



200002040014

Kathy Hill, Skagit County Auditor

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AFTER RECORDING MAIL TO:

Bank of America, N.A.
800 Fifth Avenue
P.O. Box 84448
Seattle, WA 98124

Attn: TERRI MURPHY

350520-2-008-0016

350520-2-002-0100

350525-1-001-0200

350421-1-001-0007

350516-4-003-0005

FIRST AMERICAN TITLE CO.

61376

20-35-5 SE-NW 25-35-5 NE-NE 24-35-5 CONT LT 12
21-35-4 NE-NE DEED OF TRUST WITH ASSIGNMENT 16-35-5 SW-SE
OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST (hereafter "Instrument") is granted as of February 9, 2000, by DRAPER VALLEY FARMS, INC., a Washington Corporation ("Grantor"), to Rainier Credit Company ("Trustee"), in trust for Bank of America, N.A. ("Beneficiary"), and is made with reference to the Borrowing Agreement dated February 9, 2000, between Grantor and Beneficiary (the "Agreement"). Grantor agrees as follows:

1. **CONVEYANCE.** Grantor hereby irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, all of Grantor's right, title and interest in the real property legally described as **PARCEL A: 25304 MINKLER RD. PARCEL B: 30337 WALBERG RD. PARCEL C: 9088 DISTRICT LINE RD. PARCEL D: 8971 HARRISON RD., SEDRO WOOLLEY WA 98284 as further described in Exhibit A attached** ("Property"), whether now owned or later acquired by Grantor, together with all buildings, structures, improvements, equipment, fixtures and articles of property, now or later attached to, or used or adapted for use in the ownership, operation or maintenance of, the Property; all tenements, hereditaments and appurtenances, now or later in any way appertaining to the Property; and all leasehold interests, rents, payments, issues and profits derived from or in any way connected with the Property.

2. **ASSIGNMENT OF RENTS.**

(a) **ASSIGNMENT.** Grantor further assigns to Beneficiary all of Grantor's interest in all existing and future leases, licenses and other agreements for the use or occupancy of the Property ("Contracts"), including the immediate and continuing right to collect, in either Grantor's or Beneficiary's name, all rents, receipts, income, accounts and other payments due or to become due under the Contracts ("Payments"). As long as there is no default under the Agreement or this Instrument, Grantor is granted a license to collect the Payments, but such license shall not constitute Beneficiary's consent to Grantor's use of the Payments in any bankruptcy proceeding.

(b) **DISCLAIMER.** Nothing contained in this Instrument shall be construed as obligating Beneficiary or any receiver to take any action to enforce any provision of the Contracts, expend any money, incur any expense or perform any obligation under the Contracts. Beneficiary's duties are expressly limited to giving of proper credit for all Payments received by it.

3. **SECURED OBLIGATIONS.** This Instrument secures performance of (i) each agreement of Grantor contained in the Agreement and/or this Instrument (but does not secure the independent hazardous substances indemnity in the Agreement), (ii) the payment of the sum of **\$3,000,000.00** with interest thereon according to the terms of the Agreement, (iii) the obligations of Grantor under each existing or future swap transaction (meaning any transaction governed by an ISDA master agreement) to which both Grantor and Beneficiary are parties, if this Instrument is referenced in such transaction as a credit support document, and (iv) all other existing and future obligations of Grantor to Beneficiary, if the existing or future obligation by its terms states that it is secured by this Instrument (collectively the "Secured Obligations"), and all renewals, modifications, extensions of, and substitutions for any of the Secured Obligations, it being the express intent of Grantor and Beneficiary that this Instrument and the estate held by Trustee hereunder shall continue in effect notwithstanding that from time to time no Secured

Obligations of Grantor to Beneficiary may exist. Nothing contained in this Instrument shall be construed as obligating Beneficiary to make any future advance to Grantor.

4. AFFIRMATIVE COVENANTS. Grantor shall, unless waived in writing by Beneficiary:

(a) **MAINTENANCE OF PROPERTY AND TITLE.** Maintain and preserve the Property in good condition and repair, and not commit or permit any waste thereof; complete any improvement which may be constructed on the Property; restore any improvement which may be damaged or destroyed; and maintain the Property free and clear of all liens and encumbrances other than the encumbrance of this Instrument, any lien for taxes or assessments not delinquent, and such other liens as may be consented to in writing by Beneficiary, in its sole discretion (the "Permitted Liens");

(b) **COMPLIANCE WITH LAWS.** Comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property;

(c) **REAL ESTATE INTERESTS.** Perform all obligations to be performed by Grantor under the Contracts;

(d) **PAYMENT OF DEBTS AND TAXES.** Pay promptly all obligations secured by the Property; all taxes, assessments and governmental liens or charges levied against the Property; and all claims for labor, materials, supplies or otherwise which, if unpaid, might become a lien or charge upon the Property. If required by Beneficiary, at the time of making each payment to Beneficiary under the Agreement, Grantor shall deposit into a non-interest bearing reserve account with Beneficiary, hereby pledged to Beneficiary as security for the Secured Obligations, a sum estimated by Beneficiary sufficient to pay when due taxes and assessments on the Property and premiums on required insurance.

(e) **INSURANCE.**

(i) **CASUALTY.** Insure continuously with premiums prepaid, with financially sound and reputable insurers acceptable to Beneficiary, all improvements on the Property against all risks, casualties and losses through standard fire and extended coverage insurance or otherwise, including, without limitation, insurance against fire, theft, casualty, vandalism, loss of rents and business interruption and any other risk Beneficiary may reasonably request. The insurance policies shall be in an aggregate amount of not less than the full replacement cost of all improvements on the Property, including the cost of demolition and removal of debris, and shall name Beneficiary as loss payee under a lender loss payable endorsement in form satisfactory to Beneficiary. All deductibles shall be in amounts acceptable to Beneficiary. The amounts collected under the insurance policies may be applied to the Secured Obligations in any manner as Beneficiary determines, and such application shall not cause discontinuance of any proceeding to foreclose upon this Instrument. In the event of foreclosure, all of Grantor's rights in the insurance policies shall pass to purchaser at the foreclosure sale;

(ii) **FLOOD.** Obtain flood insurance if the Property is located in a designated flood hazard area (as determined by Beneficiary, with such determination to be made at Grantor's expense) and where federally subsidized flood insurance is available.

(iii) **LIABILITY.** Maintain comprehensive general public liability insurance insuring against liability from risks associated with the use, ownership and operation of the Property.

(iv) **TITLE.** Provide to Beneficiary an A.L.T.A. (1970 modified form) form of lender's extended coverage title insurance for at least \$3,000,000.00 insuring the first lien priority of this Instrument, subject only to the Permitted Liens. Such policy shall be issued by a title company acceptable to Beneficiary. The policy shall contain such endorsements as Beneficiary may reasonably request.

(f) **HAZARDOUS WASTE.** Notify Beneficiary within 24 hours of any release of a reportable quantity of any Hazardous Substance, or of the receipt by Grantor of any notice, order or communication from any governmental authority which relates to the existence or potential for environmental pollution of any kind existing on the Property, or results from the use of the Property or any surrounding property. Grantor shall indemnify, defend and hold Beneficiary and its successors and assigns harmless from and against any and all claims, demands, penalties, fees, liens, damages, losses, expenses, and liabilities arising out of or in any way connected with any alleged or actual past or future presence on or under the Property of any Hazardous Substance from any cause whatsoever; it being intended that Grantor shall be strictly and absolutely liable to Beneficiary without regard to any fault by Grantor; provided that this indemnification shall not apply to any Hazardous Substances which originated on or under the Property after the date Beneficiary or any third party acquires fee title to the Property by foreclosure or deed in lieu of foreclosure. This indemnification shall be secured by this Instrument, and shall be one of the Secured Obligations under this Instrument. "Hazardous Substances" shall mean any substance or material which may be hazardous to the health or safety of any person; including without limitation any substance or material which is now or hereafter becomes regulated under any federal, state, or local statute, ordinance, rule, regulation or other law relating to environmental protection, contamination or cleanup;

(g) **SITE VISITS, OBSERVATION AND TESTING.** Permit Beneficiary and its agents and representatives, at any reasonable time, to enter and visit the Property for the purpose of performing appraisals and/or inspecting the Property, taking and removing soil, groundwater and other samples, and conducting tests on any part of the Property; and

(h) **COSTS AND EXPENSES.** Pay, reimburse and indemnify Beneficiary for all of Beneficiary's reasonable costs and expenses incurred in connection with the enforcement of Beneficiary's rights and Grantor's obligations under this



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Instrument, foreclosing upon this Instrument, defending any action or proceeding purporting to affect the rights or duties of Beneficiary or Trustee under this Instrument, or managing the Property and collecting the Payments, including, without limitation, all reasonable attorneys' fees and value of the services of staff counsel, legal expenses, collection costs, costs of title search, and trustee's and receiver's fees.

5. **NEGATIVE COVENANTS.** Grantor shall not, without Beneficiary's prior written consent:

- (a) **PAYMENTS.** Accept or collect Payments more than one month in advance of the due date;
- (b) **CONTRACTS.** Terminate, modify or amend any provision of the Contracts or enter into a Contract with a term, including options or renewal rights, of more than 3 years and/or containing an option to purchase; or
- (c) **USE.** Change the present use of the Property or permit or consent to any restriction that would prevent or otherwise impair the use or development of the Property, or permit thereon the generation, processing, storage or disposal of any Hazardous Substance; or
- (d) **RESTRICTIONS ON CONVEYANCES.** Transfer or convey any interest in the Property, except by will or intestacy, or transfer a controlling interest in any corporation, partnership or trust the principal purpose of which is ownership of the Property.

6. **EMINENT DOMAIN.** In the event any portion of the Property is taken through eminent domain, the amount of the award to which Grantor is entitled shall be applied to the Secured Obligations.

7. **PROTECTION OF BENEFICIARY'S INTEREST.** If Grantor shall fail to pay any amounts which may become a lien on the Property, pursuant to Section 4 (d), or fail to maintain adequate insurance on the Property, as required by Section 4 (e), Beneficiary may at its sole option pay such obligations and/or obtain such insurance.

8. **ADDITIONS TO SECURED OBLIGATIONS.** Any payments required under Sections 4 (d), 4 (e), 4 (f), or 4 (h), but not made when demanded, shall immediately be deemed added to the Secured Obligations, and shall accrue interest at the highest rate of interest accruing from time to time under the Secured Obligations.

i) **RECONVEYANCE.** Trustee shall reconvey such portion of the Property to the person entitled thereto upon written request of Beneficiary, or upon satisfaction of the Secured Obligations and written request for reconveyance made by Beneficiary or any person interested in the Property, accompanied by Trustee's standard reconveyance fee, which fee shall be Grantor's obligation.

ii) **SUCCESSOR TRUSTEE.** In the event of death, incapacity, disability, dissolution, resignation or refusal to act of the Trustee, Beneficiary may appoint a successor trustee and, upon the recording of such appointment in the records of the county in which this Instrument is recorded, the successor trustee shall be vested with all powers of the original Trustee.

9. **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, at Beneficiary's option, and at any time without regard to any previous knowledge on Beneficiary's part, constitute a default under the terms of this Instrument, the Agreement, the Secured Obligations and all related loan documents:

(a) **NON-PAYMENT OF PRINCIPAL OR INTEREST.** Any payment of principal or interest on the Secured Obligations is not made when due; or

(b) **FAILURE TO PERFORM.** Any tax, assessment, insurance premium, lien, encumbrance or other charge against the Property, or any payment under a real estate contract covering the Property is not paid when due; or any other term, covenant or agreement of Grantor contained in this Instrument, or in which Grantor grants a security interest in the Property, is not promptly performed or satisfied, or any other default shall occur under the Agreement.

10. **REMEDIES UPON DEFAULT.** If any default occurs and is continuing, Beneficiary may, at its option:

(a) **TERMINATE COMMITMENT.** Terminate any outstanding and unfulfilled commitment to Grantor or Borrower;

(b) **ACCELERATE.** Declare any or all of the Secured Obligations, together with all accrued interest, to be immediately due and payable without presentment, demand, protest or notice of any kind, all of which are expressly waived by Grantor;

(c) **PAYMENTS.** Pay such sums as may be necessary to obtain a current appraisal, to inspect and test the Property, and to pay any tax, assessment, insurance premium, lien, encumbrance or other charge against the Property, or any payment under a real estate contract covering the Property, without prejudice to Beneficiary's right to accelerate the Secured Obligations and foreclose upon this Instrument. Grantor shall reimburse Beneficiary, upon demand, for all such amounts paid by Beneficiary, with interest thereon from the date of such payment at the highest rate that is, from time to time, applicable on any of the Secured Obligations. All unreimbursed amounts shall be added to and become a part of the Secured Obligations;



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(d) **COLLECTION OF PAYMENTS.** Terminate the license granted to Grantor to collect the Payments; take possession of, manage and operate the Property under the terms of the Contracts; and demand and collect all Payments, including endorsing any check, draft or other instrument given as payment, either by itself or through an agent or judicially-appointed receiver. The Payments shall be applied first to payment of the costs of managing the Property and collecting the Payments, and then to the Secured Obligations;

a) **TRUSTEE'S SALE.** Direct the Trustee, upon written request, to sell the Property and apply the sale proceeds in accordance with Washington's Deed of Trust Act (RCW 61.24.010, et seq.). Any person, except Trustee, may bid at the Trustee's sale; and

(e) **OTHER REMEDIES.** Pursue all other available legal and equitable remedies, including, without limitation, foreclosing upon this Instrument as a mortgage.

Grantor expressly waives any defense or right, in any action or proceeding in connection with the Secured Obligations, that Beneficiary must first resort to any other security or person.

11. **FIXTURE FILING.** The mailing address of the Beneficiary is as shown at the top of this Instrument. The mailing address of the Grantor is **1000 JASON LANE, MOUNT VERNON, WA 98273**. For purposes of the Uniform Commercial Code, the Grantor is the Debtor, the Beneficiary is the Secured Party, and this Instrument constitutes a fixture financing statement.

12. **WAIVER.** No waiver by Beneficiary of any deviation by Grantor from full performance of this Instrument shall constitute a waiver of Beneficiary's right to require prompt payment or to assert any other right or remedy provided for in this Instrument or the Secured Obligations on the basis of the same or similar failure to perform.

13. **SUCCESSORS AND ASSIGNS.** This Instrument inures to the benefit of and is binding upon the respective heirs, devisees, legatees, administrators, executors, successors and assigns of the parties hereto.

GRANTOR: **DRAPER VALLEY FARMS, INC.**

By: *Richard Koplowitz*

Name: RICHARD KOPLOWITZ

Title: PRESIDENT SECRETARY/

Tax I.D. No. (or S.S.N.): 910738845

TREASURER

ADDRESS: 1000 JASON LANE
MOUNT VERNON, WA 98273

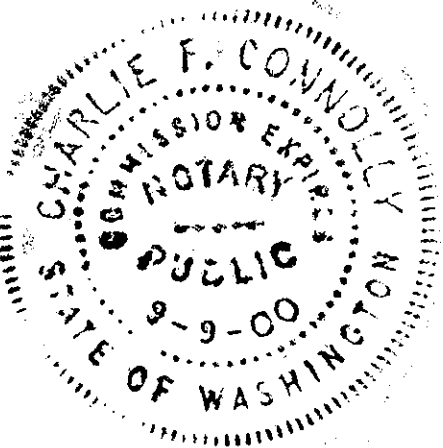
State of: WASHINGTON)

County of: SKAGIT)
SS

I certify that I know or have satisfactory evidence that RICHARD KOPLOWITZ
is/are the person(s) who appeared before me, and said person acknowledged that (s)he/they signed this instrument, on oath stated that (s)he/they was/were authorized to execute the instrument, and acknowledged it as the * PRESIDENT

of **DRAPER VALLEY FARMS, INC., a Washington Corporation of the State of Washington**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument. * SECRETARY/TREASURER

Dated: 2/3/00

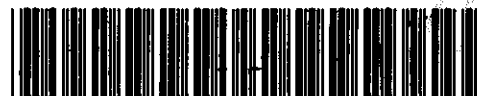


Notary Public for the State of WASHINGTON

residing at MOUNT VERNON

Printed name of Notary: CHARLIE F. CONNOLLY

My commission expires 9-9-00



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EXHIBIT A

The land referred to in this report/policy is situated in the State of Washington, County of Skagit, and is described as follows:

Parcel "A":

The Southeast 1/4 of the Northwest 1/4 of Section 20, Township 35 North, Range 5 East, W.M., EXCEPT the four following described portions thereof:

- 1.) The West 30 feet of the North 1/2 thereof;
- 2.) The West 16.5 feet of the North 1/2 of the South 1/2 of said subdivision;
- 3.) The County Road right-of-way commonly known as the Minkler Road; and
- 4.) That portion of said subdivision lying Northerly of the Minkler Road.

Parcel "B":

Tract 2 of Skagit County Survey recorded August 29, 1983, in Book 5 of Surveys, Pages 42 and 43, under Auditor's File No. 8308290022, being a portion of Government Lot 12, in Section 24, Township 35 North, Range 5 East, W.M., and a portion of the Northeast 1/4 of the Northeast 1/4 of Section 25, Township 35 North, Range 5 East, W.M.

TOGETHER WITH a non-exclusive easement for utilities over, under and across that portion of Tract 1 of said Survey 5-42, described as follows:

A 7 foot strip of land along the West line of and adjacent to Walberg Road.

Parcel "C":

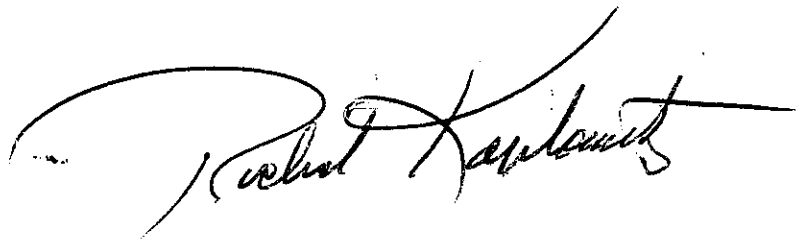
The Northeast 1/4 of the Northeast 1/4 of Section 21, Township 35 North, Range 4 East, W.M., EXCEPT County Road right-of-way commonly known as the Dahlstedt Road along the North line thereof, AND ALSO EXCEPT the County Road right-of-way commonly known as the District Line Road along the East line thereof.



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Parcel "D":

The South 3/4 of the Southwest 1/4 of the Southeast 1/4 of Section 16, Township 35 North, Range 5 East, W.M., EXCEPT the West 20 feet and the South 20 feet thereof for County Road rights-of-ways and as conveyed by documents recorded under Auditor's File Nos. 84197 and 99638, AND ALSO EXCEPT mineral rights as reserved by the State of Washington by document recorded April 7, 1909, under Auditor's File No. 73057, in Volume 65 of Deeds, page 39, records of Skagit County, Washington.



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