



200004130004

Kathy Hill, Skagit County Auditor

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AFTER RECORDING RETURN TO:

BANK OF AMERICA, N.A.  
NW CLSC REAL ESTATE  
701 FIFTH AVENUE, 14<sup>TH</sup> FLOOR  
SEATTLE, WA 98104  
Attention: Linda Lukenbill

WASHINGTON STATE COUNTY AUDITOR'S/RECORDER'S INFORMATION (RCW 65.04):

GRANTOR: C & C YAW, LLC

FIRST AMERICAN TITLE CO.

GRANTEE: BANK OF AMERICA, N.A.

53569

LEGAL DESCRIPTION:

ABBREVIATED: TRACTS 1-4, "MEMORIAL HIGHWAY TRACTS"

[FOR THE FULL LEGAL DESCRIPTION SEE SCHEDULE "A" TO THIS DOCUMENT]

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S): 3955-000-002-0007 and  
3955-000-004-0005

REFERENCE NUMBER OF RELATED DOCUMENTS: 9801290004

Loan No. 3069978

**CONSENT TO TRANSFER AND ASSUMPTION  
AGREEMENT**

**THIS CONSENT TO TRANSFER AND ASSUMPTION AGREEMENT** ("Agreement") is made to be effective as of February 14, 2000, by and between:

<b>"Lender"</b>	BANK OF AMERICA, N.A., formerly Bank of America National Trust and Savings Association, doing business as Seafirst Bank
<b>"Borrower"</b>	CHARLES S. YAW AND CAROL J. YAW
<b>"Assumptor"</b>	C & C YAW, LLC
<b>"Guarantor"</b>	CHARLES S. YAW, CAROL J. YAW, and CHARLEY'S GREENHOUSE SUPPLY, LLC

with respect to the following facts:

A. On or about January 28, 1998, Lender loaned to Borrower the principal sum of \$400,000.00 (the "**Loan**"), which Loan is evidenced by a Promissory Note ("**Note**") and secured by a Deed of Trust made by Borrower as Grantor, recorded January 29, 1998, in Skagit County, Washington, under recording number 9801290004 ("**Deed of Trust**") and constituting a first lien encumbrance on the real and personal property and fixtures (the "**Property**") described in the Deed of Trust or in any UCC financing statement filed with respect thereto. The loan documents described in this paragraph and other documents evidencing and securing the Loan are collectively described as

the "**Loan Documents.**" A legal description of the real property encumbered by the Deed of Trust is attached hereto as Schedule "A."

B. Borrower has transferred and conveyed or is about to transfer and convey the Property to Assumptor, and Assumptor desires to assume and be personally liable for payment and performance of Borrower's indebtedness and obligations to Lender on the Note, the Deed of Trust and the other Loan Documents.

C. The Deed of Trust contains a valid and enforceable "due-on-sale" provision, and to induce Lender to consent to the transfer and assumption of the Loan the parties have agreed to provide the following agreements and assurances to Lender.

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, it is agreed:

1. **Recitals.** The above recitals are true and correct and together with the Loan Documents, are by this reference incorporated into this Agreement as though fully set forth.

2. **Consent to Transfer.** Lender hereby consents to the transfer of the Property by Borrower to Assumptor and to assumption of the Loan by Assumptor. This consent by Lender is given with respect to this transfer only, and the due-on-sale provision of the Deed of Trust shall remain applicable to any further or different transfer of the Property or of a transfer of an interest in Assumptor if Assumptor is a corporation, partnership, or limited liability company, as set forth in the Deed of Trust.

3. **Loan Assumption.** Assumptor hereby unconditionally assumes the Note, the Deed of Trust and other Loan Documents, and unconditionally agrees to promptly pay, observe and perform as and when due the obligations under the Note, Deed of Trust and other Loan Documents as if Assumptor had originally made and executed the same as borrower and grantor. Assumptor understands and agrees that it shall have full recourse liability for payment of the Loan and that Lender does not have to resort to any collateral or other security before requiring payment from Assumptor.

Assumptor instructs Lender to automatically debit each required installment of principal and interest payable to Lender from Assumptor's checking account number 80230733 at Lender, or such other deposit account at Lender as Assumptor may authorize in the future, on the first day of each month. Assumptor agrees to maintain sufficient funds in said account to cover all required payments.

4. **Conditions.** Lender's consent and agreement to the transfer and assumption as provided herein is subject to satisfaction of each of the following conditions by not later than February 15, 2000, time being of the essence. Each condition is for the exclusive benefit of Lender and may be waived by Lender but any waiver must be in writing and signed by Lender in order to be effective.

(a) **No Default.** There is no uncured event of default under the Loan, nor any event or condition which, with notice or the passage of time or both, would be an event of default under the Loan.

(b) **Transfer to Assumptor.** Receipt by Lender of evidence that all of Borrower's interest in the Property has been transferred and conveyed of record to and accepted by Assumptor.

(c) **Assumption of Property Obligations.** Receipt by Lender of evidence that all of Borrower's interest in and obligations under all contracts, licenses and other agreements affecting or relating to the use and operation of the Property including, without limitation, leases and rental agreements with tenants (together with the amount of all tenant deposits, fees and other sums which may be refundable or in which the tenant retains any right, in whole or in part), property management agreements, service contracts, and agreements with



vendors and suppliers have, with any necessary consents or approvals, been transferred and assigned to and assumed by Assumptor.

(d) **Title Policy Endorsement.** Datedown and/or loan assumption endorsements, in form satisfactory to Lender, shall have been added to Lender's loan policy of title insurance ("**Loan Policy**") for the Deed of Trust, insuring that the assumption provided for herein shall not impair the continued validity, priority and enforceability of the Deed of Trust.

(e) **Guaranty.** Guarantors' execution and delivery to Lender, in the form required by Lender, of a full and unconditional joint and several guaranty ("**Guaranty**") of the indebtedness and obligations of Assumptor to Lender under the Loan Documents.

(f) **U.C.C. Financing Statements.** Assumptor's execution and delivery to Lender, in the form required by Lender, of U.C.C. Financing Statements to be filed in the State and County where the Property is located, and in the State of Assumptor's residence if different from the State where the property is located.

(g) **Tax Identification Number Certification.** Assumptor's execution and delivery, in the form required by Lender, of a TIN and Foreign Status Certification.

(h) **Documents.** This Agreement and all other documents and agreements required by Lender have been fully signed, acknowledged and delivered to Lender and, if required by Lender, filed of record.

(i) **Insurance.** Receipt by Lender of evidence of insurance on the Property as required by the Deed of Trust with Lender named on a loss payable endorsement, form 438 BFU.

(j) **Other Conditions.** Satisfaction of all other conditions and requirements to assumption of the Loan, if any, as may be contained in a letter, exhibit list or other written communication by Lender to Borrower and/or Assumptor.

5. **Representations and Warranties.** To induce Lender to enter into this Agreement, Borrower and Assumptor do each represent and warrant:

(a) **Binding Agreement.** Such party has full legal power and authority to enter into this Agreement, that all necessary consents and approvals for the execution and performance of this Agreement have been obtained, and when signed and delivered to Lender this Agreement will be the legal binding and enforceable obligation of such party.

(b) **Ownership.** Assumptor is, or will be when the transfer contemplated herein is made, vested in title to all of the Property described in the Deed of Trust or otherwise securing payment of the Loan and, except for the lien of real estate taxes and assessments not yet due, tenants in possession under leases approved by Lender or which are subordinate to the Deed of Trust, and other exceptions to title approved in writing by Lender, there exists no lien, charge or encumbrance against the Property created or arising subsequent to the recording date of the Deed of Trust. All of the undersigned agreement that deed of trust dated July 29, 1997, recorded on July 30, 1997 under recording number 9707300095, records of Skagit County, Washington, shall continue to be subordinate to the Deed of Trust.

(c) **Loan Balance.** The unpaid principal balance of the Loan as of January 31, 2000 is \$400,000.00, and neither Borrower nor Assumptor has any defense, claim or setoff, legal or equitable, to the full payment and performance of the obligations to Lender under the Loan Documents as herein assumed.

(d) **Voluntary Agreement.** Such party has read this Agreement, the Loan Documents and all other documents required by Lender in connection with this Agreement, is



familiar with their respective terms and conditions, has had the opportunity for advice of counsel of such party's own selection in regard to the terms, meaning and effect of this Agreement, the Loan Documents and all such other documents, and is satisfied with and accepts the same in all respects. Such party further acknowledges having made this Agreement freely and voluntarily, without duress, and in reliance on no promise or representation of Lender or by which Lender is bound not expressly set forth herein.

6. **Affirmation of Borrower.** Borrower (and each of them, jointly and severally, if more than one) acknowledges that each of them shall remain fully liable, jointly and severally with Assumptor, for all of Borrower's obligations to Lender under the Loan Documents, and neither Lender nor such Borrower intend for any release of Borrower's liability to occur upon the effective date of the assumption described in this Agreement. By their signatures to this Agreement each Borrower ratifies and affirms its obligations under the Loan Documents as being in full force and effect, and agrees that the assumption contained in this Agreement does not in any way impair the continued validity of such obligations. Borrower agrees that Borrower's liability shall be direct and primary as between Lender and Borrower, even though Borrower's liability may be secondary as between Borrower and Assumptor.

7. **Release of Lender.** As additional consideration for Lender's agreement to the assumption of the Loan as herein set forth, Borrower and Guarantor do each hereby release and forever discharge Lender, every participant in the Loan, and each and every of their respective employees, agents, directors, officers, subsidiaries, parent corporations and affiliates (collectively the "**Released Parties**"), of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Borrower and/or Guarantor may have or claim to have against the Released Parties or any of them as of the effective date of this Agreement, whether presently known or unknown, on account of or in any way concerning, arising out of or founded upon the Loan including, but not limited to, all such loss or damage of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the effective date of this Agreement. This release and the covenants herein on the part of Borrower and Guarantor are contractual and not a mere recital, and the parties agree that no liability is admitted except Borrower's indebtedness to Lender under the Loan Documents and that all agreements and understandings between Borrower, Guarantor and Lender concerning the Loan are expressed and embodied in the Loan Documents, as modified hereby.

8. **Notices.** Notwithstanding anything to the contrary in the Note, Deed of Trust or other Loan Documents, any notice to Borrower and/or Assumptor provided for in the Note, Deed of Trust or other Loan Documents shall be given by delivering it or by mailing it by first-class mail unless applicable law requires use of another method. The notice shall be directed to the following address or any other address Borrower or Assumptor designates within the United States of America by written notice to Lender:

If to Borrower: 17979 State Route 536  
Mount Vernon, WA 98273

If to Assumptor: 17979 State Route 536  
Mount Vernon, WA 98273

Any notice to Lender shall be in writing and shall be given by delivering it or by mailing it by first-class mail directed to the following address or any other address Lender designates by notice to Borrower and Assumptor:

Bank of America, N.A.  
Attention: Commercial Mortgage Loan Servicing Manager  
333 S. Beaudry, 26th Floor



Los Angeles, CA 90017  
Attn: Loan No. 3069978

Notice given as provided above shall be deemed effective on the next business day following hand delivery and three business days following deposit in the U.S. mail.

9. **General.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between Borrower, Assumptor, Guarantor and Lender with respect to the foregoing assumption of the Loan and shall not be amended except in writing signed by Lender, Guarantor, Borrower, and Assumptor.

(b) **Ratification.** As assumed herein the Loan Documents are ratified and affirmed and shall be and remain in full force and effect.

(c) **Cross-Default.** This Agreement shall be construed in connection with and as part of the other Loan Documents. Any default under this Agreement shall constitute a default under the Loan Documents, and each of them, and any default under any Loan Document shall constitute a default under this Agreement.

(d) **Lender's Expenses.** Borrower shall pay and/or promptly reimburse Lender for all costs and expenses of Lender incurred in connection herewith including, without limitation, credit report fees, appraisal and internal appraisal review fees, title insurance charges, escrow and recording fees, document preparation charges, and charges of outside legal counsel and allocated cost of in-house legal counsel.

(e) **Governing Law.** This Agreement shall be construed and enforced under the laws of the State of Washington. In any action or proceeding to construe or enforce this Agreement or any of the Loan Documents, the prevailing party shall recover its costs and reasonable attorneys' fees including those incurred in any trial or arbitration proceeding, in any bankruptcy or receivership proceeding, and in any appeal therefrom.

**NOTICE: ORAL AGREEMENTS, PROMISES OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF THE LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO THE LOAN ARE ALL UNENFORCEABLE UNDER WASHINGTON LAW.**



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Made to be effective as of the date first set forth above.

Assumptor:

C & C YAW, LLC

By: Charles S. Yaw  
Charles S. Yaw, Member

By: Carol J. Yaw  
Carol J. Yaw, Member

Lender:

BANK OF AMERICA, N.A.

By: [Signature]  
Vice President

Guarantor:

Charles S. Yaw  
CHARLES S. YAW

Borrower:

[X]  
CHARLES S. YAW

[X]  
CAROL J. YAW

[X]  
CAROL J. YAW

CHARLEY'S GREENHOUSE SUPPLY, LLC

By: Charles S. Yaw  
Charles S. Yaw, Member

By: Carol J. Yaw  
Carol J. Yaw, Member



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Made to be effective as of the date first set forth above.

Assumptor:

Lender:

C & C YAW, LLC

BANK OF AMERICA, N.A.

By: Charles S. Yaw  
Charles S. Yaw, Member

By: [Signature]  
Vice President

By: Carol J. Yaw  
Carol J. Yaw, Member

Guarantor: Charles S. Yaw  
Charles S. Yaw  
CHARLES S. YAW

Borrower: Charles S. Yaw  
Charles S. Yaw  
CHARLES S. YAW

Carol J. Yaw  
Carol J. Yaw  
CAROL J. YAW

Carol J. Yaw  
Carol J. Yaw  
CAROL J. YAW

CHARLEY'S GREENHOUSE SUPPLY, LLC

By: Charles S. Yaw  
Charles S. Yaw, Member

By: Carol J. Yaw  
Carol J. Yaw, Member



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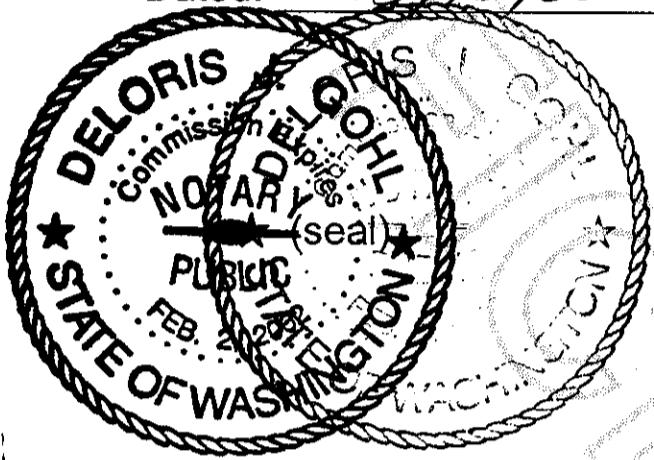
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STATE OF WASHINGTON )  
 )§  
COUNTY OF ~~KING~~ SNOHOMISH )

I certify that I know or have satisfactory evidence that WAYNE FJELSTAD is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the Vice President of BANK OF AMERICA, N.A., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2/15/00

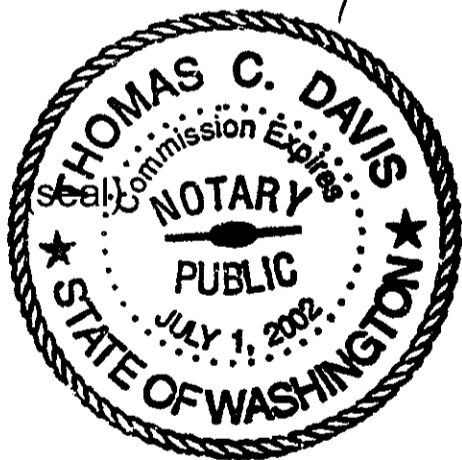


Deloris J. York  
(Print Notary Name) DELORIS J. YORK  
Notary Public in and for the State of Washington  
residing at MANASSVILLE  
My appointment expires 2/2/02

STATE OF WASHINGTON )  
 )§  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that **CHARLES S. YAW** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it in his capacity as a Member of C & C Yaw, LLC, a Washington limited liability company ("Assumptor") to be the free and voluntary act of Assumptor for the uses and purposes mentioned in the instrument.

Dated: February 14, 2000



Thomas C. Davis  
(Print Notary Name) \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at Mount Vernon  
My appointment expires 7-1-02



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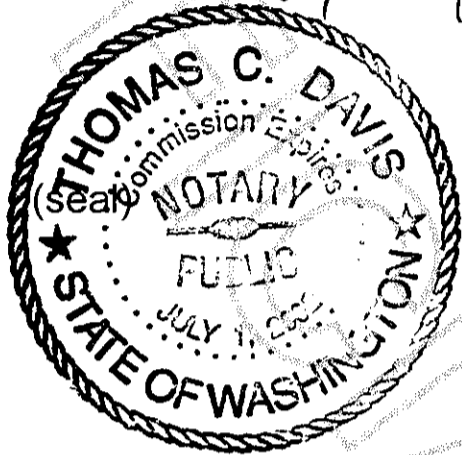


STATE OF WASHINGTON )

COUNTY OF SKAGIT )  
 )§  
 )

I certify that I know or have satisfactory evidence that **CAROL J. YAW** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledge it in her capacity as a Member of C & C Yaw, LLC, a Washington limited liability company ("Assumptor") to be the free and voluntary act of Assumptor for the uses and purposes mentioned in the instrument.

Dated: February 14, 2000



Thomas C. Davis  
(Print Notary Name) \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at Mount Vernon  
My appointment expires 7-1-02



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**SCHEDULE A**

SCHEDULE A ATTACHED TO AND FORMING PART OF THAT CONSENT TO TRANSFER AND ASSUMPTION AGREEMENT DATED FEBRUARY 14, 2000, BETWEEN BANK OF AMERICA, N.A., AS LENDER; CHARLES S. YAW AND CAROL J. YAW AS BORROWER; C & C YAW, LLC, AS ASSUMPTOR; AND CHARLES S. YAW, CAROL J. YAW, AND CHARLEY'S GREENHOUSE SUPPLY, LLC AS GUARANTOR.

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**Legal Description:**

PARCEL A:

LOTS 3 AND 4, "MEMORIAL HIGHWAY TRACTS," AS PER PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 35, RECORDS OF SKAGIT COUNTY, WASHINGTON

PARCEL B:

LOTS 1 AND 2, "MEMORIAL HIGHWAY TRACTS," AS PER PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 35, RECORDS OF SKAGIT COUNTY, WASHINGTON



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