

200510200103
Skagit County Auditor

10/20/2005 Page 1 of 24 3:21PM

Recording Requested By:
Land Title

After Recording Return To:
Audrey Miklavcic
MW Housing Partners III, L.P.
1301 Fifth Avenue, Suite 3100
Seattle, WA 98101

LAND TITLE OF SKAGIT COUNTY

118675-P

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT, AND FIXTURE FILING**
(Subordinate Loan)



PROJECT NAME: Skagit Highlands II
WRI LOAN NO: 09976
ORIGINATING OFFICE: Seattle

Grantor(s): SKAGIT HIGHLANDS, LLC	
<input type="checkbox"/> Additional on page _____	
Grantee(s): Trustee:	LAND TITLE COMPANY OF SKAGIT COUNTY
Beneficiary:	MW HOUSING PARTNERS III, L.P.
<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated):	LOTS 1-3 AND 5-10, SKAGIT HIGHLANDS
<input checked="" type="checkbox"/> Complete legal on <u>EXHIBIT A</u>	
Assessor's Tax Parcel Identification No(s):	34041430090211, 34041530130404, 34041540040015, 34041540040122, 34041540050006, 34042210010007, 34042210020006, 34042210040012, 34042320100128, 44940001540009, 340422-1-002-0100; 340415-4-005-0200 340414-3-009-0300; 340415-4-005-0100; 340423-2-010-0200; 340422-1-001-0100
Reference Nos. of Documents Released or Assigned:	N/A

This Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (the "**Deed of Trust**") is made as of October 19, 2005, by SKAGIT HIGHLANDS, LLC, a Washington limited liability company, as Trustor/Grantor ("**Borrower**" herein), whose address is:

Skagit Highlands, LLC
7981 168th Ave NE, #118
Redmond, WA 98052
Tel: 425-702-8422
Fax: 425-497-9157
Borrower's Organizational ID No.: 602 347 278

in favor of LAND TITLE COMPANY OF SKAGIT COUNTY , as trustee ("**Trustee**"), whose address is 111 East George Hopper Road, Burlington, WA 98233, for the benefit of MW HOUSING PARTNERS III, L.P., a California limited partnership, as Beneficiary ("**Lender**" herein), whose address is:

MW Housing Partners III, L.P.
1301 Fifth Ave., Suite 3100
Seattle, WA 98101

Any capitalized terms used but not defined herein shall have the meanings ascribed to them in the Loan Agreement being executed between Borrower and Lender concurrently herewith (the "**Loan Agreement**").

ARTICLE 1 GRANT IN TRUST AND SECURED OBLIGATIONS

1.1 Grant in Trust. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 for the benefit of Lender, Borrower hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, in trust, with power of sale and right of entry and possession, and grants a security interest in, all estate, right, title and interest that Borrower now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Collateral**"), which Collateral is not used principally or primarily for agricultural or farming purposes:

1.1.1 Land, Appurtenances, Easements. That certain real property and all interests therein located in Skagit County, Washington, more particularly described in EXHIBIT A attached hereto and incorporated herein by this reference, together with all existing and future easements, access rights, water rights, appurtenances, privileges, licenses, hereditaments, franchises and tenements, including all minerals, oil, gas, and other commercially valuable substances that may be in, under or produced from any part of it (collectively, the "**Land**");

1.1.2 Improvements. All buildings, structures, and improvements now located or later to be constructed on the Land (the "**Improvements**");

1.1.3 Related Real Property and Improvements. All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not, that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements;

1.1.4 Leases and Licenses. All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, and concessions ("**Leases**") relating to the use and enjoyment of all or any part of the Project, including but not limited to all leases by or through Borrower as lessor, written or oral, now in existence or hereafter arising, all other agreements for the use and occupancy of all or any



portion of the Project, and any and all extensions or renewals thereof, and any and all deposits, guaranties and other agreements relating to or made in connection with any of the Leases;

1.1.5 Goods, Materials, Fixtures, Etc. All goods, materials, supplies, chattels, furniture, appliances, furnishings, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Project, whether stored on the Land or elsewhere, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust;

1.1.6 Construction Materials and Equipment. All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into, or installed in or about the Land or Improvements;

1.1.7 Borrower Funds. All of Borrower's interest in and to the Loan funds, whether disbursed or not, the Borrower's Account, and Borrower's own funds now or later to be held on deposit in the Borrower's Account;

1.1.8 Rent, Issues, and Profits. All income, rents, security or similar deposits, revenues, issues, royalties, profits, leases, earnings, products and proceeds of the Land or Improvements, including, without limitation, all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, insurance or condemnation proceeds, payments and deposits, and any proceeds from the sale of any lots comprising the Land and any Units, and any deposits on account thereof (collectively, the "**Rents, Issues and Profits**");

1.1.9 Plans. All designs, drawings, plans, specifications, trademarks, logos, and other work product prepared or to be prepared in connection with the development, construction, marketing, and sale of the Land and Improvements thereon, together with all existing and future amendments, modifications, and supplements thereof ("**Plans**");

1.1.10 Contracts. All contracts of every kind relating to development, construction, marketing, and sale of the Land, including but not limited to all construction contracts and subcontracts, contracts with architects, engineers, and other service providers, supply contracts, consulting agreements, financing commitments and agreements, joint development agreements, service and maintenance agreements, marketing and listing agreements, lot reservation agreements, purchase and sale agreements, and other existing and future contracts relating to the Project, together with (i) all deposits, escrows, refunds, rebates, credits, payments, or other proceeds thereunder, and (ii) all existing and future amendments, modifications, and supplements thereof ("**Contracts**");

1.1.11 Claims and Other Rights. (i) Borrower's rights and claims, but not liability for any breach by Borrower, under all commitments (including loan or financing commitments, commitments for fee refunds or credits, or other commitments), insurance policies, contracts and agreements for the design, construction, marketing, operation, protection, or inspection of the Improvements and all other contracts and general intangibles (including payment intangibles and any trademarks, trade names, goodwill, software and symbols) related to the Project or the operation thereof, (ii) all letter-of-credit rights (whether



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or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the Collateral, and (iii) all contract or tort claims Borrower now has or hereafter acquires relating to the Collateral.

1.1.12 Miscellaneous Personal Property. Any and all personal property of any kind whatsoever, whether tangible or intangible, that is used or will be used in construction of, or is or will be placed upon or is derived from or used in any connection with the use, occupancy or enjoyment of, the Land or Improvements;

1.1.13 Books and Records. All books and records pertaining to any and all of the property described above, including records stored on computer readable media, and a limited sublicense to use the computer hardware or software necessary to access such records ("**Books and Records**");

1.1.14 Additional Property. Any additional personal property otherwise set forth herein or listed on the UCC-1 Financing Statement filed to perfect Lender's security interest hereunder; and

1.1.15 Proceeds. All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

The Land, Improvements, related real property, and all personal property now or hereafter installed on or used in connection with the Land and/or Improvements are collectively referred to herein as the "**Project.**" The Project constitutes the bulk of, but not the entirety of, the Collateral.

1.2 Secured Obligations. Borrower makes the grant, conveyance, transfer and assignment set forth in Section 1.1 and grants the security interest set forth in Article 3 for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Lender may choose:

1.2.1 Promissory Note. Payment of all obligations at any time owing under that certain Promissory Note (the "**Note**") executed concurrently herewith, in the stated principal amount of Three Million Nine Hundred Fifty Thousand Dollars (\$3,950,000) payable by Borrower, as maker, to the order of Lender or order, together with interest accruing thereon, and any increases, modifications, extensions or renewals thereof or protective advances made thereunder, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes and whether or not any such interest accrual, increases, modifications, or protective advances result in the total indebtedness exceeding the state principal amount of the Note;

1.2.2 Loan Documents. Payment and/or performance of each and every other obligation of Borrower under the Note, this Deed of Trust, and all other Loan Documents (which term is used as defined in and includes the Loan Agreement but, for purposes of establishing the Secured Obligations, specifically excludes any obligations of Borrower arising solely under the Indemnity Agreement, any and all amendments, modifications, and supplements thereto, the provisions of which are incorporated herein by this reference, and the payment of each fee, cost and expense by Borrower as set forth therein);



1.2.3 Related Loan Documents. Payment and/or performance of each covenant and obligation on the part of Borrower to be performed pursuant to any Related Loan Documents identified in or pursuant to the Loan Agreement, whether now existing or made in the future, together with any and all modifications, extensions and renewals thereof, subject, however, to Lender's unilateral right to terminate this cross-collateralization provision in accordance with Section 7.5 below;

1.2.4 Future Obligations. Payment to Lender of all future advances, indebtedness and further sums and/or performance of such further obligations as Borrower or its assignees or successors may undertake to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Lender, its successors or assigns, when such borrowing and/or obligations are evidenced by a written instrument reciting that it or they are secured by this Deed of Trust; and

1.2.5 Modifications and Amendments. Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

All persons who may have or acquire an interest in all or any part of the Collateral will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations.

1.3 Subordination to Senior Loan. The Loan and the Deed of Trust shall be in a subordinate position, subordinate to loans from Washington Federal Savings, a federal savings association ("**Senior Lender**") in the amounts of \$7,100,000 and \$4,250,000 (collectively, the "**Senior Loan**"), secured by the following deeds of trust against the Project in favor of Senior Lender (i) with respect to the \$7,100,000 portion of the Senior Loan, a Deed of Trust dated December 15, 2003, recorded in the official records of Skagit County, Washington on January 8, 2004, under recording no. 200401080046, as amended by a Modification Agreement dated December 2, 2004, recorded in the official records of Skagit County, Washington on January 6, 2005, under recording no. 200501060106, as further amended by a Modification Agreement dated March 1, 2005, recorded in the official records of Skagit County, Washington on March 21, 2005, under recording no. 200503210165; and (ii) with respect to the \$4,500,000 portion of the Senior Loan, a Deed of Trust dated March 1, 2005, recorded in the official records of Skagit County, Washington on March 21, 2005 under recording no. 200503210167 (collectively, and as amended, the "**Senior Deed of Trust**").

ARTICLE 2 SECURITY AGREEMENT

2.1 Grant of Security Interest. This Deed of Trust creates a lien on the Collateral, and constitutes an absolute assignment of the Rents, Issues and Profits and of the Leases, all in favor of Lender. To the extent that any part of the Collateral or Rents, Issues and Profits and Leases may be, or are determined to be, personal property, Borrower, as debtor, hereby grants to Lender, as secured party, a security interest in such part of the Collateral and Rents, Issues and Profits and Leases as is determined to be personal property, to secure payment and performance of the Secured Obligations. As to such personal property, this Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the state in which the Project is located (the "**Project State**").



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2.2 Perfection of Security Interest. Borrower authorizes Lender to file one or more financing statements and such other amendments, continuation statements, and other documents as Lender may from time to time require to perfect and continue the perfection of Lender's security interest in any part of the Collateral or the Rents, Issues and Profits and Leases. A copy of such financing statement has been or will be provided to Borrower upon its request. Borrower shall pay all fees and costs that Lender may incur in filing such documents in public offices and in obtaining such record searches as Lender may reasonably require. Borrower shall cooperate with Lender in obtaining control of any portion of the Collateral that consists of Deposit Accounts, Investment Property, Letter-of-credit rights, and Electronic Chattel Paper, as such terms are defined in the Uniform Commercial Code, as adopted in the Project State.

2.3 Presumption of Real Property. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing the declaration and the stated intention of the parties hereto that the Collateral and all components thereof are, to the maximum extent possible, real property or otherwise impair the rights or obligations of the parties under this Deed of Trust.

ARTICLE 3 FIXTURE FILING

This Deed of Trust constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code in effect in the Project State, as amended or recodified from time to time, covering any part of the Collateral that now is or later may become fixtures attached to the Land or Improvements.

ARTICLE 4 ASSIGNMENT OF LEASES AND RENTS

4.1 Assignment. Borrower hereby irrevocably, presently, absolutely and unconditionally assigns and transfers to Lender: (a) the Rents, Issues and Profits, whether now due, past due, or to become due, together with the right, power and authority to collect the same, (b) all Leases, together with the right, power and authority of Borrower to alter, modify or change the terms thereof or surrender, cancel or terminate the same, and (c) any and all guarantees of any obligations of any lessee under each of the Leases (a "Lessee"). The assignments in this Section are absolute assignments and irrevocable from Borrower to Lender and not merely the passing of security interests or assignments for security only.

4.2 Grant of License. Lender hereby confers upon Borrower a license (the "License") to collect and retain the Rents, Issues and Profits as they become due and payable, and to administer the Leases, so long as no uncured Event of Default, as defined in the Loan Agreement, shall exist and be continuing. If an Event of Default has occurred and is continuing, the License shall terminate without notice to or demand upon Borrower, without regard to the adequacy of Lender's security under this Deed of Trust; provided that upon Borrower's completion of a cure of all Events of Default under the Loan, the License shall be reinstated.



4.3 Collection and Application of Rents, Issues and Profits.

4.3.1 Attorney in Fact. Subject to the License granted to Borrower under Section 4.2, Lender has the right, power, and authority to collect any and all Rents, Issues and Profits and administer the Leases. Borrower hereby appoints Lender its attorney-in-fact, coupled with an interest, to, at such times as Lender may choose in its sole discretion: (a) demand, receive and enforce payment of any and all Rents, Issues and Profits; (b) give receipts, releases and satisfactions for any and all Rents, Issues and Profits; or (c) sue either in the name of Borrower and/or in the name of Lender for any and all Rents, Issues and Profits.

4.3.2 Possession of Project not Required. Lender's right to the Rents, Issues and Profits does not depend on whether or not Lender takes possession of the Project as permitted hereunder. If an Event of Default occurs while Lender is in possession of all or part of the Project and is collecting and applying Rents, Issues and Profits as permitted under this Deed of Trust, Lender, Trustee, and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted under Section 1.1 and Section 7.2.8.

4.4 Lender Not Responsible. Under no circumstances shall Lender have any duty to produce Rents, Issues and Profits from the Project. Regardless of whether or not Lender, in person or by agent, takes possession of the Project, Lender is not and shall not be: (a) responsible for performing any of the obligations of the lessor under any Lease; (b) responsible for any waste committed by Lessees or any other parties, any dangerous or defective condition of the Project, or any negligence in the management, upkeep, repair or control of the Project; or (c) liable in any manner for the Project or the use, occupancy, enjoyment or operation of all or any part of it, except for such matters as may arise from the willful misconduct and bad faith of Lender.

4.5 Leasing. Borrower shall not lease the Project or any part of it unless permitted under the Loan Agreement, and then only strictly in accordance with the Loan Agreement. If any leasing is permitted, Borrower shall not accept any deposit or prepayment under any Lease for any rental period exceeding one month without Lender's prior written consent.

ARTICLE 5 ENVIRONMENTAL AND ACCESS LAWS

5.1. Representations and Warranties. Borrower makes the following representations and warranties to Lender with respect to the environmental condition of the Project. For purposes of this Article 5, the term "**Property**" includes the Land, all Improvements, fixtures, and personal property now or in the future constructed or installed upon or under the Land, the soil and the groundwater on or under the Land, including any streams crossing or abutting the Land, the air above the Land and within any building or structures on the Land, and the aquifer underlying the Land.

5.1.1 Environmental Laws. Except for any contamination or environmental condition that may be disclosed in the Environmental Reports or that has otherwise been disclosed in writing by Borrower to Lender, Borrower has no knowledge of: (i) the presence of any Hazardous Substances on or



in the Property, (ii) any spills, releases, discharges or disposal of Hazardous Substances that have occurred or are presently occurring on or into the Property or the Affected Property, and (iii) any failure of the Property to comply fully with all applicable Environmental Laws. Borrower is unaware of any notices being given or any written threats of litigation or other proceedings having been made with respect to any failure of the Property to comply with Environmental Laws or the commencement of any action or proceeding relating to compliance with Environmental Laws. To Borrower's knowledge, Borrower's intended uses of the Property, including but not limited to the Improvements and materials to be constructed and installed on and in the Property and the work method for accomplishing such construction, comply fully with all Environmental Laws.

5.1.2 Access Laws. Except for any non-compliance that has been disclosed in writing by Borrower to Lender, Borrower has no knowledge of any failure of the Property or the Plans to comply fully with all applicable Access Laws. Borrower is unaware of any notices having been given with respect to any failure of the Property to comply with Access Laws or any suggestions or threats having been made with respect to the commencement of any action relating to compliance with Access Laws. To the best of Borrower's knowledge, Borrower's intended uses of the Property, including but not limited to the Improvements and materials to be constructed and installed on and in the Property, the work method for accomplishing such construction, and the plan for marketing the Improvements constructed on the Land comply fully with all Access Laws.

5.2. No Waivers of Other Indemnifications Relating to Environmental Condition. Except as set forth in: (a) the Loan Documents, (b) any documents evidencing the Senior Loan, (c) the purchase and sale agreement under which Borrower has acquired the Land, or (d) any separate Indemnity Agreement executed by Borrower at the request of Lender in connection with the Loan: (i) Borrower has not and will not release or waive the liability of any past or current owner, lessee, or operator of the Property, any party who performs work on the Property, or any party who may be responsible for the presence of or removal of Hazardous Substances on or from the Property or the Affected Property, and (ii) Borrower has made no prior promises of indemnification to any party relating to the existence or non-existence of Hazardous Substances on the Property.

5.3. Obligation to Comply with Environmental and Access Laws. So long as Borrower owns any interest in the Property, Borrower shall construct, keep, and maintain the Collateral in compliance with any and all laws relating to public safety and the condition of the environment, including but not limited to the Environmental Laws and the Access Laws. Borrower and Borrower's agents, contractors, subcontractors, authorized representatives, and employees shall not engage in any of the following prohibited activities:

5.3.1 cause or permit any application or use of Hazardous Substances in the construction, maintenance, or operation of the Property other than in full compliance with all Environmental Laws;

5.3.2 cause or permit any unintended release, spilling, leaking or other discharge of Hazardous Substances on the Property;



5.3.3 cause or permit any business to be conducted on the Property relating to manufacturing, storage, holding, handling, usage, placement, transporting, treatment, dumping or other processing of Hazardous Substances;

5.3.4 suffer or permit any other act upon or concerning the Property that would result in a violation of any Environmental Law or require any alterations or improvements to be made on the Property under any of the Environmental Laws; or

5.3.5 suffer or permit any other act upon or concerning the Property that would result in a violation of any Access Law or require any alterations or improvements to be made on the Property under any of the Access Laws.

Additionally, Borrower shall use diligent efforts to assure that Borrower's invitees and tenants, and such tenant's employees, agents, and invitees, do not perform any such prohibited acts.

5.4. Obligation to Cure Non-Compliance.

5.4.1 If Borrower at any time becomes aware of (i) any Hazardous Substances on or other environmental problem or liability with respect to the Property or any Affected Property, (ii) any failure of the Property to comply with any of the Environmental Laws, (iii) any failure of the Property or the marketing efforts and other operations undertaken with respect thereto to comply with any of the Access Laws, or (iv) any lien, action or notice resulting from violation of any Environmental Laws or Access Laws, Borrower shall immediately notify Lender, and shall thereafter exercise due diligence to ascertain the scope and nature of such condition. If the condition is such that state or federal law requires the giving of notice to the governmental agencies having appropriate jurisdiction or the implementation of other preventive measures, Borrower shall promptly furnish such notice or implement such preventive measures.

5.4.2 If, upon giving such notice or for any other reason, one or more governmental agencies having appropriate jurisdiction requires removal or treatment of Hazardous Substances from or on the Property or the making of alterations to the Property to conform to Access Laws, or such removal, treatment, or alteration is required by Environmental Laws or Access Laws, Borrower will: (i) take all actions that are necessary or desirable to clean up any Hazardous Substances affecting the Property, including removal, treatment, containment or any other remedial action required by governmental authorities or as otherwise required to restore the Property to a safe condition in compliance with applicable laws and regulations, including Environmental Laws, (ii) take all actions that are necessary or desirable to modify the Property and all Improvements and marketing materials so as to achieve compliance with applicable laws and regulations, including Access Laws, and/or (iii) attempt, through appropriate legal or administrative proceedings, to obtain a stay of enforcement proceedings if Borrower believes in good faith that Borrower is not required by law to cure such Hazardous Substances condition or to make alterations to comply with Access Laws.

5.4.3 Except for removal or treatment of any Hazardous Substances deposited on the Property by Lender or any receiver appointed at the request of Lender, Borrower agrees that the amelioration, treatment, containment, or removal of all Hazardous Substances that may be discovered on



the Property shall be at Borrower's sole expense, reserving unto Borrower any claims for contribution or indemnity that Borrower may have against other parties who may be held liable therefor.

5.5. Indemnification of Lender. Borrower shall indemnify and hold Lender harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and costs and expenses (including attorneys' fees and disbursements) that result in actual cost and expense to Lender prior to any transfer of the Property pursuant to foreclosure proceedings hereunder or a conveyance of the Property in lieu of foreclosure, and arise directly or indirectly from or out of, or in any way connected with:

5.5.1 the inaccuracy of the representations contained herein;

5.5.2 the discovery and/or clean up of Hazardous Substances that were existing on or in the Property at the time when Borrower first acquired ownership, or any clean-up, remediation, monitoring or other actions required as a result thereof;

5.5.3 any activities on the Property during Borrower's ownership, possession or control of the Property that directly or indirectly result in the existence of Hazardous Substances on or in the Property or any Affected Property in violation of any applicable Environmental Laws, or any clean-up, remediation, monitoring or other actions required as a result thereof;

5.5.4 any alleged or actual failure of any Improvements now or hereafter constructed on the Property to continuously comply with all Access Laws now or hereafter enacted for any reason whatsoever, or any modification or correction of any of the Improvements so as to comply fully with Access Laws.

However, this indemnification relates only to liabilities, demands, costs, and expenses incurred by Lender prior to any transfer of the Property pursuant to foreclosure proceedings hereunder and prior to a conveyance of the Property in lieu of foreclosure, and does not apply to any deposit or release of Hazardous Substances on the Property caused by Lender, its agents, representatives, or employees, or by any receiver for the Property appointed at the request of Lender.

**ARTICLE 6
RIGHTS AND DUTIES OF THE PARTIES**

6.1 Performance of Secured Obligations. Borrower shall promptly pay and perform each Secured Obligation in accordance with its terms.

6.2 Representations and Warranties. Borrower represents and warrants that:

6.2.1 Title to Land and Improvements. Borrower holds fee simple title to all of the Land and Improvements, subject only to Permitted Exceptions, and Borrower has or will have good title to all portions of the Collateral other than the Land and Improvements.



6.2.2 Title to Personal Property. Except for security agreements and financing statements in favor of the Senior Lender to secure the Senior Loan, Borrower owns any portion of the Collateral that is personal property free and clear of any security agreements, reservations of title, or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office other than in favor of Lender or Senior Lender.

6.2.3 Right to Encumber/Priority. Borrower has the full and unlimited power, right, and authority to encumber the Collateral and assign the Rents, Issues and Profits and Leases. Upon recording of this Deed of Trust and filing of a UCC Financing Statement with respect to any portion of the Collateral that is determined to be personal property, this Deed of Trust will create a foreclosable lien on the Collateral that is subject and subordinate to no other liens except for the senior deed of trust securing the Senior Loan made by Senior Lender and any other Permitted Exceptions.

6.3 Taxes and Assessments.

6.3.1 Real Property Taxes. Borrower shall pay or cause to be paid prior to delinquency, all general real and personal property taxes, special and supplemental real and personal property taxes and assessments, license fees, license taxes, commercial rental taxes, excise taxes, transfer taxes, levies, charges, penalties, or other taxes or similar impositions imposed by any public or quasi-public authority or utility company that are or may become a lien upon the Collateral or any portion thereof or interest therein, or that may cause any decrease in the value of the Collateral or any part of it. Borrower shall also pay prior to delinquency all real property taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in the Collateral created hereby; provided, however, that Borrower shall have no obligation to pay or discharge taxes that may be imposed from time to time upon Lender that are measured by and imposed upon Lender's net income. All of the foregoing taxes, assessments and other charges payable by Borrower with respect to the Collateral are collectively referred to as the "Taxes."

6.3.2 Proof of Payment. If requested by Lender, Borrower shall furnish Lender with receipts from the appropriate taxing authority or other proof satisfactory to Lender that all Taxes have been paid on or before the date upon which they become delinquent. If any of the Taxes become delinquent, Lender may require Borrower to present evidence that they have been paid in full within 10 days after written notice thereof by Lender to Borrower. If requested by Lender, Borrower shall pay for a tax reporting service covering the Project from a company and under arrangements satisfactory to Lender.

6.3.3 Reserves for Taxes. If required by Lender: (i) while an uncured Event of Default or Potential Default is in existence, or (ii) at any time after at least two Events of Default have occurred, and unless impounds for Taxes are then being paid to the Senior Lender in a manner satisfactory to Lender, Borrower shall deposit with Lender, in monthly installments, an amount equal to one-twelfth of the estimated aggregate annual Taxes. In such event, Borrower shall cause all bills, statements, or other documents relating to the Taxes to be sent or mailed directly to Lender. Upon receipt of such bills, statements, or other documents, and provided Borrower has deposited sufficient funds with Lender pursuant to this Section, Lender shall pay such amounts as may be due thereunder out of the funds so deposited with Lender. If at any time and for any reason the funds deposited with Lender are or will be insufficient to pay such amounts as may then or subsequently be due, Lender shall notify Borrower and



Borrower shall immediately deposit an amount equal to such deficiency with Lender. Notwithstanding the foregoing, nothing contained herein shall cause Lender to be deemed a trustee who is obligated to pay any amounts in excess of the amount of funds deposited with Lender pursuant to this Section. Lender may commingle said reserve with its own funds and Borrower shall be entitled to no interest thereon. All funds deposited by Borrower with Lender pursuant to this paragraph are pledged as additional security for the Secured Obligations.

6.4 Liens, Charges and Encumbrances. Borrower shall not encumber or permit the encumbrance of the Collateral (except for any deed of trust, security agreement, or financing statement securing the Senior Loan) without Lender's prior written consent, and Borrower shall immediately discharge any lien on the Collateral to which Lender has not consented in writing. Borrower shall pay or cause to be paid when due all obligations secured by or reducible to liens and encumbrances that shall now or hereafter encumber or appear to encumber the Collateral or any part thereof, all claims for work or labor performed, or materials or supplies furnished, in connection with any work upon the Project, whether the lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust, provided, however, that Borrower shall not be in default hereunder due to any such lien, charge, or encumbrance that is a Permitted Exception or so long as Borrower is in good faith contesting such liens and has complied with the terms and conditions in the Loan Agreement relating thereto. Lender hereby expressly reserves the right to advance any and all funds necessary to cure any and all such obligations, and/or claims.

6.5 Insurance, Condemnation, and Other Proceeds.

6.5.1 Payment to Lender. Subject to any assignment to Senior Lender under the Senior Loan and subject to the terms and conditions of this Section 6.5, Borrower hereby absolutely and irrevocably assigns to Lender, and authorizes the payor to pay to Lender, the following claims, causes of action, awards, payments and rights to payment, together with all interest that may accrue thereon (collectively, the "**Claims**"):

6.5.1.1 Condemnation Awards. All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation, or taking for public or private use that affects all or part of the Collateral or any interest in it;

6.5.1.2 Insurance Proceeds. All proceeds of any insurance policies payable because of damage or loss sustained to all or part of the Collateral.

6.5.1.3 Warranty Claims. All awards, claims, and causes of action arising out of any warranty affecting all or any part of the Collateral, or for damage or injury to or decrease in value of all or part of the Collateral or any interest in it; and

6.5.1.4 Other Claims. All awards, claims, and causes of action under contracts and agreements for the design, construction, marketing, operation, protection, or inspection of the Improvements and all other contract or tort claims or recoveries of Borrower with respect to the Project.



6.5.2 Notice to Lender. Borrower shall immediately notify Lender in writing if: (i) any damage occurs or any injury or loss is sustained to all or part of the Collateral, whether or not covered by insurance or warranty, or any action or proceeding relating to any such damage, injury, or loss is commenced; or (ii) any offer is made, or any action or proceeding is commenced, that relates to any actual or proposed condemnation or taking of all or part of the Collateral.

6.5.3 Pursuit of Claims. Borrower shall pursue recovery of all such Claims and defend its rights under any proceeding for condemnation of the Collateral or any part thereof and prosecute the same with due diligence to its final disposition, and shall cause any awards or settlements to be paid over to Senior Lender, if it has a prior right to such Claims, but otherwise to Lender for application under the Loan Documents. Subject to any prior rights of Senior Lender, Lender may, at Lender's option and in Lender's sole discretion, as attorney-in-fact for Borrower, make proof of loss and adjust and compromise any Claims, appear in or prosecute any action or proceeding to enforce the Claims, or participate in any action or proceeding relating to condemnation or taking of all or part of the Collateral, and may join Borrower in adjusting any loss covered by insurance. Borrower shall deliver or cause to be delivered to Lender such instruments as may be requested by Lender from time to time to permit Lender to take any such actions.

6.5.4 Application of Proceeds. Subject to the rights of Senior Lender, all proceeds of the Claims that Borrower may receive or be entitled to receive shall be paid to Lender and applied first to the payment of the reasonable costs and expenses incurred in the collection of such proceeds. As to the remaining balance of such proceeds (the "**Net Claims Proceeds**"), so long as there are no outstanding Events of Default under any of the Loan Documents and Borrower establishes, to Lender's reasonable satisfaction, that Borrower has sufficient funds (including the Net Claims Proceeds and any unfunded amounts under the Senior Loan and Loan that remain available for disbursement) to fully rebuild or repair the Collateral both within the remaining term of the Loan and without delaying the completion date of the Project by more than three months, Lender shall make disbursements of the Net Claims Proceeds for purposes of repair or restoration of the Collateral. If such conditions are not satisfied, Lender may apply such Net Claim Proceeds in its absolute discretion and without regard to the adequacy of its security: (i) to any of the Secured Obligations, notwithstanding the fact that Secured Obligations may not be due according to the terms thereof; (ii) to pay or reimburse Borrower for the costs of reconstructing the Improvements or otherwise repairing or restoring the Collateral; or (iii) to Borrower.

6.5.5 Restoration. If the Net Claims Proceeds are used to reimburse Borrower for the cost of reconstruction, restoration, or repair of the Collateral, the Collateral shall be promptly and diligently restored by Borrower to the equivalent of its condition immediately prior to the casualty or condemnation in accordance with the Plans or to such other condition as Lender may approve in writing, and disbursements of such Net Claims Proceeds shall be in accordance with disbursement procedures acceptable to Lender, including, without limitation, disbursement procedures comparable to those set forth in the Loan Agreement for disbursement of Loan funds. If, after applying the Net Claims Proceeds to the Secured Obligations, Lender reasonably determines the remaining security to be inadequate to secure the remaining Secured Obligations, Borrower shall, upon written demand from Lender, repay an amount that will reduce the remaining Secured Obligations to a balance for which adequate security is present.



6.6 Maintenance and Preservation of the Collateral. Borrower covenants: (a) to maintain and preserve the Collateral in good condition and repair and in a prudent businesslike manner; (b) to insure the Collateral as required by the Loan Agreement; (c) not to remove, demolish or structurally alter the Collateral or any part thereof, or alter, restore or add to the Collateral, or initiate or allow any change in any zoning or other land use classification that affects the Collateral or any part of it, except as permitted or required by the Loan Agreement or with Lender's express prior written consent, and except such alterations as may be required by laws, ordinances, rules, regulations, or orders of governmental authorities or by the terms hereof; (d) to comply with and not commit any violations of (i) laws, governmental orders, ordinances, regulations, standards, (ii) easements, covenants, conditions, or restrictions related to the Project, whether public or private, of every kind and character, and (iii) requirements of insurance companies and any bureau or agency that establishes standards of insurability, which laws, covenants or requirements affect the Collateral and pertain to acts committed or conditions existing thereon; (e) not to commit or permit any waste to or deterioration of the Collateral; (f) to perform all other acts that from the character or use of the Collateral may be reasonably necessary to maintain and preserve its value; (g) to perform all obligations required to be performed under the Loan Documents, and all other obligations of Borrower pertaining to the Collateral, including, but not limited to any and all Leases of which Borrower is or shall be the lessor or sublessor; and (h) to execute and, where appropriate, acknowledge and deliver such further instruments as Lender or Trustee may deem necessary or appropriate to preserve, continue, perfect and enjoy the security provided for herein.

6.7 Defense and Notice of Actions; Costs. Borrower shall, without liability, cost, or expense to Lender or Trustee, protect, preserve, and defend Borrower's fee interest in and to the Project and Borrower's interest in the Collateral, the security of this Deed of Trust, any additional or other security for the Secured Obligations, and the rights or powers of Lender or Trustee hereunder against all adverse claims. Said protection, preservation, and defense shall include, but not be limited to, protection, preservation and defense against all adverse claimants to and encumbrancers of Borrower's interest in the Collateral, whether or not such claimants or encumbrancers assert an interest paramount to that of Lender. Borrower shall give Lender and Trustee prompt notice in writing of the filing of any such action or proceeding. Borrower shall pay all costs, fees, and expenses including, without limitation, costs of evidence of title, trustees' fees, and reasonable attorneys' fees paid or incurred in any action or proceeding in which Lender and/or Trustee may appear or be made a party, whether or not pursued to final judgment, and in any exercise of the power of sale or other remedy contained herein, whether or not such sale is actually consummated or such other remedy is actually prosecuted to completion.

6.8 Right of Inspection. Lender, its agents, employees and representatives shall have the right to enter the Project at any reasonable time for the purpose of inspecting the Project and ascertaining Borrower's compliance with the terms hereof, and for such other purposes and in accordance with the terms specified in any of the other Loan Documents.

6.9 Substitute Trustee. Lender may remove Trustee and substitute a replacement Trustee at any time with or without cause by an instrument in writing executed by Lender. Lender may also appoint itself as a substitute Trustee, if permitted by applicable law, for the purpose of partially or fully reconveying or releasing this Deed of Trust. Upon the making of any such appointment, all of the estate and title of



Trustee in the Collateral shall vest in the named successor or substitute Trustee and it shall thereupon succeed to all of the rights, powers, privileges, immunities and duties conferred upon Trustee.

6.10 Other Permitted Actions.

6.10.1 Releases, Extensions, Modification, and Additional Security. From time to time, Lender may perform any of the following acts without incurring any liability or giving notice to any person: (i) release any person liable for payment of any Secured Obligation; (ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation; or (iv) alter, substitute, or release all or any portion of the Collateral.

6.10.2 Joinder in Maps, Plats, Covenants, Matters Affecting Title. From time to time when requested to do so by Borrower in writing, Lender or Trustee may perform any of the following acts without incurring any liability or giving notice to any person and without affecting the personal liability of any person for payment or performance of any of the Secured Obligations: (i) consent to the making of any plat or map of the Project or any part of it; (ii) join in granting any easement or creating any covenant or restriction affecting the Project; (iii) join in any extension, subordination, or other agreement affecting this Deed of Trust or the lien of it; or (iv) reconvey the Collateral or any part of it without any warranty.

6.11 Partial Reconveyance. Lender shall direct Trustee to partially release or reconvey this Deed of Trust as to a particular Unit or Lot only when all of the conditions required to be satisfied under the Loan Agreement for such partial release have been fully satisfied. Any decision by Lender not to require satisfaction of all such conditions as to any Unit or Lot shall apply only to the release of that particular Unit or Lot, and Lender reserves the right to require satisfaction in full of all such conditions before releasing any further Units from this Deed of Trust. Borrower agrees to pay any reconveyance fees charged by Trustee that exceed amount of the reconveyance fee that is charged by Lender.

6.12 Full Reconveyance. When all of the Secured Obligations have been paid in full and there exists no default under any Related Loan, Lender shall request Trustee in writing to fully reconvey this Deed of Trust and shall surrender such documents and take such actions as are needed for such full reconveyance. When Trustee receives Lender's written request for reconveyance and all reconveyance fees, recording fees, or other fees and expenses owing to it by Borrower hereunder, Trustee shall reconvey the Collateral, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. Neither Lender nor Trustee shall have any duty to determine the right of persons claiming to be rightful grantees of any reconveyance. The last such reconveyance shall operate as a reassignment of all future Rents, Issues and Profits and all Leases of the Collateral to the person or persons legally entitled thereto, unless such reconveyance expressly provides to the contrary.

6.13 Exculpation. Lender shall not be directly or indirectly liable to Borrower or any other person as a consequence of: (i) Lender's exercise of or failure to exercise any rights, remedies, or powers granted to it in this Deed of Trust; (ii) Lender's failure or refusal to perform or discharge any obligation or liability of Borrower under any agreement related to the Collateral or under this Deed of Trust; or (iii) any loss sustained by Borrower or any third party resulting from Lender's failure to lease or sell the Project, or from any other act or omission of Lender in managing the Project, unless the loss is caused by the willful



misconduct or gross negligence of Lender. Borrower hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Lender.

6.14 Subrogation. Lender shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Lender in accordance with this Deed of Trust or with the proceeds of the Loan.

6.15 Notice of Change. Borrower shall give Lender prior written notice of any change in: (i) the location of its place of business or its chief executive office if it has more than one place of business; (ii) the location of any of the Collateral, including the Books and Records; and (iii) Borrower's name or business structure. Unless approved by Lender in writing, all Collateral that consists of personal property (other than the Books and Records) will be located at the Project and all Books and Records will be located at Borrower's place of business, or chief executive office if Borrower has more than one place of business.

ARTICLE 7 DEFAULTS AND REMEDIES

7.1 Events of Default. An "Event of Default" will exist under this Deed of Trust whenever any of the facts, conditions, or events listed in the Loan Agreement as "Events of Default" are in existence.

7.2 Rights and Remedies. At any time after the occurrence of an Event of Default hereunder, Lender and/or Trustee shall have all of the rights and remedies described below, in addition to any other rights and remedies of Lender under the Loan Agreement, the other Loan Documents, or the Related Loan Documents. To the fullest extent permitted by law, Lender may undertake any such remedies regardless of the adequacy of the security for the Secured Obligations or whether any or all of the Secured Obligations have been accelerated, and all of such rights and remedies shall be cumulative and the exercise of any one or more of them shall not constitute an election of remedies.

7.2.1 Receiver. Without regard to the then-current value of the Collateral or the interest of Borrower therein, Lender may apply to any court having jurisdiction to appoint a receiver for the Collateral or any portion thereof, and Borrower hereby irrevocably consents to the appointment of a receiver upon such Event of Default. Any such receiver shall have the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender set forth in this Deed of Trust or any of the other Loan Documents, and shall continue as such and exercise all such powers until the date of confirmation of the sale of the Collateral, unless such receivership is sooner terminated. Employment by Lender shall not disqualify a person from serving as receiver.

7.2.2 Cure; Protection of Security. With or without notice, and without releasing Borrower from any obligation hereunder, Lender may (but shall not be obligated to) cure any breach or default of Borrower, and, if it chooses to do so in connection with any such cure, do any and all other things that it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such actions may include: appearing in or defending any action or proceeding that purports to affect the security of, or the rights or powers of Lender under, this Deed of Trust; paying, purchasing, contesting or compromising any tax, encumbrance, charge, lien or claim of lien that, in Lender's sole judgment, is or



may be senior in priority to this Deed of Trust; obtaining insurance or paying any premiums or charges for insurance required to be carried under the Loan Documents; otherwise caring for and protecting any and all of the Collateral; making and pursuing any claim against any third party and defending against any claim by any third party; or employing counsel, accountants, contractors and other appropriate persons to assist Lender.

7.2.3 Entry. Lender, in person, by agent, or by court-appointed receiver, with or without bringing any action or proceeding, may terminate Borrower's right and license to collect the Rents, Issues and Profits and to administer the Leases, and enter, take possession of, manage and operate, and lease or sell, all or any part of the Collateral, and may also do any and all other things in connection with those actions that Lender may in its sole discretion consider necessary or appropriate to protect the security of this Deed of Trust or that are otherwise permitted to be taken or conducted by Lender under the Loan Agreement. Such actions may include, without limitation: entering into, enforcing, modifying, or canceling Leases or sales agreements on such terms and conditions as Lender may consider proper; obtaining and evicting tenants; fixing or modifying rents or sales prices; entering into contracts of sale and selling any Units or Lots on the Project; and contracting for and making repairs and alterations. If Lender so requests, Borrower shall assemble any Collateral that has been removed from the Project and make all of it available to Lender at the Project site. The entering upon and taking possession of the Project, the collection of the Rents, Issues and Profits and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default hereunder or invalidate any other right or remedy that Lender may have in response to such default or pursuant to such notice and, notwithstanding the continued possession of the Project or the collection, receipt, and application of the Rents, Issues and Profits by Lender, Trustee, or Lender's receiver or agent, Trustee or Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon the occurrence of any Event of Default.

7.2.4 Complete Project. Borrower hereby authorizes Lender, and for this purpose irrevocably constitutes and appoints Lender as its attorney-in-fact, coupled with an interest, to use the Plans for further development and construction on the Land, to demand, receive, and enforce Borrower's rights under the Contracts, to make payments and give appropriate receipts, releases and satisfactions under such Contracts, and to perform any and all acts with respect to the Plans or Contracts that Lender deems necessary or desirable, all on behalf of and in the name of Borrower, or at Lender's option in Lender's own name, with the same force and effect as if performed by Borrower. Lender may also reassign its rights hereunder to another person designated by Lender, who shall have the same rights to utilize the Plans and enforce the Contracts.

7.2.5 Uniform Commercial Code Remedies. With respect to all or any part of the Collateral that constitutes personal property, Lender shall have all of, and may exercise any or all of, the rights and remedies of a secured party under the Uniform Commercial Code in effect in the Project State.

7.2.6 Judicial Action. Lender may commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Borrower hereunder, and Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. If this Deed of Trust is foreclosed by judicial action, Lender will, if permitted by applicable laws of the Project State, be entitled to a judgment



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providing that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the deficiency.

7.2.7 Realization of Security. Lender may resort to and realize upon or waive the security hereunder and any other security now or hereafter held by Lender in such order and manner as Trustee and Lender or either of them may, in their sole discretion, determine; which resort to such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

7.2.8 Power of Sale. Lender may execute a written notice of such Event of Default and of its election to invoke this power of sale to cause all or part of the Collateral to be sold to satisfy the Secured Obligations. Under this power of sale, Lender shall have the discretionary right to cause some or all of the Collateral, including any Collateral property that constitutes personal property, to be sold or otherwise disposed in any combination and in any manner permitted by applicable law, as follows:

7.2.8.1 Sales of Personal Property. For purposes of this power of sale, Lender may elect to treat as personal property any Collateral property that is intangible or that can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Lender may dispose of any personal property separately from the sale of real property, in any manner permitted by the Uniform Commercial Code in effect in the Project State, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

7.2.8.2 Trustee's Sales of Real Property or Mixed Collateral. Lender may also choose to dispose of some or all of the Collateral that consists solely of real property in any manner then permitted by applicable law. In its discretion, Lender may also or alternatively choose to dispose of some or all of the Collateral in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, if and as permitted by the Uniform Commercial Code in effect in the Project State. Borrower agrees that such a sale of personal property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together, will sometimes be referred to as a "Trustee's Sale."

7.2.8.3 Trustee's Sale Procedures. Before any Trustee's Sale, Lender or Trustee shall give and record such notice of default and election to sell as may then be required by law. When all legally mandated time periods have elapsed, and after such notice of sale as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale, and Lender may impose such terms and conditions of sale as are permitted or allowed by applicable law. Neither Trustee nor Lender shall have any obligation to make demand on Borrower before any Trustee's Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Lender's request shall, continue any Trustee's Sale by public announcement at the time and place scheduled for that sale, or may, in its discretion, give a new notice of sale. Also, Lender may from time to time discontinue or rescind any notice of default or notice of sale before any Trustee's Sale



as provided above, by executing and delivering to Trustee a written notice of such discontinuance or rescission. The exercise by Lender of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Lender to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the Secured Obligations, nor otherwise affect any provision, covenant, or condition of any Loan Document or Related Loan Documents, or any of the rights, obligations, or remedies of Trustee or Lender hereunder or thereunder.

7.2.8.4 Bidding at Trustee's Sale. At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, unless other terms and conditions of sale are prescribed by Lender in accordance with and as permitted by applicable law. Any person, including, without limitation, Borrower or Lender, may purchase at such sale, and Borrower hereby covenants to warrant and defend the title of such purchaser or purchasers. Trustee shall execute and deliver to the purchaser(s) at such sale a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness.

7.2.9 Single or Multiple Foreclosure Sales. If the Collateral consists of more than one lot, parcel or item of property, Lender may: (i) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and (ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted herein, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions, each of which may be separately noticed if so elected by Lender and permitted by applicable law; or in any other manner Lender may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**"). If it chooses to have more than one Foreclosure Sale, Lender at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and places and in such order as it may deem to be in its best interests, all as may be permitted under applicable law. No Foreclosure Sale shall terminate or affect the lien of this Deed of Trust on any part of the Collateral that has not been sold until all of the Secured Obligations have been paid in full.

7.3 Payment of Costs, Expenses, and Attorneys' Fees. All costs and expenses reasonably incurred by Trustee and Lender in enforcing the remedies available to them hereunder or otherwise protecting Lender's rights or interests (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not, expenses for evidence of title, appraisals and surveys and trustees' fees, and costs and fees relating to any bankruptcy, reorganization, or insolvency proceeding) shall constitute an additional obligation of Borrower to Lender and bear interest at the Default Rate of Interest from the date of expenditure until said sums have been paid.

7.4 Remedies Not Exclusive. Trustee and/or Lender shall be entitled to enforce the payment and performance of any Secured Obligations and to exercise any and all rights and powers under this Deed of Trust, any other Loan Document, or any Related Loan Document, notwithstanding the fact that some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Trustee and/or Lender shall be entitled to enforce all such



rights concurrently or separately, in such order and manner as they or either of them may in their absolute discretion determine. No remedy is intended to be exclusive of any other remedy, but each shall be cumulative and in addition to the others, to the fullest extent permitted by law.

7.5 Lender's Unilateral Right to Terminate Cross Default/Cross Collateral Provisions.

Notwithstanding certain provisions herein related to cross-default and cross-collateralization between the Loan and certain Related Loans, Lender shall have the sole and exclusive right to segregate the separate security interests granted under the Loan and Related Loans so that the deed of trust given for the Loan and each particular Related Loan shall act as security only for such obligations of Borrower or its Affiliates as Lender, in its sole discretion, shall determine. Accordingly, among other possibilities, Lender may unilaterally terminate such cross-default and cross-collateralization provisions so that this Deed of Trust secures only the obligations relating to the Loan but not the Related Loans, and the deeds of trust securing the Related Loans secure only the obligations under the Related Loans but not the Loan. Lender may elect to terminate such cross-default and cross-collateral provisions unilaterally, in its own discretion, and without prior notice to or consent by Borrower, its Affiliates, or any other party, by providing written notice of such election to Borrower and to any borrower under a Related Loan affected by such notice at any time prior to a foreclosure sale under the Deed of Trust or a deed of trust securing such Related Loan. Such notice shall identify by any reasonable means those particular obligations of Borrower and its Affiliates that shall remain secured by each deed of trust and provide that any other obligations of Borrower or its affiliates to Lender shall no longer be secured by such deeds of trust. Such notice shall be effective immediately to amend the Loan Documents in accordance therewith. Borrower hereby irrevocably designates and appoints Lender as its attorney in fact, such power of attorney coupled with an interest, for the limited purpose of preparing any amendments required in accordance with this Section 7.5.

ARTICLE 8 MISCELLANEOUS PROVISIONS.

8.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Lender and contain further agreements and affirmative and negative covenants by Borrower that apply to this Deed of Trust and to the Collateral.

8.2 Cooperation. Borrower shall, upon request, cooperate with Lender or Trustee to correct any defect, error or omission that may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge, and deliver such further instruments and take such further actions as may be reasonably requested by Lender or Trustee to carry out more effectively the purposes of this Deed of Trust.

8.3 Obligations of Borrower, Joint and Several. If more than one person has executed this Deed of Trust as Borrower, the obligations of all such persons hereunder shall be joint and several.

8.4 Severability. If any term of this Deed of Trust, or the application thereof to any person or circumstances, shall, to any extent, be invalid, void or unenforceable, the remainder of this Deed of Trust, or the application of such term to persons or circumstances other than those as to which it is invalid, void or unenforceable, shall not be affected thereby, and each term of this Deed of Trust shall be valid and



enforceable to the fullest extent permitted by law. If the lien of this Deed of Trust is invalid, void or unenforceable as to any part of the Secured Obligations, or if the lien is invalid, void or unenforceable as to any part of the Collateral, the unsecured or partially secured portion of such indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of such Secured Obligations, and all payments made on such Secured Obligations shall be considered to have been first paid on and applied to the full payment of that portion of such indebtedness that is not secured or fully secured by the lien of this Deed of Trust.

8.5 No Waiver or Cure. No waiver or delay or omission in the exercise or enforcement by Lender of any of its rights or remedies hereunder or under any of the other Loan Documents shall be considered a waiver of any subsequent application of, or right to enforce, such right or remedy, or of the right to enforce any other right or remedy of Lender in another instance. Furthermore, no waiver of Lender's rights or remedies in one or more instances shall establish a course of dealing or other agreement that will bind Lender or prohibit Lender from enforcing the terms of this Deed of Trust or any other Loan Document in another instance.

8.6 Additional Security. If Lender at any time holds additional security for any of the Secured Obligations, all such security shall be taken, considered, and held as cumulative, and Lender may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with the exercise of any of its rights or remedies hereunder or after a sale is made hereunder. The taking of additional security, the execution of partial releases of the security, or any extension of the time of payment of the Secured Obligations shall not diminish the force, effect, or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety, or endorser for the payment of any such indebtedness.

8.7 Accommodations to Successors. The liability of the original Borrower shall not be released or changed if Lender grants any successor in interest to Borrower any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Lender shall not be required to comply with any demand by the original Borrower that Lender refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

8.8 Amendments. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing. Any such written amendment shall either be signed by both Borrower and Lender, or may be signed by Borrower and delivered to Trustee (or any other title or escrow company) with instructions from Lender regarding recording.

8.9 Successors in Interest. Subject to the limitations on transfer contained in the Loan Documents, the terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors and assigns of the parties hereto.

8.10 Modification and Extensions. References to the Note, the Loan Agreement, the Loan Documents and the Related Loan Documents in this document shall be deemed to include all modifications, extensions, and renewals thereof.



8.11 Applicable Law. The provisions of this Deed of Trust shall be governed by and construed in accordance with the laws of the Project State, without regard to the choice of law rules of the Project State and except to the extent that federal laws preempt the laws of the Project State.


8.12 Merger. No merger shall occur as a result of Lender's acquiring any other estate in or any other lien on the Collateral unless Lender consents to a merger in writing.

8.13 Waiver of Marshaling. Borrower waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Borrower, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust, Security Agreement, and Fixture Filing as Trustor/Grantor hereunder, and as a Debtor under the Uniform Commercial Code, as of the date set forth above.

Borrower/Trustor/Grantor:

SKAGIT HIGHLANDS, LLC,
a Washington limited liability company

By 
Name James West
Is managing member



STATE OF WA
COUNTY OF King } ss.

On this day personally appeared before me James E. Toast, to me known to be the Man. member of SKAGIT HIGHLANDS, LLC, the Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 19th day of Oct, 2005.

Sherrill H. McCullough
Printed Name Sherrill H. McCullough
NOTARY PUBLIC in and for the State of WA
residing at Issaquah
My Commission Expires 6/10/06

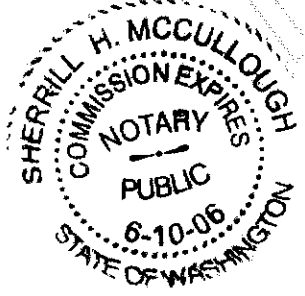


EXHIBIT "A"

DESCRIPTION OF PROPERTY

LOTS 1 TO 3, INCLUSIVE, AND 5 TO 10, INCLUSIVE, OF THAT CERTAIN AMENDED BOUNDARY LINE ADJUSTMENT SURVEY APPROVED JUNE 8, 2005 AND RECORDED JUNE 8, 2005, UNDER AUDITOR'S FILE NO. 200506080122, AND BEING A PORTION OF SECTIONS 15, 22 AND 23, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESSES AND UTILITIES OVER UNDER AND ACROSS THOSE PORTION OF LOTS 1-9, INCLUSIVE OF SAID BOUNDARY LINE ADJUSTMENT SURVEY MARKED "FUTURE ROAD RIGHT OF WAY."

EXCEPT THAT PORTION CONVEYED FOR RIGHT-OF-WAY BY INSTRUMENT UNDER AUDITOR'S FILE NO. 200506080120.

SITUATE IN THE CITY OF MOUNT VERNON, COUNTY OF SKAGIT, STATE OF WASHINGTON

