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Skagit County Auditor

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## Return Address:

Thomas M. Hansen  
Oseran Hahn Spring & Watts, P.S.  
10900 NE Fourth Street #850  
Bellevue WA 98004

**SKAGIT COUNTY AUDITOR/RECORDER'S INDEXING FORM**

CHICAGO TITLE IC38275

**DOCUMENT TITLE(S):**

1. TENANCY-IN-COMMON AGREEMENT

**REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:**

Additional reference numbers are on page \_\_\_\_\_ of document.

**CO-TENANT:**

1. J &amp; J PATTERSON, LLC

Additional names on page 15 of document.

**CO-TENANT:**

1. A &amp; E THORSETT, LLC

Additional names on page 15 of document.

**LEGAL DESCRIPTION:** (abbreviated i.e. lot, block, plat, section, township, and range)

Section 7, Township 36, Range 4; ptn. Government Lot 4

Full legal description is on Exhibit A attached to document.

**ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER:**

360407-0-008-0504 (P48997)

The Auditor/Recorder will rely on information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

**TENANCY-IN-COMMON AGREEMENT**

THIS TENANCY-IN-COMMON AGREEMENT ("Agreement") is made and entered into effective as of April 14, 2006, by and among J & J PATTERSON, LLC, a Washington limited liability, Co-Tenant ("PATTERSON"), and A & E THORSETT, LLC, a Washington limited liability, Co-Tenant ("THORSETT"). PATTERSON and THORSETT are collectively referred to herein as "Co-Tenants", and each individually as a "Co-Tenant".

## **ARTICLE 1. – FORMATION OF TENANCY-IN-COMMON**

The Tenancy-in-Common ownership arrangement shall be deemed created on the date on which the Co-Tenants acquire title to the Property (as hereafter defined). The Tenancy in Common is not a separate legal entity, and merely describes the legal arrangement by which PATTERSON and THORSETT each own as Co-Tenants undivided interests in the Property described below. Nothing contained herein shall be deemed to constitute the Co-Tenants as Partners or joint venturers or prohibit multiple Owners of a single interest from holding title as between themselves in any manner they elect.

## **ARTICLE 2. – PROPERTY OWNED AS CO-TENANTS**

2.1 Concurrently with the execution of this Agreement the Co-Tenants will acquire title to and own that certain real property commonly known as Algiers Mini Storage, 1761 Patrick lane, Bellingham, Skagit County, Washington, 98229, and legally described on Schedule 1 attached hereto and incorporated herein by reference ("Property"). The Co-Tenants shall neither hold themselves out as a partnership or any other form of business entity.

2.2 The Co-Tenants intend to operate and manage the Property exclusively as investment property.

## **ARTICLE 3. – CO-TENANTS' PERCENTAGE INTERESTS, RELATIVE RIGHTS AND OBLIGATIONS**

The names, addresses, and undivided percentage interests of the Co-Tenants are set forth below, as amended or restated from time to time.

J & J PATTERSON, LLC 302 Rhodora Heights Lake Stevens, WA 98258	30%
A & E THORSETT, LLC 13501 Se 226 <sup>th</sup> Place Kent, WA 98042	70%

Such undivided interests are referred to herein as their "Percentage Interests" collectively, and "Percentage Interest" individually. Except as set forth otherwise in this Agreement, the Co-Tenants shall share any cash or other distribution, income tax benefits, and obligations relating to the Property in accordance with their respective Percentage Interests.

## **ARTICLE 4. – MANAGEMENT OF PROPERTY.**

4.1 Management of Administrative Activities. The Co-Tenants will jointly appoint a manager ("Manager"), who will be responsible for administering all daily activities relating to the ownership and operation of the Property. However, major decisions and actions affecting the Property, as described in Section 4.2 below, will



require the unanimous consent of the Co-Tenants. The initial Manager shall be PATTERSON. Except as otherwise expressly provided in Section 4.2 below or in this Agreement, the Manager shall have full and complete authority, power and discretion to manage and control all activities, and make all decisions, and perform any and all other acts or activities customary or incident to the management and operation of the Property. Without limiting the generality of the foregoing, the Manager shall have power and authority on behalf of the Co-Tenants:

4.1.1 To spend both the capital contributed by the Co-Tenants, proceeds of any mortgage loans, and revenues from the Property in the furtherance of the ownership and improvement of the Property;

4.1.2 To acquire, improve, manage, operate, sell, transfer, exchange, encumber, pledge and dispose of the Property, or any personal property acquired or held by the Co-Tenants in connection with the ownership and improvement of the Property;

4.1.3 To borrow money on a secured or unsecured basis from individuals, banks and other lending institutions in order to finance or refinance the costs of ownership, operation and improvement of the Property, to meet other Co-Tenant obligations, to provide working capital, and for any other purposes; to execute promissory notes, deeds of trust, lease assignments and such other security instruments as a lender of funds may require to secure repayment of such borrowing(s); to change, substitute or amend such borrowing, as, in their judgment, is in the best interest of the Co-Tenants, and to execute any and all documents that may be required by a bank or other financial institution or other source to establish an escrow, trust agreement, a trust account with a bank, institution or other sources for the receipt of funds, sale proceeds and other payments and disbursements thereof to service such loan(s);

4.1.4 To purchase at the expense of the Co-Tenants such liability, casualty, property and other insurance as the Manager in its reasonable discretion deems advisable to protect the Co-Tenants' assets against loss or claims of any nature; provided, however, the Manager shall not be liable to the other Co-Tenant for failure to purchase any insurance if such coverage should prove inadequate;

4.1.5 To invest the Co-Tenants' funds temporarily in time deposits, short-term governmental obligations, commercial paper or other short-term investments;

4.1.6 To execute instruments and documents, including without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Co-Tenants' property, assignments, bills of sale, leases, and any other instruments or documents necessary, in the opinion of the Manager, to the ownership and improvement of the Property



4.1.7 To employ accountants, legal counsel, independent contractors, managing agents or other experts to perform services for the Co-Tenants and to compensate them from funds of the Co-Tenants;

4.1.8 To enter into any and all other agreements with any other person for any purpose related to the ownership or improvement of the Property, all in such form as the Manager may approve;

4.1.9 From time to time open bank accounts in the name of the Co-Tenants, and the Manager shall be the sole signatory thereon, unless the Manager determines otherwise; and

4.1.10 To do and perform all other acts as may be necessary or appropriate to the ownership and improvement of the Property.

Unless authorized to do so by this Agreement or by the Manager, no Co-Tenant or agent of the Co-Tenants shall have any power or authority to bind the other Co-Tenant in any way, to pledge its credit or to render it liable for any purpose.

The Manager shall devote so much of its time and attention to administering the daily activities relating to the ownership and operation of the Property as in its judgment is reasonably necessary to manage properly such activities .

4.2 Major Decisions and Actions. Notwithstanding anything to the contrary in this Agreement, the Manager shall not make or undertake any of the following decisions or actions without the unanimous approval of all Co-Tenants:

4.2.1 Entering into a property management agreement with a third party to operate and lease the Property.

4.2.2 Any material decision or action relating to obtaining any new mortgage loan secured by the Property, including the selection of a mortgage lender, the terms of any mortgage application and approved mortgage financing, as well as the Co-Tenants entering into any binding agreement regarding any loan application, loan documents, modification or any other agreements relating to such mortgage financing;

4.2.3 Any other borrowings by the Co-Tenants in excess of Ten Thousand Dollars (\$10,000);

4.2.4 The sale of the Property, including entering into any binding agreements related to a sale, such as listing agreements, letters of intent and/or purchase agreements;

4.2.5 Any expenditure of funds relating to the improvement, leasing and/or sale of the Property, which are in excess of Ten Thousand Dollars (\$10,000);



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4.2.6 The admission of additional Co-Tenant;

4.2.7 Any transaction between the Co-Tenants and an affiliate of a Co-Tenant, or any change, modification or early termination of any such relationship;

4.2.8 Initiating or settling any lawsuit, claim, arbitration or other dispute with any person involving payment or receipt by the Co-Tenants with a value in excess of Ten Thousand Dollars (\$10,000);

4.2.9 Causing the Co-Tenants to enter into a joint venture, partnership, limited liability Co-Tenants or other similar type arrangement with any person;

4.2.10 Causing the Co-Tenants to enter into any contract related to the modification, redevelopment or improvement of the Property that involves more than Ten Thousand Dollars (\$10,000);

4.2.11 The decision to distribute any cash or other assets owned by the Co-Tenants; or

4.2.12 Requiring the Co-Tenants to provide additional capital contributions in accordance with Section 6.2 below in connection with the ownership and improvement of the Property, as well as the amount and timing of payment of such additional capital contribution.

The Co-Tenants have consented to their borrowing of funds as Co-Tenants from GENERAL ELECTRIC CAPITAL CORPORATION ("Lender") in the original amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000) ("GE Loan"). Manager is authorized to execute on behalf of Co-Tenants any and all documents necessary to borrow funds from Lender in the amount of the GE Loan.

4.3 Compensation. The Manager will be paid no compensation for acting as Manager herein.

4.4 Limitation on Liability; Indemnification.

4.4.1 The Manager shall not be liable, responsible or accountable in damages or otherwise to the Co-Tenants for any act or omission by any such Manager performed in good faith pursuant to the authority granted to such Manager by this Agreement or in accordance with its provisions, and in a manner reasonably believed by such Manager to be within the scope of the authority granted to such Manager and in the best interest of the Co-Tenants; provided that such act or omission did not constitute fraud, intentional misconduct or gross negligence. The Co-Tenants shall indemnify and hold harmless the Manager, and each member, director, officer, partner, employee or agent thereof, against any liability, loss, damage, cost or expense incurred by them on behalf of the Co-Tenants or in furtherance of the Co-Tenants' interests without relieving any such Manager of liability for fraud, misconduct, bad faith or negligence. No Co-Tenant



shall have any personal liability with respect to the satisfaction of any required indemnification of the above-mentioned Manager.

4.4.2 Any indemnification required to be made by the Co-Tenants shall be made promptly following the fixing of the liability, loss, damage, cost or expense incurred or suffered by a final judgment of any court, settlement, contract or otherwise. In addition, the Co-Tenants may advance funds to a Manager claiming indemnification under this Section 4.5 for legal expenses and other costs incurred as a result of a legal action brought against such Manager only if (a) the legal action relates to the performance of duties or services by such Manager on behalf of the Co-Tenants, (b) the legal action is initiated by a party other than a Member, and (c) such Manager undertakes to repay the advanced funds to the Co-Tenants if it is determined that such Manager is not entitled to indemnification pursuant to the terms of this Agreement.

4.5 Resignation of Manager. The Manager may not voluntarily resign or withdraw as Manager. If, for any reason, the Manager becomes unable to perform its duties as Manager, then THORSETT shall replace PATTERSON as the Manager of the Co-Tenants.

4.6 Operation and Management by Third-Party Management Company. The Co-Tenants agree to enter into a property management agreement with OCCIDENTAL CAPITAL HOLDINGS, INC. ("COMPANY"), a copy of which is attached hereto as Exhibit A. COMPANY is a Nevada corporation wholly owed by James R. Patterson and Joan H. Patterson. COMPANY shall be the property management company that operates and manages the Property. COMPANY shall be solely responsible for leasing, operating, and the day-to-day management of the Property. COMPANY will maintain the books and render monthly statements of receipts and expenses. As the cash flow of the Property allows, monthly distributions will begin the fourth (4th) month of ownership. A reserve account will be opened at the date of purchase of the Property in which all funds of the Tenancy in Common, including any excess funds from the closing will be deposited. In the event rents collected are less than the expenses which COMPANY is required to make, or deems advisable to make, the Tenancy in Common shall deposit such funds as will be sufficient to make up any deficiency in accordance with their pro rata interest in the Tenancy in Common. If funds are not available to pay all operating expenses, the management fee will accrue interest free until such time as sufficient funds are available to pay the management fee. COMPANY agrees to subordinate its management fee to all operating expenses of the Property. The mortgage payments, insurance, property taxes, and all operating expenses will have priority in payment over the management fee.

## **ARTICLE 5. – RIGHTS AND OBLIGATIONS OF CO-TENANTS**

5.1 Inspection of Records. Upon reasonable request, each Co-Tenant shall have the right to inspect and copy at such Co-Tenant's expense, during ordinary business hours, the records required to be maintained by the Co-Tenants pursuant to Article 9.



5.2 No Priority and Return of Capital. No Co-Tenant shall have priority over any other Co-Tenant, either as to the return of capital contributions or as to net profits, net losses or distributions, provided that this Section 5.2 shall not apply to loans made by a Co-Tenant to other Co-Tenants.

## ARTICLE 6. – CAPITAL CONTRIBUTIONS

6.1 Co-Tenants' Initial Capital Contributions. It is anticipated that the total Initial Capital Contributions from all Co-Tenants will be approximately One Million Four Hundred Twenty-Five Thousand Dollars (\$1,425,000). Once the actual amount has been determined, the Co-Tenants will promptly make their Initial Capital Contributions pro rata in accordance with their respective Percentage Interests, which amounts shall be set forth on Schedule 1 attached hereto.

6.2 Additional Capital Contributions. If the Manager, subject to Section 4.2.9 above, determines that additional capital is required in connection with the ownership and improvement of the Property, then the Manager may require the Co-Tenants to contribute additional cash capital on a pro rata basis (based on their respective Percentage Interests. A Co-Tenant shall contribute any such additional capital within thirty (30) days after receipt of written notice from the Manager specifying the amount of such additional cash Capital Contribution. This Section 6.2 shall not benefit any creditor of any Co-Tenant or of the Property, and no third party may require that any such additional Capital Contribution be made. A Co-Tenant shall be deemed in default hereunder if they fail to pay its initial or additional Capital Contribution within thirty (30) days after receipt of written notice from the Manager requesting such Capital Contribution. For so long as a Co-Tenant is in default hereunder for failing to contribute capital when due, then that Co-Tenant shall not be entitled to vote on any matter requiring the consent or vote of the Co-Tenants hereunder, including the major decisions and actions described in Section 4.2 above.

6.3 Withdrawal or Reduction of Co-Tenant's Contributions to Capital. A Co-Tenant shall not receive any part of its Capital Contribution until all liabilities of the Co-Tenants and against the Property, except liabilities to Co-Tenants on account of their Capital Contributions, have been paid. A Co-Tenant, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

6.4 Personal Guaranty of Loans for Property. Each Co-Tenant agrees to execute all documents required by any lender in connection with any loan against the Property. Such documents may include loan guaranties and related documents that may have the effect of imposing personal liability on the Co-Tenants. Each Co-Tenant further agrees to provide financial statements, income tax returns and other documents required by such lender in connection with any such loan.



## ARTICLE 7. – ALLOCATIONS OF NET PROFITS AND LOSSES

The net profits and/or net loss for any fiscal year of the Tenancy-in-Common shall be allocated to all Co-Tenants in accordance with their respective Percentage Interests. Net profits and net losses shall be determined in accordance with generally accepted accounting principles. It is the intention of the Tenants in Common that they will receive regular monthly distributions in proportion to their respective percentage interests in the Property, beginning no later than the first (1st) day of fourth (4th) month of owning the Property, and such payments will continue for the duration of the Tenancy in Common.

## ARTICLE 8. – CASH DISTRIBUTIONS

8.1 Distributable Cash. As used herein, the term "Distributable Cash" means all net revenues received from the ownership, leasing, sale or refinancing of the Property remaining after payment of the debt service for the indebtedness of against the Property, all other expenses of owning, maintaining, repairing, financing and selling the Property, and further reduced by reserves for foreseeable future expenses.

8.2 Distributions of Distributable Cash. At least once every year, all Distributable Cash available from ownership of the Property shall be distributed to the Co-Tenants pro rata in proportion to their respective Percentage Interests as set forth in Article 3.

8.3 Distributions of Distributable Cash from Proceeds of Sale or Refinancing of Property. Distributable Cash available from the proceeds of sale or refinancing of the Property for purposes of this Agreement shall mean the net cash proceeds resulting from sale, or refinancing of the Property, after deduction of all expenses incurred in connection with such sale, refinancing and the application of any such proceeds, at the sole discretion of the Co-Tenants, for the payment of any indebtedness of the Property, the payment of any other expenses, and the establishment of any reserves as the Co-Tenants deem reasonably necessary for future ownership, maintenance and repair expenses of the Property. After provisions have been made for such reserves, all Distributable Cash from the proceeds of sale or refinancing of the Property shall be distributed as follows: (a) first, to repay to the Co-Tenants pro rata all capital contributions from any Co-Tenant, if not previously returned; and (b) second, to the Co-Tenants pro rata in proportion to their respective Percentage Interests as set forth in Article 3.

## ARTICLE 9. – ACCOUNTING, BOOKS AND RECORDS

9.1 Accounting Principles. The Co-Tenants' books and records regarding the Property shall be kept, and its income tax returns prepared, under such permissible method of accounting, consistently applied, as the Co-Tenants determine is in the best interest of all Co-Tenants.

9.2 Interest On and Return of Capital Contributions. No Co-Tenant shall be entitled to interest on its capital contribution or to return of its capital contribution, except as otherwise specifically provided for herein.





9.3 Accounting Period. The accounting period shall be the calendar year.

9.4 Records, Audits and Reports. At the expense of the Co-Tenants, the Co-Tenants shall maintain records and accounts of all operations and expenditures of the Tenancy-in-Common. At a minimum the Co-Tenants shall keep the following records: (a) copies of this Agreement and all amendments hereto; (b) minutes of every meeting of the Co-Tenants and any written consents obtained from Co-Tenants for actions taken by Co-Tenants without a meeting; and (c) copies of the income and expense statements of the Property for the three (3) most recent years.

#### **ARTICLE 10. – LENDER CONDITIONS**

10.1 Manager is authorized to be the sole contact and notice party for the Lender for all notices to the Tenancy in Common. Lender shall have no duty to give notice to any other Co-Tenant, and Manager shall have all authority to deal with Lender on behalf of the Tenancy in Common.

10.2 The Property may not be partitioned. However, in the event a Co-Tenant becomes a debtor subject to the Bankruptcy Code, any one or more of the other Co-Tenants shall have the right to purchase the bankrupt Co-Tenant's interest at fair market value based on independent appraisals. The purpose of this provision is to avoid the bankruptcy court's exercise of power to force the sale of the Property pursuant to Sec. 363(h) of the Code.

10.3 Notwithstanding anything to the contrary contained herein, this Agreement and the rights of the Co-Tenants hereunder is, and shall be, subordinate to the rights of Lender pursuant to any note for the GE Loan and all other instruments, agreements and documents related to the Loan evidenced by any note between Lender and the Tenancy in Common. Lender shall be a third-party beneficiary hereof.

10.4 Each Co-Tenant hereby authorizes Manager to be the only party the Lender or holder of the Loan need notify or provide written notice or other communication pursuant to the Loan documents. Any such notice shall be valid and effective under the Loan as though given to all Co-Tenants. Manager hereby agrees to provide such notice to each Co-Tenant, but failure to do so will not alter the effect of such notice under the Loan.

10.5 Each Co-Tenant hereby acknowledges that the Property has been acquired by the Co-Tenants for long-term investment purposes, and that a premature forced sale or division of the Property would significantly and adversely affect that investment and the value of their respective Co-Tenancy Interests in the Property and the interests and requirements of Lender. Notwithstanding any other provision set forth herein to the contrary, no Co-Tenant may exercise any right of partition with respect to the Property.

10.6 In the event that any Co-Tenant becomes a debtor in a bankruptcy proceeding, any one or more of the other Co-Tenants shall have the right to purchase the Co-Tenant's Interest at fair market value based on an independent appraisal.



10.7 So long as the Loan is outstanding: (a) each Co Tenant waives any and all remedies against other Co Tenants and lien rights it has or may acquire against the Property, including but not limited to any lien arising under the terms of this Agreement and (b) this Agreement and all the rights of the Co Tenants under this Agreement, including without limitation, any purchase right or rights of first refusal, are and will remain subordinate to the Loan Documents, and the rights of Lender under the Loan Documents, including any modifications, amendments, renewals, and extensions of the Loan Documents.

10.8 The Co-Tenants each agree that this Agreement shall not be modified or amended without the express written consent of Lender. In the event of any conflict between the terms of this Article 10 and any other provision in this Agreement, then as long as the Loan from General Electric Capital Corporation is outstanding, the terms of this Article 10 shall control.

#### **ARTICLE 11. – TRANSFERABILITY; PARTITION; LENDER RESTRICTIONS**

11.1 General. No Co-Tenant shall have the right to sell, encumber, assign, pledge, gift or otherwise transfer all or any portion of their undivided interest in the Property or any other assets owned by the Co-Tenants (collectively "Transfer"), unless (i) the transferee enters into this Co-Tenancy Agreement on or prior to such transfer, and (ii) each of the transferees shall meet all requirements of Lender, including single purpose entity criteria, as set forth in the Loan Documents so long as the Loan is outstanding. Each Co-Tenant hereby acknowledges the reasonableness of the restrictions on any such Transfer in view of the relationship of the Co-Tenants. Accordingly, the restrictions on Transfer are specifically enforceable. Each Co-Tenant specifically waives the right to seek partition of the Property or any other assets owned by the Co-Tenants.

11.2 Right of First Refusal. No Tenant in Common may sell or transfer her Tenancy-in-Common interest to any third party without first giving the other Tenant in Common the first right of refusal to purchase the selling Co-Tenant's interest at a price equal to the amount offered by a bonafide third party. Upon receipt of a bonafide offer to purchase from a third party, the selling Co-Tenant shall deliver to the other Co-Tenant a notice of intent to sell along with a true and correct copy of the bonafide offer to purchase. The receiving Co-Tenant shall have thirty (30) calendar days from receipt of the notice and copy of the bonafide offer to purchase to elect to purchase selling Co-Tenant's interest at the price and on the terms equal to those set forth in the bonafide offer to purchase. In the event the receiving Co-Tenant delivers notice of intent to purchase within such 30-day period, the receiving Co-Tenant shall have thirty (30) calendar days from delivery of the notice of intent to purchase to close the purchase. In the event the receiving Co-Tenant elects not to purchase, then the selling Co-Tenant may sell its interest free of this right of first refusal. A third-party purchaser acquiring the selling Co-Tenant's interest shall take such interest subject to all the terms and conditions contained in the Tenancy-in-Common Agreement.



## **ARTICLE 12. – INDEPENDENT ACTIVITIES OF CO-TENANTS**

As a requirement for the assumption of the GE Loan, neither Co-Tenant may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to the ownership, financing, management, employment by, lending to or otherwise participating in businesses which are similar to or in competition with the ownership of the Property ventures or to the income or profits there from. Each Co-Tenant shall comply with any and all single purpose entity and other similar requirements in connection with the GE Loan, and further agrees to include any such provisions or requirements in their respective Limited Liability Company Agreements.

## **ARTICLE 13. – DEFAULT**

13.1 Events of Default. The following events shall be deemed a default and must be cured by the defaulting Co-Tenant:

13.1.1 A Co-Tenant's failure within thirty (30) days after receipt of written demand from the Co-Tenant to remove any involuntary lien or encumbrance against the Property to bond against such lien or encumbrance arising from action by the defaulting Co-Tenant.

13.1.2 A Co-Tenant's willful and persistent breach of any other financial obligations under this Agreement.

## **ARTICLE 14. - REMEDIES**

14.1 In addition to all the remedies permitted by law under this Agreement, a Co-Tenant that is in compliance with the terms and provisions of this Agreement (a "Non-Defaulting Co-Tenant") shall have the remedies described herein against any Co-Tenant who commits a default (a "Defaulting Co-Tenant").

14.1.1 The Non-Defaulting Co-Tenant shall have the right, but not the obligation, to advance money owing by a defaulting Co-Tenant to pay any expense, lien, mortgage, pledge or judgment created by the defaulting Co-Tenant. The amount of such advance shall constitute a loan to the Defaulting Co-Tenant shall bear interest at the rate of the Bank of America NT & SA (San Francisco branch) reference rate in effect on the date of the advancement plus three percent (3%), or the maximum legal rate, if less, from the date of advancement until paid in full.

14.1.2 Any such advance shall due and payable upon demand of the advancing Non-Defaulting Co-Tenant. Unless repaid on demand, any such advance, together with interest as set forth above, shall, at the option of the Non-Defaulting Co-Tenant, be deducted and repaid from the Defaulting Co-Tenant's contribution to the Tenancy in Common's reserve account, if any, which the Defaulting Co-Tenant shall immediately restore.



14.1.3 The Non-Defaulting Co-Tenant shall also have a lien upon the ownership interest of the Defaulting Co-Tenant in the Property to the extent of such advances, interest or attorneys' fees incurred by the Non-Defaulting Co-Tenant.

14.1.4 The lien of each of the advances or assessments shall be subordinate to the lien of any bonafide first or second mortgage or first or second deed of trust now or hereafter placed upon the Defaulting Co-Tenant's ownership interest subject to advances or assessments.

14.1.5 Any advance not repaid or assessment not paid within fifteen (15) days after the due date shall be deemed to be in default and shall bear interest from the due date at the rate of ten percent (10%) per annum on such advancement by the Non-Defaulting Co-Tenant will constitute a lien on the Defaulting Co-Tenant's ownership interest. An Non-Defaulting Co-Tenant may bring an action at law against the Defaulting Co-Tenant, who shall be personally obligated to pay the same, or may foreclose the lien against the Defaulting Co-Tenant's ownership interest in the Property.

#### **ARTICLE 15. – PROCEEDS FROM THE SALE ANY CO-TENANT'S INTEREST IN THE PROPERTY**

Any Co-Tenant that sells their interest as provided for in this Agreement shall be entitled to all proceeds realized from such sale, less (a) the balance as of the sale date of any liens or encumbrance against or allocable to the interest of such Co-Tenant as provided in this Agreement, the amount of such lien or encumbrance shall be paid to the other Co-Tenant individually; (b) all selling expenses.

#### **ARTICLE 16. – DISPUTE RESOLUTION**

16.1 Except actions for injunctive relief, to compel arbitration, or for unlawful detainer, any controversy, dispute, or claim arising out of, in connection with, or in relation to the interpretation, performance, or breach of this Agreement shall be resolved, at the request of any Co-Tenant, as follows:

16.1.1 Before instituting any arbitration relating to the rights and/or duties of the Co-Tenants under this Agreement, other than the payment or collection of any assessments, the Co-Tenant that desires to initiate such action (the "Complainant") must make a good faith attempt to mediate such dispute in accordance with this Section. The Complainant shall send the other party (the "Respondent") written notice of the nature of the dispute, the facts giving rise to such claim and the Complainant's desire to mediate the matter (the "Mediation Notice"). The Mediation Notice shall name a mediator who shall have at least three (3) years' experience mediating real estate disputes in King County and no personal or business relationship with the Complainant. The parties shall share the cost of initiating and conducting mediation equally. Within seven (7) days of Respondent's receipt of the Mediation Notice, Respondent shall inform



Complainant in writing if Respondent does not agree with the Complainant's choice of mediator (the "Rejection Notice"). Such Rejection Notice shall include the name of the Respondent's choice of a qualified mediator. Complainant and Respondent's mediators shall then select a third qualified mediator to hear the dispute. Within thirty (30) days after the final mediator is chosen, the parties shall schedule and attend a mediation session and attempt in good faith to resolve their dispute. If the mediation does not resolve the dispute or if the Respondent refuses to attend such mediation, the Complainant may commence arbitration as provided below. The requirements of this provision shall not apply under circumstances where the Complainant would be entitled to injunctive or declaratory relief.

16.1.2 In the case of any claim or dispute between Co-Tenants that related to the rights and/or duties of the Co-Tenants under this Agreement, the dispute shall be submitted to, and conclusively determined by binding arbitration conducted by a retired judge appointed pursuant to the provisions as set forth in Washington law as pertains to dispute resolution. If the parties cannot agree upon a member of the dispute panel, one shall be appointed by the Presiding Judge in King County. The arbitrator shall award costs and attorneys' fees to the prevailing party and shall have the authority to order a sale of the Property in accordance with Washington law to effectuate any remedy provided in this Agreement. This provision shall not preclude any Co-Tenant from seeking injunctive or other provisional or equitable relief to preserve the status quo pending the parties' resolution of their dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that Co-Tenant's arbitration rights.

NOTICE BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY WASHINGTON LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE DISPUTE RESOLUTION PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE WASHINGTON CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTER INCLUDED IN THE "ARBITRATION" PROVISION TO NEUTRAL ARBITRATION.

Initials:

*JRP ET JR*



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Skagit County Auditor

Initials: \_\_\_\_\_

## ARTICLE 17. – MISCELLANEOUS PROVISIONS

17.1 Notices. Any notice, demand or communication required or permitted under this Agreement shall be deemed to have been duly given if delivered personally to the party to whom directed, or if mailed by registered or certified mail, postage and charges prepaid, addressed to a Co-Tenant, to the Co-Tenant's address specified in attached Article 3. Except as otherwise provided herein, any such notice shall be deemed given when personally delivered or, if mailed, three (3) business days after the date of mailing. A Co-Tenant may change its address for the purposes of notices hereunder by giving notice to the other parties specifying such changed address in the manner specified in this Section 12.1.

17.2 Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Washington.

17.3 Amendments. This Agreement may not be amended except by the unanimous written agreement of all Co-Tenants.

17.4 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

17.5 Headings. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.

17.6 Waivers. The failure of any Co-Tenant to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act which would have originally constituted a violation from having the effect of an original violation.

17.7 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

17.8 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

17.9 Successors and Assigns. Each of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective legal representatives, successors and assigns.



17.10 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of any Co-Tenant.

17.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

Executed by the undersigned Co-Tenants effective as of the date first above written.

**CO-TENANTS:**

J & J PATTERSON, LLC,  
a Washington limited liability Company

By: James R. Patterson

James R. Patterson  
Its: Manager, Member

By: Joan H. Patterson

Joan H. Patterson  
Its: Member

A & E THORSETT, LLC,  
a Washington limited liability Co-Tenants

By: Allen Thorsett

Allen Thorsett  
Its: Manager, Member

By: Elizabeth Thorsett

Elizabeth Thorsett  
Its: Member



## EXHIBIT 'A'

### PARCEL A:

That portion of Government Lot 4 of Section 7, Township 36 North, Range 4 East of the Willamette Meridian, described as follows:

Commencing at the Southwest corner of said Government Lot 4;  
thence South 89°01'34" East a distance of 1,451.78 feet to the Southeast corner of said Government Lot 4, being the Southeast corner of Skagit County Short Plat No. 11-85, approved March 10, 1986, and recorded March 11, 1986, under Auditor's File No. 8603110018, records of Skagit County, Washington, and the point of beginning;  
thence North 00°18'56" West along the East line of said government lot and said short plat a distance of 1,201.82 feet to the Southerly line of Alger-Lake Samish Road;  
thence North 70°55'30" West along said Southerly line a distance of 261.41 feet to the centerline of Patrick Lane as shown upon said short plat;  
thence South 03°20'47" East along said centerline a distance of 22.10 feet;  
thence South 25°41'33" West along said centerline a distance of 215.99 feet;  
thence South 03°03'26" West along said centerline a distance of 123.31 feet;  
thence North 89°01'34" West a distance of 290.00 feet;  
thence South 30°00'00" West a distance of 150.00 feet;  
thence South 13°00'00" West a distance of 100.00 feet;  
thence South 15°50'30" West a distance of 104.59 feet to the Easterly line of Interstate Highway No. 5;  
thence Southerly along said Easterly line the following courses:  
South 23°56'55" East a distance of 301.93 feet;  
thence South 27°24'52" East a distance of 146.80 feet;  
thence South 27°56'00" East a distance of 237.89 feet to the South line of said Government Lot 4;  
thence South 89°01'34" East along said South line a distance of 467.09 feet to the point of beginning;

(Being Parcel 5 of an unrecorded survey.)

Situated in Skagit County, Washington.

### PARCEL B:

An easement for ingress, egress, and utilities, described as follows:

That portion of Government Lot 4 of Section 7, Township 36 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at the intersection of the Southerly line of Alger-Lake Samish Road with the Easterly line of Interstate Highway No. 5;  
thence Southerly along said Easterly line as shown on Skagit County Short Plat No. 11-85 the following courses:  
South 19°04'31" West a distance of 95.97 feet;  
thence South 12°27'14" West a distance of 308.83 feet;  
thence South 05°44'23" East a distance of 150.30 feet;  
thence departing from said Easterly line of Interstate Highway No. 5 South 89°01'34" East a distance of 489.51 feet to the Westerly line of Patrick Lane as shown on said short plat;  
thence North 03°03'26" East along said Westerly line a distance of 20.01 feet;  
thence departing therefrom North 89°01'34" West a distance of 462.38 feet to a line parallel with and 30 feet Easterly of said Easterly line of Interstate Highway No. 5;  
thence North 05°44'23" West parallel with said Easterly line a distance of 128.89 feet;  
thence North 12°27'14" East parallel with said Easterly line a distance of 73.47 feet;  
thence South 89°01'34" East a distance of 30.61 feet to a line parallel with and 60 feet Easterly of said Easterly line;

continued....



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Skagit County Auditor



**EXHIBIT 'A' continued:**

thence North 12°27'14" East parallel with said Easterly line a distance of 221.00 feet;  
thence North 19°04'31" East parallel with said Easterly line a distance of 32.50 feet;  
thence North 66°21'56" East a distance of 88.46 feet to said Southerly line of Alger-Lake Samish Road;  
thence North 70°55'30" West along said Southerly line a distance of 125.00 feet to the point of beginning.

Situated in Skagit County, Washington.

**PARCEL C:**

An easement for ingress, egress, and utilities over that portion of the above described Patrick Lane delineated on Skagit County Short Plat No. 11-85, approved March 10, 1986, and recorded March 11, 1986, under Auditor's File No. 8603110018, records of Skagit County, Washington; being a portion of Government Lot 4 of Section 7, Township 36 North, Range 4 East of the Willamette Meridian, lying North of the Easterly projection of the South line of the 20-foot wide portion of the following parcel:

That portion of Government Lot 4 of Section 7, Township 36 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at the intersection of the Southerly line of Alger-Lake Samish Road with the Easterly line of Interstate Highway No. 5;  
thence Southerly along said Easterly line as shown on Skagit County Short Plat No. 11-85 the following courses:  
South 19°04'31" West a distance of 95.97 feet;  
thence South 12°27'14" West a distance of 308.83 feet;  
thence South 05°44'23" East a distance of 150.30 feet;  
thence departing from said Easterly line of Interstate Highway No. 5 South 89°01'34" East a distance of 489.51 feet to the Westerly line of Patrick Lane as shown on said short plat;  
thence North 03°03'26" East along said Westerly line a distance of 20.01 feet;  
thence departing therefrom North 89°01'34" West a distance of 462.38 feet to a line parallel with and 30 feet Easterly of said Easterly line of Interstate Highway No. 5;  
thence North 05°44'23" West parallel with said Easterly line a distance of 128.89 feet;  
thence North 12°27'14" East parallel with said Easterly line a distance of 73.47 feet;  
thence South 89°01'34" East a distance of 30.61 feet to a line parallel with and 60 feet Easterly of said Easterly line;  
thence North 12°27'14" East parallel with said Easterly line a distance of 221.00 feet;  
thence North 19°04'31" East parallel with said Easterly line a distance of 32.50 feet;  
thence North 66°21'56" East a distance of 88.46 feet to said Southerly line of Alger-Lake Samish Road;  
thence North 70°55'30" West along said Southerly line a distance of 125.00 feet to the point of beginning.

Situated in Skagit County, Washington.

**- END OF EXHIBIT "A" -**



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Skagit County Auditor