



200712030216

Skagit County Auditor

12/3/2007 Page 1 of 26 3:59PM

After Filing Return To:

CITIBANK, N.A.
One Sansome Street, 20th Floor
San Francisco, CA 94104
Attn: Ms. Beth DiRamos
Legal Dept. No.: 2007-CON-CBG-001645

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

88986

GUARDIAN NW TITLE

Grantor(s):

1. **VILLAORBA, L.L.C., a Washington limited liability company, who acquired title as VILLAORBA L.L.C.**

Additional names on page _____ of document

Grantee(s):

1. **CITIBANK, N.A., a national banking association**
2. **FIRST AMERICAN TITLE INSURANCE COMPANY**

Additional names on page _____ of document

Abbreviated Legal Description (lot, block and plat name, or section-township-range):

Section 20, Township 34, Range 4; Ptn. SW NE

Additional legal description is on page 26 of document

Assessor's Property Tax Parcel Account Number(s): 340420-1-012-0006; 340420-1-009-0100;
340420-1-012-0204

Property I.D. Numbers: P26901, P26895 and P26902

Reference Numbers of Documents Assigned or Released (if applicable):

Additional reference numbers on page _____ of document

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

DATED November 29, 2007

This DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Security Instrument**") is by and among **VILLAORBA, L.L.C.**, a Washington limited liability company, who acquired title as **VILLAORBA L.L.C.**, whose address is **720 Main Street, Suite 230, Mount Vernon, WA 98273** (the "**Borrower**"), **FIRST AMERICAN TITLE INSURANCE COMPANY**, whose address is **2101 Fourth Avenue, Suite 800, Seattle, WA 98121** ("**Trustee**"), and **CITIBANK, N.A.**, a national banking association, having an office at **One Sansome Street, San Francisco, CA 94104** ("**Lender**").

WITNESSETH: That FOR THE PURPOSE OF SECURING (1) Payment in the sum of \$2,085,000.00 with interest thereon, according to the terms of a promissory note of even date herewith made by Borrower and other co-makers, if any, named therein, payable to Lender or order, which, if not sooner paid, is due and payable in full on December 1, 2022, and all modifications, extensions, renewals, and/or replacements thereof (the "**Note**"); **Notice: the Note provides for a variable rate of interest.** (2) Payment of such additional sums with interest thereon (a) as may be hereafter borrowed from Lender by the then record owner of the property hereinbelow described and evidenced by a promissory note or notes reciting it is or they are so secured, and all modifications, extensions, renewals and/or replacements thereof, and, (b) as may be incurred, paid out, or advanced by Lender or may otherwise be due to Trustee or Lender under any provision of this Security Instrument and all modifications, extensions, renewals and/or replacements thereof; (3) Performance of each agreement or obligation of Borrower contained herein or incorporated herein by reference or contained in any papers executed by Borrower relating to the loan of money by Lender to Borrower as evidenced by the Note and any future notes secured hereby (the "**Loan**"), including, without limitation, performance (if the Loan secured hereby or any part thereof is for the purpose of constructing improvements on the property hereinbelow described) of each provision or agreement of Borrower contained in any construction loan agreement or other such agreement between Borrower and Lender relating to the property hereinbelow described (all of such documents and agreements are herein called the "**Loan Documents**"). Notwithstanding the foregoing, this Security Instrument shall not be construed to secure any agreement or obligation of Borrower contained in any such papers or agreements which expressly provide that the same either are unsecured or are not secured by this Security Instrument; (4) Performance and keeping by Borrower of each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of the lease, if this Security Instrument encumbers a leasehold estate (the "**Lease**"), and any and all other instruments creating Borrower's interest in or defining Borrower's rights in respect to the property hereinbelow described; (5) Payment by Borrower of each and every monetary provision to be performed by Borrower under any declaration of covenants, conditions, and restrictions pertaining to the property hereinbelow described and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, which enforcement shall include, if the same have not been paid within 30 days after such written request is made, valid legal steps to enforce such payment; (6) Payment of all fees and charges owing to Lender in connection with the Loan, whether or not herein set forth, except where the document or agreement relating to such fees and charges expressly provides that payment of the same is an unsecured obligation of Borrower or is otherwise not intended to be secured by this Security Instrument; and (7) Payment of charges, as allowed by law when such charges are made, for any statement regarding the obligations secured hereby.

Borrower irrevocably GRANTS, MORTGAGES, BARGAINS, SELLS, ASSIGNS AND CONVEYS TO TRUSTEE, AND ITS SUCCESSORS AND SUBSTITUTES IN TRUST HEREUNDER, WITH POWER OF SALE, AND RIGHT OF ENTRY AND POSSESSION TO THE EXTENT PROVIDED HEREIN OR BY LAW, AND MORTGAGES, PLEDGES, ASSIGNS AND CREATES FOR THE BENEFIT OF LENDER, A SECURITY INTEREST AND MORTGAGE LIEN UPON, all of Borrower's right, title and interest in and to



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that certain real property located at 210 – 222 North 15th Street, in the City of Mount Vernon, County of Skagit, State of Washington, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.

(the "Land").

TOGETHER WITH all interests which Borrower now has or may hereafter acquire in or to the Land and in and to: (a) all tenements, hereditaments, licenses, easements, gores of land, streets, ways, alleys, passages, sewer rights, and rights of way appurtenant thereto; (b) all buildings, structures, improvements, fixtures, appliances, machinery, equipment, goods, and other articles of real or personal property of every kind and nature (other than consumable goods), whether or not physically attached or affixed to the Land and now or hereafter installed or placed thereon, and used in connection with any existing or future operation thereof (including, but not limited to, all apparatus and equipment used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, laundry, garbage disposal, fire prevention and extinguishing equipment, elevators, antennas, pool equipment, window coverings, floor coverings, ranges, ovens, dishwashers, and water heaters), it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the Land that is conveyed hereby (all of the herein above described property called the "**Improvements**"); (c) all water, water courses and water rights (whether or not appurtenant) and shares of stock pertaining to such water or water rights, ownership of which affects the Land; (d) all shrubs, trees, crops, and plants; (e) all adjacent lands included in enclosures or occupied by buildings located partly on the Land; and (f) all claims, demands and causes of action of every kind (including proceeds of settlements of any such claim, demand, or cause of action of any kind and which are subject to Paragraph 9 below) which Borrower now has or may hereafter acquire arising out of acquisition or ownership of the Land, including insurance proceeds of any kind whatsoever (whether or not from insurance specifically required by the Loan Documents), and any award of damages or compensation for injury to or in connection with any condemnation for public use of the Land or any part thereof (whether or not eminent domain proceedings have been instituted), subject however to the right, power and authority given to and conferred upon Lender by Paragraph 9 below, incorporated herein by reference, it being agreed, however, that Trustee shall have no duty to prosecute any such claim, demand or cause of action; (g) all plans and specifications prepared for construction of any Improvements, and all contracts and agreements of Borrower relating to such plans and specifications or to the construction of the Improvements, provided that nothing herein shall be deemed to be an assumption by Lender of any obligation of Borrower with respect to such plans and specifications or such construction or under any agreement relating thereto, nor shall Lender otherwise incur any liability with respect thereto unless and until Lender, in its sole and absolute discretion, shall hereafter expressly agree in writing; (h) all sales agreements, deposits, escrow agreements, and other documents and agreements entered into by Borrower with respect to the sale of all or any part of the Land or any interest therein; (i) all accounts, deposit accounts, instruments, chattel paper, documents, letters of credit, letter of credit rights, supporting obligations, permits, governmental approvals and entitlements, licenses, management contracts, and other contracts and agreements in which Borrower now has or may hereafter have an interest arising out of, or relating to, the acquisition, development, ownership, management or use of the Land (but without Lender assuming or incurring any obligation or liability of Borrower arising thereunder or relating thereto), and all general intangibles arising out of or relating to the acquisition, development, ownership, management or use of the Land, including all software and names by which the Improvements or other property associated therewith may at any time be known or operated and all rights to carry on business under such names or any variant thereof and all trademarks and goodwill in any way relating to the Improvements or such other property; (j) all additions, substitutions and proceeds (cash and noncash) of the foregoing.

ALSO TOGETHER WITH, if this Security Instrument encumbers a leasehold estate, all of the estate, right, title, and interest of Borrower, both at law and in equity, therein and thereto, and in and to any deposits of cash, securities or other property which may be held at any time and from time to time by the Landlord under the Lease, to secure the performance by Borrower of the covenants, conditions and agreements to be performed by Borrower thereunder, and any option to purchase the fee simple title to the Land, or any greater interest therein than Borrower now owns; and any and all other further or additional



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title, estate, interest or right which may at any time be acquired by Borrower in or to the Land, Borrower hereby agreeing that if Borrower shall, at any time prior to payment in full of all indebtedness secured hereby, acquire the fee simple title or any other or greater estate than Borrower now owns in the Land, then, and in that event, the lien of this Security Instrument shall automatically, and without the need for further action by any party hereto, attach, extend to, cover and be a lien upon such fee simple title or other greater estate, and Borrower will promptly execute, acknowledge and deliver such instruments as Lender may reasonably require to accomplish such result;

ALSO TOGETHER WITH all rights of Borrower, Borrower's bankruptcy trustee, and Borrower in the capacity of a debtor-in-possession to deal with the Lease or otherwise exercise any rights or remedies with respect thereto as provided in Paragraph 10 hereof;

ALSO TOGETHER WITH all profits, royalties, tolls, earnings, income and other benefits therefrom and installments of money payable pursuant to any agreement for sale of the Land or any part thereof or interest therein and any release, termination or "buy-out" consideration now or hereafter payable to Borrower with respect to any lease, rental, tenancy, occupancy or other agreement;

ALSO TOGETHER WITH all right, title, and interest of Borrower in and to any and all leases and rental, tenancy and occupancy agreements now or hereafter on or affecting the Land or the Improvements and all books and records pertaining thereto, together with all rents, issues, profits, security deposits, royalties, tolls, earnings, income and other benefits payable thereunder (collectively, "**Rents and Profits**"), subject however to the right, power and authority given to and conferred upon Lender and Borrower by Paragraph 18 hereof. The immediately foregoing provision shall, to the extent permitted by applicable law, constitute an absolute, present and executed assignment of the Rents and Profits, subject, however, to the conditional license given to Borrower to collect, hold and use such Rents and Profits to the extent provided in Paragraph 18 hereof.

(For the purpose of this Security Instrument, including all provisions incorporated by reference herein, all of the foregoing described real property, property rights, and interests shall be referred to as "**the Property**" or "**such Property**".)

BORROWER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

1. PERFORMANCE OF NOTE AND OTHER LOAN DOCUMENTS. Borrower shall perform, observe and comply with all provisions hereof, of the Note, and of every other Loan Document and will promptly pay to Lender the principal with interest thereon and all other sums required to be paid by Borrower under the Note and pursuant to the provisions of this Security Instrument and of every other Loan Document when payment shall become due, provided that nothing herein shall be construed to cause this Security Instrument to secure any covenant or other obligation of Borrower under any Loan Document which is expressly stated to be an unsecured obligation of Borrower or to be an obligation of Borrower which is not secured by this Security Instrument. In addition to certain other Loan Documents, Borrower has executed an Environmental Indemnity Agreement (the "Indemnity Agreement") in connection with the Note. Notwithstanding any other provision of this Security Instrument, any other Loan Document, or the Indemnity Agreement, this Security Instrument does not secure (i) any obligations under the Indemnity Agreement or (ii) any obligations under this Security Instrument or any Loan Document that are substantially equivalent to the obligations arising under the Indemnity Agreement, and none of the foregoing described obligations shall be included in the sums secured by this Security Instrument.

2. GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES. Borrower represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof: (a) Borrower is the lawful owner of good and marketable fee simple title to the Property and has good right and authority to grant, mortgage, bargain, sell, convey, transfer, and assign the Property or, if this Security Instrument secures a leasehold estate, Borrower is the owner of the Tenant's interest under the Lease and the holder of the estate thereunder, and is the owner of the Improvements hereby secured, and has good right to grant, mortgage, bargain, sell, convey, transfer, and assign the same as security under this Security Instrument. If this Security Instrument secures a leasehold estate, the terms "**Lease**", "**Landlord**" and "**Tenant**" shall have the meanings ascribed thereto in **Exhibit "A"** attached hereto. If the Property is a leasehold, the Lease is in full force and effect and is unmodified and no event of default has occurred thereunder; (b) Borrower will warrant and forever defend the title to the Property against the claims of all persons whomsoever claiming the same or any part thereof, and this warranty of title shall



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survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to foreclosure; (c) Borrower is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities, no bankruptcy or insolvency proceedings are pending or contemplated by or against Borrower, no assignment to creditors has been made by Borrower and no portion of Borrower's assets are presently subject to any attachment, execution or judicial seizure, and Borrower covenants immediately to provide notice to Lender in the event that any change in any of the circumstances described in this sentence should occur; (d) All reports, statements and other data furnished by or on behalf of Borrower, or any partner, officer, employee or agent of Borrower or any guarantor in connection with the Loan are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (e) Borrower is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified and authorized to do business in the state where the Property is located, and has full power and authority to own its property, to carry on its business as presently being conducted and as contemplated to be conducted hereunder and to execute, deliver and perform its obligations under this Security Instrument, the Note and the other Loan Documents; the person(s) executing this Security Instrument, the Note and the other Loan Documents on behalf of Borrower have been duly authorized to execute and deliver this Security Instrument, the Note and other Loan Documents on behalf of Borrower; this Security Instrument, the Note and the other Loan Documents constitute legally valid and binding obligations of Borrower enforceable in accordance with their terms; and the execution, delivery and performance of this Security Instrument, the Note and the other Loan Documents by Borrower will not conflict with, or constitute a breach of, or default under, Borrower's governing instruments or any indenture, mortgage, deed of trust, note, lease, commitment, agreement or other instrument or obligation to which Borrower is a party or by which Borrower or its properties is bound; (f) There are no actions, suits or proceedings pending, or to the knowledge of Borrower threatened, against or affecting Borrower or the Property of any nature; (g) Borrower is not in default under the terms of any instrument evidencing or securing any indebtedness of Borrower and there has occurred no event which would, if incurred or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time or both; (h) Electric, gas, sewer, water facilities, and any other necessary utilities, are available (or, if this is a construction loan, will be available at such time during or after construction as Lender deems necessary) and shall continue to be available in sufficient capacity to service the Property satisfactorily for its intended uses; and (i) the Property, including without limitation the Improvements thereon, comply with (or if this is a construction loan, the Improvements at such time during or after construction as Lender deems necessary, will comply with) and will continue throughout the term hereof to comply with all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health, disability and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations, including permits, licenses and/or certificates that may be necessary from time to time to comply with any of these requirements.

3. SECURITY AGREEMENT AND FINANCING STATEMENTS. Borrower (as Debtor) hereby grants to Lender (as Creditor and Secured Party) a security interest in all of the Property which is tangible or intangible personal property, including without limitation, fixtures, goods, accounts, deposit accounts, instruments, chattel paper, documents, letters of credit, letter of credit rights, supporting obligations, and general intangibles described hereinabove and all additions, substitutions and proceeds (cash and noncash) of the foregoing.

Borrower shall execute any and all such documents as Lender may request, including without limitation, financing statements pursuant to the Uniform Commercial Code in the jurisdiction in which the Property is located or in which Borrower resides or is formed or organized, as applicable (the "Uniform Commercial Code"), to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Lender on demand any expenses incurred by Lender in connection with the preparation, execution and filing of any such documents. Said financing statements shall be filed in the real estate records of the county in which the Property is located and such other offices as Lender deems advisable under the Uniform Commercial Code. Borrower hereby authorizes Lender to file all financing statements, refilings, continuations and amendments thereof as Lender deems necessary or advisable to create, preserve and protect said lien and security interest. Borrower shall cooperate with Lender in obtaining control of deposit accounts, letter of credit rights and any



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other collateral for which control is necessary for perfection under the Uniform Commercial Code. This Security Instrument constitutes a security agreement for any and all items of Property which are personal property and fixtures and which, under applicable law, may be subject to a security interest pursuant to the applicable Uniform Commercial Code and which are not herein effectively made part of the Land. Borrower hereby grants Lender a security interest in said property, and in all additions, substitutions and proceeds (cash and noncash) thereof, for the purpose of securing all indebtedness and obligations of Borrower now or hereafter secured by this Security Instrument. The remedies available to Lender for violations of the covenants, terms and conditions set forth in this security agreement shall be (i) as set forth in this Security Instrument and (ii) as permitted under applicable law, including the Uniform Commercial Code. Each of these remedies shall be distinct and cumulative as to all other rights or other remedies and may be exercised concurrently, independently or successively, as Lender may elect.

This Security Instrument constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to any and all fixtures included within the term "Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

Borrower and Lender agree that neither the filing of a financing statement in the public records normally having to do with personal property nor the taking of any other action described in the above Paragraph shall be construed in any way as derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Security Instrument is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded, to the extent permitted by applicable law, as part of the real estate encumbered by this Security Instrument irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment or other items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease, rental agreement, tenancy agreement or occupancy agreement or right to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender as determined by this Security Instrument or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Lender in the event any court or judge shall at any time hold with respect to clauses (1), (2), and (3) of this Paragraph 3 that notice of Lender's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in such public records.

Borrower represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof as follows: Borrower's full, correct and exact legal name is set forth at the end of this Security Instrument. If Borrower is not an individual, Borrower is an organization of the type and (if not an unregistered entity) is incorporated in, organized or formed under the laws of the state specified in the introductory paragraph to this Security Instrument. If Borrower is an unregistered entity (including, without limitation, a general partnership) it is organized or formed under the laws of the state specified in the introductory paragraph of this Security Instrument. In the event of any change in name or identity of Borrower, Borrower shall notify Lender in writing of such change at least 30 days prior to the effective date of such change and hereby authorizes Lender to file such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon the Property which may be deemed personal property or fixtures, including future replacement thereof, which serves as collateral under this Security Instrument, and shall pay all expenses in connection with the filing and recording of such forms. If Borrower is not an individual, Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recording data of any kind and nature including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding five (5) years (or, if less, the entire period of existence of Borrower) been and will continue to be (unless Borrower notifies Lender of any change in writing at least 30 days prior to



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the date of such change) the address of Borrower set forth at the end of this Security Instrument. If Borrower is an individual, Borrower's principal residence has for the preceding five (5) years been and will continue to be (unless Borrower notifies Lender of any change in writing at least 30 days prior to the date of such change) the address of Borrower as set forth at the end of this Security Instrument.

4. REPAIR AND MAINTENANCE OF PROPERTY. Borrower covenants and agrees with Lender to cause the Property to be managed in a first class manner satisfactory to Lender; to keep the Property in good condition and repair, including, without limitation, maintaining all structures on the Property free of any liquid water and/or water vapor intrusion into the structures in amounts that could support the growth of fungus and/or mold inside the structures and free of any sites of growing fungus and/or mold inside the structures; not substantially to alter, remove or demolish any buildings or other Improvements except when incident to the replacement of fixtures, machinery or appliances with items of like kind and of at least equivalent value; to restore promptly and in a good and workmanlike manner to no less than the equivalent of its condition on origination of the Loan any buildings or other Improvements which may be damaged or destroyed, including, without restricting the generality of the foregoing, damage from termites and earth movement, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair; to pay when due all claims for labor performed and materials furnished in connection with the Property and not to permit any mechanic's or materialman's lien to be filed or remain against the Property; to comply with all laws affecting the Property or the operation or leasing thereof or requiring any alterations or improvements to be made thereon, including, without limitation, the Americans with Disabilities Act of 1990; to fully remedy in a manner acceptable to Lender any notice of violation or any other notice issued by any governmental entity having jurisdiction over the Property within thirty (30) days of the date of such notice; not to commit or permit waste thereon; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate and prune all landscaping on the Property; and to do all other acts that from the character or use of the Property may be reasonably necessary to keep the Property in the same or better condition (reasonable wear and tear excepted) as at the date of this Security Instrument; to perform and keep each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of the Lease and any and all other instruments creating Borrower's interest in or defining Borrower's rights in respect to the Property. Without the prior written consent of Lender, Borrower shall not (i) initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances, (ii) use or permit the use of the Property in a manner which may result in the use of the Property becoming a non-conforming use under applicable zoning ordinances, or (iii) subject the Property to restrictive covenants.

5. CONSTRUCTION OF IMPROVEMENTS. If all or any part of the Loan secured hereby is used for land development and improvement or construction purposes, Borrower shall comply in all respects with any agreement between Borrower and Lender relating thereto.

6. INSURANCE. At all times, Borrower is to provide, and maintain in force, and pay the cost of property, commercial general liability, and other types and forms of insurance coverage with respect to such Property or the Loan as may be required by Lender in accordance with Lender's insurance requirements as delivered to Borrower from time to time, including but not limited to the insurance coverage described below in this Section 6. Lender's insurance requirements may change from time to time.

At the written request of Lender, Borrower shall deliver to Lender a copy, in a form satisfactory to Lender, of any insurance policy required to be obtained by Borrower hereunder. Borrower shall promptly pay all premiums when due on any such policies and renewals thereof and shall furnish Lender with written evidence of such payment. At least 30 days prior to the expiration of any such policies required by Lender, a policy form renewing or extending such expiring insurance shall be delivered to Lender if Lender requests delivery of such policies to it.

In the event Borrower fails to provide any insurance complying with the provisions hereof, or fails to continue such insurance in force, Lender may at Borrower's expense, but without obligation so to do, without notice to Borrower, without demand upon Borrower, without releasing Borrower from any obligation hereof, and without curing any default of Borrower, obtain insurance, in any amounts determined by Lender, through or from any insurance agency or insurer or insurance underwriter which is authorized to do business in the state in which the Property is located (or which is an eligible surplus insurer) and which



is acceptable to Lender, and pay the premium therefor, and Lender by doing so shall not be chargeable with obtaining or maintaining such insurance or for the collection of any insurance monies or for any insolvency of any insurer or insurance company.

In the event that Borrower fails to provide insurance or evidence of insurance required hereunder and Lender obtains any such insurance, the insurance obtained by Lender shall be limited to protection against physical damage to the Property, up to the lesser of the unpaid balance of the Loan, or the value of the Property. In any case, any amount advanced by Lender to obtain such insurance policies shall become part of the indebtedness secured by the lien of this Security Instrument, shall bear interest at the "Default Rate" as defined in the Note and shall be due and payable immediately upon demand by Lender.

Lender, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Lender pursuant hereto and any information concerning the Loan, Borrower, or the Property.

Borrower hereby assigns to Lender all insurance proceeds from each and every kind of insurance obtained by Borrower related to the Property, including without limitation, all proceeds from insurance not specifically required by Lender at the origination of the Loan or thereafter but which may be carried by Borrower from time to time with respect to the Property or the ownership, operation or income thereof, including, without limitation, earthquake insurance. If at any time Borrower obtains insurance related to the Property or the ownership, operation or income thereof, which is not specifically required by Lender, including, without limitation, earthquake insurance, then Borrower shall nevertheless include Lender and its successors and assigns as additional insureds or additional loss payees thereto.

PROPERTY ALL-RISK INSURANCE. Borrower shall, at its sole expense, purchase and maintain property all risk extended coverage policies of insurance. Each policy of insurance shall be in an amount, for a term and in a form and content as may be satisfactory to Lender, shall insure against such risks of loss or damage as are commonly covered by all risk extended coverage policies of insurance and such other risks as Lender may from time to time designate for coverage under Borrower's policies, and shall be provided through such insurance companies, as may be satisfactory to Lender, with loss payable to Lender and shall, if required by Lender, be delivered to and remain in the possession of Lender as further security for the performance by Borrower under this Security Instrument. Such policy of insurance shall include a Lender's Loss Payable Endorsement or Mortgagee Clause in favor of and in form acceptable to Lender. The amount of such insurance shall in no event be less than (i) the original amount of the Note and be in compliance with any co-insurance requirements of such insurance, or (ii) an amount equal to the highest insurable value of the Property, whichever is the lesser.

Borrower hereby assigns to Lender all unearned premiums on any such policy, and agrees that any and all unexpired insurance shall inure to the benefit of, and pass to, Lender upon acquisition by Lender of the Property through foreclosure proceedings or any purchaser of the Property pursuant to such foreclosure proceedings. Pursuant to its rights granted hereunder in all proceeds from any insurance policies, Lender is hereby authorized and empowered at its option to adjust or compromise any loss under any insurance policies on the Property and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender alone and not to Borrower and Lender jointly. So long as Borrower is not in default under the Loan Documents, Borrower shall be entitled to participate in the adjustment or compromise of any insurance loss.

COMMERCIAL GENERAL LIABILITY INSURANCE AND LOSS OF INCOME INSURANCE. Borrower shall, at its sole expense, purchase and maintain commercial general liability insurance coverage for the ownership, maintenance and use of the Property. Lender may require such policies to: (a) be no less than a certain minimum amount; (b) insure against such risks of liability as are commonly covered by broad form commercial liability policies in general use for owners of properties similar to the Property and such other risks as Lender may from time to time designate for coverage under Borrower's policies; (c) be provided through such insurance companies as may be satisfactory to Lender; and (d) include Lender and its successors and assigns, as additional insured or additional loss payees.

Lender may further require that Borrower provide, and maintain in force, at Borrower's sole expense, loss of rental income insurance, loss of earnings insurance, business interruption insurance or



other forms of coverage to protect the income or earnings of the Property, in form, coverage and liability amount acceptable to Lender.

OTHER INSURANCE. Borrower shall, at its sole expense, obtain and maintain such additional insurance coverages as Lender may from time to time require against other insurable hazards or risks, including but not limited to, environmental impairment liability coverage; provided that Lender may only require coverage for risks not required by Lender at origination of the Loan if such hazards or risks are commonly insured against, and provided such insurance is reasonably available, for property similarly situated, due regard being given to the height and type of any buildings, their construction, use and occupancy. Notwithstanding the foregoing, should the Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Borrower agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid balance of the Loan and any prior liens on the Property securing the Loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the Loan.

7. DISPOSITION OF THE PROCEEDS OF ANY INSURANCE POLICY, CONDEMNATION OR OTHER RECOVERY. The amount received by Lender pursuant to this Security Instrument under any insurance policy, or in connection with any condemnation for public use of the Property, or for injury or damage to the Property, or in connection with the transaction financed by the Loan secured hereby (collectively, the "**Proceeds**"), at the option and in the sole discretion of Lender, and without regard to the adequacy of Lender's security, may be (a) applied by Lender upon any indebtedness secured hereby and in such order as Lender may determine, or (b) without reducing the indebtedness secured hereby, used by Lender or, with Lender's express prior written consent, by Borrower to replace, restore, or reconstruct the Property to a condition satisfactory to Lender, or (c) released by Lender to Borrower, or (d) divided by Lender in any manner among any such application, use or release. No such application, use or release shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice (or alter the amount of any payment provided under the Note, this Security Instrument, or any other Loan Document or postpone or extend the due date of any payment due under the Note, this Security Instrument or any other Loan Document).

Notwithstanding the foregoing provisions of this Paragraph 7, Lender shall permit Borrower to use the Proceeds to replace, restore or reconstruct the Property (herein "**Restoration**") following any injury or damage to the Property or condemnation of a portion of the Property for public use on the following terms and conditions, each of which must be satisfied as determined by Lender in its reasonable judgment:

(i) the Proceeds shall first be applied to reimburse Lender for all costs and expenses incurred by Lender in recovering the Proceeds and Restoration of the Property, including without limitation, reasonable attorneys' fees, and the balance of the Proceeds (herein "**Net Claims Proceeds**") shall be used by Borrower only to pay the actual reasonable costs of Restoration;

(ii) the Improvements affected by such injury, damage or condemnation shall be replaced, restored or reconstructed to at least the same condition as the Improvements in existence on the Property immediately prior to the injury, damage or condemnation, in full compliance with all applicable zoning, building, health and safety, and other laws, ordinances and governmental requirements applicable to the Restoration;

(iii) the plans, specifications, cost breakdown, architect and engineering agreements, construction contracts, construction schedule, contractors, major subcontractors, and any payment and performance bonds required by Lender, shall be approved by Lender in its reasonable discretion;

(iv) if the Net Claims Proceeds are not sufficient, in the reasonable judgment of Lender, to fully pay for all costs of Restoration, Borrower shall deposit with Lender, within ten (10) days following written request, cash in such amount as Lender shall determine to be sufficient at such time for the full payment of all costs of Restoration, and Borrower shall make such additional cash deposits, within ten (10) days following written request, as Lender shall determine from time to time during the course of the Restoration are necessary to ensure that sufficient funds will be available at all times to pay for all costs of Restoration; all such sums deposited by Borrower with Lender shall be held by Lender in a non-interest



bearing account at an office of Lender, and Lender shall be granted a first priority security interest therein to secure Borrower's obligation to pay for all costs of Restoration;

(v) the Net Claims Proceeds and all funds deposited by Borrower to pay for the costs of Restoration as provided in clause (iv) above shall be disbursed by Lender in progress payments (less a ten percent (10%) retention, which shall be disbursed only upon full and final completion of Restoration as determined by Lender in its reasonable judgment) in accordance with and subject to Lender's standard construction loan disbursement procedures and requirements and such additional construction-related requirements as Lender may reasonably impose in connection with the Restoration;

(vi) Lender shall receive satisfactory evidence that (a) the proceeds of existing rental insurance payable on account of the damage or destruction together with the net cash flow from the undamaged portions of the Property will be sufficient to pay debt service on all indebtedness secured by the Property during the full period of Restoration, (b) the continued use of the Property upon completion of Restoration is economically feasible and will be in full compliance with all applicable laws and ordinances, (c) all leases of the Property which Lender may require to be and remain in place following completion of the Restoration will be in full force and effect after such completion, and (d) Restoration will be completed within a reasonable time and in any event no less than six (6) months prior to the Final Payment Date (as defined in the Note); and

(vii) no default under the Note, this Security Instrument or any other Loan Document shall have occurred and be continuing.

Borrower agrees that in no event shall Lender's consent to or approval of any Restoration be deemed to extend the due date of any payments owing under the Note or any other Loan Document, or otherwise be construed to cure or waive any default of Borrower under the Note, this Security Instrument or any other Loan Document. In the event that, prior to completion of Restoration, Borrower is in default under the Note, this Security Instrument or any other Loan Document, then without limiting any other rights and remedies of Lender, Lender shall have the right to apply any funds of Borrower held on deposit with Lender as provided in clause (iv) above against such obligations of Borrower under the Note, this Security Instrument or any other Loan Document as Lender may determine in its sole discretion.

Borrower hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under applicable law, which provide for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

8. TAXES, LIENS, AND OTHER SUMS DUE. Borrower covenants and agrees with Lender to pay, satisfy and discharge: (a) at least 10 days before delinquency, all general and special city and county taxes, and all assessments on water stock, affecting the Property, (b) when due, all special assessments for public improvements on or benefiting the Property, (c) on demand of Lender but in no event later than the date such amounts and/or performance become due (1) all encumbrances, charges and liens (including, without limitation, income tax liens, or liens of a similar character, imposed or levied by the United States Government, the state in which the Property is located, any municipality or county, or an agency of any of them), with interest, on such Property, or any part thereof which are, or appear to Lender to be prior to or superior to this Security Instrument, (2) all costs, fees and expenses under this Security Instrument whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Lender not to exceed the maximum amount allowed by law therefor at the time when such request is made, (4) Lender's and Trustee's fees, charges and expenses for any other statement, information or services furnished by Lender or Trustee in connection with the obligations secured hereby (said services may include, but shall not be limited to, the processing by Lender or Trustee, or both, of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owners, recordation of maps, plats or records of survey, grants of easements, and full and partial reconveyances, and the obtaining by Lender of any policies of insurance pursuant to any of the provisions contained in this Security Instrument), (5) if such Property includes a leasehold estate, all payments and obligations (whether monetary or otherwise) required of Borrower or its successor in interest under the terms of the instrument or instruments creating such leasehold, (6) all payments and monetary obligations required of the owner of the Property under any declaration of covenants, conditions and restrictions pertaining to the Property or any modification thereof, and (7) any sums advanced or paid by Lender or Trustee under any clause or provision of this Security Instrument. Should Borrower fail to make any such payment, Lender, without contesting the validity or amount, may elect, but without obligation to do



so, to make or advance such payment together with any costs, expenses, fees, or charges relating thereto, including employing counsel and paying attorneys' fees. Any such sum, until so repaid, shall be secured hereby and bear interest from the date it was advanced or paid at the **Default Rate** (as defined in the Note) and shall be secured by this Security Instrument. Borrower agrees to notify Lender immediately upon receipt by Borrower of notice of any increase in the assessed value of the Property and agrees that Lender, in the name of Borrower, may contest by appropriate proceedings such increase in assessment. Borrower will obtain the written consent of Lender prior to permitting any issuance of any improvement bond for unpaid special assessments. Borrower agrees to notify Lender and appropriate taxing authorities immediately upon the happening of any event which does or may affect the value of Property, the amount or basis of assessment of the Property, or the availability of any exemption to which Borrower is or may be entitled. If any state, federal, municipal or other governmental law, order, rule or regulation, passed subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of deeds of trust or debts secured by deeds of trust, or the manner of collecting taxes so as to materially and adversely affect the rights of Lender, the entire balance of the indebtedness and other sums secured by this Security Instrument and all interest accrued thereon shall, without notice, become due and payable forthwith at the option of Lender.

Notwithstanding the foregoing, Borrower shall have the right to contest diligently and in good faith the validity or amount of any tax, assessment or charge affecting the Property or any part thereof, and, so long as the validity or amount thereof is being contested diligently and in good faith, Borrower may, to the extent permitted by law, defer payment of such tax, assessment or charge, provided Borrower protects the Property against any lien arising out of any such tax, assessment or charge or out of any such contest by either (a) depositing with Lender, in a non-interest bearing account, as additional security for the Loan, an amount equal to 120% of the amount of the tax, assessment or charge being contested, or (b) a surety bond in form and substance satisfactory to Lender and issued by a corporate surety satisfactory to Lender.

Borrower will pay when due and payable, all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, fees of inspecting architect(s) and engineer(s), fees of environmental engineers and consultants, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with the issuance of its commitment for the Loan, the preparation and execution of Loan Documents, the funding of the Loan, and the administration and enforcement of this Security Instrument, the Note and the other Loan Documents. During the term of the Loan, Borrower will, upon demand by Lender, reimburse Lender for all such expenses, together with accrued interest at the Default Rate, which have been incurred or which shall be incurred by Lender, and Borrower will defend, indemnify and hold harmless Lender and Trustee from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Lender or Trustee by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property, or with this Security Instrument or any of the indebtedness evidenced by the Note.

9. CLAIMS, DEMANDS AND ACTIONS. Borrower covenants and agrees with Lender: (a) To give Lender immediate notice of any claim, demand, action or proceeding purporting to affect the Property (including, without limitation, loan funds, whether or not disbursed) or purporting to affect the security hereof (whether or not it affects the security hereof) or the condition and integrity of the Improvements constructed thereon or purporting to affect the rights or powers of Lender or Trustee or which are Commercial Tort Claims (as defined in the Uniform Commercial Code) arising in favor of Borrower, (b) to defend any such action or proceeding; and (c) to file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Property, and enforce against others each and every obligation to be performed by them under any declaration of covenants, conditions, and restrictions pertaining to the Property. Both Trustee and/or Lender are hereby authorized, without obligation so to do, to commence, appear in, and defend any action or proceeding, whether or not brought by or against Borrower to exercise or enforce any other right, remedy, or power available or conferred



hereunder, whether or not judgment be entered in any action or proceeding. Trustee and/or Lender may appear or intervene in any action or proceeding, and retain counsel therein, and take such action therein as either may deem advisable, and may settle, compromise or pay the same or any other claims and, for any of said purposes, may expend and advance such sums of money as either may deem necessary. Borrower covenants that, in addition to the present assignment of actions, claims, damages and awards set forth herein, Borrower will execute and deliver to Lender such assignments of actions, claims, damages, and awards as Lender may, from time to time, request, including but not limited to, assignments to Lender in such form as Lender may require of all such claims, demands and actions which are Commercial Tort Claims (as defined in the Uniform Commercial Code). Borrower hereby authorizes Lender to file all financing statements, re filings, continuations and amendments thereof as Lender deems necessary or advisable under the Uniform Commercial Code in connection with such assignments. Whether or not Borrower so appears or defends, Borrower shall pay on demand all costs and expenses of Lender and Trustee, including without limitation, costs of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Lender or Trustee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Lender or Trustee in the Property is directly questioned by such action including, but not limited to, any action for the condemnation or partition of the Property and any suit brought by Lender to foreclose this Security Instrument. Lender may apply, use or release such monies so received by it in the same manner as in Paragraph 7 provided for the proceeds of insurance.

10. LEASEHOLD ESTATE. If the Property is a leasehold estate: (a) Borrower will: (i) pay the rent reserved by the Lease and all other monetary obligations thereunder as the same become due and payable; (ii) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by the Tenant under the Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify Lender in writing of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or Landlord under the Lease; (iv) if any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the Tenant under the Lease of the exercise of any right to renew or extend the term of the Lease, promptly give notice to the Landlord of the exercise of such right of extension or renewal; (v) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Lender pursuant to the requirements of the Lease, promptly notify Lender in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; and (vi) promptly notify Lender in writing of any request made by either party to the Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Lender a copy of the determination of the arbitrators or appraisers in each such proceeding; and (b) Borrower will not surrender the Lease or Borrower's leasehold estate and interest therein, nor terminate or cancel the Lease; and will not, without prior written consent of Lender, modify, change, supplement alter or amend the Lease, either orally or in writing and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Lease contained, Borrower hereby assigns to Lender all of its rights, privileges and prerogatives as Tenant under the Lease to terminate, cancel, modify, change, supplement, alter or amend the Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Lease, without the prior written consent thereto by Lender shall be void and of no force and effect. Without limiting the generality of the foregoing, Borrower will not reject the Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, or allow the Lease to be deemed rejected by inaction and lapse of time, and will not elect to treat the Lease as terminated by the Landlord's rejection of the Lease pursuant to 11 U.S.C. Section 365(h)(1) or any successor law, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Lease contained, Borrower hereby assigns to Lender all rights, privileges and prerogatives of Borrower, Borrower's bankruptcy trustee, and Borrower in the capacity of a debtor-in-possession, to deal with the Lease, or otherwise exercise any rights or remedies with respect thereto, which right may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or Landlord under the Lease, including, without limitation, the right to assume or reject, or to compel the assumption or rejection of the Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, the right



to seek and obtain extensions of time to assume or reject the Lease, the right to elect whether to treat the Lease as terminated by the Landlord's rejection of the Lease or to remain in possession of the Property and offset damages pursuant to 11 U.S.C. Section 365(h)(1) or any successor law; and any exercise of such rights, privileges or prerogatives by Borrower, Borrower's bankruptcy trustee, or Borrower in the capacity of a debtor-in-possession, without the prior written consent thereto by Lender shall be void and of no force and effect. As further security for Lender, Borrower hereby agrees to deposit with Lender a duplicate original of the Lease and all supplements thereto and amendments thereof, to be retained by Lender until the indebtedness secured hereby is fully paid. So long as there is no breach of or default under any of the covenants, agreements, obligations and conditions herein contained to be performed by Borrower, or in the performance by Borrower of any of the covenants, agreements, obligations and conditions in the Lease to be performed by the Tenant thereunder, Lender shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Lease. No release or forbearance of any of Borrower's obligations as Tenant under the Lease, whether pursuant to the Lease or otherwise, shall release Borrower from any of its obligations under this Security Instrument, including, but not limited to, Borrower's obligations with respect to the payment of rent as provided for in the Lease and the observance and performance of all of the covenants, agreements, obligations and conditions contained in the Lease to be observed and performed by the Tenant thereunder. Unless Lender shall otherwise expressly consent in writing, the fee title to the Property demised by the Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in Borrower or in a third party by purchase or otherwise.

11. ACCUMULATION ACCOUNT. Borrower covenants and agrees with Lender, upon demand by Lender, to pay to Lender in addition to and concurrently with any other payments required in any note secured by this Security Instrument, monthly advance installments, as estimated by Lender from time to time for the purpose of establishing an account (the "**Accumulation Account**") for payment of any or all taxes, assessments, special assessments, fire, casualty, liability, loss of rental income, and other insurance premiums, encumbrances and leasehold payments, security deposits, or other obligations secured by this Security Instrument or required to be paid with respect to the Property (hereafter in this Paragraph referred to as "**Impositions**"). Borrower shall deliver promptly to Lender all bills and notices of such Impositions. If the amounts paid to Lender under the provisions of this Paragraph are not sufficient to pay such Impositions as they become due, Borrower shall pay to Lender promptly upon demand the amount of the deficiency. All monies paid to Lender under this Paragraph shall not be held in trust and may be intermingled with other monies of Lender and such amounts held by Lender shall earn only such interest as prescribed by law, if any. Lender may pay such Impositions before or after they become due and payable, but before delinquency. In the event of a default in the payment of any note secured by this Security Instrument, default of any obligation secured hereby, or default in the performance of any of the covenants and obligations of this Security Instrument, then any balance remaining from monies paid Lender under the provisions of this Paragraph may, at the option of Lender, be applied to the payment of principal, interest or obligations secured hereby in lieu of being applied to any of the purposes for which the Accumulation Account is established. At all times, any negative balance in the Accumulation Account shall constitute a secured advance made by Lender to protect its security under this Security Instrument and shall accrue interest at the Default Rate defined in the Note. Lender will make such reports of the Accumulation Account as are required by law.

12. SALES, TRANSFERS, FURTHER ENCUMBRANCES AND OTHER EVENTS. Lender shall have the right, at its option, to declare all sums secured hereby immediately due and payable, if (a) Borrower or any successor in interest to Borrower conveys, transfers or assigns the Property or any part thereof, or interest therein, or agrees to do so, whether by deed, contract of sale, lease with option to buy, or otherwise and whether such conveyance, transfer or assignment is to an unrelated third party or a related entity, including without limitation an entity that shares a common ownership with Borrower or an entity that is a subsidiary of Borrower; or (b) Borrower or any successor in interest to Borrower further encumbers or alienates the Property or any part thereof, or interest therein; or (c) in the event that the Property is not rental property, Borrower or any successor in interest to Borrower leases the Property or any part thereof without the prior written consent of Lender; or (d) in the event that the Property is rental property, Borrower or any successor in interest to Borrower enters into any lease, rental agreements, tenancy agreement, or occupancy agreement in violation of any of the terms or conditions under this



Security Instrument or any other Loan Document; or (e) Borrower suffers its title or any interest therein to be divested, whether voluntarily or involuntarily; or (f) without the written consent of Lender, Borrower or any successor in interest to Borrower changes or permits to be changed the character or use of the Property from the character or use contemplated by Borrower and Lender upon execution of this Security Instrument, as specified in Borrower's application to Lender and other documents executed by Borrower in connection with the Loan, including, without limitation, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; or (g) suit be commenced to condemn the Property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon (and Lender reasonably believes that its security under this Security Instrument may be impaired by such suit or the activities or conditions which are the subject of such suit) or for the partition or sale of the Property; or (h) in the event that Borrower is a general partnership or limited liability company, any of the partners' or members' interests in Borrower or any portion thereof are sold, transferred or assigned, whether voluntarily or involuntarily, other than to such partners' or members' respective family revocable trusts; or (i) in the event that Borrower is a limited partnership, any limited partnership interests or any portion thereof consisting of more than twenty percent (20%) ownership interest in Borrower are sold, transferred or assigned, whether voluntarily or involuntarily, other than to such partners' respective family revocable trusts, or any of the general partners' general partnership interests or the general partners' limited partnership interests in Borrower or any portion thereof are sold, transferred or assigned, whether voluntarily or involuntarily, other than to such general partners' respective family revocable trusts or (j) in the event that Borrower is a corporation, more than twenty percent (20%) of the capital stock thereof is sold, transferred or assigned, whether voluntarily or involuntarily, other than to the shareholders' respective family revocable trusts; or (k) Borrower or any successor in interest to Borrower has made any oral or written material misrepresentations or failed to disclose any material fact, in order to induce Lender to enter into the transaction evidenced by the Note or any agreements which this Security Instrument secures; or (l) Borrower or any successor in interest to Borrower has disbursed funds collected from Rents and Profits to itself or its equity owners for personal use without first reserving sufficient funds to be used for the protection or preservation of the Property, for maintaining the Property in good condition, and for making such capital improvements and replacements to the Property as are reasonably foreseeable to be required within a period of twelve (12) months following the date of such distribution of funds. If any of the events described in this Paragraph 12 occur and if Lender consents to the same, then such consent must be in writing and signed by Lender to be effective. Such written consent shall not be deemed or construed as a waiver of any of Lender's rights or as a cure of any default by Borrower pertaining to any subsequent occurrences of any event described in this Paragraph 12 and the written consent of Lender shall be required on all subsequent occurrences. Furthermore, if any event described in this Paragraph 12 occurs and if Lender does not give its written consent to same but fails to exercise its right to declare all sums secured hereby due and payable, such failure shall not be deemed or construed as a waiver of any of Lender's rights or as a cure of any default of Borrower pertaining to the occurrence of such event or any subsequent occurrences of any event described in this Paragraph 12. The right of Lender to declare all sums secured hereby immediately due and payable if any of the events described in this Paragraph 12 occur shall not be construed or deemed to be exclusive of any other rights of Lender set forth in this Security Instrument or the Loan Documents, or any rights at law or in equity now or hereafter existing, to declare all sums secured hereby immediately due and payable, but all such rights shall be cumulative.

13. PREPAYMENT FEE. Should the Note or any other obligation secured hereby provide any fee for prepayment of any of the indebtedness secured hereby, whether such prepayment is made prior to or following the occurrence of any default of Borrower or the institution of any foreclosure proceedings by Lender, Borrower covenants and agrees with Lender to promptly pay said fee notwithstanding Borrower shall have defaulted in any obligation secured hereby and Lender, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

14. WAIVERS AND CONSENTS PERTAINING TO NOTE. Borrower waives presentment, demand, protest and notice of nonpayment of the Note, and consents to delays, changes in time of payment, and the amount of installments due under the Note, and, to the extent provided in the Note, to the reduction or increase of the interest rate thereof.

15. WAIVER OF STATUTE OF LIMITATIONS. Time is of the essence in all Borrower's obligations hereunder, and to the fullest extent permitted by law, Borrower waives the right to assert any



present or future statute of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Security Instrument, the Note or any other Loan Document or any rights or remedies hereunder.

16. INSPECTION AND BUSINESS RECORDS. Lender or any authorized representative or agent of Lender or any person or entity interested in acquiring all or any part of or any interest in the Loan may enter upon and inspect the Property at any reasonable time during the term of this Security Instrument. If the Property is now or hereafter used for commercial or residential income purposes, Borrower will promptly deliver to Lender within 60 days after the end of each calendar year, such financial statements, gross income and expense statements, and profit and loss statements of such types as may be required from time to time by Lender which will be certified and prepared according to generally accepted accounting principles or other principles and practices acceptable to Lender, which statements shall cover the financial operations relating to the Property (collectively, "**Financial Statements**") for the immediately preceding calendar year. Borrower shall also deliver to Lender such Financial Statements as may be requested by Lender from time to time, which shall be current as of 60 days prior to Lender's request and shall be delivered within 30 days of Lender's request. Borrower further agrees when requested by Lender promptly to deliver in writing such further additional information as may be required by Lender relating to any such Financial Statements.

Borrower shall furnish to Lender a rent schedule on or before January 30 of each year during the term of the Loan, which shall be current as of December 31 of the immediately preceding calendar year. Borrower shall also furnish to Lender a rent schedule as may be requested from time to time by Lender, which shall be current as of 30 days prior to the date of Lender's request and shall be delivered within 15 days of Lender's request. Such rent schedule shall be certified by Borrower, showing the name of each tenant and the space occupied, the lease expiration date, the rent and additional rent due and payable, prepaid rent, if any, security deposit paid, the last date to which rent was paid and whether or not such tenant was then in default under any of the terms of the lease. In the event Borrower fails to comply with the provisions of this Paragraph 16, Lender shall have the right to have Borrower's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of Borrower secured by this Security Instrument. In addition, Borrower's failure to comply may, at the option of Lender, be deemed a default under this Security Instrument and Lender may exercise any and all of its remedies under this Security Instrument.

17. ESTOPPEL CERTIFICATES. Borrower, within 10 days after written request from Lender, shall furnish a written statement, duly acknowledged to Lender and any third party designated by Lender, setting forth the unpaid principal and interest and any other sums and charges due under the Note, this Security Instrument and the other Loan Documents and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums or charges and stating that the Note, Security Instrument and other Loan Documents have not been modified or stating that the Note, Security Instrument or other Loan Documents have been modified and specifying such modifications, and that the Note, Security Instrument and other Loan Documents, as unmodified or modified, as applicable, remain in full force and effect. If Borrower fails to execute and deliver such estoppel certificate within such 10-day period, Borrower shall be in default hereunder and, without limiting any other rights or remedies of Lender hereunder on account of such default, Borrower shall conclusively be deemed to have constituted and appointed Lender as Borrower's special attorney-in-fact to execute and deliver any such estoppel certificate to any third party and shall be deemed to have certified that the Note, Security Instrument and other Loan Documents remain in full force and effect, either unmodified or modified in the manner specified by Lender, whichever Lender reasonably may represent. Borrower and Lender expressly agree that any such certificate may be relied on by any prospective purchaser of the Loan or any portion thereof or interest therein without independent investigation or examination.

18. RIGHT TO COLLECT AND RECEIVE RENTS AND PROFITS. The mortgage, pledge and assignment of Rents and Profits set forth hereinabove shall be fully operative without any further action on the part of either party. Notwithstanding that Borrower has made a present, absolute and executed mortgage, pledge and assignment of the Rents and Profits to Lender, Lender hereby grants a revocable license (the "**License**") to Borrower to collect, hold, apply and retain the Rents and Profits of the Property as they become due and payable, so long as Borrower is not in default under the Note, this Security Instrument or any of the other Loan Documents. The License given to Borrower hereunder to collect, apply



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Skagit County Auditor

and retain such Rents and Profits shall be automatically revoked and terminated, without notice or demand of any kind, upon and after default by Borrower under the Note, the Security Instrument or any of the other Loan Documents. **Notwithstanding the foregoing, in the event that Lender is required by any provision of law to give Borrower notice or to make a demand to terminate the License or to enforce the mortgage, pledge and assignment granted by Borrower to Lender hereunder, such notice, if not otherwise given by Lender in such other manner as may be permitted or required by applicable law, shall be deemed to have been given by Lender and actually received by Borrower when Lender sends to Borrower, in the manner set forth in Paragraph 26 hereof, a written notice of default or demand for payment of the amount in default whether or not such notice or demand specifically refers to or contains a termination of the License.** Borrower shall immediately turn over to Lender upon receipt or collection any Rents and Profits collected or received by Borrower after the termination of said License or after default by Borrower under the Note, this Security Instrument or any of the other Loan Documents. Any such Rents and Profits not turned over by Borrower to Lender as required hereby shall be held by Borrower in trust for Lender. After Borrower's default under the Note, this Security Instrument or any of the other Loan Documents, Lender, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured may, in the sole discretion of Lender and without regard to the adequacy of its security: (i) use and possess, without rental or charge, the personal property of Borrower located on the Property and used in the operation or occupancy thereof; (ii) **apply the Rents and Profits, and any sums recovered by Lender on account thereof, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any indebtedness secured hereby and in such order as Lender may determine (except for such application, Lender shall not be liable to any person for the collection or non-collection of any rents, income, issues or profits, nor for failure to assert or enforce any of the foregoing rights);** (iii) take possession of the Property, manage and operate the Property and Borrower's business thereon, and take possession of and use all books of accounts and financial records of Borrower and its property managers or representatives relating to the Property; (iv) execute new leases of any part of the Property, including leases that extend beyond the term of this Security Instrument, and cancel or alter any existing leases; (v) sign the name of Borrower and bind Borrower on all papers and documents relating to the operation, leasing and maintenance of the Property; (vi) **demand payment from Borrower of all Rents and Profits collected by Borrower from the date of the default, which Rents and Profits shall, from and after the occurrence of such default, be deemed held by Borrower in trust for Lender;** (vii) **demand, receive, and sue for payment of Rents and Profits directly from Borrower's tenants, including serving notice upon any or all tenants for the payment directly to Lender of all rents and other monetary obligations owing under such tenants' leases;** (viii) bring an action against Borrower for turnover of Rents and Profits collected by Borrower after Borrower's default under the Note, this Security Instrument or any of the other Loan Documents; (ix) to bring an action against Borrower to obtain the appointment of a receiver to collect and pay over to Lender the Rents and Profits from the Property; and/or (x) take any and all other actions with respect to the Property and the Rents and Profits as may be permitted under or authorized by applicable law or any of the Loan Documents. Lender may, in its sole and absolute discretion, seek the appointment of a receiver solely to collect the Rents and Profits from the Property, or may seek the appointment of a receiver to operate the Property and collect the Rents and Profits. Borrower hereby stipulates to the Court's appointment of a receiver if, at the time of Lender's request, Borrower is in default under the Note, this Security Instrument or any of the other Loan Documents. The entering upon and taking possession of the Property, the collection of any Rents and Profits, the doing of other acts herein authorized and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Property by Lender.

19. LEASES AFFECTING THE PROPERTY. Borrower warrants, represents and covenants as to each lease between Borrower and its tenant (the "**Tenant Lease**") now or hereafter covering all or any part of the Property, that (i) each Tenant Lease is in full force and effect, valid and enforceable in accordance with its terms and has not been modified, amended or altered, whether in writing or orally; (ii) no default exists on the part of the tenant under the Tenant Lease or Borrower thereunder and to the best



of Borrower's knowledge, no event has occurred and is continuing which would result in default but for the requirement that notice be given in accordance with the terms of the Tenant Lease; (iii) no rent has been collected more than one (1) month in advance; (iv) no Tenant Lease, or any interest therein, nor Rents and Profits arising therefrom, has been previously mortgaged, pledged or assigned; (v) no tenant has any defense, setoff or counterclaim against Borrower under any Tenant Lease; (vi) all rent due under each Tenant Lease has been collected and no concession has been granted to any tenant under a Tenant Lease in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due thereunder; (vii) no Tenant Lease grants to the tenant thereunder, or anyone else, an option to purchase, or a right of first refusal to purchase, any part of the Property; (viii) Borrower is the sole owner of the entire landlord's interest in all Tenant Leases and it has not and will not perform or fail to perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights under the terms, covenants and conditions of this Security Instrument; and (ix) Borrower has full right, power and authority/ to mortgage, pledge and assign the Tenant Leases and the Rents and Profits to Lender and Borrower has not done any act which might prevent Lender from exercising its rights under this Security Instrument.

The assignment of leases set forth hereinabove shall not be deemed to impose upon Lender any of the obligations or duties of Borrower provided in any such lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease), and Borrower shall comply with and observe its obligations as landlord under all leases affecting the Property or any part thereof.

Without the prior written consent of Lender, Borrower shall not (i) amend, modify, cancel, terminate (except following a default by the tenant thereunder which has not been cured within the period, if any, expressly provided for such cure in the Tenant Lease) any Tenant Lease, (ii) waive, excuse, or in any manner release or discharge any tenant or guarantors from their obligations with respect to any Tenant Lease, (iii) extend the term of any Tenant Lease on the Property entered prior to the date hereof, or (iv) enter into any new Tenant Lease on the Property after the date hereof. Notwithstanding the foregoing, with respect to any Tenant Lease which covers 10,000 square feet or less of the total rentable square footage of the Property, Lender hereby grants permission to Borrower, revocable at any time immediately upon written notice from Lender to Borrower, without regard to the due and faithful performance of Borrower under this Security Instrument, the Note and the other Loan Documents, to take any of the foregoing actions if in the judgment of Borrower, reasonably exercised, such actions do not adversely affect Lender's security interest in the Property, the Tenant Leases or the Rents and Profits therefrom. Borrower shall not accept payment of rent more than one (1) month in advance without the prior written consent of Lender. Lender shall have the right to require at any time and from time to time that Borrower promptly furnish to Lender original or certified copies of all Tenant Leases now existing or hereafter created.

Borrower will immediately notify Lender when any release, termination or "buy-out" consideration is due and payable to Borrower by any tenants or guarantors with respect to any lease, rental, tenancy or occupancy agreement. Notwithstanding anything to the contrary set forth in this Security Instrument or any of the Loan Documents, Lender may, in its sole and absolute discretion, require that any such release, termination or "buy-out" consideration be paid immediately to Lender as proceeds of its collateral. In its absolute and sole discretion and without regard to the adequacy of Lender's security, Lender may apply such payments to reduce the unpaid principal balance of the Loan or deposit such payments in a non-interest bearing account established with Lender which account shall be held as additional security for the Loan.

With respect to the assignment of leases hereinabove set forth, Borrower shall, from time to time upon request of Lender, execute one or more separate specific lease assignment or assignments in such form as may be approved by Lender, assigning to Lender all right, title and interest of Borrower in and to any and all leases now or hereafter on or affecting the Property, together with all security therefor and all monies payable thereunder, subject to the conditional License hereinabove given to Borrower to collect the Rents and Profits under any such lease. Borrower shall also execute and deliver to Lender any notification, financing statement or other document reasonably required by Lender to perfect the foregoing assignment as to any such leases. Lender shall have the right, at any time and from time to time, to notify any tenant of the rights of Lender as provided in the assignment by Borrower to Lender of all leases relating to the Property and to the Rents and Profits.

In the event of the occurrence of any default by Borrower under any Loan Document and the institution by Lender of any foreclosure, receivership or other proceeding for the enforcement of



Lender's rights or remedies under this Security Instrument, Lender may elect at any time prior to consummation of a foreclosure sale of the Property, and the purchaser at such foreclosure sale (including Lender) may elect at any time within thirty (30) days following the consummation of such foreclosure sale, to declare any or all Tenant Leases to be prior and superior to the lien of this Security Instrument and to recognize the rights of the tenant(s) thereunder, in which event such Tenant Lease(s) shall survive such foreclosure sale and shall be and remain in full force and effect, and the tenant(s) thereunder shall be obligated to attorn to Lender or such purchaser and to execute and deliver such instruments of attornment as Lender or such purchaser shall require. Any such election shall be in the sole discretion of Lender or such purchaser, and shall be evidenced by written notice from Lender to Borrower and/or to the applicable tenant(s) delivered either prior to or within thirty (30) days following such foreclosure sale, by a statement of such election contained in the notice of the foreclosure sale, and/or by announcement at such foreclosure sale.

20. FAILURE OF BORROWER TO COMPLY WITH SECURITY INSTRUMENT. Should Borrower fail to make any payment or to do any act as provided in this Security Instrument, the Note, or any other Loan Document or fail to perform any obligation secured by this Security Instrument, or should Borrower do any act Borrower agreed not to do, or should any of the representations and warranties made by Borrower be untrue in any material respect, or if (i) a petition is filed by Borrower, or any guarantor, co-maker or endorser of the Note seeking or acquiescing to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency or an involuntary petition under such law is filed against Borrower and is still in effect 60 days from the date of such filing; or (ii) a receiver, trustee, master or liquidator is appointed with respect to the Property or the rents, issues, profits, security deposits, royalties, tolls, earnings, income and other benefits therefrom; or (iii) Borrower, or any guarantor, co-maker or endorser of the Note is "insolvent" (unable to pay its debts as they become due and/or if the fair market value of its assets does not exceed its aggregate liabilities), or (iv) Borrower makes an assignment for Borrower's creditor's; or (v) any significant portion of Borrower's assets is attached, executed upon or judicially seized in any manner and such attachment, execution or seizure is not discharged within 10 days, Borrower shall be in default under this Security Instrument, and Lender (but without obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, and without contesting the validity or amount of the same) shall have the right, at its option, to declare all sums secured hereby immediately due and payable, and may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Lender being authorized to enter upon the Property for such purposes, and in exercising any such power, pay necessary expenses, employ counsel and pay attorneys' fees. Furthermore, at any time after a default by Borrower, Lender shall have the following rights and remedies, all of such rights and remedies, together with the rights and remedies set forth in the previous sentence, shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies: (a) Lender may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property; (b) Lender may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code; (c) Lender may choose, in its sole and absolute discretion, to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by RCW 62A.9A-604, and Borrower agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property; and/or (d) Lender may exercise any other right or remedy which is set forth in this Security Instrument or any other Loan Document or which is otherwise available at law or in equity. Upon default by Borrower, Lender may, by delivery to Trustee of written notice of declaration of default and demand for sale, cause to be filed of record a written notice of default and election to sell the Property. If required by Trustee, Lender shall also deposit with Trustee the Security Instrument and Note or other Loan Documents or other agreements and such documents as required by Trustee evidencing expenditures or advances secured hereby. Trustee, upon presentation to it of an affidavit signed by Lender setting forth facts showing a default by Borrower under any Paragraph or provision contained in this Security Instrument, is authorized to accept as true and conclusive the facts and statements therein and to act thereon hereunder without any independent investigation or further inquiry by Trustee. Borrower hereby agrees to be bound thereby. After the lapse of such time as there may be required by law following recordation of such notice of default and notice of sale having been given as then



required by law, Trustee, without demand on Borrower, shall sell the Property either as a whole or in separate parcels, and in such order as it or Lender may determine, at public auction to the highest bidder for cash in lawful money of the United States. Lender may, in its sole discretion, elect that the Property be sold in separate parcels through two or more successive sales. If noncontiguous portions of the Property are situated in different counties, Borrower agrees that a sale by Trustee of all or any part of the Property may be held in a single county provided all notices required to be posted are posted on the Property in each county and that all notices required to be published are published in each county. If Lender elects more than one sale of separate parcels of the Property, Lender may, at its option, cause the same to be conducted simultaneously or successively, on the same day or at such different days or times and in such order as Lender may deem to be in its best interests, and no such sale shall terminate or otherwise effect the first lien of the Security Instrument or Trustee's power of sale hereunder until all indebtedness secured hereby has been fully paid. If Lender elects to dispose of the Property through more than one sale, Borrower shall pay the costs and expenses of each such sale and of any proceedings where the same may be made or conducted. Trustee may postpone and change the time and place of sale of all or any portion of the Property by public announcement at any time and place fixed by it in said notice of sale and from time to time and place to place thereafter, without any further posting or notice thereof, may postpone such sale in public announcement to the time and place fixed by such postponement, whether or not said place fixed by any postponement be in the same city or other place as fixed in said notice of sale. Any person permitted by law, including Borrower or Lender, may purchase at such sale. If Lender is the purchaser at a foreclosure sale, Lender shall be entitled to a credit against the purchase price in an amount equal to the lesser of (i) the full amount secured by this Security Instrument as of the date of the sale, or (ii) the purchase price. Trustee shall apply the proceeds of any sale, first, to the expenses of sale, including the cost of guaranty of title and a reasonable Trustee's fee and Trustee's attorneys' fees and, second, to the Note and any other sums (including without limitation attorneys' fees) secured by this Security Instrument; and the surplus, if any, shall be distributed in accordance with applicable law. Trustee shall deliver to the purchaser at the sale of the Premises its deed, without warranty, which shall convey to the purchaser the interest in the Premises which Borrower had or had the power to convey at the time of its execution of this Security Instrument, and such as it may have acquired thereafter. The Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and this Security Instrument, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of *bona fide* purchasers and encumbrancers for value. The power of sale conferred by this Security Instrument and by applicable law is not an exclusive remedy, and when not being exercised, Lender may foreclose this Security Instrument as a mortgage and Borrower shall pay all costs incurred by Lender in any suit, or appeal therefrom, brought by Lender to foreclose this Security Instrument, including without limitation costs of guaranty of title and reasonable attorneys' fees. Trustee is not obligated to notify any party hereto of a pending sale under any other Security Instrument or of any action or proceeding in which Borrower, Trustee or Lender shall be a party, unless such action or proceeding is brought by Trustee. Borrower and all persons dealing with the Property through or under Borrower and their successors and assigns, including, without limitation all subsequent purchasers of all or any portion of the Property and all persons holding or obtaining an interest in the Property which is junior and subordinate to this Security Instrument, by taking and accepting their respective conveyances, encumbrances, security interests, deeds of trust, or liens do hereby acknowledge, covenant and agree with Lender that (i) in the event of any default in the repayment of the indebtedness secured hereby, or in the event of any default under the terms of this Security Instrument, or under any other deed of trust or security agreement securing the same indebtedness as is secured by this Security Instrument, whether directly or by virtue of a cross-collateralization agreement or under any other Loan Document, Lender may proceed to seek foreclosure or any other relief available at law or in equity in any order which Lender may determine, in Lender's sole discretion, and Lender may proceed against any property or collateral securing said indebtedness in any order which Lender elects without regard to any matters which could or might be raised by any subsequent purchaser or by any junior lienor or encumbrancer under those certain equitable doctrines known as the doctrine of "marshalling of assets" and the doctrine of "inverse order of alienation", (ii) they will not assert, and they do hereby waive any right to assert, the doctrine of marshalling of assets or any similar equitable doctrines, and (iii) they will not assert, and they do hereby waive any right to assert, the doctrine of inverse order of alienation or any similar equitable doctrines.



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21. NO WAIVER OR MODIFICATION UNLESS IN WRITING. No modification or waiver by Lender of any right under this Security Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Security Instrument or under any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, or by exercising Lender's rights to receive and collect the rents, issues, profits, security deposits, royalties, tolls, earnings, income and other benefits therefrom, Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all acts required hereunder, or to declare a default for failure so to pay or perform.

22. REMEDIES. No remedy herein provided shall be exclusive of any other remedy herein, or now or hereafter existing by law or in equity, but shall be cumulative. Every power or remedy hereby given to Trustee or to Lender or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue separate remedies. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Borrower, Lender may, at its option, offset against any indebtedness owing by it to Borrower, the whole or any part of the indebtedness secured hereby, and Lender is hereby authorized and empowered, at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby and of Borrower to Lender, any and all sums of money which Lender may have in its possession or under its control, including, without limiting the generality of the foregoing, the indebtedness evidenced by an investment certificate or any escrow or trust funds. In order to assure the definiteness and certainty of the rights and obligations herein provided, Borrower waives any and all rights of offset of claims and no offset shall relieve Borrower from paying installments on the obligations secured hereby as they become due.

23. GENERAL PROVISIONS. (a) As and when used herein, the term "**Borrower**" shall mean and include Borrower above-named and its successors and permitted assigns and the term "**Lender**" shall mean and include Lender hereinabove named and its successors and assigns; (b) wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and vice-versa; (c) captions and Paragraph headings used herein are for convenience only, are not a part of this Security Instrument, and shall not be used in construing it; (d) Lender shall have the right at any time and from time to time to provide any information it has in its possession relating to Borrower, or any guarantor of the Loan, or any other person or entity now or hereafter liable with respect to the Loan, or the Property to any party interested in acquiring all or any part of the Loan or any interest therein; (e) in exercising any right or remedy or taking any action provided herein, Lender may act through its employees, agents, counsel, or independent contractors, as authorized by Lender; (f) as and when used herein, the word "**including**" shall be deemed to mean "**including without limitation**"; and (g) if more than one person is named as Borrower, each obligation of Borrower hereunder shall be the joint and several obligation of each such person. Without limiting the foregoing, in the event that Borrower is a partnership, each general partner thereof shall be deemed to have agreed, by its execution of this Security Instrument, that such partner is jointly and severally liable with Borrower for the performance of each and every obligation of Borrower under this Security Instrument and the other Loan Documents and that Lender shall not be required to exhaust the assets of Borrower in enforcing any monetary obligation of Borrower to Lender prior to proceeding against the assets of such general partner. The foregoing agreement shall constitute a separate obligation of each general partner.

24. FURTHER ASSURANCES. At any time and from time to time, upon Lender's request, Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further deeds of trust, instruments of further assurance, certificates, agreements and other documents as Lender may consider necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve the obligations of Borrower under the Note, this Security Instrument or any other Loan Document and the lien of this Security Instrument or any other lien upon or security interest in all of



the Property or any other property securing the indebtedness evidenced by the Note, whether now owned or hereafter acquired by Borrower and unto all and every person or persons deriving any estate, right, title or interest under this Security Instrument or the power of sale herein contained. Upon any failure by Borrower to do so, Borrower hereby authorizes Lender to make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower to do so.

25. GOVERNING LAW; SEVERABILITY. This Security Instrument shall be governed by and construed and enforced in accordance with the laws of the United States of America and any rules, regulations or orders issued or promulgated thereunder applicable to the affairs of, or transactions entered into, by Lender as a national banking association; and this Security Instrument shall, to the extent not covered thereby, otherwise be governed by, and construed and enforced in accordance with, the laws of the state where the Property is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than such state. In the event that any provision or clause of this Security Instrument, the Note or any other Loan Document is construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall not affect other provisions of this Security Instrument or the Note or the other Loan Documents which can be given effect without the void, invalid or unenforceable provision, and to this end the provisions of this Security Instrument, the Note and all other Loan Documents are declared to be severable.

26. NOTICES. Except for any notice required by applicable law to be given in another manner, all notices provided pursuant to the Note, this Security Instrument or any other Loan Document shall be in writing and shall be deemed to have been duly given if sent by United States certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at the address set forth herein or such other address as the recipient party may have designated by notice given in the manner specified above. Each such notice shall be deemed received upon the earlier of (i) when given or received in the manner prescribed by applicable law, (ii) when received in person by the recipient party or (iii) two calendar days following the mailing of such notice, certified mail, postage prepaid, return receipt requested to the address set forth herein.

27. LOST INSTRUMENTS. In the event that following execution, the Note, Security Instrument, or any other Loan Document should be lost, destroyed or mutilated, Borrower agrees to execute another original of such Note, Security Instrument or Loan Document.

28. TRUSTEE. Trustee accepts appointment hereunder when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender or Trustee shall be a party.

29. POWER OF TRUSTEE TO RECONVEY OR CONSENT. Without affecting the liability of any person, including Borrower, for the payment of any indebtedness secured hereby, including such indebtedness as may be due at the time of or after full reconveyance, or the lien of this Security Instrument upon any remainder of the Property for the full amount of any indebtedness then or thereafter secured hereby, or the rights or powers of Lender or Trustee with respect to the remainder of the Property (other than any person or property specifically released by Lender), Lender or Trustee (if so requested by Lender, from time to time, without liability therefor, and without notice to Borrower, upon written request of Lender and presentation of this Security Instrument and the Note or other agreement secured hereby, together with payment for any fees of Trustee therefor), may do any one or more of the following: (1) release any indebtedness; (2) extend the time or otherwise alter the terms of payment of such indebtedness; (3) accept additional security; (4) substitute or release any property securing such indebtedness; (5) reconvey all or any part of such property; (6) consent to the making of any map or plat thereof; (7) join in granting any easement thereon; or (8) join in any extension agreement or any agreement subordinating or otherwise affecting the lien or charge hereof. Any reconveyance by Trustee shall be made without warranty. The recitals in any reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyances may be described as "the person or persons legally entitled thereto". A full reconveyance of this Security Instrument shall operate as a re-assignment of the leases and the Rents and Profits assigned herein to Lender.

30. SUBSTITUTION OF TRUSTEE. Lender may, from time to time, by an instrument in writing, substitute a successor or successors to any trustee named herein or acting hereunder, which



instrument, executed and acknowledged by Lender and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor trustee or trustees, who shall, without conveyances from the trustee predecessor, succeed in all its title, estate, rights, powers and duties. Such instrument shall contain the name and address of the new trustee. The procedure herein provided for substitution of trustees shall not be exclusive of other provisions for substitution provided by law.

31. STATEMENT OF OBLIGATION. Lender may charge a fee equal to fifty dollars (\$50.00) or such greater amount as maybe authorized by law for furnishing each statement of obligation.

32. RECONVEYANCE. Upon payment of all sums secured by this Security Instrument, including, but not limited to any prepayment premiums or fees due and payable under the Note, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing indebtedness secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

33. WAIVER OF JURY TRIAL. To the fullest extent permitted by law, Borrower and Lender HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Note, this Security Instrument or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation. Neither party will seek to consolidate any such action in which a jury has been waived, with any other action in which a jury trial cannot or has not been waived. Each party acknowledges that it has received the advice of counsel with respect to this waiver.

34. FINAL AGREEMENT. The Note, this Security Instrument and the other Loan Documents collectively represent the final agreements between Lender and Borrower and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten agreements between Lender and Borrower.

35. PATRIOT ACT. Borrower represents, covenants and warrants that as of the date hereof and at all time hereunder during the term hereof:

(a) (i) None of the funds or other assets of Borrower or of any affiliate of Borrower constitute property of, or are beneficially owned, directly or indirectly, by any person subject to trade restrictions under the laws of the United States, including those who are covered by the International Emergency Economic Powers Act, 50 U.S.C. §§1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1, et seq., and any executive orders or regulations promulgated thereunder (an "Embargoed Person") with the result that Lender Exposure (as hereinafter defined) will occur; (ii) no Embargoed Person has any interest of any nature whatsoever (whether directly or indirectly) in Borrower with the result that Lender Exposure will occur; and (iii) none of the funds of Borrower have been derived from any unlawful activity with the result that Lender Exposure will occur. For the purposes hereof, "Lender Exposure" shall mean any one or more of the following: (w) the Loan is in violation of applicable law, or (x) the Property or any other collateral for the Loan or any portion thereof (including, without limitation, the Rents and Profits or other income to be derived therefrom) is subject to forfeiture or to being frozen, seized, sequestered or otherwise impaired by any governmental authority, or (y) the Loan or any payments made or to be made in respect thereof (including, without limitation, principal and interest) is subject to forfeiture or to being frozen, seized, sequestered or otherwise impaired by a governmental authority or Lender or any of Lender's collateral for the Loan or the lien priority thereof or any of Lender's rights or remedies in respect of the Loan or the collateral therefor is otherwise impaired or adversely affected, or (z) Lender is subject to criminal or civil liability or penalty.

(b) Neither Borrower nor any of its direct or indirect owners is in violation of the U.S. Federal Bank Secrecy Act, as amended, and its implementing regulations (31 CFR part 103), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder (collectively, the "Patriot Act"), any order issued with respect to anti-money laundering by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or any other anti-money laundering Law with the result that Lender Exposure will occur.

(c) Neither Borrower nor any of its direct or indirect owners is a person with whom people of the United States are restricted from doing business with under (a) regulations issued by OFAC



(including those persons and entities named on OFAC's Specially Designated Nationals and Blocked persons list) or under any law of the United States (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or (b) any other law, if, with respect to either clause (a) or (b) Lender Exposure will occur. Without limiting the foregoing, Borrower is not presently funding Borrower's obligations hereunder with funds from any of the persons referred to in this paragraph (c) if Lender Exposure will occur.

36. NONRECOURSE. Borrower's personal liability for the payment and performance of Borrower's obligations secured by this Security Instrument is limited pursuant to the terms and conditions set forth in those certain nonrecourse provisions of the Note, which terms and conditions are incorporated herein by reference.

37. ASSUMPTION OF LOAN. Notwithstanding anything to the contrary in Paragraph 12 of this Security Instrument, Lender will consent to a one-time transfer of the entire Property subject to the Loan Documents if: (1) the transferee's creditworthiness, financial strength and management ability are satisfactory to Lender, in its sole discretion (2) the Property meets Lender's underwriting criteria in effect at the time of the transfer of the Property, including, without limitation, a debt service ratio, loan to value ratio and loan to purchase price ratio, all satisfactory to Lender in its sole discretion; (3) the transferee has executed the form of Assumption Agreement provided by Lender containing such terms as Lender may require.; (4) such transferee pays Lender an assumption fee equal to one percent (1.0%) of the remaining principal balance of the Note; (5) the Loan is current and there exists no event of default under this Security Instrument or any other Loan Document, and there exists no other event, which, with the giving of notice or the passage of time or both, would constitute an event of default under this Security Instrument or any other Loan Document; (6) Lender receives a new Lender's policy of title insurance or endorsement insuring the continued existing lien status of the Loan; and (7) the transferee pays all costs relating to the transaction (credit report fees, notary fees, recording fees, escrow fees, title fees, title insurance premium, legal fees, costs for appraisal and environmental reports, and any other costs incurred by Lender). In the event the above conditions are met, all existing terms of the Loan Documents will remain in effect. The obligations of Lender stated herein are expressly conditioned upon the assumption transaction being in compliance with the applicable law and regulations of all government agencies having jurisdiction over a Lender at the time of the transfer. The provisions of this Paragraph shall apply to the transfer of the Property by Borrower only and it shall not apply to a subsequent transfer by Borrower's transferee.

38. NON-AGRICULTURAL USE. The Property is not used principally for agricultural purposes and shall not during the term of the Loan be used principally for agricultural purposes.

The undersigned Borrower requests that a copy of any notices hereunder be mailed to it at its address set forth below:

Villaorba, L.L.C.
720 Main Street, Suite 230
Mount Vernon, WA 98273

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

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IN WITNESS WHEREOF, Borrower has executed this Security Instrument on the day in the year first above written.

BORROWER:

**VILLAORBA, L.L.C., a Washington
limited liability company**

By 
Don E. Gordon, Manager

By 
Kay N. Gordon, Manager

**DOCUMENT IS NOT TO BE EXECUTED IN COUNTERPARTS
OR UNDER A POWER OF ATTORNEY
ALL SIGNATURES MUST BE ACKNOWLEDGED**

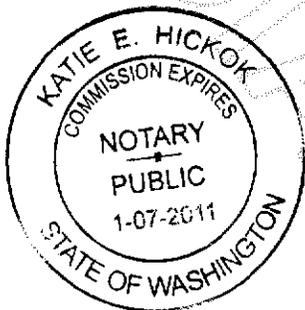


ACKNOWLEDGEMENTS

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 30th day of November, 2007, before me, a Notary Public in and for the State of Washington, personally appeared **DON E. GORDON**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Manager of VILLAORBA, L.L.C., a Washington limited liability company, to be the free and voluntary act and deed of said limited liability company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Katie E. Hickok
NOTARY PUBLIC in and for the State of Washington,
residing at Mt Vernon
My appointment expires 1-7-11
Print Name Katie E Hickok

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this _____ day of November, 2007, before me, a Notary Public in and for the State of Washington, personally appeared **KAY N. GORDON**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the Manager of VILLAORBA, L.L.C., a Washington limited liability company, to be the free and voluntary act and deed of said limited liability company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Katie E. Hickok
NOTARY PUBLIC in and for the State of Washington,
residing at Mt Vernon
My appointment expires 1-7-11
Print Name Katie E Hickok



EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The Property is located in the City of Mount Vernon, County of Skagit, State of Washington and is described as follows:

PARCEL A:

The West ½ of the South ½ of the following described tract:

The South ½ of the East ½ of the West ½ of the Southwest ¼ of the Northeast ¼ of Section 20, Township 34 North, Range 4 East, W.M., EXCEPT the South 341.00 feet thereof, AND EXCEPT the West 30 feet thereof.

PARCEL B:

The East ½ of the South ½ of the following described tract:

The South ½ of the East ½ of the West ½ of the Southwest ¼ of the Northeast ¼ of Section 20, Township 34 North, Range 4 East, W.M., EXCEPT the South 341.00 feet thereof, AND EXCEPT the West 30 feet thereof.

PARCEL C:

The East ½ of the North ½ of the following described tract:

The South ½ of the East ½ of the West ½ of the Southwest ¼ of the Northeast ¼ of Section 20, Township 34 North, Range 4 East, W.M., EXCEPT the south 341 feet thereof, AND EXCEPT the West 30 feet thereof.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities over and across that portion of the North 30 feet of the South ½ of the East ½ of the West ½ of the Southwest ¼ of the Northeast ¼ of said Section 20, lying Westerly of the above described main tract, EXCEPT the West 30 feet thereof.

PARCEL D:

The West ½ of the North ½ of the following described tract:

The South ½ of the East ½ of the West ½ of the Southwest ¼ of the Northeast ¼ of Section 20, Township 34 North, Range 4 East, W.M., EXCEPT the West 30 feet thereof, EXCEPT the South 341 feet thereof.



200712030216
Skagit County Auditor