

Recording Requested By and  
When Recorded Mail To:

HOMESTREET BANK  
Income Property Finance  
601 Union Street, Suite 2000  
Seattle, Washington 98101-2326  
Attn: Wendy Young



200801170086

Skagit County Auditor

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CHICAGO TITLE COMPANY  
IC41566

**Document Title:** Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing

**Grantor:** Roeter Cook Road LLC;  
Larson Cook Road Larson LLC; and  
Bissell Real Estate Holdings, LLC

**Grantee/Beneficiary:** HomeStreet Bank

**Grantee/Trustee:** Chicago Title Insurance Company

**Legal Description:**

**Abbreviated Legal Description:** Tr. 3, SP 90-33

**Full Legal Description:** See Exhibit A attached

**Assessor's Tax Parcel Nos.:** 350419-4-004-0100

**Reference Nos. of Documents Released or Assigned:** N/A

**Grantor UBI No.:** 602-789-738, 602-789-741, 602-737-918

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING  
(Including Construction Loan Provisions)**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of January 16, 2008,

by **ROETER COOK ROAD LLC**, a Washington limited liability company, **LARSON COOK ROAD LLC**, a Washington limited liability company, and **BISSELL REAL ESTATE HOLDINGS, LLC**, a Washington limited liability company (collectively, "**Borrower**"), as Grantor, whose mailing address is c/o Alliance Management, 801 2nd Avenue, Suite 1501, Seattle, Washington 98104, Attn: Michael J. Roeter, to **CHICAGO TITLE INSURANCE COMPANY** ("**Trustee**"), as Trustee, whose mailing address is P.O. Box 670, Burlington, Washington 98233; to **HOMESTREET BANK**, a Washington state chartered savings bank ("**Lender**"), as Beneficiary, whose mailing address is 601 Union Street, Suite 2000, Seattle, Washington 98101-2326, Attention Income Property Finance.

For purposes of Article 9 of the Uniform Commercial Code (RCW 62A.9A), this Deed of Trust constitutes a Security Agreement and Financing Statement with the Borrower being the Debtor and the Lender being the Secured Party. This Deed of Trust also shall constitute a Financing Statement filed as a fixture filing pursuant to Article 9 of the Uniform Commercial Code (RCW 62A.9A-402(6)).

In consideration of the loan (the "**Loan**") from Lender to Borrower evidenced by the "Note" (defined below), Borrower hereby irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, all of Borrower's present and future estate, right, title, claim, and interest, either in law or in equity, in and to the following property ("**Property**"):

(a) The real property ("**Realty**") described in Exhibit A, and all existing and future rights to the alleys, streets and roads adjoining or abutting the Realty;

(b) All present and future easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, royalties, water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances belonging or in any way appertaining to the Realty;

(c) All present and future buildings, improvements and tenements located on the Realty ("**Improvements**");

(d) All present and future fixtures and articles of property attached to, or used or adapted for use in the ownership, development, operation or maintenance of the Realty and Improvements (whether such items are leased, owned, or subject to any title-retaining or security instrument), including without limitation all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposers, refrigerators and other appliances; all escalators and elevators, baths, sinks, cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash; all carpeting, underpadding, floor covering, panelling, and draperies; and all shrubbery and plants.



All such items shall be deemed part of the Realty and not severable wholly or in part without material injury to the freehold;

(e) All present and future rents, revenues, issues, profits and income from the Realty or the Improvements, and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty and Improvements, including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guarantees of tenants' or occupants' performance under such leases and agreements;

(f) All present and future tangible personal property ("**Personal Property**") used in connection with the ownership, development, operation or maintenance of the Realty and Improvements, including without limitation all furniture, furnishings, equipment, and supplies;

(g) All present and future intangible personal property used in connection with the ownership, development, operation or maintenance of the Realty, Improvements, and Personal Property, including without limitation, all permits, licenses and franchises, contract rights (including without limitation architectural, engineering, consulting, and management contracts), accounts receivable, escrow accounts, insurance policies, deposits, instruments, documents of title, general intangibles, business records and the exclusive right to the use of trade names;

(h) All present and future materials, supplies, and other goods, wherever located, whether in the possession of Borrower, warehouseman, bailee, or any other person, purchased for use in the construction, operation or furnishing of the Improvements, together with all documents, contract rights, and general intangibles relating thereto;

(i) All present or future site plans, plats, architectural plans and specifications, work drawings, surveys, engineering reports, test borings, market surveys, and other work products relating to the Realty and Improvements;

(j) All present or future construction contracts relating to the Improvements, together with all performance, payment, completion or other surety bonds in connection with or related to any such construction contracts which are transferable by Borrower;

(k) All present and future contracts and policies of insurance which insure any buildings, structures or improvements on the Realty, or any fixtures or personal property thereon, against casualty and theft, and all monies and proceeds and rights thereto which may become payable by virtue of any insurance contracts or policies;

(l) Any good faith deposit or other deposit paid to any potential lender on the Property;

(m) All Borrower's right, title and interest and to the proceeds of any and all condemnation actions now or hereafter affecting the Property; and

(n) All products and proceeds of the foregoing.



The following obligations are secured by this Deed of Trust (collectively the "**Secured Obligations**"):

(a) Payment of the sum of Two Million Seven Hundred Ten Thousand and No/100 Dollars (\$2,710,000.00), or so much thereof as may be advanced, with interest thereon, according to the terms and provisions of a promissory note ("**Note**") of even date, made by Borrower and payable to Lender, including any and all modifications, extensions, renewals and replacements thereof. THE NOTE CONTAINS PROVISIONS ALLOWING FOR ADJUSTMENTS TO THE INTEREST RATE APPLICABLE TO THE NOTE.

(b) Payment of all sums advanced to protect the security of this Deed of Trust, together with interest thereon as herein provided;

(c) Payment of all other sums which are or which may become owing under the "Loan Documents" (defined below) or which may be advanced by Lender pursuant to the Loan Documents;

(d) The performance of the covenants and agreements of Borrower contained in the Construction Loan Agreement between Borrower and Lender of even date (the "**Loan Agreement**"); and

(e) Performance of all of Borrower's other obligations under the Loan Documents.

For purposes of this Deed of Trust, the term "**Loan Documents**" means the Loan Agreement, the Note, this Deed of Trust, and all related documents and instruments (except Environmental and Building Laws Agreement and Indemnity (the "**Indemnity Agreement**") made by Borrower for the benefit of Lender), and any and all modifications, extensions, renewals and replacements thereof.

BORROWER HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

#### **SECTION 1. TITLE AND USE.**

**1.1 Warranty of Title.** Borrower covenants and agrees that: (i) Borrower is lawfully seized of the estate hereby conveyed and has full right and power to grant, convey and assign the Property, (ii) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the exceptions listed in Lender's title insurance policy insuring this Deed of Trust or exceptions otherwise approved in writing by Lender ("**Permitted Exceptions**"), (iii) no other liens or encumbrances, whether superior or inferior to this Deed of Trust, shall be created or suffered to be created by Borrower without the prior written consent of Lender, (iv) no default on the part of Borrower or any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification, (v) complete and current copies of the Permitted Exceptions have been furnished to



Lender, and none of them have been or will be modified by Borrower without Lender's prior written consent, (vi) Borrower shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Lender a copy of all notices delivered in connection with the Permitted Exceptions, (vii) Lender has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Borrower from time to time shall, at the request of Lender, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Lender may request, and (viii) Borrower shall forever warrant and defend the Property unto Lender against all claims and demands of any other person whatsoever, subject only to non-delinquent taxes and assessments and the Permitted Exceptions.

**1.2 Non-Agricultural Use.** Borrower represents and warrants to Lender that the Property is not used principally or primarily for agricultural or farming purposes.

**1.3 Hazardous Substances.**

(a) **Representations and Warranties.** Borrower represents and warrants to Lender, to the best of its knowledge after due inquiry and inspection, that (i) no asbestos has ever been used in the construction, repair or maintenance of any Improvements, (ii) no substance currently designated as a Hazardous Substance is currently being generated, processed, stored, transported, handled or disposed of on or under the Property, except in accordance with all applicable laws, (iii) neither Borrower nor any other person or entity has ever caused or permitted any substance currently designated as a Hazardous Substance to be generated, processed, stored, transported, handled or disposed of, on, under or in the Property, except in compliance with all applicable laws, (iv) there is no actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law relating to Hazardous Substances, and (v) there is no action or proceeding pending or threatened before or appealable from any court, quasi-judicial body or administrative agency relating to Hazardous Substances affecting or alleged to be affecting the Property.

(b) **Covenant.** Borrower covenants and agrees that Hazardous Substances shall not be generated, processed, stored, transported, handled or disposed of on the Property by any person or entity, except in accordance with all applicable laws.

(c) **Definition.** "**Hazardous Substances**" means any hazardous, toxic or dangerous substance, waste or material which is now or hereafter becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including without limitation any substance, waste or material which now or hereafter is (i) designated as a "hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. §1257 et seq.), (ii) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), (iii) defined as a "hazardous substance" in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq. as amended), or (iv) designated as a hazardous substance under or pursuant to the Hazardous Waste



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Cleanup -- Model Toxics Control Act (Revised Code of Washington 70.105D). Without limiting the foregoing, Hazardous Substances shall include asbestos, petroleum or hydrocarbon products, and any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state or local governmental authority.

(d) Notification; Cleanup. Borrower shall immediately notify Lender if Borrower becomes aware of (i) any Hazardous Substance problem or liability with respect to the Property, (ii) any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law relating to Hazardous Substances, or (iii) any lien or action with respect to any of the foregoing. Borrower shall, at its sole expense, take all actions as may be necessary or advisable for the cleanup of Hazardous Substances with respect to the Property, including without limitation, all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Lender, and shall further pay or cause to be paid all cleanup, administrative and enforcement costs of governmental agencies if obligated to do so by contract or by law.

(e) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structure, at reasonable times, and after reasonable notice for the purpose of inspecting the Property to determine Borrower's compliance with this paragraph.

## **SECTION 2. BORROWER'S COVENANTS.**

**2.1 Payment and Performance of Secured Obligations.** Borrower shall pay when due all sums that are now or that may become owing under the Note, and shall pay and perform all other Secured Obligations in accordance with their terms.

### **2.2 Payment of Taxes, Utilities, Liens and Charges.**

(a) Taxes and Assessments. Except as the same may otherwise be paid under Section 3, Borrower shall pay when due directly to the payee thereof all taxes and assessments (including without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Borrower shall promptly furnish to Lender all notices of amounts due under this subparagraph and all receipts evidencing such payments.

(b) Utilities. Borrower shall pay when due all utility charges and assessments for services furnished the Property.

(c) Labor and Materials. Borrower shall pay when due the claims of all persons supplying labor or materials to or in connection with the Property.



(d) Liens and Charges. Borrower shall promptly discharge any lien, encumbrance, or other charge, whether superior or inferior to this Deed of Trust, that may be claimed against the Property.

(e) Taxes, Assessments and Other Charges Imposed on Lender. If, at any time after the date of this Deed of Trust, any law is enacted or changed (including any interpretation thereof) that subjects Lender to any increase in any tax (except federal, state or local income taxes), assessments, or other charge, in any form measured by or based on any portion of the indebtedness secured by this Deed of Trust, Borrower shall pay such increased amount to Lender on demand; provided that if any such payment would be unlawful, Lender may declare all accrued interest and the entire principal balance of the Note immediately due and payable.

(f) Right to Contest. Notwithstanding anything set forth in this Section 2.2, so long as no Event of Default shall occur hereunder, Borrower shall have the right to contest the amount or validity in whole or in part of any lien, encumbrance or other charge against the Property by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, in which event Borrower, upon written notice to Lender, may defer payment of any such lien, encumbrance or other charge, so long as (i) Borrower shall have provided Lender with evidence satisfactory to Lender that such proceedings shall operate to prevent the sale of the Property or any portion thereof, or the imposition of any penalties on Borrower or the Property; (ii) neither the Property nor any part thereof will, by reason of such postponement or deferment, be in danger of being forfeited or lost; (iii) before the date such lien, encumbrance or other charge becomes delinquent, Borrower shall provide Lender with such security as Lender may require to insure payment thereof and prevent any forfeiture or loss of the Property or any part thereof; and (iv) on a final determination of such contest, which is not appealable or is not being appealed, Borrower shall pay the amount of the lien, encumbrance or other charge if and when due, and prior to the imposition of any penalties or delinquent interest.

## 2.3 Insurance.

(a) Coverages Required. Borrower shall keep the following insurance coverages in effect with respect to the Property:

(1) An "All-Risk" hazard insurance policy on the Property, which during the construction of the Improvements, shall be in a Builder's All-Risk Form. Such insurance shall name Lender as loss payee on a Form 438-BFU or acceptable equivalent attached to the policy, shall be in an amount not less than one hundred percent (100%) of the full replacement cost of the Improvements and any other improvements on the Property, and shall contain such endorsements and coverages as Lender may require.

(2) A flood insurance policy in the maximum amount available, as required by the Flood Disaster Protection Act of 1973, since the Property is located in an area designated by the United States Department of Housing and Urban Development as a special flood



hazard area. The policy shall name Lender as loss payee on a Form 438-BFU or acceptable equivalent attached to the policy.

(3) A certificate evidencing a commercial general liability insurance policy with respect to the Property insuring against claims of bodily injury, death or property damage (combined single limit form), in an amount not less than \$1,000,000 per occurrence, and providing coverage in an aggregate amount of not less than \$2,000,000, naming Lender as an additional insured.

(4) Insurance against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts, as Lender may from time to time reasonably require.

(b) Policies. Each insurance policy will be issued by a company and in a form acceptable to Lender. All required policies will provide for at least ten (10) days' written notice to Lender prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage. Borrower shall furnish to Lender the original of each required insurance policy, or a certified copy thereof together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. As security for the Secured Obligations, Borrower hereby assigns to Lender all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

(c) Payment; Renewals. Borrower shall promptly furnish to Lender all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Section 3, Borrower shall pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Borrower shall furnish to Lender a renewal policy in a form acceptable to Lender, together with evidence that the renewal premium has been paid.

(d) Application of Insurance Proceeds. In the event of any loss, Borrower shall give prompt written notice thereof to the insurance carrier and Lender. Borrower hereby authorizes Lender as Borrower's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Lender's or Borrower's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Lender shall have no obligation to do so. Lender shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

(1) The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or





(2) The reimbursement of Borrower, under Lender's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Lender may, at its option, condition the reimbursement on Lender's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Lender may reasonably require.

Except to the extent that insurance proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to excuse Borrower from restoring, repairing or maintaining the Property as provided in paragraph 2.4, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

(e) Transfer of Title. If the Property is sold pursuant to Section 8 or if Lender otherwise acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

(f) Application of Insurance Proceeds. Notwithstanding Paragraph 2.3(d) above, Lender shall make insurance proceeds available to Borrower to pay for costs associated with the repair or restoration of the Property, provided the following conditions are satisfied:

(1) There is no Event of Default hereunder nor does any event or condition then exists which with the giving of notice, the passage of time, or both, will constitute an Event of Default.

(2) The following conditions shall have been satisfied: (i) Borrower shall have furnished to Lender and Lender shall have approved a detailed budget and cost breakdown for the restoration and rebuilding work, describing the nature and type of expenses and the cost thereof estimated by Borrower for such restoration and rebuilding work, including without limitation, the cost of materials and supplies, architect's, engineer's and designer's fees, general contractor's fees, and the anticipated monthly disbursement schedule; (ii) Lender shall have reviewed and approved the construction contract for the repair and restoration, and if required by Lender, Lender shall have received payment and performance bonds with dual obligee rider; (iii) Lender shall have received evidence satisfactory to it that the insurance proceeds are adequate to restore the Property to its condition immediately prior to the casualty, and if the proceeds are insufficient, Lender shall have received from Borrower the amount of the deficiency for disbursement with the insurance proceeds; (iv) Lender shall have received evidence satisfactory to it that Borrower has funds available to it sufficient to pay all operating expenses, taxes, debt service and other carrying costs of the Property through the period of repair or restoration; (v) Borrower shall have furnished to Lender and Lender shall have approved plans and specifications for the restoration or rebuilding work, and written evidence satisfactory to it that the same has been approved by all governmental authorities having jurisdiction over the Property; (vi) in Lender's judgment, the rebuilding and restoration work can be completed at least six (6) months prior to the



maturity date of the Note; and (vii) Lender must be satisfied that the leases of the Property will remain in full force and effect pending the completion of the repairs, or Lender shall have received evidence satisfactory to it that upon completion of the repair or restoration work, the Property will produce sufficient income and be of sufficient value to be adequate security for the Secured Obligations.

(3) Each disbursement of the insurance proceeds shall be made in accordance with Lender's then standard procedures for disbursement of construction loan proceeds.

(4) Borrower shall execute and deliver to Lender such additional security documents and instruments as Lender deems reasonably necessary to continue and perfect Lender's security interest in the Property.

## **2.4 Preservation and Maintenance of Property; Right of Entry.**

(a) Preservation and Maintenance. Borrower shall (i) not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) not abandon the Property, (iii) restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. None of the Improvements shall be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability which is owned by Borrower free and clear of any lien or security interest.

(c) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property to determine Borrower's compliance with this paragraph.

**2.5 Parking.** If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are diminished for any other reason, Borrower shall take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Borrower shall furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations. This Deed of Trust shall constitute a first lien on all such substitute parking facilities.



**2.6 Use of Property.** Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions applicable to the Property, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

**2.7 Condemnation.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking (including without limitation any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Lender, and all proceeds of any such awards, payments, damages or claims shall be paid to Lender. Lender shall apply any such proceeds in the manner and upon the terms and conditions set forth in Paragraphs 2.3(d) and 2.3(f) above relating to the application of insurance proceeds.

**2.8 Protection of Lender's Security.** Borrower shall give notice to Lender of and shall appear in and defend any action or proceeding that may affect the Property, the interests of Lender or Trustee therein, or the rights or remedies of Lender or Trustee under the Loan Documents. If any such action or proceeding is commenced, or Borrower fails to perform any obligation under the Loan Documents, Lender or Trustee may, at their option, make any appearances, disburse any sums, make any entries upon the Property, and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Deed of Trust, (ii) remedy Borrower's failure to perform its obligations under the Loan Documents (without waiving such default by Borrower), or (iii) otherwise protect Lender's or Trustee's interests. Borrower shall pay all losses, damages, fees, costs, and expenses incurred by Lender and Trustee in taking such actions, including without limitation reasonable legal fees.

**2.9 Reimbursement of Lender's and Trustee's Expenses.** All amounts disbursed by Lender and Trustee pursuant to Paragraph 2.8 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. All such amounts shall be immediately due and payable and bear interest from the date of disbursement at the lesser of the default rate under the Note, or the maximum rate permitted by law.

**2.10 Books and Records, Financial Statements.** Borrower shall keep and maintain at Borrower's address stated above, or such other place as Lender may approve in writing, books of accounts and records adequate to reflect correctly the results of the operation of the Property, and



copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination, inspection and copying at any reasonable time by Lender. Borrower shall provide Lender with the operating statements, financial statements and reports of Borrower and Guarantors and the rent roll for the Project as provided in Section 13 of the Loan Agreement.

**2.11 Condominium Declaration.** Borrower hereby covenants and agrees not to file or record any declaration or constituent condominium document which would subject the Property to the Washington Condominium Act, RCW Chapter 64.34, or any other law later enacted or effective related to condominiums (the "**Act**"), without Lender's prior written consent. As to any portion of the Property which is later submitted to the Act, this Deed of Trust shall continue in effect and extend to all of Borrower's right, title and interest in and to any and all units and apartments created thereby and Borrower's interest in the underlying land and common elements, and all other interests and easements pertaining thereto, without further action.

### **SECTION 3. RESERVES.**

**3.1 Deposits.** If required by Lender, Borrower shall, at the time of making each monthly installment payment under the Note, deposit with Lender a sum, as estimated by Lender, equal to (i) the taxes and special assessments next due on the Property, and (ii) the premiums that will next become due on insurance policies as may be required under this Deed of Trust, less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such taxes, special assessments and premiums will become delinquent. Lender may require Borrower to deposit with Lender, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Borrower or the Property as Lender reasonably deems necessary to protect Lender's interests ("**Other Impositions**"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Lender's option. If required by Lender, Borrower shall promptly deliver to Lender all bills and notices with respect to any taxes, assessments, premiums and Other Impositions. Lender shall not be required to pay Borrower any interest, earnings or profits on any sums deposited with Lender. All sums deposited with Lender under this paragraph 3.1 are hereby pledged as security for the Secured Obligations.

**3.2 Application of Deposits.** All such deposited sums shall be held by Lender and applied in such order as Lender elects to pay such taxes, assessments, premiums and Other Impositions or, upon any Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 3 is solely for the added protection of Lender and entails no responsibility on Lender's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Each transfer of the Property in accordance with Section 4 below shall automatically transfer to the transferee all rights of Borrower with respect to any funds deposited



hereunder. Upon payment in full of the Secured Obligations, Lender shall promptly refund to Borrower the remaining balance of any deposits then held by Lender.

**3.3 Adjustments to Deposits.** If the total deposits held by Lender exceeds the amount deemed necessary by Lender to provide for the payment of such taxes, assessments, premiums and Other Impositions, such excess shall, provided there is no Event of Default or any event which would constitute an Event of Default if not cured within the time allowed, be credited by Lender on the next due installment or installments of such deposits. If at any time the total deposits held by Lender are less than the amount deemed necessary by Lender to provide for the payment of such taxes, assessments, premiums and Other Impositions, Borrower shall promptly deposit the deficiency with Lender after receipt of written demand from Lender.

**3.4 Conditional Waiver.** Notwithstanding the foregoing, Lender shall not require the payment of reserves as provided in this Section until a delinquency occurs in the payment of such taxes, assessments, premium and Other Impositions, or the occurrence of an Event of Default.

#### **SECTION 4. RESTRICTIONS ON TRANSFER OR ENCUMBRANCE.**

Except for the Permitted Transfers (as defined in Section 4.11 of the Loan Agreement), neither the Property nor any part thereof or interest therein shall be encumbered, sold (by contract or otherwise), conveyed, or otherwise transferred by Borrower; nor shall there be any change in (i) the ownership or control of any of Borrower's stock if Borrower is a corporation, (ii) the ownership or control of any general partnership interest in Borrower if Borrower is a partnership, (iii) the ownership or control of any beneficial interest in Borrower if Borrower is not otherwise a natural person or persons, and (iv) the ownership or control of any stock, any general partnership interest, membership interests or any other beneficial interest in any corporation, partnership, limited liability company or other entity that has an ownership interest in Borrower. Any such action without Lender's prior written consent shall be deemed to increase the risk of Lender, and shall constitute an Event of Default if not corrected within five (5) days after Lender's delivery of written demand to Borrower. Lender may, in its sole discretion, consent to any such action subject to such terms and conditions as Lender may require, including without limitation, the payment of a non-refundable transfer review/processing fee, an increase in the interest rate applicable to the Note, and an assumption fee equal to one percent (1%) of the outstanding principal balance of the Loan. In such event Lender shall not be required to release the original obligor or any other party liable for the Secured Obligations.

#### **SECTION 5. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

**5.1 Grant to Lender.** This Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code with respect to (a) any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust; and (b) any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other



property constituting "**Property**") for purposes of this Deed of Trust. Borrower hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Borrower and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Deed of Trust, is and at all times shall be regarded as part of the Realty.

**5.2 Status of Borrower; Financing Statements.** Borrower's exact legal name is correctly set forth on the signature page of this Deed of Trust. If Borrower is not an individual, Borrower is an organization of the type specified in the introductory paragraph of this Deed of Trust. If Borrower is a registered entity, Borrower is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Borrower is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Borrower will not cause or permit any change to be made in its name, identity or corporate, company or partnership structure unless the Borrower shall have notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of further perfecting or protecting the lien and security interest of Lender in the Property. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its book and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writing, plans, specifications and schematics concerning the Property, has been for the preceding four months (or less if for the entire existence of Borrower) and will continue to be the address of Borrower set forth in the first paragraph of this Deed of Trust (unless Borrower notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). If Borrower is an individual, Borrower's principal residence has been for the preceding four months and will continue to be the address of the principal residence of Borrower set forth at the end of this Deed of Trust (unless Borrower notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification numbers assigned by the state of incorporation or organization are 602-789-738, 602-789-741 and 602-737-918. Borrower shall promptly notify Lender of any change of its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender of such organizational identification number. Borrower agrees that Lender may file this Deed of Trust, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. Borrower hereby authorizes Lender (and Lender's representatives and agents) to file financing statements (and amendments thereto) relating to the Property. The form and substance of any financing statement filed with respect to this Deed of Trust shall be as Lender, in its sole discretion, may determine. Borrower shall pay all costs of filing such financing statements and any extensions, continuations, renewals, amendments and releases thereof, and shall



pay all costs and expenses of any record searches for financing statements which Lender may require.

**5.3 Lender's Rights and Remedies.** With respect to the property subject to the foregoing security interest, Lender shall have all the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default hereunder, Borrower shall assemble any items of personal property and make them available to Lender at the Property. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law.

**SECTION 6. ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.**

**6.1 Lender's Consent.** Borrower shall not enter into a lease of the Property or any part thereof unless permitted under the Loan Agreement or by other express written consent of Lender, and then only strictly in accordance with such agreement. Notwithstanding the foregoing, however, any and all Leases at the Property, whether or not entered into with the consent of Lender, shall be subject to the provisions of this Section 6.

**6.2 Assignment of Rents and Leases.** As part of the consideration for the Secured Obligations, and not as additional security therefor, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all right, title and interest of Borrower in and to: (a) any and all present and future leases, subleases, and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof ("**Leases**"); (b) all cash or security deposits, advance rentals and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases; and (d) all rents, issues, profits and revenues ("**Rents**") now due or which may become due or to which Borrower may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages.

**6.3 Collection of Funds.** Prior to any Event of Default hereunder, Borrower shall have a license to, and shall, collect and receive all Rents of the Property as trustee for the benefit of Lender; apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency; second to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust, third to the costs of discharging any obligation or liability of

Borrower under the Leases; and fourth to the Secured Obligations, with the balance, if any, to the account of Borrower provided there is no Event of Default. Upon delivery of written notice by Lender to Borrower of an Event of Default hereunder and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only. Borrower hereby expressly authorizes and directs all present and future tenants of the Property to pay any and all Rents due Borrower pursuant to the Leases directly to Lender or such nominee as Lender may designate by written notice delivered to and received by such tenants. Borrower agrees any tenants who make payments directly to Lender or its designee after receipt of such a notice are hereby expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made. Lender may exercise, in Lender's or Borrower's name, all rights and remedies available to Borrower with respect to collection of Rents. Nothing herein contained shall be construed as obligating Lender to perform any of Borrower's obligations under any of the Leases.

**6.4 Borrower's Representations and Warranties.** Borrower hereby represents and warrants to Lender that Borrower has not executed and will not execute any other assignment of said Leases or Rents, that Borrower has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Lender from exercising its rights under this Section 6, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof. Borrower further represents and warrants to Lender that all existing Leases are in good standing and there is no default thereunder, whether by Borrower or lessee, and that, to Borrower's knowledge, there is no event or condition which, with notice or the passage of time or both, would be a default thereunder. Borrower shall execute and deliver to Lender such further assignments of rents and leases of the Property as Lender may from time to time request.

**6.5 Leases of the Property.** Borrower shall comply with and observe Borrower's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or set off. At Lender's request, Borrower shall furnish Lender with executed copies of all Leases now existing or hereafter made and all Leases hereafter entered into will be on a form and in substance satisfactory to Lender. All commercial Leases will specifically provide that the tenant attorns to any person succeeding to the interest of Borrower upon any foreclosure of this Deed of Trust or conveyance in lieu thereof; such attornment shall be in such form as Lender may approve and shall provide that Tenant shall not have the right of set off or defense to payment of rents for any event or act that occurred prior to such successor obtaining title to Borrower's interest except to the extent such event or act is continuing at the time such successor obtains such title. Tenant shall also agree to execute such further evidences of attornment as Lender may from time to time request. Without Lender's written consent, Borrower shall not (i) collect or accept payment of any Rents more than two (2) months





prior to the due dates thereof; (ii) modify, surrender or terminate any commercial Lease; (iii) waive, discharge, release or modify the obligations of any tenant or other occupant of the Property under any commercial Lease; or (iv) request or consent to the subordination of any commercial Lease to any lien subordinate to this Deed of Trust.

**6.6 Lender in Possession; Appointment of Receiver.** Upon any Event of Default hereunder, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Borrower could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect the security of this Deed of Trust. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default hereunder, Lender shall be entitled (regardless of the adequacy of Lender's security) to the appointment of such receiver, Borrower hereby consenting to the appointment of such receiver. Said receiver may serve without bond and may be Lender or an employee of Lender. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Lender in this Section 6. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

**6.7 Application of Rents.** All Rents collected subsequent to delivery of written notice by Lender to Borrower of an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower under the Leases, and then to the Secured Obligations. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Section.

**6.8 Deficiencies.** To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Borrower under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Deed of Trust. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the greater of the default rate under the Note, or the maximum rate permitted by law.



**6.9 Lender Not Mortgagee in Possession.** Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

**6.10 Enforcement.** Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the Secured Obligations.

## **SECTION 7. CONSTRUCTION LOAN PROVISIONS.**

**7.1 Advances.** Borrower agrees to comply with covenants and conditions of the Loan Agreement. The Loan Agreement provides for the disbursement of loan funds with respect to the construction of certain improvements on the Property and for other matters described therein. The Loan Agreement is hereby incorporated by reference and made a part of this Deed of Trust. All advances made by Lender pursuant to the Loan Agreement shall be indebtedness of Borrower secured by this Deed of Trust, and such advances shall be deemed to be obligatory. Any sums disbursed by Lender for the purpose of financing tenant improvements for the benefit of Borrower shall be treated as disbursements pursuant to the Loan Agreement and secured hereby. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Deed of Trust up to the principal amount of the Note shall be treated as disbursements pursuant to the Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note.

**7.2 Assignment of Claims.** From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender in such form as Lender shall direct, assignments of any and all rights or claims that relate to the construction of the Property, and that Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property.

## **SECTION 8. EVENTS OF DEFAULT.**

**8.1 Events of Default.** The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

(a) Failure to make any payment when due under the Note, this Deed of Trust, the Loan Agreement or any other Loan Documents or the Indemnity Agreement and such failure is not cured within ten (10) days after written notice given by Lender to Borrower;

(b) Failure to perform any other covenant, agreement or obligation to be performed by Borrower under the Loan Agreement, this Deed of Trust or the other Loan Documents or the Indemnity Agreement and such failure is not cured within thirty (30) days after written notice thereof has been given by Lender to Borrower (or if the failure is such that the cure cannot be completed within said thirty (30) day period, failure by Borrower to commence the cure within said thirty (30) day period and thereafter continue the cure with diligence and complete the cure within ninety (90) days after such written notice);



(c) Any representation or warranty made by Borrower or any guarantor to Lender in connection with the Loan proves to be false or misleading in any material respect;

(d) The filing of a complaint for receivership or the filing of a voluntary or involuntary petition for bankruptcy or for reorganization (unless such complaint or petition be released or discharged within forty-five (45) days of such filing), with respect to Borrower or any guarantor, or Borrower or any guarantor shall become insolvent or make a general assignment for the benefit of creditors or consent to the appointment of a receiver of all or any material portion of its property or assets, or voluntarily suspends its usual business;

(e) An unauthorized lien or encumbrance that is not removed or for which adequate security is not provided to Lender within the time set forth in Section 12 of the Loan Agreement;

(f) There is a material adverse change in the financial condition of Borrower or any guarantor;

(g) Borrower defaults under the Indemnity Agreement or any Loan Document;  
or

(h) A default occurs under any other indebtedness now or hereafter owing to Lender on which Borrower or any guarantor is a maker or a guarantor, and such default is not cured within the applicable cure period, if any, under the instruments evidencing and securing such indebtedness.

**8.2 Acceleration Upon Default; Additional Remedies.** Upon any Event of Default, Lender may, at its option and without notice to or demand upon Borrower, exercise any one or more of the following actions: (a) declare all the Secured Obligations immediately due and payable; (b) bring a court action to enforce the provisions of this Deed of Trust or any of the other Loan Documents; (c) foreclose this Deed of Trust as a mortgage; (d) cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law; (e) elect to exercise its rights with respect to the Leases and the Rents; (f) exercise any or all of the other rights and remedies under this Deed of Trust and the other Loan Documents; and/or (g) exercise any other right or remedy available under law or in equity. To the extent permitted by law, every right and remedy provided in this Deed of Trust or afforded by law or equity or any other agreement between Lender and Borrower, and may be exercised concurrently, independently or successively, in any order whatsoever. Lender may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

**8.3 Exercise of Power of Sale.** For any sale under the power of sale granted by this Deed of Trust, Lender or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by Lender and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place notified for the sale. If the Property includes several lots



or parcels, Lender in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by the Trustee is personal property, then Trustee shall be acting as the agent of the Lender in selling such Property. Any person permitted by law to do so may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

**8.4 Application of Sale Proceeds.** The proceeds of any sale under this Deed of Trust shall be applied in the following manner: (a) first to the payment of the costs and expenses of the sale; including without limitation Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the applicable interest rate under the Note from time to time or at the maximum rate permitted to be charged by Trustee under the applicable law if that is less; (b) second to the payment of all sums expended by Lender under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the applicable interest rate under the Note from time to time or the maximum rate permitted by applicable law if that is less; and (c) third to the payment of all other Secured Obligations in any order that the Lender chooses; and (d) the remainder, if any, to the person or persons legally entitled to it.

**8.5 Waiver of Order of Sale and Marshalling.** Lender shall have the right to determine the order in which any or all portions of the secured indebtedness are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Borrower, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waives any and all right to require marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust.

**8.6 Non-Waiver of Defaults.** The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

**8.7 Expenses During Redemption Period.** If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the greater of the default rate under the



Note, or the maximum rate permitted by law, shall be added to and become a part of the amount required to be paid for redemption from such sale.

**8.8 Foreclosure Subject to Tenancies.** Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

**8.9 Evasion of Prepayment Terms.** If any Event of Default has occurred, a tender of payment of the indebtedness secured hereby at any time prior to or at a judicial or non-judicial foreclosure sale of the Property by Borrower, or anyone on behalf of Borrower, shall constitute an evasion of any prepayment terms of the Note, if any, and shall constitute a voluntary prepayment thereunder, and any such tender shall include any prepayment premium required under the Note, if any.

**8.10 Lender's and Trustee's Expenses.** Borrower shall pay all of Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust or to protect Lender's security interest hereunder, whether or not any suit is filed, including without limitation legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the greater of the default rate under the Note, or the maximum rate permitted by law.

## **SECTION 9. TENANCY IN COMMON.**

**9.1 Tenancy in Common.** Borrower owns the Property as a tenancy in common, pursuant to that certain tenancy in common agreement executed by each entity comprising Borrower dated of even date with this Deed of Trust (the "**TIC Agreement**"). Notwithstanding anything to the contrary set forth in the TIC Agreement, (a) Borrower agrees not to commence any action to partition the Property; (b) any rights or remedies of any Borrower entity including without limitation options to purchase or rights of first refusal, whether contained in the TIC Agreement or elsewhere, shall be expressly subject to and subordinate to Lender's rights under this Deed of Trust and the Loan Documents and to Lender's rights to the Property; and (c) no Borrower entity shall exercise or seek the enforcement of any right or remedy under the TIC Agreement, including without limitation cross rights, remedies, or indemnities, against any other Borrower entity during the term of this Loan. Any breach of this Section 9.1 by any Borrower entity shall be an immediate Event of Default hereunder. Borrower shall not amend the TIC Agreement without Lender's prior written consent. Borrower agrees that, within ten (10) business days after request by Lender, it shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances and instruments, in recordable form, as Lender may request for the better assuring and evidencing of the foregoing subordinations and agreements.

## **SECTION 10. PARTIAL RELEASE.**

**10.1 Partial Release.** Borrower intends to record a binding site plan and construct a retail building and two retail pads. After recording the binding site plan, Borrower shall not have



the right to obtain a partial release, but may request that Lender grant a partial release of the lien of this Deed of Trust with respect to one or both of the retail pads. Lender shall have no obligation to grant Borrower's request for a partial release hereunder. At a minimum, and without limitation, Borrower shall satisfy all the following terms and conditions in Lender's sole discretion before a partial release may be granted:

(a) No Event of Default (as defined in Section 8) may exist, nor may any event have occurred or state of facts exist that, with the giving of notice or the passage of time, or both, could become an Event of Default.

(b) Borrower makes a prepayment of principal on the Note in an amount to be determined by Lender in its sole discretion, but in no event less than an amount sufficient so that (i) the resulting Loan to value ratio of the remaining Property as determined pursuant to the most recent appraisal (not more than two months old) is less than 80%; and (ii) the debt service coverage ratio from the remaining Property is not less than 1.15:1.00 (calculated as provided in Section 2(a)(vii) of the Note).

(c) Borrower gives Lender at least 30 days prior written notice of its request for a release hereunder. If a new appraisal is required by Lender, Borrower shall pay for it and Lender shall not be required to provide a request for reconveyance until 15 days after the new appraisal is completed, reviewed and accepted by Borrower.

(d) At Lender's request, Borrower shall provide a partial release endorsement to Lender's Title Policy.

(e) Borrower pays all costs and expenses in connection with the partial release, including without limitation, the costs of any appraisal, title insurance, reconveyance fees, recording fees, escrow fees and attorneys' fees.

## **SECTION 11. GENERAL**

**11.1 No Offset.** Borrower's obligation to timely pay and perform all obligations under the Note, this Deed of Trust, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance; including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Borrower or any guarantor may have or claim against Lender or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against Lender or any other person or entity; provided that Borrower shall maintain a separate action thereon.

**11.2 Application of Payments.** Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Lender under the Note or this Deed of Trust shall be applied by Lender in the following order of priority: (a) Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust; (b) interest payable on advances made to



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protect the security of this Deed of Trust; (c) principal of such advances; (d) amounts payable to Lender by Borrower under Section 3 for reserves; (e) interest and late charges payable on the Note; (f) principal of the Note; and (g) any other Secured Obligations in such order as Lender, at its option, may determine; provided, however, that Lender may, at its option, apply any such payments received to interest on or principal of the Note prior to applying such payments to interest on and principal of advances made to protect the security of this Deed of Trust.

**11.3 Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

**11.4 Successor Trustee.** In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

**11.5 Lender's Powers.** Without affecting the liability of any person for payment or performance of the Secured Obligations or any of Lender's rights or remedies, Lender, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or creating any restriction on the property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

**11.6 Subrogation.** Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Note or any other indebtedness secured thereby.

**11.7 Limitation on Interest and Charges.** The interest, fees and charges under the Loan Documents shall not exceed the maximum amounts permitted by any applicable law. If any such interest, fee or charge exceeds the maximum, the interest, fee or charge shall be reduced by the excess and any excess amounts already collected from Borrower shall be refunded. Lender may refund such excess either by treating the excess as a prepayment of principal under the Note or by



making a direct payment to Borrower. If Lender elects to treat the excess as a prepayment of principal, Borrower shall not be obligated to pay any prepayment premium required under the Note. The provisions of this paragraph shall control over any inconsistent provision in the Loan Documents.

**11.8 Additional Documents; Power of Attorney.** Borrower, from time to time, shall execute, acknowledge and deliver to Lender upon request, and hereby irrevocably appoints Lender its attorney-in-fact to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Borrower shall pay to Lender upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

**11.9 Waiver of Statute of Limitations.** To the full extent Borrower may do so, Borrower hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

**11.10 Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Lender of payment of any sum secured by this Deed of trust after the due date thereof shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Lender's receipt of any awards, proceeds or damages under Paragraphs 2.3 and 2.7 hereof operate to cure or waive Borrower's default in payment of sums secured by this Deed of Trust.

**11.11 Modifications and Waivers.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**11.12 Notice.** Any notice to Borrower under this Deed of Trust shall be to the address noted above or such other address as may be designated by Borrower in writing so long as such notice is given in accordance with the notice provisions in the Loan Agreement.

**11.13 Governing Law; Severability; Captions.** This Deed of Trust shall be governed by the laws of the State of Washington. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof that can be given





effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and articles of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**11.14 Definitions.** As used herein: the term "**Borrower**" means the Borrower herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "**Trustee**" means the Trustee herein named, together with any successor Trustee; and the term "**Lender**" means the Lender herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

**11.15 Successors and Assigns; Joint and Several Liability; Agents.** This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Section 4 hereof. Each person executing this Deed of Trust as Borrower shall be jointly and severally liable for all obligations of Borrower hereunder. In exercising any rights hereunder or taking actions provided for herein, Lender and Trustee may act through their respective employees, agents or independent contractors as authorized by Lender and Trustee.

**11.16 Time.** Time is of the essence in connection with all obligations of Borrower herein.

**11.17 Estoppel Certificate.** Borrower shall, within ten days of a written request from Lender and at no charge to Lender, furnish Lender or any other party designated by Lender with a written statement, duly acknowledged, setting forth the sums secured hereby and any right of set-off, counterclaim or other defense that may exist with regard to the Secured Obligations.

**11.18 First Opportunity-Term Financing.** Borrower hereby grants Lender the first opportunity to provide permanent financing for any improvements now or hereafter located on the Property, and Borrower agrees not to submit applications or proposals for permanent financing to any lender other than Lender until Lender, within a reasonable time after receiving an adequate and reasonable application from Borrower for such financing, shall have declined to make such financing available to Borrower.

[Signatures on following page]



Dated as of the day and year first written above.

**BORROWER:**

**LARSON COOK ROAD LLC,**  
a Washington limited liability company

By: Reverse Exchange Corporation,  
a Washington corporation, sole member

By Kelly Yates  
Kelly Yates, Authorized Agent

**ROETER COOK ROAD LLC,**  
a Washington limited liability company

By: Reverse Exchange Corporation,  
a Washington corporation, sole member

By Kelly Yates  
Kelly Yates, Authorized Agent

**BISSELL REAL ESTATE HOLDINGS, LLC,**  
a Washington limited liability company

By B. Bissell  
Name B. Bissell  
Title MANAGING MEMBER



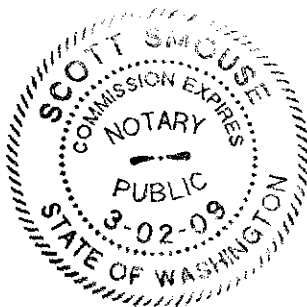
200801170086  
Skagit County Auditor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 16<sup>TH</sup> day of January, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Kelley Yates as the Authorized Signatory of Reverse Exchange Corporation, a Washington corporation, as the sole member of **Roeter Cook Road LLC**, a Washington limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Scott He  
Signature

Scott Smouse  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at Berkeley  
My commission expires 3/2/2009.



STATE OF WASHINGTON )

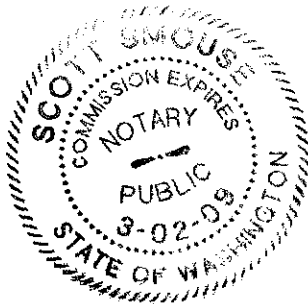
) ss.

COUNTY OF KING )

On this 16th day of January, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Kelley Yates as the Authorized Signatory of Reverse Exchange Corporation, a Washington corporation, as the sole member of **Larson Cook Road LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Signature

Print Name

NOTARY PUBLIC in and for the State of  
Washington, residing at Bellevue  
My commission expires 3/2/2009.



Skagit County Auditor

1/17/2008 Page

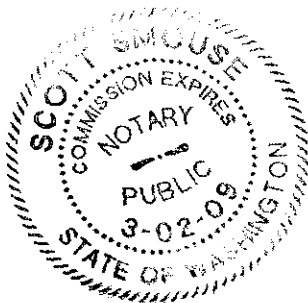
28 of 30 1:26PM

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 16TH day of January, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared ERIC BISSELL, known to me to be the MANAGING MEMBER of **Bissell Real Estate Holdings, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Scott Smouha  
Signature

SCOTT SMOUHA  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at BELLEVUE  
My commission expires 3/2/2009.



200801170086  
Skagit County Auditor

**EXHIBIT A**

**ADDRESS AND LEGAL DESCRIPTION OF PROPERTY**

TRACT 3 OF SKAGIT COUNTY SHORT PLAT NO. 90-33, APPROVED JANUARY 14, 1991 AND RECORDED JANUARY 14, 1991 UNDER AUDITOR'S FILE NO. 9101140018 IN VOLUME 9 OF SHORT PLATS, PAGE 300, RECORDS OF SKAGIT COUNTY, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M.

SITUATED IN SKAGIT COUNTY, WASHINGTON.



200801170086  
Skagit County Auditor