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Skagit County Auditor

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Skagit County Auditor

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**Return Address:**

**John L. Abenroth  
Louis H. Requa  
806 Metcalf Street  
Sedro Woolley, WA 98284**

LAND TITLE OF SKAGIT COUNTY **119370PE**

THIS DEED OF TRUST IS BEING RE-RECORDED TO ATTACH THE LEGAL DESCRIPTION.

**DEED OF TRUST**

**Grantor**

**FOREST PARK ESTATES, LLC**

**Grantee(s)**

- 1. John L. Abenroth, Delores A. Abenroth, Louis H. Requa, and Joann Requa**
- 2. Land Title Company – Burlington, Trustee**

**Legal Description: PTN NE ¼ SE ¼, 16-35-7 E. W. M. a/k/a SP 91-099**

**Additional on page 20**

**Assessor's Property Tax Parcel or Account Number at the time of recording:**

350716- 4-001-0100 (P108794)  
350716- 4-001-0200 (P108795)  
350716- 4-001-0300 (P108796)  
350716- 4-001-0005 (P42824)

THIS DEED OF TRUST ("**Deed of Trust**"), dated December 28, 2005, is made by FOREST PARK ESTATES, LLC, a Washington limited liability company ("**Grantor**") in favor of LAND TITLE COMPANY - BURLINGTON as trustee ("**Trustee**") for the benefit of **JOHN L. ABENROTH, DELORES A. ABENROTH, LOUIS H. REQUA, AND JOANN REQUA** (collectively, "**Beneficiary**").

**SECTION 1. DEFINITIONS**

- 1.1 Capitalized Terms.** Unless defined elsewhere in this Deed of Trust, capitalized terms used in this Deed of Trust will have the meanings ascribed to them in the attached Appendix A.

- 1.2 Chapter 61.24 RCW.** Unless the context clearly indicates otherwise, terms used in this Deed of Trust that are defined in Chapter 61.24 RCW will have the meanings ascribed to them in Chapter 61.24 RCW.

## **SECTION 2. DEED OF TRUST**

- 2.1 Transfer.** As security for the full and prompt payment and performance of the Obligations, Grantor conveys to Trustee in trust for the benefit of Beneficiary, with power of sale, all of Grantor's right, title, and interest in and to the Real Property, subject to the provisions of this Deed of Trust.
- 2.2 Recording and Perfection.**
- (a) Beneficiary may record this Deed of Trust in the office of the recording officer of Skagit County, Washington.
  - (b) Upon Trustee's or Beneficiary's request, Grantor will take any actions that Trustee or Beneficiary deems reasonably necessary to perfect and continue Trustee's and Beneficiary's rights under this Deed of Trust.
- 2.3 Reconveyance by Trustee.** Trustee must reconvey the Real Property to the person entitled to the Real Property on written request of Beneficiary, or upon satisfaction of the Obligations and written request for reconveyance made by Beneficiary or the person entitled to the Real Property.

## **SECTION 3. REPRESENTATIONS AND WARRANTIES OF GRANTOR**

Grantor represents and warrants to Beneficiary as follows:

- 3.1 Organization.** Grantor is a limited liability company duly organized and validly existing under the laws of the State of Washington.
- 3.2 Authority.** Grantor has full power and authority to sign and deliver this Deed of Trust and to perform all of Grantor's obligations under this Deed of Trust.
- 3.3 Binding Obligation.** This Deed of Trust is the legal, valid, and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.
- 3.4 No Conflicts.** The signing and delivery of this Deed of Trust by Grantor and the performance by Grantor of all of Grantor's obligations under this Deed of Trust will not:



- (a) conflict with Grantor's certificate of formation or limited liability company agreement;
- (b) breach any agreement to which Grantor is a party, or give any person the right to accelerate any obligation of Grantor;
- (c) violate any law, judgment, or order to which Grantor is subject; or
- (d) require the consent, authorization, or approval of any person, including but not limited to any governmental body.
- 3.5 Real Property.** Schedule 3.5 contains a correct legal description of the Real Property.
- 3.6** Grantor's use of the Real Property complies with all applicable zoning laws;
- (a) Grantor's use of the Real Property is not subject to any permitted nonconforming use or to any structure classification;
- (b) no fixtures or improvements are on the Real Property;
- (c) no fixture or improvement on any parcel of land not included in the Real Property encroaches onto the Real Property;
- (d) the Real Property abuts and has direct vehicular access to a public road or to a permanent, irrevocable, appurtenant easement that provides direct vehicular access to a public road; and
- (e) the Real Property is not located within any flood plain.
- 3.7 Title to Real Property.** Grantor has good title to the Real Property, free from all Encumbrances except the Permitted Encumbrances.
- 3.8 Commercial Purposes.** Grantor has used the Real Property exclusively for commercial purposes.
- 3.9 No Agricultural Purposes.** The Real Property is not used principally for agricultural purposes.
- 3.10 Commercial Loan.** This Deed of Trust secures a loan that is not made primarily for personal, family, or household purposes.
- 3.11 No Contracts.** Except for the Prior Mortgage Contract in favor of Whidbey Island Bank and this Deed of Trust, Grantor is not a party to any contract involving the ownership, lease, use, or operation of the Real Property.

### **3.12 Prior Mortgage Contract.**

- (a) Grantor has delivered to Beneficiary a complete and accurate copy of the Prior Mortgage Contract, including all amendments.
- (b) Grantor has paid and performed all of Grantor's obligations under the Prior Mortgage Contract.
- (c) No event has occurred or circumstances exist that will likely:
  - (1) result in Grantor's failure to pay or perform any obligation of Grantor under the Prior Mortgage Contract; or
  - (2) give any other person the right to terminate the Prior Mortgage Contract or accelerate any obligation of Grantor under the Prior Mortgage Contract.
- (d) Grantor has not received any notice from any person regarding any actual, alleged, or potential failure by Grantor to pay or perform any obligation of Grantor under the Prior Mortgage Contract.
- (e) Grantor has not waived any right or remedy available to Grantor under the Prior Mortgage Contract.
- (f) The unpaid principal amount of the Prior Mortgage Contract as of the date of this Deed of Trust is Seven Hundred Sixty-Six Thousand and No/100 Dollars (\$766,000.00).

### **3.13 Environmental.** Grantor has delivered to Beneficiary complete copies of all environmental reports, studies, analyses, tests, and site assessments relating to the Real Property. Except as otherwise provided:

- (a) Grantor has no liabilities or obligations of any kind arising out of any Environmental Law, whether known or unknown, fixed or contingent, disputed or undisputed, matured or unmatured, liquidated or unliquidated, or secured or unsecured;
- (b) Grantor is not a party to any contract, settlement agreement, or other similar arrangement that requires or may require Grantor to have any liability or obligation of any kind arising out of any Environmental Law;
- (c) no event has occurred or circumstances exist that will likely result in Grantor having any liability or obligation of any kind arising out of any Environmental Law;
- (d) Grantor has complied with all applicable Environmental Laws;



- (e) no event has occurred or circumstances exist that will likely result in Grantor's failure to comply with any applicable Environmental Law;
- (f) Grantor has not received any notice from any governmental authority or other person regarding:
- (1) any actual, alleged, or potential failure by Grantor to comply with any Environmental Law; or
  - (2) any actual or threatened liability or obligation of Grantor arising out of any Environmental Law with respect to the Real Property;
- (g) no action, arbitration, audit, hearing, investigation, litigation, suit, or other proceeding relating to any Environmental Law is pending or, to Grantor's Knowledge, threatened against Grantor;
- (h) Grantor is not subject to any judgment or order relating to any Environmental Law;
- (i) no Hazardous Substance is present on the Real Property;
- (j) no Hazardous Substance has been spilled, discharged, or otherwise released on or into the Real Property;
- (k) to Grantor's Knowledge, no Hazardous Substance is present on any real property that geologically or hydrologically adjoins the Real Property;
- (l) to Grantor's Knowledge, no Hazardous Substance has been spilled, discharged, or otherwise released on or into any real property that geologically or hydrologically adjoins the Real Property;
- (m) no underground storage tank is present on the Real Property; and
- (n) the Real Property does not contain any wetlands or other protected areas, flora, or fauna.

**3.14 Financial Statements.** Grantor has delivered to Beneficiary its financial statements which financial statements:

- (a) fairly present the financial condition and the results of operations, changes in shareholders' or owners' equity, and cash flow of Grantor as at the dates and as of the periods specified;
- (b) were prepared in accordance with generally accepted accounting principles;

- (c) reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to the financial statements; and
- (d) were prepared in accordance with the books of account and records of Grantor.

**3.15 Books and Records.** The books of account and records of Grantor:

- (a) are complete and accurate in all material respects;
- (b) represent actual, bona fide transactions; and
- (c) have been maintained in accordance with sound business practices, including the maintenance of an adequate system of internal accounting controls.

**3.16 Taxes.** Grantor has filed on a timely basis all tax returns and reports required to be filed by applicable laws. All of Grantor's filed tax returns are complete and accurate in all material respects. Grantor has paid – or made provision for the payment of – all taxes that have become due for all periods. No taxing authority has asserted – or informed Grantor that it intends to assert – any deficiency in the payment of any taxes by Grantor. Grantor is not the beneficiary of any extension of time within which to file a tax return.

**3.17 No Material Adverse Change.** Since the date of the most recent financial statement, no material adverse change in the financial condition of Grantor has occurred. Grantor has no Knowledge of any facts or circumstances that will likely result in a material adverse change in the financial condition of Grantor.

**3.18 Insurance.**

- (a) Grantor has delivered to Beneficiary a complete and accurate copy of each insurance policy that has provided coverage with respect to the Real Property including the following information for each policy:
  - (1) name of insurer;
  - (2) type of insurance;
  - (3) period of coverage;
  - (4) policy number; and
  - (5) a summary description of each claim made under the policy, including the name of the claimant, the amount of the claim, and the current status or outcome of the claim.



(b) Except as otherwise provided below:

- (1) the insurance policies that provide coverage to Grantor provide adequate insurance coverage for the Real Property for all risks normally insured against by a person owning similar real property in a similar location, and for any other risks to which the Real Property is normally exposed;
- (2) Grantor has complied with the terms and conditions of each insurance policy, including the payment of all premiums; and
- (3) Grantor has not received any notice from any person regarding any actual, alleged, or potential failure by Grantor to comply with the terms and conditions of any insurance policy.

(c) Each insurance policy that covers the Real Property names Beneficiary as a loss payee and provides that the policy may not be amended or cancelled without 30 days' prior written notice to Beneficiary.

**3.19 Nonforeign Person.** Grantor is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

#### **SECTION 4. COVENANTS OF GRANTOR**

Grantor covenants to Beneficiary that Grantor will perform the following obligations and observe the following conditions until the Obligations are fully paid and performed:

- 4.1 Obligations.** Grantor will fully and promptly pay and perform the Obligations when due.
- 4.2 Ownership.** Grantor will keep the Real Property free from all Encumbrances except Permitted Encumbrances. Grantor will defend Trustee's and Beneficiary's rights under this Deed of Trust against the adverse claim of any person.
- 4.3 Restriction on Transfer.** Except as otherwise provided in Section 4.7, Grantor will not Transfer the Real Property or any interest in the Real Property.
- 4.4 Condition of Real Property.** Grantor will keep the Real Property in good repair and condition, reasonable wear and tear excepted, and will not commit or permit any waste of the Real Property.
- 4.5 Use of Real Property.** Grantor will use the Real Property exclusively for commercial purposes. Grantor will not use the Real Property principally for agricultural purposes.
- 4.6 Prior Mortgage Contract.** Grantor will fully and promptly pay and perform all of Grantor's obligations under the Prior Mortgage Contract.



**4.7 No Contracts/ Partial Releases.** Grantor will not enter into any contract involving the ownership, lease, use, or operation of the Real Property without the prior written consent of Beneficiary, which Beneficiary may withhold in Beneficiary's sole discretion. Notwithstanding the foregoing, provided Grantor is not otherwise in default under any of the terms, covenants and conditions of this Deed of Trust, Grantor may enter into purchase and sale agreements for the sale of individual lots provided that upon closing of the sale(s), payment of Forty Thousand Dollars (\$40,000.00) for each lot sold is made to reduce the principal balance of the Obligations. Subject to receipt of the release price, Beneficiary agrees to a partial release of this Deed of Trust at the closing of each individual lot sale with all costs associated with such partial release(s) to be borne by Grantor.

**4.8 Notification.** Grantor will promptly notify Beneficiary if any of the following occurs:

- (a) any material loss or damage with respect to the Real Property, whether or not the loss or damage is covered by insurance;
- (b) any material adverse change in the financial condition of Grantor; or
- (c) an Event of Default.

**4.9 Inspection.** Upon Beneficiary's request, Grantor will permit Beneficiary to:

- (a) inspect the Real Property; and
- (b) inspect and copy Grantor's books of account and records related to the Real Property.

**4.10 Environmental.**

- (a) Grantor will comply with all applicable Environmental Laws.
- (b) Grantor will comply with the terms and conditions of each judgment and order relating to any Environmental Law to which Grantor is subject.
- (c) Grantor will not cause or permit any Hazardous Substance to be present on or to be spilled, discharged, or otherwise released on or into the Real Property.
- (d) Grantor will fully and promptly pay and perform all of Grantor's obligations arising out of any Environmental Law.
- (e) Grantor will comply with the terms and conditions of any contract, settlement agreement, or other similar arrangement that requires or may require Grantor to have any liability or obligation of any kind arising out of any Environmental Law.





- (f) Grantor will promptly notify Beneficiary if Grantor obtains Knowledge of the occurrence after the date of this Deed of Trust of any fact or condition that would cause Grantor to breach any representation or warranty in Section 3.13 if the representation or warranty were made as of the date of the occurrence.

**4.11 Financial Statements.** Grantor will deliver to Beneficiary such financial statements of Grantor that Beneficiary may reasonably request from time to time. The financial statements:

- (a) will fairly present the financial condition and the results of operations, changes in shareholders' or owners' equity, and cash flow of Grantor as at the dates and as of the periods specified;
- (b) will have been prepared in accordance with generally accepted accounting principles;
- (c) will reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to the financial statements; and
- (d) will have been prepared in accordance with the books of account and records of Grantor.

**4.12 Books and Records.** Grantor will keep books of account and records that:

- (a) are complete and accurate in all material respects;
- (b) represent actual, bona fide transactions; and
- (c) are maintained in accordance with sound business practices, including the maintenance of an adequate system of internal accounting controls.

**4.13 Taxes.** Grantor will file on a timely basis all tax returns and reports required to be filed by applicable laws. All of Grantor's filed tax returns will be complete and accurate in all material respects. Grantor will pay – or make provision for the payment of – all taxes that become due for all periods. Grantor will promptly notify Beneficiary if any taxing authority asserts – or informs Grantor that it intends to assert – any deficiency in the payment of any taxes by Grantor. Grantor will not seek any extension of time within which to file a tax return.

**4.14 Insurance.**

- (a) Grantor will obtain and maintain insurance policies that provide equivalent or greater coverage for the Real Property, in form and substance reasonably satisfactory to Beneficiary.



(b) Grantor will obtain and maintain such additional insurance coverage for the Real Property for all risks normally insured against by a person owning similar real property in a similar location, and for any other risks to which the Real Property is normally exposed.

(c) Each insurance policy that covers the Real Property will name Beneficiary as a loss payee and will provide that it may not be amended or cancelled without 30 days' prior written notice to Beneficiary. Upon Beneficiary's request, Grantor will deliver a copy of each policy to Beneficiary.

**4.15 Organizational Documents.** Grantor will not amend its certificate of formation or limited liability company agreement.

**4.16 Dissolution.** Grantor will not dissolve, and will not wind up or liquidate its business and affairs.

**4.17 Sales and Reorganizations.** Grantor will not enter into any transaction involving the sale of substantially all of Grantor's assets, or the reorganization, recapitalization, consolidation, conversion, or merger of Grantor.

## **SECTION 5. DAMAGE OR DESTRUCTION**

Grantor will perform the following obligations and observe the following conditions until the Obligations are fully paid and performed:

**5.1 Assignment of Proceeds.** Grantor assigns and transfers to Beneficiary all of Grantor's rights to receive insurance proceeds under all insurance policies that provide coverage to Grantor for the Real Property.

**5.2 Application of Proceeds.** If any damage or destruction occurs with respect to the Real Property, and if Beneficiary receives any insurance proceeds under any insurance policy that provides coverage to Grantor for the Real Property:

(a) Beneficiary may hold the proceeds as additional security for the full and prompt payment and performance of the Obligations, subject to the provisions of this Section 5.2; and

(b) Beneficiary may, in Beneficiary's sole discretion, apply the proceeds:

- (1) to the Obligations, whether or not the Obligations are then due; or
- (2) to the cost and expense of restoring the portion of the Real Property that was damaged or destroyed, subject to any conditions that Beneficiary deems reasonably necessary to ensure that the Real Property is properly



restored, including but not limited to holding the proceeds until the restoration is complete.

## **SECTION 6. DEFAULTS AND REMEDIES**

### **6.1 Events of Default.** Each of the following events is an Event of Default:

- (a) Grantor fails to make any payment Obligation when due;
- (b) Grantor fails to perform any non-payment Obligation within 20 days after Beneficiary notifies Grantor of the failure to perform the Obligation when due;
- (c) any representation or warranty made by Grantor in this Deed of Trust is found to have been untrue or misleading in any material respect as of the date of this Deed of Trust;
- (d) an Encumbrance other than a Permitted Encumbrance attaches to the Real Property;
- (e) any Transfer of the Real Property or any interest in the Real Property to any person other than Trustee or Beneficiary, unless the Transfer is expressly permitted by this Deed of Trust;
- (f) any material loss or damage with respect to the Real Property occurs that is not covered by insurance;
- (g) any material portion of the Real Property is condemned;
- (h) Grantor voluntarily dissolves or ceases to exist, or any final and nonappealable order or judgment is entered against Grantor decreeing its dissolution;
- (i) Grantor fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Grantor's debts as they become due, or makes a general assignment for the benefit of creditors;
- (j) a proceeding with respect to Grantor is commenced under any applicable law for the benefit of creditors, including but not limited to any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Grantor or the Real Property is entered;
- (k) an event of default occurs under:
  - (1) any agreement evidencing, guaranteeing, or securing the payment or performance of any of the Obligations; or



(2) any agreement securing the payment or performance of any of the obligations of any guarantor of the Obligations;

(l) the occurrence of any event that has or may reasonably be expected to have a material adverse effect on Grantor's financial condition or Grantor's ability to pay and perform the Obligations.

**6.2 Remedies.** On and after an Event of Default, Beneficiary may exercise the following remedies, which are cumulative and which may be exercised singularly or concurrently:

- (a) upon notice to Grantor, the right to accelerate the due dates of the Obligations so that the Obligations are immediately due, payable, and performable in their entirety;
- (b) upon notice to Grantor, the right to take possession, control, and charge of the Real Property;
- (c) the right to commence an action to appoint a receiver to take charge of the Real Property;
- (d) the right to commence an action to obtain a temporary restraining order;
- (e) upon notice to Grantor, the right to pay and perform any of the Obligations;
- (f) any remedy available to Beneficiary under any agreement evidencing, guaranteeing, or securing the payment or performance of any of the Obligations or any of the obligations of any guarantor of the Obligations;
- (g) any remedy available to Beneficiary under Chapter 61.24 RCW, including but not limited to the foreclosure of this Deed of Trust by trustee's sale;
- (h) the right to foreclose this Deed of Trust in the same manner as a real property mortgage; and
- (i) any other remedy available to Beneficiary at law or in equity.

**6.3 Assistance.** After an Event of Default, and upon Beneficiary's request, Grantor will assist Beneficiary in exercising any remedy available to Beneficiary under this Deed of Trust.

**6.4 Possession and Protection of Real Property.**



- (a) If Beneficiary or a receiver takes possession, control, or charge of the Real Property after an Event of Default, Grantor will peacefully relinquish possession of the Real Property upon Beneficiary's or the receiver's request.
- (b) After taking possession, control, or charge of the Real Property, Beneficiary or the receiver may:
- (1) manage the Real Property;
  - (2) grant leases of all or any portion of the Real Property;
  - (3) subdivide, develop, make or obtain the vacation of public plats, adjust boundaries, or partition the Real Property;
  - (4) borrow money, secured or unsecured, for the protection of the Real Property, and for all expenses, losses, and liability sustained in the protection of the Real Property;
  - (5) make loans, either secured or unsecured, for the protection of the Real Property, and for all expenses, losses, and liability sustained in the protection of the Real Property;
  - (6) insure the Real Property against hazards;
  - (7) change the character of or abandon the Real Property or any interest in it;
  - (8) make ordinary or extraordinary repairs or alterations to the Real Property, demolish any improvements, raze existing structures, and make any improvements to the Real Property;
  - (9) employ persons to advise or assist Beneficiary or the receiver in the protection of the Real Property, and act without independent investigation upon their recommendations;
  - (10) pay taxes, assessments, and other expenses incurred in the protection of the Real Property;
  - (11) prosecute, defend, pay, contest, or settle any action, claim, or proceeding relating to the Real Property; and
  - (12) take any other actions that Trustee or the receiver deems reasonably necessary to protect the Real Property.
- (c) Any payments made or indebtedness incurred by Beneficiary or the receiver in connection with protecting the Real Property will be added to the Obligations,



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and will bear interest at the same rate as specified in the Promissory Note dated of even date herewith in the principal amount of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) made by Grantor in favor of Beneficiary.

(d) If Beneficiary or the receiver receives any rent or other payments after taking possession, control, or charge of the Real Property:

(1) Beneficiary may hold the payments as additional security for the full and prompt payment and performance of the Obligations, subject to the provisions of this Section 6.4 (d); and

(2) Beneficiary may, in Beneficiary's sole discretion, apply the payments:

(A) to the Obligations, whether or not the Obligations are then due; or

(B) to the cost and expense of protecting the Real Property.

**6.5 Sale of Real Property.** After an Event of Default, Trustee or Trustee's authorized agent may sell the Real Property at public auction to the highest bidder. Trustee may sell the Real Property in gross or in parcels. Trustee may not bid at the trustee's sale. Any other person, including Beneficiary, may bid at the trustee's sale.

**6.6 Disposition of Proceeds of Sale.** After an Event of Default and a sale of one or more parcels of the Real Property by Trustee, Trustee must apply the proceeds of the sale as follows:

(a) to the expenses of the sale, including the compensation of Trustee, and a reasonable charge by the attorney for Trustee;

(b) to the Obligations;

(c) to all persons having recorded liens subsequent to the interest of Trustee in this Deed of Trust as their interests may appear in the order of their priority; and

(d) the surplus, if any, to Grantor or to the successor in interest of Grantor entitled to such surplus.

**6.7 No Obligation to Pay or Perform.** Beneficiary has no obligation to pay or perform any Obligation.

## **SECTION 7. RELEASE, INDEMNIFICATION, AND WAIVERS**

**7.1 Release and Indemnification.** Grantor releases and will defend and indemnify Trustee and Beneficiary for, from, and against any and all claims, actions,



proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including but not limited to reasonable attorney's fees, resulting from or arising out of:

- (a) any action that Trustee or Beneficiary takes to perfect or continue Trustee's and Beneficiary's rights under this Deed of Trust; or
- (b) the exercise of any remedy available to Beneficiary under this Deed of Trust, without regard to cause or the negligence of Trustee, Beneficiary, or any other person.

**7.2 Waiver by Grantor.** Grantor waives demand, presentment for payment, notice of dishonor or nonpayment, protest, notice of protest, and lack of diligence in collection, and agrees that Beneficiary may amend any agreement evidencing, guaranteeing, or securing any of the Obligations or extend or postpone the due dates of the Obligations without affecting Grantor's liability.

**7.3 No Waiver by Beneficiary.** No waiver will be binding on Beneficiary unless it is in writing and signed by Beneficiary. Beneficiary's waiver of a breach of a provision of this Deed of Trust or any agreement evidencing, guaranteeing, or securing any of the Obligations will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. Beneficiary's failure to exercise any remedy under this Deed of Trust or any agreement evidencing, guaranteeing, or securing any of the Obligations will not be considered a waiver by Beneficiary of Beneficiary's right to exercise the remedy.

## **SECTION 8. ENVIRONMENTAL INDEMNIFICATION**

**8.1 Indemnification.** Grantor will defend and indemnify Beneficiary and each present and future shareholder, director, member, assignee, manager, partner, officer, and authorized representative of Beneficiary for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including but not limited to reasonable attorney's fees, resulting from or arising out of Grantor's breach of any representation, warranty, covenant, or other obligation of Grantor in Section 3.13 or Section 4.10.

**8.2 Survival.** All representations, warranties, covenants, and other obligations of Grantor in Section 3.13, Section 4.10, and Section 8.1 will survive the reconveyance of the Real Property to Grantor and the foreclosure of this Deed of Trust.

## **SECTION 9. SUCCESSOR TRUSTEE**

Trustee may resign at Trustee's own election or be replaced by Beneficiary. Trustee must give prompt written notice of Trustee's resignation to Beneficiary. The resignation of



Trustee will become effective upon the recording of the notice of resignation in Skagit County, Washington. Upon the resignation, incapacity, disability, absence, or death of Trustee, or the election of Beneficiary to replace Trustee, Beneficiary must appoint a successor Trustee. Upon recording the appointment of a successor Trustee in Skagit County, Washington, the successor Trustee will be vested with all the powers of the original Trustee.

## **SECTION 10. GENERAL**

- 10.1 Time of Essence.** Time is of the essence with respect to all dates and time periods in this Deed of Trust.
- 10.2 No Assignment.** Grantor may not assign or delegate any of Grantor's rights or obligations under this Deed of Trust to any person without the prior written consent of Beneficiary, which Beneficiary may withhold in Beneficiary's sole discretion.
- 10.3 Binding Effect.** This Deed of Trust will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 10.4 Amendment.** This Deed of Trust may be amended only by a written document signed by the party against whom enforcement is sought.
- 10.5 Notices.** All notices or other communications required or permitted by this Deed of Trust:
- (a) must be in writing;
  - (b) must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties; and
  - (c) are considered delivered:
    - (1) upon actual receipt if delivered personally or by fax or an overnight delivery service; and
    - (2) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.



To Grantor:

Forest Park Estates, LLC  
806 Metcalf Street  
Sedro Woolley, WA 98284

To Beneficiary:

John L Abenroth  
9685 Green Road  
Burlington, WA 98233

And To:

Louis H. Requa  
310 W. Bennett Street  
Sedro Woolley, WA 982843

- 10.6 Severability.** If a provision of this Deed of Trust is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Deed of Trust will not be impaired.
- 10.7 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Deed of Trust.
- 10.8 Attachments.** Any exhibits, schedules, and other attachments referenced in this Deed of Trust are part of this Deed of Trust.
- 10.9 Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 10.10 Governing Law.** This Deed of Trust is governed by the laws of the State of Washington, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Deed of Trust.
- 10.11 Venue.** Any action or proceeding arising out of this Deed of Trust will be litigated in courts located in Skagit County, Washington. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Skagit County, Washington.
- 10.12 Attorney's Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Deed of Trust, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, the litigation, any appeal or



petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

**10.13 Entire Agreement.** This Deed of Trust contains the entire understanding of the parties regarding the subject matter of this Deed of Trust and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Deed of Trust.

GRANTOR:

FOREST PARK ESTATES, LLC,  
a Washington limited liability company

By: [Signature]  
John L. Abenroth, Co-Manager

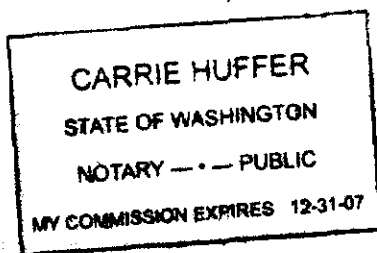
By: [Signature]  
Louis H. Requa, Co-Manager

By: [Signature]  
Dolores A. Abenroth, Member

By: [Signature]  
Joann Requa, Member

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF SKAGIT        )

On this 28th day of December, 2005, before me, the undersigned Notary Public, personally appeared **LOUIS H. REQUA, Co-Manager; JOHN L. ABENROTH, Co-Manager; JOANN REQUA, Member; and DOLORES A. ABENROTH, Member of FOREST PARK ESTATES, LLC** personally known to me or proved to me on the basis of satisfactory evidence to be the designated agents of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.



[Signature]  
Print Name: Carrie Huffer  
Notary Public in and for the State of Washington  
Residing at Burlington  
My commission expires: 12/31/2007

## APPENDIX A

### Definitions

**"Encumbrance"** means any lien, mortgage, pledge, security interest, or other encumbrance.

**"Environmental Law"** means any law designed to minimize, prevent, punish, or remedy the consequences of actions that damage or threaten the environment or public health and safety.

**"Event of Default"** means any event specified in Section 6.1.

**"Obligations"** means all present and future obligations of any kind owed by Grantor to Beneficiary, including but not limited to all of Grantor's obligations arising out of:

- (a) the Promissory Note of even date herewith in the principal amount of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) made by Grantor in favor of Beneficiary; and
- (b) this Deed of Trust.

**"Permitted Encumbrances"** means:

- (a) Encumbrances in favor of Trustee or Beneficiary;
- (b) Encumbrances arising by operation of law for taxes, assessments, or government charges not yet due; and
- (c) Statutory Encumbrances for services or materials arising in the ordinary course of Grantor's business for which payment is not yet due.

**"Prior Mortgage Contract"** means the Promissory Note dated December 23, 2005 in the principal amount of Seven Hundred Sixty-Six Thousand Dollars (\$ 766,000.00) made by Grantor in favor of WHIDBEY ISLAND BANK, securing that certain Deed of Trust dated December 23, 2005, recorded December 29, 2005 under Skagit County Auditors File No: 200512290204 made by Grantor in favor of WHIDBEY ISLAND BANK.

**"Real Property"** means the real property located in Skagit, Washington, as more particularly described on Schedule 3.5, together with all fixtures and improvements.



Lots 1 – 4, inclusive, Short Plat No. 91-099, approved May 25, 1993, recorded May 28, 1993 in Volume 10 of Short Plats, page 198, under Auditor's File No. 9305280027, and being a portion of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 16, Township 35 North, Range 7 East, W.M.

Situate in the County of Skagit, State of Washington.



200601300001

Skagit County Auditor