

WHEN RECORDED RETURN TO:

Seattle Mortgage Services Company
1800 112th Avenue N.E., Suite 300
Bellevue, WA 98004
#2177



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Skagit County Auditor
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**CONSTRUCTION DEED OF TRUST,
ASSIGNMENT OF RENTS AND LEASES,
AND SECURITY AGREEMENT**

*OCTOBER

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT ("Deed of Trust") is made this ~~31st~~ day of ~~NOVEMBER~~, 2001, among ARMADA/BURLINGTON, LLC, a Washington limited liability company, ("Grantor"), whose address is c/o 2115 Sixth Avenue, Seattle, Washington 98121, and FIRST AMERICAN TITLE COMPANY OF SKAGIT COUNTY, a corporation, ("Trustee"), whose address is 1301-B Riverside Drive, P.O. Box 1667, Mount Vernon, Washington 98273, and SEATTLE MORTGAGE SERVICES COMPANY, a Washington corporation, ("Beneficiary"), whose address is 1800 112th Ave. NE, #300, Bellevue, Washington 98004.

For purposes of Article 9 of the Uniform Commercial Code, this Deed of Trust constitutes both a Security Agreement with the Grantor being the Debtor and the Beneficiary being the Secured Party and a Financing Statement filed as a fixture filing in accordance with Section 9-402(6) of the Uniform Commercial Code.

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor hereby grants, assigns, conveys and confirms unto Trustee in trust with power of sale and right of entry and possession all of Grantor's present and future right, title and interest in and to the following described Real Property. Grantor also (i) grants a security interest to Beneficiary in the following described Personal Property, (ii) assigns (subject to the collection rights hereinafter provided) the following described Rents and Leases, and (iii) grants Beneficiary a security interest in the following described Proceeds (which Proceeds, Rents and Leases, Personal Property, and Real Property are hereinafter referred to collectively as the "Property"):

A. The real property in the City of Burlington, County of Skagit, State of Washington that is legally described on Exhibit "A" attached hereto and made a part hereof ("Real Property"), including without limitation all buildings, improvements, fixtures now or hereafter located thereon, and including without limitation (i) all furnishings, appurtenances, easements, reversions, remainders, water and water rights, pumps and pumping plants, pipes, flumes, and ditches thereunto appertaining; (ii) all machinery, equipment, materials, appliances and fixtures of every kind; (iii) all wall-beds, wall-safes, built-in furniture and installation, shelving, lockers, partitions, door-stops, vaults, elevators, dumbwaiters, awnings, window shades, venetian blinds, light fixtures, fire hose and brackets and boxes for same, fire sprinklers, alarm system, drapery rods and brackets, screens, linoleum, carpets and carpeting, plumbing, laundry tubs and trays, ice boxes, refrigerators, heating units, ranges, water heaters, dishwashers, home laundries, garbage disposal units, incinerators, communication systems; and (iv) all installations for which any such building or improvement is specially designed; all of said items, whether now or hereafter installed or attached to the Real Property being hereby declared to be for all purposes of this Deed of Trust a part of the realty.

B. All tangible and intangible personal property now or hereafter used or acquired in connection with the ownership, development, operation or maintenance of the Real Property, including without limitation any of the property described in the preceding section that is considered personal property and is subject to the provisions of Article 9 of the Uniform Commercial Code with respect to which this Deed of Trust is a Security Agreement granting to Beneficiary, as secured party, a security interest in all such property ("Personal Property").

C. All of the present and future rents, revenues, issues, profits and income of the Real Property, and all present and future leases and other agreements for the occupancy or use of all or any part of the Real Property, including without limitation all cash or security deposits, advance rentals and payments of a similar nature, and all guaranties of the tenants' performance under such leases ("Rents and Leases").

D. All cash, insurance and other proceeds of the foregoing ("Proceeds").

This Deed of Trust is executed and delivered for the purpose of securing the following obligations ("Secured Obligations):

A. Payment of Grantor's Promissory Note of even date herewith ("Note") evidencing a construction loan ("Construction Loan") in the original principal amount of \$1,800,000.00, with interest, payable to Beneficiary or order, and any modifications, renewals, or extensions thereof.

B. Payment and performance of every obligation, covenant, promise and agreement of Grantor contained in this Deed of Trust.



C. Payment and performance of every obligation, covenant, promise and agreement contained in the Construction Loan Agreement of even date herewith between Grantor and Beneficiary and in each of the other instruments and agreements (other than the Hazardous Substance Indemnity) executed by Grantor for the benefit of Beneficiary in connection with the Construction Loan (collectively and together with the Note and Deed of Trust, the "Construction Loan Documents").

D. Payment of future advances and additional sums and interest thereon, which may hereafter be loaned by Beneficiary to Grantor in connection with the Construction Loan; provided, however, that nothing herein contained shall be deemed to bind or commit Beneficiary to lend such additional sums.

Grantor promises and agrees until the Note and all sums payable hereunder are paid in full, to perform and abide by all of the following terms, covenants and conditions:

1. **Payment.** Grantor shall pay the Note according to its terms and pay or perform all other Secured Obligations. Time is of the essence and failure to pay or perform any of the Secured Obligations, when due, shall cause the whole indebtedness hereby secured to become immediately due and payable at the option of the Beneficiary, without notice, and this Deed of Trust may be foreclosed in accordance with Sections 14 and 15 hereof. All monthly payments made by Grantor to Beneficiary shall be applied by Beneficiary: first, to the monthly reserve amounts due under this Section 2, if such amounts are then required by Beneficiary; second, to any repayment of advances due under Section 9 hereof; third, to interest due on the Note; and fourth, to the unpaid principal of the Note.

2. **Reserves.** Grantor shall pay to Beneficiary, if Beneficiary so requires, in addition to the payments required by the Note, a sum each month equal to one-twelfth (1/12) of the annual real estate taxes and any other assessments against the Real Property, annual hazard insurance premiums and ground rents, if any, to permit payment of these obligations on or before the due date, and such sums held by Beneficiary shall not bear interest for the benefit of Grantor. The beneficial interest in reserves held by Beneficiary shall pass with any transfer of title to the Real Property, voluntary or involuntary, except that, in the event of a foreclosure or Trustee's sale pursuant hereto, Beneficiary at the time of the sale shall apply such funds, if any, against the amount due and owing on the Note.

3. **Taxes and Assessments.** Grantor shall pay, at least ten (10) days before delinquency, all taxes, assessments, ground rents, water charges, liens and encumbrances affecting the Property if the payment thereof is not provided for pursuant to Section 2 hereof, and shall keep the Property free of liens and charges of any government, or political subdivision or agency thereof, except the liens for property taxes and local improvement assessments payable in installments that are not yet due.



4. **Insurance**

(a) **Casualty Insurance.** Grantor shall procure and maintain, with respect to the Property, both real and personal, and to deliver to Beneficiary at least thirty (30) days prior to the expiration of existing policies, insurance policies providing fire and extended coverage insurance and insurance with respect to such other risks as Beneficiary shall at any time require in amount and form and in companies satisfactory to, and with loss payable to the Beneficiary. Grantor shall pay to Beneficiary, as Beneficiary may require, a fee to cover costs of substituting policies in the event the Grantor replaces any policy prior to its expiration. All insurance proceeds may be applied to any debt secured hereby or any installment thereof, or be released at Beneficiary's option. Neither the application nor the release of any such proceeds shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Unexpired insurance shall pass with any transfer of title to the Property, voluntary or involuntary, or pursuant to any foreclosure or Trustee's sale, and Beneficiary is hereby irrevocably authorized to assign, in Grantor's name, such insurance accordingly. Payments made pursuant to Section 2 shall not relieve Grantor of the obligation to procure and deliver insurance as required hereby except that Beneficiary shall pay the premiums of such policies provided moneys paid by the Grantor to Beneficiary under Section 2 have been sufficient and are available for such payment.

(b) **Liability Insurance.** Grantor shall procure and maintain liability insurance covering injury and damage to persons and property in amounts and on terms acceptable to Beneficiary.

(c) **Flood Insurance.** Grantor shall procure and maintain flood insurance if the Property is located in an area that is considered to be a flood risk by the U.S. Department of Housing and Urban Development.

(d) **Rent Loss Insurance.** Grantor shall procure and maintain rent loss insurance in form and with companies acceptable to Beneficiary for a term of no less than twelve (12) months so that the Property will continue to draw revenues at the pre-abatement level.

5. **Actions Affecting the Property.** Grantor shall appear in and defend any action or proceeding purporting to affect the Property, the security thereof, or the rights or powers of Beneficiary or Trustee and, if so requested by Trustee or Beneficiary, to commence and maintain actions and proceedings for the purpose of protecting the Property or said rights and powers, all at the expense of Grantor. Should Trustee or Beneficiary appear in, defend or commence and maintain any such actions or proceedings or, should suit be brought by Beneficiary to enforce this Deed of Trust or the Note, Grantor shall pay all costs and expenses thereof, including cost of evidence of title and attorney's fees.



6. **Trustee's Fees.** Grantor shall pay all fees and expenses of Trustee in connection with this Deed of Trust, including without limitation attorney's fees actually incurred, as provided herein or by statute.

7. **Late Payments.** In addition to any interest that accrues on the outstanding balance of the Note at the default rate, Grantor shall pay to Beneficiary, a "late charge" of \$.04 per dollar for any payment not made to Beneficiary within ten days after the same shall be due to cover the extra expenses involved in handling delinquent payments.

8. **Modifications**

(a) **Modifications of Loan Documents.** Beneficiary or Trustee, at the request of Beneficiary, without affecting the liability of any person with respect to any Secured Obligations and without affecting the lien of this Deed of Trust upon any Property not thereby reconveyed, may from time to time, without notice, agree to the extension of the maturity or alter the terms of payment of such obligations, release any person so liable, cause to be reconveyed any portion or all of the Property, take or release other security, make compositions or other arrangements with respect to such obligations, join in granting any easement on the Property or in creating or releasing any covenants restricting use thereof, or join in any agreement subordinating the lien hereof.

(b) **Modifications by Beneficiary.** Without affecting the liability of any other person (including Grantor, upon conveyance of the Property) for the payment of any Secured Obligations and without affecting the lien hereof upon any property not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Property, take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or thereafter, and sell same or otherwise realize thereon, either before, concurrently with, or after sale hereunder.

9. **Advances; Inspections.** Beneficiary (or Trustee), without demand or notice and without releasing Grantor from any Secured Obligations, may do any or all things required of Grantor by any of the provisions of this Deed of Trust that Grantor has failed to do, and may incur and pay expenses in connection therewith; Grantor shall pay to Beneficiary (or Trustee) on demand all sums of money Beneficiary (or Trustee) shall expend pursuant to this Section, together with interest upon each of said amounts, until repaid, from the time of payment thereof, at a floating rate equal to six percent (6.0%) per annum over the prime rate of interest of Bank of America, National Association, as publicly announced and in effect from time to time or such lesser maximum rate, if any, required by applicable law. Beneficiary (or Trustee) and their respective agents are



authorized to enter upon any part of the Real Property at any time for the purpose of inspection, or to carry out Grantor's obligations hereunder.

10. **Rents.** All of the rents, issues and profits of the Property are assigned to Beneficiary as consideration for the Loan. As of this date no rents have been paid in advance and in the future no rents will be accepted in advance (other than current rentals) or in amounts less than specified under leases now or hereafter on the Property. Until default be made in payment or performance of any Secured Obligations, Grantor may collect and retain such rents, issues and profits as they become due. Upon any such default, Beneficiary may at any time, without notice, either by its agents, attorneys, employees, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for any Secured Obligations, enter upon and take possession of the Property, do any acts Beneficiary may deem necessary or proper to conserve the value thereof, rent, lease and operate the same in its own name, and collect and receive all rents, issues and profits thereof, including those past due and unpaid, applying the same, less costs and expenses of operation and collection, upon any Secured Obligations. Neither the taking of possession or the collecting of rents, issues and profits and the application thereof, as aforesaid, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

11. **Judgments, Awards and Settlements.** All judgments, awards of damages and settlements hereafter made as a result of or in lieu of any condemnation or other proceeding for public use of, or for any damage to, the Real Property or the improvements thereon, are hereby assigned and shall be paid to the Beneficiary to the extent of Beneficiary's outstanding indebtedness, including, but not limited to accrued but unpaid interest and additional advances (if any) made under the Note. Grantor agrees to execute such further assignments of any such compensation, award, judgment or settlement that may be received by Grantor. Beneficiary may apply any and all of such proceeds on any Secured Obligations or release all or any part thereof. Neither the application nor the release of such proceeds shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

12. **Default**

(a) **Acceleration.** All sums secured hereby shall immediately become due and payable, notwithstanding the terms of any Note evidencing the same, at the option of Beneficiary, and without demand or notice, upon the happening of any one or more of the following:

(i) Upon default in payment, when due, of any sums secured hereby;

(ii) Upon Grantor's conveying, selling or encumbering the Real Property or any part thereof or any interest therein without the prior written consent of

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Beneficiary, or being divested of title, or any interest therein, in any manner, voluntary or involuntary, specifically set forth as follows:

The Grantor or its successors and assigns shall not sell or transfer directly or indirectly all or any of the Grantor's interest in the Real Property without the prior written consent of Beneficiary. If the Grantor sells or transfers any such interest in the Real Property, Beneficiary or its successors or assigns may declare the entire balance secured by this Deed of Trust immediately due and payable or, at its sole option, may increase the interest rate to be charged on the indebtedness secured hereby, up to the prevailing interest rate then quoted by Beneficiary for loans of similar quality and term, and/or may require payment of a reasonable transfer fee and all expenses, legal and otherwise, incurred by Beneficiary.

Beneficiary specifically reserves the right to condition its consent to a sale, transfer, assignment, encumbrance or conveyance (by way of illustration but not by way of limitation) upon its approval of the financial and/or management ability of the purchaser, assignee, transferee or subsequent owner of the property and upon the following provisions having been satisfied: (i) an agreement to increase the interest rate of the Note, (ii) the payment of a reasonable transfer fee and (iii) the payment of any expenses incurred by Beneficiary as a result of the sale, transfer, assignment, encumbrance or conveyance of the Real Property.

For the purposes of the above paragraphs, the term "sell or transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliate entity(ies), transfers made to a reconstituted limited partnership, transfers by any partnership or limited liability company, or to the partners or members thereof, or vice versa, transfers made by a partner to other partners or to third parties, transfers by any corporation to its stockholders or vice versa, any corporate merger or consolidation, and transfers made by any individual(s) to any other individual(s) or entity(ies), or vice versa.

(iii) Upon Grantor's obtaining secondary financing during the term of the Note or this Deed of Trust, or Grantor's entering into any subordinate debt instrument of any kind permitting any other encumbrance to attach to the Real Property; or

(iv) Upon default by Grantor in the performance of any covenant, term or condition herein or in the Construction Loan Documents.

(v) Upon Grantor's default in the terms of its obligation to construct improvements on the Real Property pursuant to any construction contract, or

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other agreement related thereto (collectively the "Construction Obligations") or upon Grantor's default in the terms of its obligation pursuant to any Purchase and Sale Agreement (the "Purchase Agreement"), now existing or hereafter created for the Real Property.

(b) **Beneficiary's Action on Behalf of Grantor.** Should Grantor fail or refuse to make any payment or perform any other obligation secured hereunder at the time and in the manner herein provided, then Trustee and/or Beneficiary, each in his or its sole discretion, may, without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof:

(i) Pay or perform the same in such manner and to such extent as may be deemed necessary to protect the security of this Deed of Trust, the Trustee and/or Beneficiary being authorized to enter upon and take possession of said Property for such purposes;

(ii) Commence, appear in or defend any action or proceeding affecting or purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder, whether brought by or against Grantor, Trustee or Beneficiary; or

(iii) Pay, purchase, contest or compromise any prior claim, debt, lien, charge or encumbrance which in the judgment of either may affect or appear to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder.

(iv) Enter the Real Property, and perform all Construction Obligations of Grantor, under any contracts for the construction of improvements on the Real Property, and/or perform the obligations of Grantor under the Purchase Agreement.

Provided, however, neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or perform any of the acts above mentioned but, upon election of either or both so to do, employment of an attorney or attorneys is authorized and payment of such attorney's fees is hereby secured. Grantor shall repay, on demand, any sums paid or advanced by either Trustee or Beneficiary pursuant to this Section 12 with interest in accordance with Section 9 of this Deed of Trust.

(c) **Optional Acceleration of Debt.** The Note and all other sums secured hereby shall become due at the option of Beneficiary if Grantor, without first obtaining the written consent of Beneficiary thereto shall assign the rents or any part thereof from the Real Property; or shall consent to the cancellation or surrender of any lease of the Real Property, or any part thereof, now existing or hereafter to be made, having an unexpired term of one year or more; or shall modify any such lease so as to shorten the unexpired term thereof, or so as to decrease the amount of the rent payable thereunder; or

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shall in any other manner impair the security of Beneficiary for the payment of the debt secured hereby.

(d) **Cross Default.** If Beneficiary is now or hereafter becomes the owner or holder of a deed of trust on other property or another deed of trust upon the Property hereby conveyed, or any part thereof, failure to comply with any of the requirements or conditions of this Deed of Trust or any of the other deeds of trust shall, at the option of the Beneficiary, constitute a default under all such deeds of trust, thereby enabling the beneficiaries thereunder to pursue any available remedy. A default under the terms of this Deed of Trust, any other instrument securing the Note, or any of the other Construction Loan Documents shall constitute a default under this Deed of Trust. Also, a default under the separate Hazardous Substances Indemnity that Grantor has executed or will execute in connection with the Construction Loan shall constitute a default under (but shall not be secured by) this Deed of Trust.

(e) **Notices.** All notices given pursuant to this Deed of Trust must be in writing and will be effectively given when personally delivered or mailed postage prepaid, certified or registered mail, return receipt requested, to the address of the parties on page 1 of this Deed of Trust, or to such other address as a party may hereafter designate in writing.

13. **Covenants Regarding the Property**

Grantor further agrees:

- (a) To protect, preserve and defend the Property and title thereto;
- (b) To keep all buildings or improvements now or hereafter on the Real Property free of termites, dry rot, fungus, beetles and other wood-boring, wood-eating, or harmful or destructive insects and in all respects properly to care for and keep all of said buildings, structures and improvements in good condition and repair;
- (c) To keep the trees, vines, shrubbery, plants, lawns and crops thereon in good condition;
- (d) To comply with all laws, ordinances and regulations now or hereafter enacted affecting the Real Property or other Property or requiring any alterations or improvements to be made, including delivery to Beneficiary during the term of this Deed of Trust and within ten (10) days of Grantor's receipt of any additional permits or approvals or disapprovals affecting the Real Property;
- (e) To complete or restore promptly and in good workmanlike manner any buildings or improvements that may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor, and if the Note secured hereby, or any part thereof, is being obtained for the purpose of financing construction or improvements on the

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Real Property (i) to commence construction promptly, thereafter diligently pursue the work to completion, and in any event within thirty (30) days from the date of this instrument and to complete the same in accordance with any agreements relating to construction and plans and specifications satisfactory to Beneficiary; (ii) to allow Beneficiary to inspect the Real Property and other Property at all times during construction; (iii) to replace any work or materials unsatisfactory to Beneficiary within fifteen (15) calendar days after written notice to Grantor of such fact; and (iv) not to cease work on the construction of such improvements for any reason whatsoever for a period of fifteen (15) or more consecutive days;

(f) To permit no waste or deterioration; and

(g) Not to remove, substantially alter or demolish any building or improvement on the Real Property except as required by subsection (e) of this Section.

14. **Foreclosure.** Should default be made by Grantor in payment of any indebtedness secured hereby or in performance of any obligation, covenant, promise or agreement herein, when due, Beneficiary may declare all sums secured hereby immediately due and payable, and execute and deliver to Trustee a written declaration of default and demand for sale and written notice of default, and shall surrender to Trustee this instrument, the Note and all evidence of expenditures hereunder. Thereafter Trustee shall cause such notice of default to be sent or delivered in accordance with the Deed of Trust Act of the State of Washington.

After the lapse of such time as may then be required by law following the mailing of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Grantor, shall sell the Real Property as permitted by applicable law at the time and place fixed by it in the notice of sale at public auction. Trustee may postpone sale of all or any portion of said Real Property by public announcement at such time and place, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Without further notice, Trustee may make such sale at the time to which the sale shall be so postponed. Any person, including Beneficiary, but excepting Trustee, may purchase at such sale.

(a) **Proceeds of Foreclosure Sale.** Trustee shall apply the proceeds of any sale to payment of:

(i) All costs, fees, charges and expenses of Trustee acting under this Deed of Trust, fees of any attorneys employed by Trustee or Beneficiary pursuant to the provisions hereof, Trustee's fees in connection with sale, and all expenses of sale, including cost of procuring a title policy, guarantee or other evidence of title in connection with sale proceedings, as required by Beneficiary;



(ii) All other sums then secured hereby, including indebtedness described herein, all sums advanced or expended under the terms hereof and not then repaid, the interest on each of the foregoing items, all in such manner and order of priority or preference as Beneficiary may determine in its sole and absolute discretion;

(iii) The remainder, if any, shall be dealt with in accordance with the then applicable Washington laws.

(b) **Trustee's Deed.** Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Real Property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as Grantor may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers for value.

(c) **Nonexclusive Remedies.** The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy and, when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage.

(d) **Beneficiary's Remedies.** If any debt secured hereby is now or hereafter secured by mortgages, pledges, guarantees, other deeds of trust, or other security agreements, including without limitation the security agreement and assignment of rents and leases contained herein, Beneficiary may, at its option, enforce its rights with respect to any one or more of said security arrangements, either concurrently or independently and in such order as it may determine without affecting its rights hereunder and without waiving any default hereunder.

15. **Trustee.** Trustee accepts these trusts when this Deed of Trust is made a public record, and Trustee shall be entitled to reasonable compensation for all services, including fees of its counsel, employed in connection herewith, and also reimbursement for all of its reasonable expenses, and Grantor agrees to pay the same.

(a) **Substitute Trustee.** Beneficiary may, at any time, nominate and appoint by written notice another Trustee in the place and stead of the Trustee named herein or any successor Trustee, and a copy of such notice of appointment shall be forwarded to Grantor, and the original shall be recorded in the records of the county in which the Deed of Trust is recorded. The title herein conveyed to said Trustee shall be vested in said successor, which appointment shall be in writing.



(b) **Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall convey, without warranty, the Real Property then held hereunder. The Grantee in such reconveyance may be described by Trustee either as Grantor or "the person or persons legally entitled thereto." Ten (10) years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust, unless directed in such request to retain them.

16. **Real Property Becomes Less Desirable Security.** Should developments for oil, gas or minerals on the Real Property at any time be such as, in the opinion of Beneficiary, to render the Real Property less desirable as security for the Note and all other sums hereby secured, then Beneficiary shall have the right to declare the Note due and payable without notice and Beneficiary shall have the same rights hereunder for the collection of same as though the Note and such other sums had become due by default or maturity.

17. **Usury.** Grantor shall not be liable for the payment of any charges or interest provided in this Deed of Trust to the extent such charges exceed the maximum amount permitted under the laws of the State of Washington, it being fully agreed and understood that it is the intention of Beneficiary that this Deed of Trust shall in all respects conform to the laws of the State of Washington.

18. **Substitute Tax.** If, after the date of the Deed of Trust, any law is passed by the State of Washington imposing upon the Beneficiary any tax upon the Note or this Deed of Trust, any liability to pay any part of the tax against the Real Property or other Property or changing in any way the laws for taxation of mortgages or debts secured thereby, the Grantor shall immediately reimburse the Beneficiary for the amount of such taxes, excluding any tax hereafter assessed against Beneficiary's income. In the event said taxation is imposed and the Beneficiary does not waive the requirements for reimbursement, then in that event, the Grantor shall have the right during said period of taxation to prepay the then outstanding loan balance.

19. **Nonexclusive Remedies/No Waiver.** The rights and remedies of Trustee and Beneficiary hereunder are not exclusive but shall be concurrent and cumulative with all other rights and remedies given by law to trustees and beneficiaries under deeds of trust and to the holders of the notes secured thereby. Any failure on the part of Beneficiary promptly to exercise any right, remedy or option herein given or reserved shall not prevent the exercise thereof at any time thereafter. Nothing in this Deed of Trust shall be construed to prevent Beneficiary from enforcing payment of the Note without first foreclosing this Deed of Trust.



20. **No Agricultural Use.** The Real Property hereby conveyed is not used principally for agricultural purposes.

21. **Additional Documentation.** At all times, and from time to time, upon the request of Beneficiary, Grantor agrees to execute and deliver to Beneficiary one or more UCC Financing Statements in the appropriate form to give public notice of Beneficiary's security interest in all personal property owned by Grantor pertaining to the operation of the Real Property, and all such assurances of title and additional papers and instruments as Beneficiary may request.

22. **Commitment.** The provisions of the Commitment Letter shall be binding upon Grantor and all successors-in-interest to Grantor and shall survive the execution of any of the loan documents, including, but not limited to, this Deed of Trust and the Note referred to herein. If any conflict arises in the construction of the loan commitment letter between Grantor and Beneficiary, with the terms hereof or of any of the other Loan Documents, the terms of this Deed of Trust and the other Loan Documents shall be controlling; provided, however, that additional requirements of the commitment letter not contained in the Loan Documents shall not be deemed to be a conflict.

23. **Management Agreements.** In the event of a default of any nature during the term of the Note or this Deed of Trust, Beneficiary shall have the right to terminate any management agreements, contracts or agents/managers responsible for the property management of the Real Property if said property management is, in Beneficiary's sole judgment, unsatisfactory in any respect.

24. **Miscellaneous**

(a) **Severability.** The invalidity of any one or more covenants, phrases, clauses, sentences or sections of this Deed of Trust shall not affect the remaining portions hereof, and this Deed of Trust shall be construed as if such invalid covenants, phrases, clauses, sentences or sections, if any, had not been included herein.

(b) **Construction of Terms.** This Deed of Trust shall be so construed that, wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of any gender shall be applicable to all genders and shall likewise be so construed as applicable to and including a corporation, limited liability company, partnership or other legal entity. The word "Note" shall include all notes evidencing the indebtedness secured hereby. The term "Beneficiary" shall mean the owner and holder of the Note whether or not named as Beneficiary herein. Captions are for convenience only and have no legal effect in the interpretation of the Loan Documents.



(c) **Joint and Several Liability; Heirs and Assigns.** All obligations of each Grantor hereunder are joint and several, and this Deed of Trust shall inure to the benefit of and bind the heirs, devisees, legatees, administrators, executors, successors and assigns of the parties hereto.

(d) **Amendments.** This Deed of Trust may only be amended in writing signed by Grantor and Beneficiary.

(e) **Waiver of Homestead Exemption.** Grantor releases, relinquishes and waives all rights or claims of homestead exemption and includes such rights in this Deed of Trust.

(f) **Partial Release.** If a lot is sold or has a permanent loan placed on it, then Grantor will apply one hundred percent (100%) of the net sale or loan proceeds to pay down the acquisition and development loan.

(g) **Exit Fee.** Grantor hereby grants the sole and exclusive right to Beneficiary to provide permanent financing (as defined as financing greater than thirty-six months) for the improvements. The expected fee is 1% of the loan amount, however, if Beneficiary does not place the permanent loan, an exit fee of 1% will be due to Beneficiary, if the properties are not sold by the Grantor.

Executed as of the date first above written.

ARMADA/BURLINGTON, LLC, a
Washington limited liability company

By: 
Alan J. Winningham, Member

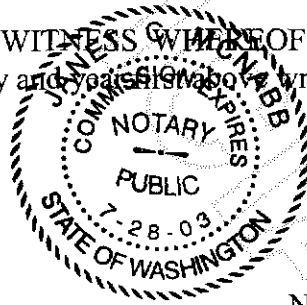
By: 
James W. Lagerquist, Member



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 31ST day of OCTOBER, 2001, before me personally appeared ALAN J. WINNINGHAM and JAMES W. LAGERQUIST to me known to be the members of ARMADA/BURLINGTON, LLC, a Washington limited liability company and on behalf of said limited liability company acknowledged to me that THEY signed and sealed the foregoing instrument as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned.

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



Janet C. McNabb
[Notary Signature]

JANET C. MCNABB

[Type or Print Name of Notary]

Notary Public in and for the STATE OF WASH
residing at KIRKLAND

My Commission expires 7-28-03



EXHIBIT "A"

Legal Description

Lots 2 and 3, CITY OF BURLINGTON BINDING SITE PLAN NO. BURL-BSP-2-00, approved August 2, 2000 and recorded March 13, 2001, as Skagit County Auditor's File No. 200103130080, being a portion of the Northwest ¼ of the Southwest ¼ of Section 5, Township 34 North, Range 4 East, W.M., TOGETHER WITH parking, access and utility easements delineated on said Plat as appurtenant thereto.

Parcel Nos: 8031-000-002-0000 P117981 and
8031-000-003-0000 P117982

