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Skagit County Auditor

7/1/2008 Page 1 of 22 1:46PM

RECORDING REQUESTED BY,
AND WHEN RECORDED, MAIL TO:

BANK OF THE WEST
Doc-North
6873 N. West Avenue, Suite 102
Fresno, CA 93711
ATTN: COLLATERAL UNIT (Nursery/Greenhouse ABC)

**DEED OF TRUST (NON-CONSTRUCTION) SECURITY AGREEMENT
AND FIXTURE FILING WITH ASSIGNMENT OF RENTS**

GRANTOR/TRUSTOR:

1. SKAGIT RESPE LLC

CHICAGO TITLE CO.

1645129

TRUSTEE:

Chicago Title Insurance Company

GRANTEE/ASSIGNEE/BENEFICIARY:

BANK OF THE WEST

Legal Description: See attached Exhibit "A". P41 NW NW 32.34-4

Assessor's Parcel Numbers: P106105, P106106, P21493, P21495, P21740, P29385, P29522, P29524, P29527, P29539, P29541, and P29545

THIS DEED OF TRUST is made and dated as of June 30th 2008, by and between SKAGIT RESPE LLC (the "TRUSTOR"), Transnation Title Insurance ("TRUSTEE") and BANK OF THE WEST, a California corporation ("BENEFICIARY").

WITNESSETH

THAT TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE, its successors and assigns, IN TRUST, WITH POWER OF SALE:

All that property now or hereafter acquired in County or Counties of Skagit, State of Washington, described in the attached Exhibit A ("Property");

TOGETHER WITH, and including, without limitation: all of the buildings and improvements now or hereafter erected on the Property; all of the easements, rights, rights-of-way, privileges, franchises and appurtenances now or hereafter belonging to, or in any way appertaining, or in any way being a means of access, to said Property; all water and water rights, and pumps, pumping plants, and all shares of stock evidencing the foregoing, and all machinery, appliances and fixtures for generating or distributing water, all rents, issues, profits, royalties, revenue, income, general intangibles, including payment intangibles and all accounts arising out of the sale

or lease of the Property, and other benefits of or arising from the use or enjoyment of all or any portion of the Property or the buildings and improvements now or hereafter erected thereon (subject however to the right, reserved to TRUSTOR, to collect, receive and retain such rents, issues, profits, royalties, revenue, income and other benefits prior to any default hereunder or under the Note referenced below or other evidence of debt secured hereby); all gas, oil, water and mineral rights, profits and stock now or hereafter derived from, appurtenant to, or pertaining to the Property (and any and all shares of stock evidencing the same); all crops now or hereafter grown on the Property; and all equipment, machinery, appliances, building materials, goods and fixtures as defined in Article 9 of the Uniform Commercial Code ("UCC") (including replacements and additions thereto) now or hereafter erected thereon.

For purposes hereof, the term "water rights" shall mean and includes all water, water rights, ditch rights and entitlements of every kind or nature relating to the Property or the TRUSTOR'S use of the Property, including without limitation: the ground water on, under, pumped from or otherwise available to the Property and the right to remove and extract any such groundwater; any rights to which the Property is entitled with respect to the diversion, storage and use of surface water, whether such rights are appropriative, riparian, prescriptive, adjudicated or otherwise; any water, water storage right, or other water-related entitlement appurtenant or otherwise applicable to the Property by contract or by virtue of the Property being situated within the boundaries of any district, agency, or other company, or other non-governmental entity; any drainage rights appurtenant or otherwise applicable to the Property; all rights to transport, carry, allocate or otherwise deliver water from or to the Property by any means, wherever located; all licenses, permits, approvals, contracts, decrees, rights and interests to acquire or appropriate any water, water bank or other credits evidencing any right to water; and all storage and treatment rights for any water or Water Rights, whether on or off the Property together with all storage tanks, and other equipment used or usable in connection with such storage.

All of the foregoing shall be deemed to be and shall remain a part of the Property encumbered by this Deed of Trust, and all of the foregoing, together with the Property (or the leasehold estate, if this Deed of Trust encumbers a leasehold interest in the land comprising such Property), are hereinafter referred to as the "premises";

1. FOR THE PURPOSE OF SECURING, in such order of priority as BENEFICIARY, in its absolute discretion, may determine:

(a) Payment of an indebtedness in the aggregate principal amount of \$5,665,000.00 as evidenced by a Credit Agreement dated as of June __, 2008 between SKAGIT REAL ESTATE HOLDINGS, LLC, TRUSTOR and BENEFICIARY (herein referred to as the "Note"), and any and all amendments, modifications, extensions or renewals of the Note (whether evidenced by the Note or otherwise); together with the payment of interest on such indebtedness and the payment of all other sums (with interest as therein provided) according to the terms of the Note (and any and all amendments, modifications, extensions, or renewals thereof);

(b) The maturity date of the Note, unless sooner paid, is June 1, 2023.



(c) The indebtedness secured by this Deed of Trust is subject to a variable rate which may increase or decrease from time to time during the pendency of the obligations secured by this Deed of Trust and all interest which accrues shall have the same priority as the funds initially advanced.

(d) Payment of all other sums, with interest as herein provided, becoming due or payable, under the provisions of this Deed of Trust, to TRUSTEE or BENEFICIARY;

(e) Due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained in this Deed of Trust, the Note and any document or instrument modifying or amending this Deed of Trust or the Note, or otherwise evidencing, securing or pertaining to the indebtedness evidenced by the Note;

(f) Payment of such additional sums (with interest thereon) as may hereafter be borrowed from BENEFICIARY, or its successors or assigns, by Skagit Real Estate Holdings, LLC, TRUSTOR or the then record owner of the Property and evidenced by one or more instruments (other than the Note) which are by their terms secured by this Deed of Trust.

2. TO PROTECT AND MAINTAIN THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(a) **Payment of Obligations When Due.** TRUSTOR shall promptly pay, when due and in lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment, each and every indebtedness and obligation for which this Deed of Trust has been given as security as provided hereinabove; and TRUSTOR shall promptly perform, observe and discharge each and every condition, obligation, covenant and agreement for which this Deed of Trust has been given as security as provided herein.

(b) **Maintenance of Premises.** TRUSTOR shall maintain and keep the premises in good condition and repair and shall not commit or permit waste of the whole or part of any item consisting of a part of the premises. TRUSTOR shall not alter, remove or demolish any buildings, improvements, machinery, equipment, appliances or fixtures now or hereafter on the Property without the prior written consent of BENEFICIARY.

TRUSTOR shall promptly repair, replace or restore (in good, workmanlike manner and in compliance with all laws, ordinances, governmental rules and regulations, easements, agreements, covenants, conditions and restrictions affecting the premises) all buildings, improvements, machinery, equipment, appliances and fixtures now or hereafter on the Property, in the event of damage to or destruction of such buildings, improvements, machinery, equipment, appliances and fixtures.

TRUSTOR shall perform, in the event all or any portion of the premises constitutes a leasehold estate belonging to TRUSTOR, each and every obligation of



TRUSTOR under the terms of the lease agreement relating to the demise of the premises.

TRUSTOR shall not commit, suffer or permit any act upon the premises in violation of law, ordinance, governmental rules and regulations, easements, agreements, covenants, conditions and restrictions affecting the premises or use of the premises.

TRUSTOR shall cause the Property to be cultivated, irrigated, fertilized, fumigated, sprayed, pruned and do any other acts which from the character or use of the Property may be reasonably necessary, and, if the Property is agricultural property, TRUSTOR shall cause the Property to be farmed and harvested, and prepared for farming and harvesting, in an approved and husbandmanlike manner.

In the performance of all acts required of TRUSTOR under the above paragraphs describing maintenance of the premises, TRUSTOR shall promptly pay when due all expenses incurred therefor and shall promptly pay, discharge or otherwise release all claims for labor performed and materials furnished therefor.

(c) Environmental Protection Matters.

(1) The TRUSTOR shall comply with any and all laws, regulations and orders with respect to the release and removal of Hazardous Materials on or from the premises, and shall keep the premises free of any lien imposed pursuant to such laws, regulations or orders. In the event TRUSTOR fails to do so, after notice to TRUSTOR and the expiration of the earlier of (i) applicable cure periods hereunder, or (ii) the cure period permitted under applicable law, regulation or order, BENEFICIARY may either declare an event of default under this Deed of Trust or cause the premises to be freed from the Hazardous Materials to the extent necessary to comply with such laws and free the premises from any such lien, and the cost of the removal shall become due and payable immediately upon demand and with interest thereon at the default interest rate applicable to the indebtedness secured hereby from the date of demand until paid. Any failure by TRUSTOR to reimburse BENEFICIARY for any amounts expended within five (5) days after demand shall be an event of default hereunder. TRUSTOR shall give to BENEFICIARY and its agents and its employees access to the premises and hereby specifically grants BENEFICIARY a license to remove the Hazardous Materials if TRUSTOR fails to do so as required above.

(2) TRUSTOR shall not cause or permit (or allow any tenant or other occupant of the premises to cause or permit) the premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials. TRUSTOR shall not cause or permit a Discharge of Hazardous Materials. TRUSTOR shall notify BENEFICIARY in writing immediately upon the receipt of: (i) any Notice, (ii) TRUSTOR's discovery of any occurrence or condition on any



Real Property adjoining or in the vicinity of the premises that could cause the premises, or any part thereof, to be subject to any restrictions on the ownership, occupancy, transferability or use of the premises under any Environmental Law.

(3) Should TRUSTOR or any tenant or other occupant of the premises cause or permit any intentional or unintentional act or omission resulting in the Discharge of Hazardous Materials, TRUSTOR shall promptly, and at TRUSTOR's sole expense, clean-up such Discharge, or cause such tenant or other occupant to clean-up such Discharge, in accordance with applicable federal, state and local regulations. TRUSTOR shall fully cooperate in allowing from time to time such examinations, tests (including but not limited to a geohydrological survey of soil and subsurface conditions), inspections, and reviews of the premises or any part thereof as BENEFICIARY, in its sole discretion, shall determine to be advisable in order to evaluate any potential environmental problems. The cost of any such examinations, tests, inspections and reviews shall be paid by TRUSTOR.

(4) For purposes hereof, the following terms shall have the following meanings:

- (i) **"Discharge"**: shall mean any spilling, leaking, pumping, pouring, emitting, emptying, release, discharge, injection, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of Hazardous Material(s) into or through the soil, surface water or ground water of the Real Property, whether caused by, contributed to, permitted by, acquiesced to, or known to the Borrower.
- (ii) **"Environmental Claims"**: shall mean all claims, however asserted, by any governmental authority or other person alleging potential liability or responsibility for violation of any Environmental Law or for Discharge or injury to the environment or threat to public health, personal injury (including sickness, disease or death), Property damage, natural resources damage, or otherwise alleging liability or responsibility for damages (punitive or otherwise), cleanup, removal, remedial or response costs, restitution, civil or criminal penalties, injunctive relief, or other type of relief, resulting from or based upon (a) the presence, placement, Discharge, emission or release (including intentional and unintentional, negligent and non-negligent, sudden or non-sudden, accidental or non-accidental placement, spills, leaks, Discharges, emissions or releases) of any Hazardous Material at, in, or from Property, whether or not owned by the TRUSTOR, or (b) any other circumstances forming the



basis of any violation, or alleged violation, of any Environmental Law.

- (iii) **"Environmental Laws"**: shall mean all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authorities, in each case relating to environmental, health, safety and land use matters; including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act and applicable state and local hazardous waste control laws, solid waste management laws, water codes and health and safety laws and regulations.
- (iv) **"Hazardous Materials"**: shall mean all those substances which are regulated by, or which may form the basis of liability under, any Environmental Law, including all substances identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent, special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum derived substance or waste..

(c) **Insurance.** TRUSTOR shall provide, maintain and keep policies of insurance (with companies and in form, content, policy limits and terms satisfactory to BENEFICIARY, with loss payable to BENEFICIARY) insuring the premises against: fire (with an extended coverage endorsement), public liability, loss of rents or business interruption, flood damage (if the Property is located in a flood hazard area and if such insurance is available) and such other hazards and coverages, including earthquake, as BENEFICIARY from time to time may reasonably require.

TRUSTOR shall promptly pay when due all premiums for such insurance, shall deliver copies of all such insurance policies, renewals of such policies and premium receipts therefor to BENEFICIARY, and shall do all things necessary to obtain prompt settlement or disposition of any claim or loss covered under such policies.

All such policies shall name BENEFICIARY as an additional insured and shall include such endorsements as BENEFICIARY shall reasonably deem necessary to protect its interest in the premises. All such policies shall not be cancelable nor subject to substantial change without at least ten (10) days' prior written notice to,



and approval by, BENEFICIARY, and BENEFICIARY shall receive at least ten (10) days' prior written notice of the termination of any such policy.

Without waiving or curing any default in the performance of any obligation under this Deed of Trust and/or without waiving notice of any such default, BENEFICIARY may, in its absolute discretion: apply the proceeds of such insurance upon any indebtedness or obligation secured under this Deed of Trust; and/or, in such order, in such manner and according to such terms and conditions as BENEFICIARY may determine, release all or portions of such proceeds to TRUSTOR for the repair, replacement, or restoration of the premises.

(d) **Payment of Taxes and Assessments.** Unless an appropriate extension of the time to pay has been filed, TRUSTOR shall pay and discharge, at least ten (10) days prior to delinquency: all taxes, assessments and charges of every kind and nature (including real personal property taxes); all general and special assessments, including common area maintenance assessments and assessments on appurtenant water stock; all levies and all permit, inspection and license fees; all water and sewer rents, connection fees and charges and all other public and private charges whether of a like or different nature) imposed upon or assessed against TRUSTOR or the premises, or any part thereof or upon the revenues, rents, issues, income, or profits thereof or upon the inventory of goods maintained or stored thereon or therein. TRUSTOR shall, within ten (10) days following such payment or discharge, provide BENEFICIARY with receipts therefor.

Notwithstanding the foregoing, TRUSTOR shall have the right to contest the validity or amount of any such tax, assessment or charge; provided that the validity or amount thereof is contested diligently and in good faith and provided further that TRUSTOR shall protect the premises against any lien arising out of any such tax, assessment or charge, or out of any such contest thereof, by obtaining a bond, in form, substance, amount, and issued by a surety, satisfactory to BENEFICIARY.

(e) **Litigation.** TRUSTOR shall appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust and/or the rights and/or powers of BENEFICIARY and/or TRUSTEE hereunder, and TRUSTOR shall pay all costs and expenses (including costs of evidence of title and attorneys' fees at trial and on appeal) in any action or proceeding in which BENEFICIARY or TRUSTEE may so appear and/or in any suit brought by BENEFICIARY to foreclose this Deed of Trust, to enforce any obligation secured by this Deed of Trust and/or prevent the breach thereof.

(f) **Performance of Obligations by Beneficiary or Trustee.** Should TRUSTOR fail to make any payment, perform any obligation or do any act set forth in or secured by this Deed of Trust, BENEFICIARY or TRUSTEE (at the request of BENEFICIARY), without obligation to do so, without notice to or demand upon TRUSTOR and without releasing TRUSTOR from making such future payments, performing such future obligations or doing such future acts, may make such payment, perform such obligation or do such act in such manner and to such extent



as BENEFICIARY or TRUSTEE may deem necessary to protect the security of this Deed of Trust. For any and all such purposes, BENEFICIARY and/or TRUSTEE are authorized to enter upon the premises, and, if the premises consists of agricultural property, BENEFICIARY and/or TRUSTEE are authorized to prepare for harvest, harvest, remove, and sell any crops that may be growing upon the premises and apply the proceeds thereof to the indebtedness secured by this Deed of Trust.

Without limiting the foregoing, BENEFICIARY or TRUSTEE may pay, purchase, contest or compromise any encumbrance, charge or lien which, in the sole judgment of BENEFICIARY or TRUSTEE, appears to be prior or superior to this Deed of Trust. In exercising any such power, BENEFICIARY or TRUSTEE may pay all necessary expenses incurred therefor and employ legal counsel and pay its fees.

TRUSTOR agrees to and shall pay, immediately without demand, all sums so expended by BENEFICIARY or TRUSTEE, with interest, from the date of expenditure, at a rate which is five percent (5%) per annum in excess of the rate otherwise payable on such date according to the terms of the Note.

(g) **Condemnation.** Any award of damages or other form of compensation awarded in connection with any condemnation for public use of, or injury to, the Property and/or the buildings and improvements now or hereafter erected thereon (or any part thereof) are hereby assigned and shall be paid directly to BENEFICIARY, to be used, held, paid, applied or released in the absolute discretion of BENEFICIARY up to the full amount of the indebtedness, in the same manner and with the same effect as provided herein for the disposition of insurance proceeds. In this regard, TRUSTOR hereby waives the benefit of any statute, rule or law which may be contrary thereto, and TRUSTOR hereby agrees to execute such further assignments therefor as BENEFICIARY may require.

(h) **Acceptance of Late and Partial Payments.** The acceptance by BENEFICIARY of the payment of any sum secured by this Deed of Trust after its due date shall not constitute a waiver of the right to require prompt payment when due of all other and future sums so secured, or to declare a default as herein provided for any failure to so pay, or to proceed with foreclosure or sale for any other default then existing. The acceptance by BENEFICIARY of the payment of a portion of any sum secured by this Deed of Trust at such time that such sum in its entirety is due and payable shall neither cure nor excuse the default caused by failure to pay the whole of such installment or affect any notice of default recorded prior to such acceptance, unless such notice of default is expressly revoked in writing by BENEFICIARY. Such acceptance shall not constitute a waiver of BENEFICIARY'S rights to require full payment when due of all other and future sums so secured.

(i) **General Rights of Beneficiary and Trustee.** At any time or from time to time, without liability therefor, without notice and without affecting the liability of



any person (including TRUSTOR) for the payment of any indebtedness, or the performance of any obligation secured by this Deed of Trust or the lien of this Deed of Trust on the premises or any portion thereof.

(1) BENEFICIARY may: release any person liable for the payment of any such indebtedness or for the performance of any such obligation; extend the time or otherwise alter the terms of payment of any such indebtedness; accept additional security therefor of any kind, including deeds of trust and mortgages; and/or alter, substitute and/or release any portion of the premises securing such indebtedness;

(2) TRUSTEE may, upon the written consent of BENEFICIARY, consent to the making of any map or plot of the Property; join in granting any easements or creating any restrictions on the Property and/or join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust.

(j) **Reconveyance of this Deed of Trust.** Upon written request of BENEFICIARY stating that all indebtedness secured by this Deed of Trust has been paid, upon surrender of this Deed of Trust and all notes evidencing such indebtedness to TRUSTEE for cancellation and retention and upon payment to TRUSTEE of its fees, costs and expenses incurred or to be incurred thereby, TRUSTEE shall reconvey, without warranty, the premises then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

(k) **Assignment of Rents.** TRUSTOR absolutely and unconditionally hereby assigns, transfers, conveys, and sets over to BENEFICIARY all of the rents, royalties, issues, profits, revenue, income, and other benefits of the premises arising from the use or enjoyment of all or any portion thereof or from any lease or agreement pertaining thereto (hereinafter collectively referred to as the "rents"); reserving to TRUSTOR only the right, prior to any default by TRUSTOR hereunder, to collect, receive and retain the rents as they become due and payable, but not otherwise. TRUSTOR shall, at the request of BENEFICIARY, execute such further assignments to BENEFICIARY of any or all such leases, agreements and rents as BENEFICIARY may require.

Upon any such default by TRUSTOR hereunder, BENEFICIARY may, at any time and without notice (either in person, by agent or representative, or by a receiver appointed by a court) and without regard to the adequacy of any security for the indebtedness and/or obligations secured by this Deed of Trust: enter upon and take possession of the premises or any part thereof, in its own name or in the name of TRUSTOR; sue for or otherwise collect the rents (including those past due and unpaid) and apply such rents (less costs and expenses of operation and collection, including attorneys' fees and expenses at trial and on appeal) to the payment of such indebtedness secured under this Deed of Trust in such order and proportions as



BENEFICIARY in its absolute discretion may determine. The entering upon and taking possession of the premises and the collection and application of the rents shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(l) **Security Agreement.** TRUSTOR hereby grants to BENEFICIARY a security interest in and to all tangible personal property now owned or hereafter located on the Property, together with all proceeds of the foregoing. With respect to all fixtures, this Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to the provisions of Article 9 of the UCC with respect to any goods, or other personal property, that may now be or hereafter become such fixtures.

(m) **Sale by Trustee of the Premises.** Upon a default in the payment of any indebtedness, or the performance of any obligation, secured by this Deed of Trust, or in the event that any representation, covenant or warranty contained in this Deed of Trust or in any other document evidencing or securing the loan for which any such indebtedness is evidenced shall be or become untrue, BENEFICIARY may (without notice to or demand upon TRUSTOR): declare all indebtedness secured by this Deed of Trust immediately due and payable; and/or execute and record (or cause TRUSTEE to execute and record) a notice of default and election to cause the premises to be sold to satisfy the indebtedness and obligations secured hereby; and/or commence an action to foreclose this Deed of Trust and/or take any other action permitted by law to enforce its rights and remedies hereunder as it may deem to be appropriate. Upon the recordation of such notice of default, BENEFICIARY shall deposit this Deed of Trust and all notes and documents evidencing such indebtedness and/or such obligations with TRUSTEE.

After the lapse of such time as may then be required by law following the recordation of the notice of default, and after the notice of the sale of the premises has been given by TRUSTEE as then required by law, TRUSTEE (without demand on TRUSTOR) shall sell the premises at the time and place fixed in such notice of sale, either as a whole or in separate parcels, and in such order as TRUSTEE may determine, at public auction to the highest bidder for cash in lawful money of the United States of America, payable at the time of sale. TRUSTEE may postpone the sale of all or any portion of the premises by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement.

TRUSTEE shall deliver to the purchaser a deed conveying the premises (or such portion thereof) so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

Any person, including TRUSTOR, TRUSTEE, or BENEFICIARY, may purchase at such sale.



Upon such sale by TRUSTEE, and after deducting all costs, expenses, and fees of TRUSTEE and of this Trust (including the cost of evidence of title in connection with the sale), TRUSTEE shall apply the proceeds from the sale to the payment of: the indebtedness and obligations secured by this Deed of Trust, whether evidenced by the Note or otherwise; sums representing advances made or expenditures made and incurred by, and not then repaid to, BENEFICIARY or TRUSTEE under this Deed of Trust or under any document evidencing or securing any indebtedness secured hereby (including without limitation BENEFICIARY or TRUSTEE's attorney fees and costs for the action and, if litigation is commenced, at trial and on appeal), together with accrued interest thereon at the rate specified in Subsection 2(f) of this Deed of Trust; all other sums then secured by this Deed of Trust, together with interest as provided in any document pertaining thereto; and the remainder, if any, to the person or persons legally entitled thereto.

If this Deed of Trust or any note secured provides for any charge for prepayment of any indebtedness secured hereby, TRUSTOR agrees to pay said charge if any of such indebtedness shall be paid prior to the normal due date thereof stated in such note or in this Deed of Trust; this result shall obtain even if and notwithstanding TRUSTOR shall have defaulted in the payment thereof or in the performance of any obligation hereunder, and BENEFICIARY, by reason of such default, shall have declared all indebtedness secured hereby immediately due and payable.

(n) **Appointment of Receiver.** BENEFICIARY shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. BENEFICIARY's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by BENEFICIARY shall not disqualify a person from serving as a receiver.

(o) **Acceleration of Indebtedness Upon Sale or Further Encumbrance of the Premises.** In the event TRUSTOR, or any successor in interest to TRUSTOR in the premises secured by this Deed of Trust, sells, conveys, alienates, assigns, transfers, further encumbers or disposes of the premises, or any part thereof or any interest therein, including, but not limited to, all or any part of the TRUSTOR's water or water rights, or becomes divested of its title or any interest therein in any manner or way, or enters into a lease for longer than one year covering all or any portion thereof or an undivided interest therein, whether voluntary, involuntary, or otherwise, or enters into an agreement to do so, without the prior written consent of BENEFICIARY, then BENEFICIARY may, at its election, declare the Note and such other indebtedness and obligations secured by this Deed of Trust, irrespective of the maturity date specified in the Note or in any written agreement pertaining to the Note and/or such other indebtedness and obligations, immediately due and payable without notice. No waiver of this right shall be effective unless in writing. Consent by BENEFICIARY to one such transaction shall not constitute or be



deemed to be a waiver of the rights of BENEFICIARY provided herein, or a waiver of the requirement of the prior written consent of BENEFICIARY, as to future or succeeding transactions. BENEFICIARY hereby consents to that certain junior Trust Deed, Security Agreement and Fixture Filing dated June ____, 2008 among TRUSTOR as grantor, Chicago Title Insurance Company of Oregon, Inc. as trustee, and Skagit Acquisition Corp. as beneficiary securing a loan for \$385,000.00, evidenced by that certain Promissory Note dated June ____, 2008 (the "Skagit Note"), and BENEFICIARY hereby consents to that certain Lease between TRUSTOR, as Lessor, and Skagit Acquisition Corp. as Lessee, dated June ____, 2008.

(p) Acceleration of Indebtedness Upon Change in Ownership, Control, or Membership of Trustor. If TRUSTOR is a corporation, trust, limited or general partnership, limited liability company, or joint venture, should there occur a sale, conveyance, transfer, disposition or encumbrance (whether voluntary or involuntary, or otherwise), or should an agreement be entered into to do so, with respect to more than ten percent (10%) of the issued and outstanding capital stock of TRUSTOR (if a corporation), of the beneficial interest of TRUSTOR (if a trust), or of any general or limited partnership or joint venture interest (if TRUSTOR be a general or limited partnership or joint venture), of the membership interests (if TRUSTOR is a limited liability company), or if there shall occur a change in any general partner or any joint venturer, or a change affecting the ownership, control, or membership of TRUSTOR (if TRUSTOR is a general or limited partnership or a joint venture), then BENEFICIARY may, at its election, declare the Note and such other indebtedness and obligations secured by this Deed of Trust, irrespective of the maturity date specified in the Note or in any written agreement pertaining to the Note and/or such other indebtedness and obligations, immediately due and payable, without notice, unless BENEFICIARY shall have given its prior written consent thereto. Consent to one such transaction shall not constitute or be deemed to be a waiver of the right to require such consent as to future or succeeding transactions. BENEFICIARY hereby consents to (i) Skagit Acquisition Corp. acquiring a 50% or more membership interest in Skagit Real Estate Holdings, LLC, as described in the Skagit Note, (ii) Skagit Acquisition Corp. becoming a manager of either Skagit Real Estate Holdings, LLC or TRUSTOR or designating a replacement manager, and (iii) upon dissolution of Skagit Real Estate Holdings, LLC's member, KMC Investment Group, LLC, the transfer of its interest in Skagit Real Estate Holdings, LLC to member(s) of KMC Investment Group, LLC.

(q) Acceleration of Indebtedness Upon an Event of Bankruptcy or Insolvency. TRUSTOR agrees that BENEFICIARY may, at its election, declare the Note and such other indebtedness and obligations secured by this Deed of Trust, irrespective of the maturity date specified in the Note or in any written agreement pertaining to the Note and/or such other indebtedness and obligations, immediately due and payable, without notice: if any proceeding under the Bankruptcy Code, or under any present or future federal, state or other statute, law or regulation pertaining to bankruptcy, insolvency or other relief for debtors shall be instituted by or against TRUSTOR or any other person who may be liable (by way of guaranty,



assumption, endorsement or otherwise) upon the Note and/or such other indebtedness and obligations secured hereby; and/or if a receiver, trustee or custodian shall be appointed for TRUSTOR or such other person shall make an assignment for the benefit of creditors and if such proceeding or receiver, trustee or custodian shall not be dismissed, or such assignment shall not be voided, within sixty (60) days of such institution, appointment or making.

(r) **Successor Trustees.** BENEFICIARY, acting alone, may, from time to time, by instrument in writing, substitute a successor or successors to any TRUSTEE named herein or acting hereunder. Such instrument, executed, acknowledged and recorded in the manner required by law, shall be conclusive proof of proper substitution of such successor TRUSTEE or TRUSTEES, who shall (without conveyance from the preceding TRUSTEE) succeed to all of the title, estate, rights, powers and duties of such preceding TRUSTEE. Such instrument must contain the name of the original TRUSTOR, TRUSTEE and BENEFICIARY hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new TRUSTEE. If a notice of default has been recorded, this power of substitution cannot be exercised until after the costs, fees, and expenses of the then acting TRUSTEE have been paid to such TRUSTEE, who shall endorse receipt thereof upon such instrument or substitution.

(s) **Cumulative Remedies; Additional Security.** No remedy herein conferred upon or reserved to the parties to this Deed of Trust is intended to be exclusive of any other remedy provided herein or by law. Each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of TRUSTEE or BENEFICIARY in the exercising of any right or power accruing upon any event of default hereunder shall impair such right or power or any other right or power, nor shall such delay or omission be construed or deemed to be a waiver of any default or any acquiescence therein.

If there exists additional security for the indebtedness and obligations secured by this Deed of Trust, BENEFICIARY, at its election and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which BENEFICIARY may be entitled hereunder—either concurrently with whatever rights or remedies BENEFICIARY may have in connection with such other security or in such order and in such manner as BENEFICIARY may deem fit—without waiving any rights or remedies with respect to any other security.

(t) **Partial Invalidity of this Deed of Trust.** In the event any one or more of the provisions of this Deed of Trust, the guaranty, or any other document evidencing the indebtedness and obligations secured hereby shall for any reason be held to be invalid, illegal and/or unenforceable in any respect, such invalidity, illegality and/or unenforceability shall not affect any other provision of this Deed of Trust, the guaranty, or any such other document, and such other provisions shall remain binding and enforceable and shall continue in effect.



(u) **Application of Washington Law.** This Deed of Trust has been executed and delivered in the State of Washington without regard to conflict of law principles, to the jurisdiction of whose courts the TRUSTOR hereby submits.

(v) **Miscellaneous Provisions.**

(1) This Deed of Trust applies to, inures to the benefit of and binds all parties hereto and their respective heirs, legatees, devisees, administrators, executors, successors and assigns. The term "BENEFICIARY" as used herein shall mean the owner and holder, including pledgees, of the Note or any other indebtedness secured hereby, whether or not named as BENEFICIARY herein.

(2) The headings and captions of the paragraphs of this Deed of Trust are for reference purposes only and shall not be construed or deemed to define or limit any of the terms and provisions contained thereunder. Whenever in this Deed of Trust the context so requires, the gender used includes the masculine, feminine, and/or neuter and the number so used includes the singular and/or the plural.

(3) Any TRUSTOR who is married hereby expressly agrees that recourse may be had against such person's separate property, but without thereby creating any lien or charge thereon for any deficiency after sale of the premises as herein provided.

(4) The pleading of any statute of limitations as a defense to any and all indebtedness and/or obligations secured by this Deed of Trust is hereby waived to the fullest extent permissible by law.

(5) In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of real property, for tax purposes, any lien or charge thereon, or changing in any way the laws now existing for the taxation of deeds of trust or indebtedness secured by deeds of trust for federal, state or local purposes, or changing the manner of collection of any such taxes as to affect this Deed of Trust or the indebtedness secured hereby, TRUSTOR agrees to pay such tax arising from such new law; and if TRUSTOR fails to do so or if it would be illegal for TRUSTOR to do so, BENEFICIARY may, at its election and without demand or notice, declare the entire indebtedness secured by this Deed of Trust (together with accrued interest thereon) immediately due and payable.

(6) TRUSTEE accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. TRUSTEE is not obligated to notify any party to this Deed of Trust of a pending sale under any other deed of trust or of any action or proceeding in which TRUSTOR, BENEFICIARY and/or TRUSTEE is a party, unless brought by TRUSTEE hereunder.



(7) To the extent that this Deed of Trust encumbers a leasehold interest in the land comprising the Property, if at any time hereafter TRUSTOR shall acquire fee title to the Property and the leasehold interest of TRUSTOR shall become extinguished by reason of the merger of title or otherwise by operation of law, this Deed of Trust shall thereupon encumber TRUSTOR'S fee hold interest in the Property without the necessity of executing (by TRUSTOR and BENEFICIARY and/or TRUSTEE) or recording any further documents or instruments pertaining to such event, it being the purpose and intent of TRUSTOR that whatever interest which TRUSTOR may now or hereafter have in the Property shall be encumbered by this Deed of Trust.

(8) TRUSTOR requests that a copy of any notice of default or any notice of sale thereunder be mailed to TRUSTOR at the address first referenced and set forth herein, or at such other address as TRUSTOR may, from time to time, notify TRUSTEE by certified United States mail.

(9) This Deed of Trust may be executed in one or more counterparts for the purpose of recording concurrently in more than one County, each of which is deemed to be an original, but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Deed of Trust is executed as of the date first hereinabove written.


TRUSTOR(S):

SKAGIT RESPE LLC

By: SKAGIT REAL ESTATE HOLDINGS, LLC
Its sole member

By: SKAGIT ACQUISITION CORP.
Its Manager

By:



Brian Oliver, Vice President of Skagit
Acquisition Corp.

[Notarization required—please see next page]



200807010070

Skagit County Auditor

STATE OF OREGON)

) ss.

County of Multnomah)

This instrument was acknowledged before me on June 27, 2008, by Brian Oliver, Vice President of Skagit Acquisition Corp.

Kristen Eran

Notary Public for Oregon

My Commission Expires June 12, 2010



200807010070

Skagit County Auditor

EXHIBIT A

PARCEL A:

The North 165 feet of the Southwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian;

EXCEPT roads;

AND EXCEPT the South 45 feet of the West 120 feet thereof lying East of the former U.S. Highway 99;

AND ALSO EXCEPT all that portion thereof lying East of a line 295 feet West of Drainage Ditch No. 17.

Situated in Skagit County, Washington

PARCELS B and C:

That portion of the North 165 feet of the Southwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian, lying East of the drainage ditch of Drainage District No. 17;

Also the East 60 feet of that portion of the North 165 feet of the Southwest Quarter of the Northwest Quarter of said Section 32, lying West of aforesaid drainage ditch;

AND EXCEPT that portion of said premises conveyed to the State of Washington for Primary State Highway No. 1, by deed recorded March 12, 1972, under Auditor's File No. 764259, records of Skagit County, Washington.

TOGETHER WITH a non-exclusive easement for ingress and egress over and across the North 16.5 feet of said Southwest Quarter of the Northwest Quarter lying West of a point 60 feet West of aforesaid drainage ditch and East of Old Highway 99.

Situated in Skagit County, Washington.

continued.....



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Skagit County Auditor

EXHIBIT 'A' continued:

PARCEL D:

That portion of the Southwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at the intersection of the North line of said subdivision with a point 60 feet West of the West line of the drainage ditch of Drainage District No. 17;

Thence South 185 feet;

Thence West 235 feet;

Thence North 185 feet;

Thence East 235 feet to the point of beginning.

Situated in Skagit County, Washington

PARCEL E:

That portion of the North Half of the South Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at a point on the South line of said North Half of the South Half of the Northwest Quarter of the Northwest Quarter, 30 feet East of the Southwest corner thereof, said point being the East line of the State Highway "99" right of way, as said highway existed on January 7, 1954;

Thence East along the South line of said North Half of the South Half of the Northwest Quarter of the Northwest Quarter, 188 feet;

Thence North parallel with the West line of said subdivision 200 feet;

Thence West 188 feet to the East line of said State Highway right of way;

Thence South along the East line of said highway right of way, 200 feet to the point of beginning;

continued.....



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Skagit County Auditor

EXHIBIT 'A' continued:

TOGETHER WITH that portion of the North Half of the South Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning a point on the South line of said North Half of the South Half of said Northwest Quarter of the Northwest Quarter, 30 feet East of the Southwest corner thereof, said point being on the East line of the State Highway 99 right of way, as said highway existed on January 7, 1954;

Thence North along the East line of said State Highway right of way, 200 feet;

Thence East 144 feet to the true point of beginning;

Thence continue East 44 feet;

Thence North parallel to the West line of said Northwest Quarter, 8.0 feet;

Thence West 44 feet;

Thence South 8.0 feet to the true point of beginning;

EXCEPT the North 6.13 feet thereof;

AND ALSO TOGETHER WITH the following described parcel:

The South 1.87 feet of the West 144.00 feet of that portion of the North Half of the South Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at a point on the East line of the State Highway, 200 feet North of the South line of said North Half of the South Half of the Northwest Quarter of the Northwest Quarter of said Section 32;

Thence East 144 feet;

Thence North parallel to the West line of said Northwest Quarter of the Northwest Quarter, 8 feet;

Thence East 44 feet, more or less, to a line which is distant 218 feet East of and parallel to the West line of said Northwest Quarter of the Northwest Quarter;

Thence North along said parallel line 122 feet, more or less, to the North line of said North Half of the South Half of the Northwest Quarter of the Northwest Quarter;

Thence West along said North line 188 feet, more or less, to the East line of said State Highway;

Thence South along said East line 130 feet to the point of beginning.

Situated in Skagit County, Washington

continued.....



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Skagit County Auditor

EXHIBIT 'A' continued:

PARCEL F:

The North Half of the South Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian;

EXCEPT the West 218 feet thereof;

AND EXCEPT that portion thereof conveyed to the State of Washington for highway purposes by deed dated January 29, 1953 and recorded February 12, 1953, under Auditor's File No. 485836, records of Skagit County, Washington and deed recorded December 21, 1971, under Auditor's File No. 782101, records of Skagit County, Washington;

Situated in Skagit County, Washington

PARCEL G:

The South 330 feet of the Northwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian;

AND EXCEPT Old State Highway 99 along the West line thereof;

AND ALSO EXCEPT that portion conveyed to the State of Washington for Primary State Highway No. 1 along the East line thereof, by deed dated February 3, 1953, recorded March 12, 1953, under Auditor's File No. 485839, records of Skagit County, Washington;

AND ALSO EXCEPT that portion, if any, lying within the North Half of the South Half of the Northwest Quarter of the Northwest Quarter;

AND ALSO EXCEPT that portion thereof condemned by the State of Washington for highway purposes in Skagit County Superior Court Cause No. 33040.

Situated in Skagit County, Washington

continued.....



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Skagit County Auditor

EXHIBIT 'A' continued:

PARCEL H and I:

Lots 2 and 3 of SKAGIT COUNTY SHORT PLAT NO. 94-033, approved September 26, 1944 and recorded September 30, 1997, in Volume 11 of Short Plats, pages 121 and 122, under Auditor's File No. 9409300084, records of Skagit County, Washington; being a portion of the North Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 34 North, Range 4 East of the Willamette Meridian.

Situated in Skagit County, Washington

PARCEL J and L:

Government Lot 7 of Section 12, Township 34 North, Range 3 East of the Willamette Meridian, and a tract of land in the Northeast Quarter of the Northeast Quarter of Section 13, Township 34 North, Range 3 East of the Willamette Meridian, described as follows:

Beginning at the Northeast corner of said Section 13;
Thence South 83°31' West along the North line of said Section 13, a distance of 1,273.6 feet, more or less, to the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 13;
Thence South along the West line of said Northeast Quarter of the Northeast Quarter, a distance of 160.6 feet;
Thence South 89°33' East, a distance of 1,275 feet, more or less, to the East line of said Section 13;
Thence North along the East line of said Section; a distance of 314.8 feet, more or less, to the point of beginning;

EXCEPT the East 40 feet of that portion of the subject property lying within Government Lot 7 in Section 12, Township 34 North, Range 3 East of the Willamette Meridian and as conveyed to Skagit County for road purposes by deed recorded April 5, 1911, in Volume 83 of Deeds, page 536;

AND EXCEPT the East 40 feet of that portion of the subject property lying within Section 13, Township 34 North, Range 3 East of the Willamette Meridian, as conveyed to John Krangness by deed recorded April 4, 1924, in Volume 132 of Deeds, page 576;

AND ALSO EXCEPT the North 2 acres of the West 10 acres of the remainder.

Situated in Skagit County, Washington

continued.....



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Skagit County Auditor

EXHIBIT 'A' continued:

PARCEL K:

That portion of Government Lot 6, Section 12, Township 34 North, Range 3 East of the Willamette Meridian, described as follows:

Beginning at the Southwest corner of said Lot;

Thence North $83^{\circ}40'02''$ East 1,193.75 feet along the South line of said Section 12, to a point that is South $83^{\circ}40'02''$ West 1,285.18 feet from the Southeast corner of said Section 12 said point being the true point of beginning;

Thence North $0^{\circ}19'30''$ West 204.05 feet;

Thence South $88^{\circ}38'19''$ East 48.51 feet to the East line of said Lot;

Thence South $0^{\circ}33'18''$ West 197.86 feet along said East line to the Southeast corner thereof;

Thence South $83^{\circ}40'02''$ West 45.71 feet along said South line to the true point of beginning;

Being a portion of Lot 2, Short Plat No. 79-80, recorded in Volume 5 of Short Plats, page 125, under Skagit County Auditor's File No. 8109110008, records of Skagit County, Washington.

Situated in Skagit County, Washington

- END OF EXHIBIT "A" -



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Skagit County Auditor