to provide Beneficiary with any of the financial and operating information required to be provided under this subsection 4.12 within the time periods required under this subsection 4.12 and such default continues after Beneficiary has provided Grantor with thirty (30) days' notice and opportunity to cure such default, Grantor shall pay to Beneficiary, as liquidated damages for the extra expense in servicing the loan secured hereby, Five Hundred Dollars (\$500) on the first day of the month following the expiration of such thirty (30)-day period and One Hundred Dollars (\$100) on the first day of each month thereafter until such default is cured. All such amounts shall be secured by this Deed of Trust.

4.13 Sale, Transfer, or Encumbrance of Property. Grantor shall not, without the prior written consent of Beneficiary, further encumber the Property or any interest therein, cause or permit any change in the entity, ownership, or control of Grantor or agree to do any of the foregoing without first repaying in full the Note and all other sums secured hereby.

Grantor shall not, without the prior written consent of Beneficiary (which consent shall be subject to the conditions set forth below), sell, transfer, or otherwise convey the Property or any interest therein,



Loan No.: 625498151

Order No.: IC 33178

voluntarily or involuntarily, or agree to do any of the foregoing without first repaying in full the Note and all other sums secured hereby.

Beneficiary will not unreasonably withhold its consent to a sale, transfer, or other conveyance of the Property, provided however, that:

(a) Grantor shall provide to Beneficiary a loan application on such form as Beneficiary may require executed by the proposed transferee and accompanied by such other documents as Beneficiary may require in connection therewith;

(b) Beneficiary may consider the factors normally used in the process of determining whether or not to loan funds including but not limited to (i) the ratio of the remaining principal amount of the Note to the value of the Property, (ii) the ratio of the debt service requirements of the obligations secured by the Property to the income generated by the Property, and (iii) such other factors as Beneficiary may consider relevant;

(c) Beneficiary may specifically evaluate the financial responsibility, structure and real estate operations experience of any potential transferee;

(d) Beneficiary may require that it be provided at Grantor's expense, with an appraisal of the Property and an on-site inspection of the Property by an appraiser and an inspector satisfactory to Beneficiary, and may require that Grantor or the transferee of the Property correct any items of deferred maintenance that may be identified by Beneficiary;

(e) Beneficiary may, as a condition to granting its consent to a sale, transfer, or other conveyance of the Property, require in its sole discretion:

(i) the payment by Grantor of a fee (the "Consented Transfer Fee") of one percent (1%) of the unpaid principal balance of the Note;

(ii) that the unpaid principal balance of the Note be reduced to an amount not to exceed a percentage of the sales price of the Property equal to Beneficiary's then current underwriting requirements for loan-to-value ratios for properties similar to the Property;

(iii) that the Note Rate (as defined in the Note) be increased so that, at all times after such sale, transfer or other conveyance, the Note bears interest at a rate of up to five percentage points (5%) per annum higher than would otherwise be the case and notwithstanding any otherwise applicable limitation on the Note Rate, or on adjustments in the Note Rate, set forth in the Note; and

(f) No Event of Default (as defined below), or event or condition which with the giving of notice or the passage of time would be an Event of Default if not cured, has occurred and is continuing.

In connection with any sale, transfer or other conveyance of the Property to which Beneficiary is asked to consent, Grantor agrees to pay to Beneficiary, in addition to any sums specified above, for Beneficiary's expenses incurred in reviewing and evaluating such matter, the following amounts: (i) Seven Hundred Fifty Dollars (\$750), which amount shall be paid by Grantor to Beneficiary upon



Loan No.: 625498151

Order No.: IC 33178

Grantor's request for Beneficiary's consent and shall be applied to the Consented Transfer Fee if Beneficiary's consent is given to such sale, transfer, or other conveyance of the Property; and (ii) Beneficiary's reasonable attorneys' fees and other reasonable out-of-pocket expenses incurred in connection with such request for consent and in connection with such sale, transfer or other conveyance. In addition, prior to or at the time of any sale, transfer or other conveyance to which Beneficiary grants its consent, Grantor shall obtain and provide to Beneficiary a fully and duly executed and acknowledged assumption agreement in form and substance satisfactory to Beneficiary under which the transferee of the Property assumes liability for the loan evidenced by the Note and secured by this Deed of Trust together with such financing statements and other documents as Beneficiary may require. Grantor and any guarantors of such loan shall continue to be obligated for repayment of such loan unless and until Beneficiary has entered into a written assumption agreement specifically releasing them from such liability.

Consent to any one such occurrence shall not be deemed a waiver of the right to require consent to any future occurrences.

In each instance in which a sale, transfer or other conveyance of the Property, or any change in the entity, ownership, or control of Grantor, occurs without Beneficiary's prior written consent thereto having been given, and regardless of whether Beneficiary elects to accelerate the maturity date of the Note (any of the foregoing events is referred to as an "Unconsented Transfer"), Grantor and its successors shall be jointly and severally liable to Beneficiary for the payment of a fee (the "Unconsented Transfer Fee") of two percent (2.0%) of the unpaid principal balance of the Note as of the date of such Unconsented Transfer. In addition, the Note Rate shall be increased as provided in subsection (e)(iii) above effective as of the date of such Unconsented Transfer. The Unconsented Transfer Fee, together with all interest accrued pursuant to the immediately foregoing sentence and not previously paid, shall be due and payable thirty (30) days after written demand therefor by Beneficiary, and shall be secured by this Deed of Trust; provided, however, that payment of such amounts shall not cure any Event of Default resulting from the Unconsented Transfer.

Beneficiary's waiver of any of the Consented Transfer Fee, the Unconsented Transfer Fee or any other amount payable hereunder, in whole or in part for any one sale, transfer or other conveyance shall not preclude the imposition thereof in connection with any other sale, transfer or other conveyance.

Notwithstanding the foregoing and notwithstanding Section 4.15, Beneficiary's consent will not be required, and neither the Consented Transfer Fee nor the Unconsented Transfer Fee will be imposed, for the transfer of not more than twenty-five percent (25%) in the aggregate during the term of the Note of partnership interests in Grantor, if Grantor is a partnership, or of member interests in Grantor, if Grantor is a limited liability company, or of shares of stock of Grantor, if Grantor is a corporation, provided that none of the persons or entities liable for the repayment of the Note is released from such liability.

4.14 Information for Participants, Etc. Grantor agrees to furnish such information and confirmation as may be required from time to time by Beneficiary on request of potential loan participants and assignees and agrees to make adjustments in this Deed of Trust, the Note, and the other documents evidencing or securing the loan secured hereby to accommodate such participant's or assignee's requirements, provided that such requirements do not vary the economic terms of the loan



Loan No.: 625498151

Order No.: IC 33178

secured hereby. Grantor hereby authorizes Beneficiary to disclose to potential participants and assignees any information in Beneficiary's possession with respect to Grantor and the loan secured hereby.

4.15 Grantor Existence. If Grantor is a corporation, partnership, limited liability company or other entity, Beneficiary is making this loan in reliance on Grantor's continued existence, ownership and control in its present form. Grantor will not alter its name, jurisdiction of organization, structure, ownership or control without the prior written consent of Beneficiary and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. If Grantor is a partnership, Grantor will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Beneficiary. The withdrawal or expulsion of any general partner from Grantor partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

4.16 Tax and Insurance Reserves. In addition to the payments required by the Note, Grantor agrees to pay Beneficiary, at Beneficiary's request, such sums as Beneficiary may from time to time estimate will be required to pay, at least thirty (30) days before due, the next due taxes, assessments, insurance premiums, and similar charges affecting the Property, less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such taxes, assessments, and premiums will become delinquent, such sums to be held by Beneficiary without interest or other income to the Grantor to pay such taxes, assessments and premiums. Should this estimate as to taxes, assessments, and premiums prove insufficient, the Grantor upon demand agrees to pay Beneficiary such additional sums as may be required to pay them before delinquent.

If the total of the above-described payments in any one year shall exceed the amounts actually paid by Beneficiary for taxes, assessments, and premiums, such excess may be credited by Beneficiary on subsequent payments under this section. If there shall be a default hereunder for which Beneficiary elects to realize upon this Deed of Trust, then at any time after default and prior to the trustee's sale or sheriff's sale, Beneficiary may apply any balance of funds it may hold pursuant to this Section 4.16 to any amount secured by this Deed of Trust and in such order as Beneficiary may elect. If Beneficiary does not so apply such funds at or prior to the trustee's sale or sheriff's sale, the purchaser at such sale shall be entitled to all such funds. If Beneficiary acquires the Property in lieu of realizing on this Deed of Trust, the balance of funds it holds shall become the property of Beneficiary.

Any transfer in fee of all or a part of the Property shall automatically transfer to the grantee all or a proportionate part of Grantor's rights and interest in the fund accumulated hereunder.

4.17 Leases

(a) Grantor shall not receive or collect any rents from any present or future tenant of the Property or any part thereof in advance in excess of one (1) month's rent or collect a security deposit in excess of two (2) months' rent.

(b) Grantor shall promptly deposit and maintain all security deposits or other deposits received by Grantor from tenants in a segregated trust account in a federally insured bank or savings and loan association and shall notify and direct in writing each and every present or future tenant or occupant of the Property or any part thereof that any security deposit or other deposit heretofore



Loan No.: 625498151
Order No.: IC 33178

delivered to Grantor has been retained by Grantor or assigned and delivered to Beneficiary as the case may be.

5. DEFAULT.

5.1 **Definition.** Any of the following shall constitute an "Event of Default" as that term is hereinafter used:

(a) Any representation or warranty made by or for the benefit of Grantor herein or elsewhere in connection with the loan secured hereby, including but not limited to any representations in connection with the security therefor, shall prove to have been incorrect or misleading in any material respect;

(b) Grantor or any other person or entity liable therefor shall fail to pay when due any indebtedness secured hereby;

(c) Grantor or any other signatory thereto shall default in the performance of any covenant or agreement contained in this Deed of Trust, the Note, or any other agreement securing, or executed in connection with, the indebtedness secured hereby;

(d) Grantor or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they mature, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding;

(e) Grantor or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage or deed of trust encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness evidenced thereby;

(f) A tax, charge, or lien shall be placed upon or measured by the Note, this Deed of Trust, or any obligation secured hereby that Grantor does not or may not legally pay in addition to the payment of all principal and interest as provided in the Note; or

(g) There shall occur any default under the Indemnity Agreement.

5.2 **Beneficiary's and Trustee's Right to Perform.** Upon the occurrence of any Event of Default, Beneficiary or Trustee, but without the obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligations hereunder, may: make any payments or do any acts required of Grantor hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in, and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien in accordance with the following paragraph; and in exercising any such powers, pay necessary expenses, employ counsel, and pay a reasonable fee therefor. All sums so expended shall be payable on demand by Grantor, be secured hereby and bear interest at the Default Rate of interest specified in the Note from the date advanced or expended until repaid.



Loan No.: 625498151

Order No.: IC 33178

Beneficiary or Trustee in making any payment herein is hereby authorized, in the place and stead of the Grantor, in the case of a payment of taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the Property, to make such payment in reliance on any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement, or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; in the case of any apparent or threatened adverse claim of title, lien, statement of lien, encumbrance, deed of trust, claim, or charge Beneficiary or Trustee, as the case may be, shall be the sole judge of the legality or validity of same; and in the case of a payment for any other purpose herein and hereby authorized, but not enumerated in this paragraph, such payment may be made whenever, in the sole judgment and discretion of Trustee or Beneficiary, as the case may be, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, provided further, that in connection with any such advance, Beneficiary at its option may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expenses of which shall be repayable by the Grantor without demand and shall be secured hereby.

5.3 Remedies on Default. Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Beneficiary and Beneficiary may:

(a) Have a receiver appointed as a matter of right on an ex parte basis without notice to Grantor and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security, such receiver shall take possession and control of the Property and shall collect and receive all of the rents, issues, and profits thereof;

(b) Foreclose this Deed of Trust as a mortgage or otherwise realize upon the Property;

(c) Cause Trustee to exercise its power of sale;

(d) Sue on the Note as permitted under applicable law;

(e) To the extent permitted by law, including, without limitation, RCW 61.24.100, seek and obtain a deficiency judgment following the completion of a judicial foreclosure or a trustee's sale of all or a portion of the security for the obligations secured by this Deed of Trust; or

(f) Avail itself of any other right or remedy available to it under the terms of this Deed of Trust, the other Loan Documents (as defined below) or applicable law.

5.4 No Waiver. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to do so.

5.5 Waiver of Marshaling, Etc. In connection with any trustee's sale or other foreclosure sale under this Deed of Trust, Grantor hereby waives, for itself and all others claiming by,



Loan No.: 625498151

Order No.: IC 33178

through or under Grantor, any right Grantor or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

5.6 Remedies Cumulative; Subrogation. The rights and remedies accorded by this Deed of Trust shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Deed of Trust or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any default shall not constitute a waiver of any subsequent or other default. Beneficiary shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the loan proceeds hereof.

6. CONDEMNATION. Any award of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property, for public or private use, or for injury to any portion of the Property is hereby assigned and shall be paid to Beneficiary which may apply such moneys received by it in the same manner and with the same effect as provided in Section 4.4.6 above for disposition of proceeds of hazard insurance, provided that if the taking results in a loss of the Property to an extent which, in the reasonable opinion of Beneficiary, renders or will render the Property not economically viable or which substantially impairs Beneficiary's security or lessens to any extent the value, marketability or intended use of the Property, Beneficiary may apply the condemnation proceeds to reduce the unpaid indebtedness secured hereby in such order as Beneficiary may determine, and without any adjustment in the amount of installments due under the Note. If so applied, any proceeds in excess of the unpaid balance of the Note and other sums due to Beneficiary shall be paid to Grantor or Grantor's assignee. Beneficiary shall in no case be obligated to see to the proper application of any amount paid over to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all compensation, awards or other relief therefor, and Grantor agrees to pay Beneficiary's costs and reasonable attorneys' fees incurred in connection therewith. No condemnation award at any time assigned to or held by Beneficiary shall be deemed to be held in trust, and Beneficiary may commingle such award with its general assets and shall not be liable for the payment of any interest thereon.

7. TRUSTEE.

7.1 General Powers and Duties of Trustee. At any time or from time to time, without liability therefor and without notice and without affecting the liability of any person for the payment of the indebtedness secured hereby, upon written request of Beneficiary, payment of its own fees and presentation of this Deed of Trust and the Note for endorsement (in case of full reconveyance, for cancellation or retention), Trustee may:

- (a) Consent to the making of any map or plat of the Property;
- (b) Join in granting any easement or creating any restriction thereon;



Loan No.: 625498151

Order No.: IC 33178

(c) Join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; or

(d) Reconvey, without warranty, all or any part of the Property.

7.2 Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

7.3 Powers and Duties on Default. Upon written request therefor by Beneficiary specifying the nature of the default, or the nature of the several defaults, and the amount or amounts due and owing, Trustee shall execute a written notice of default and of its election to cause the Property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to law.

Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, Trustee, without demand on Grantor, shall sell the Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Grantor agrees that such a sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Property that may be personal property Trustee shall have and exercise, at Beneficiary's sole election, all the rights and remedies of a secured party under the UCC. Whenever notice is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Property, and from time to time thereafter may postpone such sale, as provided by statute. Trustee shall deliver to the purchaser its deed and bill of sale conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person other than Trustee, including Grantor or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of this trust, including the cost of evidence of title search and title insurance and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums secured hereby in such order as Beneficiary may determine; and the remainder, if any, to the clerk of the superior court of the county in which the sale took place, as provided in RCW 61.24.080.

7.4 Reassignment of Security Interest. At the request of Beneficiary, Trustee shall reassign to Beneficiary the security interest created hereby and after such reassignment Beneficiary shall have the right, upon the occurrence or continuance of any Event of Default, to realize upon the personal property subject to this Deed of Trust, independent of any action of Trustee, pursuant to the UCC.

7.5 Acceptance of Trust. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to



Loan No.: 625498151

Order No.: IC 33178

notify any party hereto except Beneficiary of pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

7.6 Reliance. Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Grantor under this Deed of Trust, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

7.7 Replacement of Trustee. Beneficiary may, from time to time, as provided by statute, appoint another trustee in place and stead of Trustee herein named, and thereupon Trustee herein named shall be discharged and the trustee so appointed shall be substituted as Trustee hereunder, with the same effect as if originally named Trustee herein.

7.8 No Impairment of Right to Pursue Unsecured Obligations. The foreclosure of this Deed of Trust or sale by Trustee of the Property through the exercise of its power of sale granted hereunder shall not preclude or impair any action to collect or enforce any obligation of Grantor or any guarantor or other party liable for any of the obligations secured by this Deed of Trust, or the substantial equivalent of such obligation, which obligation is not secured by this Deed of Trust including, without limitation, the obligations of Grantor under the Indemnity Agreement and the obligations of each such guarantor under its guaranty. All of such obligations (and all substantial equivalents of such obligations) shall constitute separate recourse obligations of Grantor and each such guarantor or other party and shall not be deemed to be evidenced by the Note or secured by this Deed of Trust.

8. NOTICES.

8.1 Trustee. Any notice or demand upon Trustee may be given or made at the address set forth above for Trustee.

8.2 Grantor and Beneficiary. Any notice to or demand upon Grantor (including any notice of default or notice of sale) or notice to or demand upon Beneficiary shall be deemed to have been sufficiently made for all purposes when deposited in the United States mails, postage prepaid, registered or certified, return receipt requested, addressed to Grantor at its address set forth above or to Beneficiary at the following address:

Washington Mutual Bank, a Washington corporation
National Commercial Operations Center
P.O. Box 9178
Coppell, Texas 75019-9178
Attention: Portfolio Administration

or to such other address as the recipient may have directed by notice in accordance herewith.

8.3 Waiver of Notice. The giving of notice may be waived in writing by the person or persons entitled to receive such notice, either before or after the time established for the giving of such notice.

9. MODIFICATIONS. Upon written request of any party then liable for any sum secured hereby, Beneficiary reserves the right to extend the term, or otherwise modify the terms, hereof or of the Note as Beneficiary and such person may from time to time deem appropriate and any such change shall



Loan No.: 625498151

Order No.: IC 33178

not operate to release, in any manner, the liability of the original Grantor or Grantor's successors in interest.

10. SUCCESSORS AND ASSIGNS. All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11. GOVERNING LAW; SEVERABILITY. This Deed of Trust shall be governed by the law of the state of Washington. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, the conflict shall not affect other provisions of this Deed of Trust or the Note that can be given effect without the conflicting provision and to this end the provisions of this Deed of Trust and the Note are declared to be severable.

12. GRANTOR'S RIGHT TO POSSESSION. Grantor may be and remain in possession of the Property for so long as it is not in default hereunder or under the terms of the Note and Grantor may, while it is entitled to possession of the Property, use the same.

13. MAXIMUM INTEREST. No provision of this Deed of Trust or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Note provided for, neither Grantor nor its successors or assigns shall be obligated to pay that portion of such interest that is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section 14 shall control any provision of this Deed of Trust or the Note that is inconsistent herewith.

14. ATTORNEYS' FEES AND LEGAL EXPENSES. In the event of any default under this Deed of Trust, or in the event that any dispute arises relating to the interpretation, enforcement, or performance of any obligation secured by this Deed of Trust, Beneficiary shall be entitled to collect from Grantor on demand all fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators, and court reporters. Without limiting the generality of the foregoing, Grantor shall pay all such costs and expenses incurred in connection with (a) arbitration or other alternative dispute resolution proceedings, trial court actions, and appeals; (b) bankruptcy or other insolvency proceedings of Grantor, any guarantor or other party liable for any of the obligations secured by this Deed of Trust, or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) postjudgment collection proceedings; (e) all claims, counterclaims, cross-claims, and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Deed of Trust; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

15. PREPAYMENT PROVISIONS. If at any time after default and acceleration of the indebtedness secured hereby there shall be a tender of payment of the amount necessary to satisfy such indebtedness by or on behalf of the Grantor, its successors or assigns, the same shall be deemed to be a voluntary prepayment such that the sum required to satisfy such indebtedness in full shall include, to the extent permitted by law, the additional payment required under the prepayment privilege as stated in the Note.

16. TIME IS OF THE ESSENCE. Time is of the essence under this Deed of Trust and in the performance of every term, covenant, and obligation contained herein.



Loan No.: 625498151

Order No.: IC 33178

17. FIXTURE FILING. This Deed of Trust constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of improvements and fixtures described in Section 1.2 of this Deed of Trust and to any goods or other personal property that are now or hereafter will become a part of the Property as fixtures.

18. MISCELLANEOUS.

18.1 Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

18.2 The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit, or expand the express provisions of this Deed of Trust.

18.3 This Deed of Trust, the Note and the other documents, instruments, and agreements entered into by Grantor and Beneficiary in connection therewith (collectively, the "Loan Documents") constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

19. WAIVER OF JURY TRIAL. EACH OF GRANTOR AND BENEFICIARY (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

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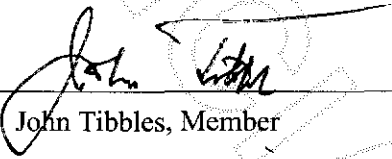
Loan No.: 625498151
Order No.: IC 33178

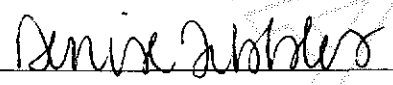
DATED as of the day and year first above written.

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY,
EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT
OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW**

GRANTOR:

Somerset Place, LLC, a Washington limited liability company


By: John Tibbles, Member


By: Denise Tibbles, Member



200412280137
Skagit County Auditor

LIMITED LIABILITY COMPANY, BY INDIVIDUAL MEMBER - SINGLE CERTIFICATE

STATE OF WASHINGTON)

COUNTY OF Skagit ss.

I certify that I know or have satisfactory evidence that JOHN TIBBLES is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument, and acknowledged it as a member of *, a limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this 23 day of December 2004

Donna M. Todd
(Signature of Notary)

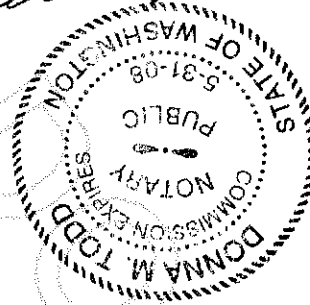
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at Anacortes, WA

My appointment expires 05-31-2005

Use this space for Notarial stamp/seal.

* Somerset Place, LLC, a Washington limited
liability company



200412280137
Skagit County Auditor

LIMITED LIABILITY COMPANY, BY MANAGER - SINGLE CERTIFICATE

STATE OF WASHINGTON)
COUNTY OF Skagit) ss.

I certify that I know or have satisfactory evidence that DENISE TIBBLES is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument, and acknowledged it as manager of X, a limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this 27th day of December, 2004

X Somerset Place, LLC, a Washington limited liability company
Donna M Todd
(Signature of Notary)

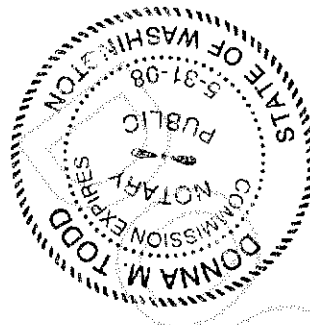
DONNA M Todd

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at Anacortes, WA

My appointment expires 5-31-2008

Use this space for Notarial stamp/seal



200412280137
Skagit County Auditor

Loan No.: 625498151
Order No.: IC 33178

EXHIBIT A

LEGAL DESCRIPTION

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

PARCEL A:

That portion of the Northeast Quarter of the Southeast Quarter of Section 17, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at a point on the South line of the county road 767.80 feet West and 30.00 feet South of the Northeast corner of said subdivision, said point being the Northwest corner of a tract conveyed to James V. Whited, et ux by deed dated May 2, 1962, recorded May 3, 1962, in Volume 323 of Deeds, page 117, under Auditor's File No. 621113, records of Skagit County, Washington;

thence West a distance of 138.90 feet;

thence South to the Northeast corner of Tract A, CORREDIG ADDITION, according to the plat thereof recorded in Volume 7 of Plats, page 14, records of Skagit County, Washington;

thence South 89°38'45" East along the North line of said Tract A extended East, to a point 102.00 feet East of the Northwest corner of said Tract A;

thence continue in an Easterly direction in a straight line a distance of 99.00 feet, more or less, to the Southwest corner of the aforementioned Whited tract;

thence North along the West line of said Whited tract to the point of beginning;

EXCEPT the North 10.00 feet thereof conveyed to the City of Mount Vernon by deed recorded under Auditor's File No. 843205, records of Skagit County, Washington;

AND ALSO EXCEPTING that portion conveyed to the State of Washington on August 30, 1991, under Auditor's File No. 9108300069, records of Skagit County, Washington.

PARCEL B:

That portion of CORREDIG ADDITION, according to the plat thereof recorded in Volume 7 of Plats, page 14, records of Skagit County, Washington, and of the Northeast Quarter of the Southeast Quarter of Section 17, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

continued.....

EXHIBIT A



200412280137
Skagit County Auditor

Beginning at the Northeast corner of Tract A of CORREDIG ADDITION, according to the plat thereof recorded in Volume 7 of Plats, page 14, records of Skagit County, Washington;
thence South 89°38'45" East along the North line of said Tract A extended East to a point 102.00 feet East of the Northwest corner of said Tract A, said point being the true point of beginning;
thence South 00°12'39" East, a distance of 150.00 feet;
thence North 89°38'45" West, a distance of 102.00 feet to a point on the East line of 19th Street;
thence South along the East line of said 19th Street to a point 210.00 feet South of the Northwest corner of said Tract A;
thence East along a line that is parallel with and 210.00 feet South of the North line of Tract A and the projection thereof, a distance of 102.00 feet;
thence South 00°12'30" East, a distance of 107.75 feet, more or less, to the North line of Tract B of said CORREDIG ADDITION;

thence East a distance of 199.00 feet, more or less, to the Southeast corner of a tract conveyed to Joseph P. Souza, et ux, by deed dated May 7, 1962, recorded May 7, 1962, in Volume 323 of Deeds, page 184, under Auditor's File No. 621248, records of Skagit County, Washington;
thence North parallel with the East line of said Souza tract a distance of 317.00 feet, more or less, to the Southeast corner of a tract conveyed to James V. Whited, et ux, by deed dated May 2, 1962, recorded May 3, 1962, in Volume 323 of Deeds, page 117, under Auditor's File No. 621113, records of Skagit County, Washington;
thence Westerly along the South line of said Whited tract a distance of 100.00 feet, more or less, to the Southwest corner of said tract;
thence Westerly in a straight line a distance of 99.00 feet, more or less, to the true point of beginning.

All situated in Skagit County, Washington.

- END OF EXHIBIT "A" -



200412280137
Skagit County Auditor