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COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

UNION BANK, N.A., as successor in interest to the FDIC as Receiver of Frontier Bank,

Respondent,

vs.

WILLIAM J. RILEY and ALTHEA V. RILEY, husband and wife, and the marital community composed thereof; WALTER V. THOMPSON and MARY L. THOMPSON, husband and wife, and the marital community composed thereof,

Appellants.

RESPONDENT UNION BANK, N.A.'S ANSWERING BRIEF

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I. INTRODUCTION

This Court should affirm the trial court's summary judgment ruling in favor of Respondent Union Bank, N.A. ("Union Bank") awarding a deficiency judgment on a defaulted commercial construction loan against commercial guarantors William Riley and Althea Riley, and Walter V. Thompson and Mary L. Thompson (collectively "Guarantors"). Guarantors are liable on their commercial guaranties notwithstanding Union Bank's nonjudicial foreclosure of the deed of trust offered by the borrower, not by Guarantors. That nonjudicial foreclosure does not prevent this action, contrary to Guarantors' assertions. This Court should reject their legal defense and affirm the trial court's judgment in Union Bank's favor.

Guarantors seek to avoid their legal obligations by misconstruing the deed of trust, misreading the Deed of Trust Act, and ignoring their own waivers. The record, including the context evidence that Guarantors fail to discuss at all, supports the trial court's judgment.

This Court should reject Guarantors' sole challenge on appeal that as a matter of law Union Bank could not seek a deficiency against them after Union Bank's nonjudicial foreclosure of the borrower's deed of trust. If this Court rejects any part of their three-part legal argument, this Court should affirm. Each part of their argument fails for these reasons: 1) the

deed of trust construed in context does *not* secure the Guarantors' obligations under their commercial guaranties, but only secures the obligations of the borrower/grantor; 2) the Deed of Trust Act does not provide the defense asserted and, instead, provides at RCW 61.24.100(3)(c) a lender's right to a deficiency judgment against commercial guarantors like these; and 3) Guarantors waived any anti-deficiency defense. This Court should affirm.

II. STATEMENT OF THE ISSUES

1. Does Guarantors' defense fail as a matter of law because the borrower's deed of trust did not secure Guarantors' obligations under their commercial guaranties but only secured the obligations of the borrower who granted the deed of trust based on the plain language, context evidence, commercial purposes of the transaction, and the borrower's limited authority under its LLC Agreement?

2. Does Guarantors' defense fail as a matter of law because the Deed of Trust Act, specifically RCW 61.24.100(3)(c), permits a deficiency action against Guarantors to recover on the commercial guaranties after the nonjudicial foreclosure even if the deed of trust secured Guarantors' obligations?

3. Does Guarantors' defense fail because these Guarantors waived the anti-deficiency defense they now assert?

III. STATEMENT OF THE CASE

This is an action to enforce personal commercial guaranties of an $8.4 million commercial construction loan. The relevant facts are undisputed.

This Court reviews the trial court's summary judgment ruling that Union Bank may recover a deficiency judgment against these guarantors of a commercial loan after nonjudicial foreclosure of the borrower's deed of trust. CP 622-25 (Order Granting Summary Judgment). The trial court ruled on cross motions for summary judgment. *Id.*

A. The commercial loan transaction and content of the deed of trust.

To acquire undeveloped real estate intended for development, Red Hawk, LLC ("Red Hawk" or "Borrower") borrowed $8.4 million from Union Bank's predecessor in interest Frontier Bank by executing a promissory note ("Note"). CP 22 (*Bembry Decl.*, ¶ 3), 29-30 (App. 5). As collateral for the Note, Borrower granted to Frontier Bank a deed of trust ("Deed of Trust") encumbering its real property. CP 50-59 (App. 6). The Note specifies that it "is secured" by the Deed of Trust. CP 30 at "COLLATERAL." The Deed of Trust properly was recorded in August 2004. CP 50-59 (App. 6).

To make the commercial loan, Frontier Bank required additional sources of repayment: personal commercial guaranties. CP 420-24 (*Kern Decl.*, ¶ 4). Guarantors executed personal commercial guaranties that absolutely and unconditionally guaranteed full satisfaction of any and all debts, liabilities and obligations of Red Hawk to Frontier Bank. CP 74-84 (*Bembry Decl.*, Ex. A) (*See* App. 4). These guaranties do not specify any

collateral or security.

Guarantors were not parties to the Deed of Trust or the Promissory Note, which were executed by Borrower Red Hawk and Frontier Bank. CP 420-24 (*Kern Decl.*, ¶ 3); CP 29-30 (Note) (App. 5). Guarantors did not own the property granted in the Deed of Trust. *Id.* No guarantor offered security for his or her guaranty. CP 420-24 (*Kern Decl.*, ¶ 4).

At the time it granted the Deed of Trust, Red Hawk's LLC Agreement **prohibited** the use of Company assets for the benefit of "any individual obligation of any Member." CP 469-470, ¶¶ 1.4 and 1.7 (*Turetsky Decl.*, Ex. A). The Agreement **limited** use of Company assets "solely for the benefit of the Company." *Id.*

Additionally, at that time Borrower passed a resolution recognizing its members' authority to grant the Deed of Trust to secure its obligations, not obligations of anyone else. CP 444-45 (*Second Bembry Decl.*, ¶ 5, Ex. 1) (App. 2). The resolution states that its members are authorized "[t]o mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber . . . any property . . . belonging to the Company . . . <u>as security for the payment of any loans or credit accommodations</u> so obtained, any <u>promissory notes</u> so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), <u>or any other or further indebtedness **of the Company**</u> to Lender at any time

owing . . . ." CP 444-45 (*Bembry Decl.*, ¶ 5, Ex. 1) (App. 2).

The Deed of Trust specifies *whose* payment and performance the Deed of Trust secures. The Deed of Trust provides that the "payment" and "performance" secured by the Deed of Trust is that of the borrower/ grantor, as follows:

> **PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, **Grantor shall pay** to Lender all amounts secured by this Deed of Trust as they become due, **and shall strictly and in a timely manner perform all Grantor's obligations** under the Note, this Deed of Trust and the Related Documents.

CP 50-59 (*Bembry Decl.*, ¶ 4, Ex. B) (App. 6). The Deed of Trust defines the "Grantor" as Red Hawk, LLC. CP 50-59 (*Bembry Decl.*, ¶ 4, Ex. B). The Deed of Trust concerns payment and performance by the "Grantor," and nobody else. This "Payment and Performance" section informs the meaning of the document and specifically the payment and performance obligations.

Mr. Riley testified under oath that the 2004 Deed of Trust executed by Red Hawk, LLC, secured the 2004 Promissory Note executed by Red Hawk, LLC, and that that 2004 Deed of Trust did not secure the obligations of any other persons. *See* CP 498-99 (*Turetsky Decl.*, Ex. B at 58:5 – 59:4).

Each of the guaranties provides as part of "GUARANTOR'S

WAIVERS" a waiver of any defense related to anti-deficiency laws or laws that would prevent the Lender from seeking a deficiency after any foreclosure, as follows,

> . . . Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including but not limited to, any rights or defenses arising by reason of (A) any "one action" or "anti-deficiency law" or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale. . . .

CP 75 (Commercial Guaranty, p. 2 at "GUARANTOR'S WAIVERS" (emphasis added)) (App. 4). There are additional provisions related to these waivers, including one entitled "GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS" and the Guarantors' acknowledgment that he or she read the provisions of the guaranty and agree to its terms. CP 75 (Commercial Guaranty, p. 2 at "GUARANTOR'S WAIVERS" (App. 4).

B. The context evidence

The contemporaneous transaction documents include the LLC Resolution, the Note, the Deed of Trust and the Guaranties.

Former Frontier Bank loan officer Ed Kern, who was the primary lending officer for Red Hawk's loan, testified that to fund the loan Frontier Bank required not only a Deed of Trust from the LLC, but

commercial guaranties from Guarantors. CP 420-22 (*Kern Decl.*, ¶¶ 1, 2, 6-7). Guarantors signed the documents as presented, with no requests for special terms or revisions. *See* CP 423 (*Kern Decl.*, ¶ 9) (Guarantors "did not ask me to add any terms in the guaranties. They never asked that the guaranties reflect that their personal obligations were secured by any deeds of trust, nor ever communicated any understanding or desire that their performance under the guaranties be secured by any deeds of trust."). None of the guarantors testified that they lacked the opportunity to review the documents.

Ed Kern testified that the personal guaranties were essential for the approval of this loan so that Frontier Bank had an additional remedy if the property did not satisfy the debt: it could look to the Guarantors. CP 421 (*Kern Decl.*, ¶ 4). The transaction was a typically structured real estate purchase loan where the borrower granted a deed of trust to secure its performance and payment obligations, and the guarantors separately guarantied those obligations. CP 422 (*Kern Decl.*, ¶ 8). Guarantors submitted no evidence that the parties intended otherwise.

C. Summary Judgment to Union Bank

After Borrower defaulted on the Note, *see* CP 24 (*Bembry Decl.*, ¶ 10), Union Bank nonjudicially foreclosed the Deed of Trust. CP 24-25 (*Bembry Decl.*, ¶¶ 13-16). Union Bank then commenced this action

against Guarantors to enforce their personal guaranties and collect the deficiency. CP 26-27 (*Bembry Decl.,* ¶¶ 17-22).

Union Bank moved for summary judgment, contending that it had the contractual and statutory right to recovery a deficiency from the Guarantors. CP 1-13 (Union Bank's Motion for Summary Judgment). Guarantors opposed the motion and cross-moved for summary judgment on the sole basis of the same legal defense raised in this appeal. CP 447-454 (Response in Opposition); CP 269-81 (Cross Motion for Summary Judgment).

The trial court granted Union Bank's motion for summary judgment, and denied Guarantors' cross-motion for summary judgment. CP 622-25 (App. 1). The trial court rejected the legal defense raised by Guarantors. It ruled that the Deed of Trust did not secure the guarantors' obligations based on the evidence of the parties' intent apparent in the documents and the structure of the transaction, stating at oral argument:

> [Guarantors] base [their argument] on the language of the deed of trust for which they're not a party and doesn't even effectuate, doesn't even try to argue that this interpretation effectuates the parties' intent.
>
> In other words, they look at the document and say well, whether it's the intent or not we want you to do that, Your Honor. And I don't think that that language supports it in the first place, and there is no argument even here that this effectuates the parties intent.
>
> And it's little wonder that that's the case, because if you

> gave it that interpretation it would subvert any reasonable structure of this transaction here. The guaranty would be very little comfort to the bank or very little support for the bank's ability to enforce its – enforce the promissory note and any deficiencies on the promissory note.
>
> ....
>
> [I]f you're securing the guaranty with the deed of trust it would be somewhat superfluous since the deed of trust securing the first loan was all the lender would need. Why would you need a deed of trust to secure the guaranty as well on the same property. That doesn't make a great deal of sense.
>
> ....
>
> I think the only reasonable and, frankly, non-absurd interpretation of the deed of trust is that the guaranty, itself, is not secured by the deed of trust. It stands on its own, and it's a commonsense result that effectuates the intent of the parties.

5/10/13 VR at 16:24-18:16. The trial court concluded that Union Bank's was the "reasonable" and "non-absurd" construction of the deed of trust in the context of the parties' transaction. *Id. See also* CP 653 (Order Denying Reconsideration). The trial court also reasoned that Guarantors' construction was not supported by the "language" in the Deed of Trust "in the first place," and "would subvert" the "structure" of the transaction. *Id.* CP 653.

In response to Guarantor's argument that RCW 24.64.100(1) prevented the deficiency action, without any acknowledgment of RCW 24.64.100(3)(c), *see* 5/10/13 VR at 8-16, the trial court rejected the argument. 5/10/13 VR at 18. *See also* CP 653 (Order Denying

Reconsideration).

As an alternative basis for rejecting Guarantors' legal defense, the trial court would have enforced Guarantors' waivers of anti-deficiency protections, reasoning that "under these circumstances" of a multi-million dollar commercial transaction, waivers by commercial parties were not against public policy. 5/10/13 VR at 19:2-23. *See also* CP 653-54 (Order Denying Reconsideration).

The trial court awarded the uncontested deficiency amount against Guarantors jointly and severally. CP 622-25 (Order); 626-628 (Judgment).

Guarantors timely appealed. CP 636-41 (Notice of Appeal).

IV. STANDARDS OF REVIEW

Although Guarantors raise an abuse of discretion standard, *see Amended Opening Brief* at 7, this appeal presents purely legal issues reviewed *de novo*. Appellate courts review summary judgment orders *de novo*. *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 908, 154 P.3d 882 (2007). Interpretation of a contract ordinarily is a question of law. *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Tanner Elec. Coop v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 574, 911 P.2d 1301 (1996). Statutory interpretation similarly is a legal issue reviewed *de novo*. *Udall*, 159 Wn.2d at 908.

CR 56(c) provides that summary judgment is appropriate where

"there is no genuine issue as to any material fact and... the moving party is entitled to a judgment as a matter of law." Appellants raise no disputed issues of fact.

Application of these standards should result in affirmance.

V. ARGUMENT

This Court should affirm the trial court's summary judgment in Union Bank's favor based on any of three legal bases. The Court first should construe the Deed of Trust to secure only Borrower's obligations based on the language, context evidence and commercial purpose of the transaction. This defeats the Guarantors' defense. Guarantors fail to address the context evidence, reconcile their proposed construction with all the contemporaneous documents, or address the express prohibition in Borrower's LLC Agreement against use of Company property to secure individual members' obligations. This uncontested evidence undermines Guarantors' incomplete analysis. This Court should reject their construction of the Deed of Trust.

Second, whether or not the Deed of Trust secures Guarantors' obligations, the Deed of Trust Act, Title 61.24 RCW, affirmatively permits this action at RCW 61.24.100(3)(c). For commercial guarantors like these, the Deed of Trust Act sets a general rule that a guarantor remains liable for a deficiency after a nonjudicial foreclosure of the

borrower's deed of trust.

Finally, in this commercial transaction affirmance is proper based on enforcement of Guarantors' waivers of any personal anti-deficiency defenses they may have had.

A. This Court should affirm the trial court's order granting Union Bank summary judgment based on a proper construction of the Deed of Trust, a proper interpretation of the Deed of Trust Act, or enforcement of Guarantors' waivers

Based on the authorities and undisputed evidence, this Court should concur with the trial court's construction of the Deed of Trust, its interpretation of the Deed of Trust Act, and the its determination in the alternative to enforce Guarantors' waivers of anti-deficiency protections.

1. The Deed of Trust, properly construed, does not secure Guarantors' obligations.

This Court properly should construe the Deed of Trust as securing only the Borrower's obligations. This construction supports affirmance without the need to construe the statute.

Guarantors frequently misstate their own argument, framing the issue as, "Is the Deed of Trust secured by the Guarantees signed by the Defendants?" *Am. Op. Br.*, 2 at Issue A. As the trial court pointed out to Guarantors' attorney at oral argument, the Deed of Trust is the security instrument; the guaranties do not "secure" the Deed of Trust. *See* 5/10/13 VR at 12:14-16. The question Guarantors frame compels a negative

answer because the Deed of Trust is not secured by anything, including the guaranties. Rather, the issue correctly framed is whether the Deed of Trust secured the guaranties, or, more precisely, whether the Deed of Trust secured Guarantors' obligations under their guaranties. It did not.

Under the objective manifestation theory of contracts applied in Washington, courts "determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties." *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Tanner Elec. Coop v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996). Courts are to "impute an intention corresponding to the reasonable meaning of the words used." *Id.* at 503-04. To implement the context rule, the court focuses on the intent of the parties demonstrated by the written agreement and the context within which the agreement was executed. *Chatterton v. Business Valuation Research, Inc.*, 90 Wn. App. 150, 155, 951 P.2d 353 (1998). Our Supreme Court in *Berg v. Hudesman* approved the tenet that "meaning can almost never be plain except in a context." *Berg v. Hudesman*, 115 Wn.2d 657, 668 P.2d 222 (1990) (disapproving plain meaning rule and adopting context rule for contract interpretation). The contract should be viewed as a whole, including (1) the subject matter and objective of the contract; (2) all circumstances surrounding its

formation; (3) the subsequent acts and conduct of the parties; (4) the reasonableness of the respective interpretations advocated by the parties; (5) statements made by the parties in the preliminary negotiations; and (6) usage of trade and course of dealings. *Tjart v. Smith Barney, Inc.*, 107 Wash. App. 885, 895 (2001), *rev. denied*, 145 Wn.2d 1027 (2002), *cert. denied*, 537 U.S. 954 (2002).

The Deed of Trust did not secure Guarantors' obligations under the guaranties based on its plain language, the context evidence and the commercial purposes of the transaction. Looking first at the plain language of the Deed of Trust, Guarantors point to its "payment" and "performance" section, coupled with the "Related Documents" provision. *See Am. Op. Br.* at 7-10. They ignore *whose* obligations the parties intended to secure. The Deed of Trust states that the obligations of "payment" and "performance" that are secured are those of the borrower LLC, i.e., "Grantor," not those of Guarantors. Guarantors do not read far enough.

Guarantors' focus on the following deed of trust section stating that the Borrower granted the Deed of Trust to secure "payment" and "performance":

> **THIS DEED OF TRUST**, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL

> PROPERTY, **IS GIVEN TO SECURE** (A) ***PAYMENT*** OF THE INDEBTEDNESS AND (B) ***PERFORMANCE*** OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST.... ***THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS***:

CP 51 (emphasis added) (App. 6). From there, Guarantors point to the defined term "Related Documents," which includes, among its generic list of items, the word "guaranties." CP 56 (App. 6). Guarantors then argue that this shows the Deed of Trust has something to do with their performance of the guaranties. This is incorrect.

The Deed of Trust is "given and accepted" to secure payment and performance only "**on the following terms**." Those "terms," which appear in the very next section of the Deed of Trust, define whose "payment" and "performance" is secured—and it is not Guarantors'. That section is entitled "PAYMENT AND PERFORMANCE" and it states as follows:

> **PAYMENT AND PERFORMANCE**. Except as otherwise provided in this Deed of Trust, **Grantor shall pay** to Lender all amounts secured by this Deed of Trust as they become due, **and shall strictly and in a timely manner perform all Grantor's obligations** under the Note, this Deed of Trust and the Related Documents.

CP 51 (emphasis added) (App. 6). The Deed of Trust defines "Grantor" as Red Hawk. CP 59 (App. 6). Thus, the Deed of Trust secures only the "payment" and "performance" of Grantor's obligations to pay and perform

its obligations on the loan and the "Related Documents," not those of "Guarantors."

That the Deed of Trust secures only Borrower's obligations, and not Guarantors', is further evidenced in the "FULL PERFORMANCE" section, which states that reconveyance shall occur when "Grantor" pays or otherwise performs, as follows:

> **FULL PERFORMANCE**. If ***Grantor pays*** all the Indebtedness when due, and ***otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance*** and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and Personal Property. . . .

CP 53 (emphasis added) (App. 6). This makes no mention of Guarantors' paying or performing. The Deed of Trust is discharged only when "Grantor"— Red Hawk —"pays" and "performs." Additionally, the warranty provision applies only until "the ***Grantor's*** Indebtedness shall be paid in full." CP 52-53 (emphasis added) (App. 6). The Deed of Trust read as a whole does not support a conclusion that it was intended to secure the obligations of Guarantors. It was not.[2]

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[2] The Court also should note that the parties did not include Guarantors' specific guaranty in the definition of "Related Documents." "Related Documents" are defined as "all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter

Based on the plain language of the Deed of Trust, this Court should conclude that it secured only Borrower's obligations under any "Related Documents," not Guarantors' separate obligations to pay and perform on the guaranties.

This conclusion also is supported, if not compelled, by Red Hawk's LLC Agreement, which prohibits transfer or encumbrance of Company property for "any individual obligation of any Member," stating:

> The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for or in payment of any individual obligation of any Member unless otherwise provided for herein.

CP 470, ¶ 1.7 (App. 3). *See also id.* at ¶ 1.4. Borrower had no authority to encumber its property by executing a Deed of Trust that secured obligations of anyone other than itself. Guarantors argue for a construction making the Borrower's conduct *ultra vires*. This Court should reject that construction, which Borrower clearly never intended.

Mr. Riley also testified under oath that the 2004 Deed of Trust executed by Red Hawk, LLC, secured the 2004 Promissory Note executed

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existing, executed in connection with the indebtedness. . . ." CP 59 (App. 6). While the list includes the word "guaranties," it does not include the word "Guaranty," which is a specifically defined term that applies exclusively to Guarantors's guaranty. *Id.* Thus, not only does the deed of trust secure only performance by borrowers, but Guarantors' specific guaranty is not expressly included in "Related Documents."

by Red Hawk, LLC, and that that 2004 Deed of Trust did not secure the obligations of any other persons. *See* CP 498-99 (*Turetsky Decl.*, Ex. B at 58:5 – 59:4).

Additionally, the contemporaneous documents strongly support Union's Bank construction. These documents must be read together and construed with reference to each other. *Kenney v. Read*, 100 Wn. App. 467, 474, 997 P.2d 455 (2000). The LLC resolution supports the conclusion that (1) Red Hawk had no express authority to offer its property to secure any obligations other than those of the Company itself, and (2) Red Hawk did not intend to secure anyone's obligations but its own. *See* CP 444-45 (App. 2).[3]

Further, the Note recites that the Borrower's obligations are secured by the Deed of Trust, stating,

> COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: a Deed of Trust dated August 12, 2004, to a trustee in favor of Lender on real property located in Pierce County, State of Washington.

CP 30 (App. 5). The Commercial Guaranties **lack** a similar provision

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[3] The resolution authorizes the LLC members "[t]**o mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber** . . . any property . . . belonging to the Company . . . **as security <u>for the payment of any loans or credit accommodations</u> so obtained, any <u>promissory notes</u> so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), <u>or any other or further indebtedness of *the Company*</u> to Lender** at any time owing. . . ."

stating that the Guarantors' obligations are secured. This contrast supports Union Bank's construction, together with the parties' expressions throughout these documents.

The subject matter and objective of the contracts and the circumstances surrounding their formation illustrate the parties' objective to provide the Bank with two sources of recovery: the deeded property and the guaranties. No utility arises by having the deed of trust also secure the guaranties. Such a structure offers no advantage to a bank, where the Borrower's full debt already is secured by the Deed of Trust. A guarantor's liability mirrors the borrower's liability. A bank, thus, could obtain every cent owed it through foreclosing on the property simply by having the property secure the Borrower's obligations.

The history of the preliminary negotiations supports Union Bank's construction. Before Frontier Bank would authorize the loan, Frontier Bank unequivocally required two things: 1) the Deed of Trust offering the real property and 2) the personal commercial guaranties. CP 420-24; (*Kern Decl.*, ¶¶ 3, 4). The Guarantors made no demand or request that the Deed of Trust also secure their personal obligations. CP 420-24 (*Kern Decl.*, ¶ 9). Absent a request for a special structure by the Guarantors, the Bank would be expected to prepare its customary documents securing only the Borrower's performance by the Deed of Trust. CP 420-24 (*Kern Decl.*,

¶ 9). No context evidence suggests the parties had a different intent.

Guarantors' construction of the Deed of Trust is simply unreasonable given the entire context of the parties' transaction. This Court must reach a commercially reasonably interpretation of the documents. *Wilson Court Ltd. P'ship v. Tony Maroni's*, 134 Wn.2d 692, 705, 952 P.2d 590 (1998) (court must recognize "the commercial context" and "a commercially reasonable construction"). The trial court rightly noted in its oral ruling that "the only reasonable and, frankly, non-absurd interpretation of the deed of trust is that the guaranty, itself, is not secured by the deed of trust." *See* 5/10/13 VR at 18:12-18:14.

The trial court correctly construed the Deed of Trust. Its decision is consistent with the undisputed evidence and the law. This Court should hold that Red Hawk's Deed of Trust did not secure Guarantors' obligations and affirm the trial court's judgment granting summary judgment in favor of Union Bank.

2. The Deed of Trust Act authorizes this action for a deficiency judgment against commercial guarantors even if the foreclosed deed of trust granted by the Borrower secures Guarantors' obligations

Even if this Court were to conclude that Guarantors' obligations under the guaranties were secured by the Borrower's Deed of Trust, Guarantors' legal argument still fails because the Deed of Trust Act affirmatively permits Union Bank to seek deficiency judgments against

them. Guarantors assert that RCW 61.24.100(1) prevents this action. *Am. Op. Br.* at 2, Issue B; at 7. They misunderstand the statute. The Act does not mean what Guarantors assert. The plain language does not bar this action.

"A court's objective in construing a statute is to determine the legislature's intent." *Id.* at 909, citing *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007). "'[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.'" *Id.* "Plain meaning is 'discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.'" *Id.* "If the statutory language remains susceptible to more than one reasonable interpretation, the statute is considered ambiguous, and the court may then employ statutory construction tools, including legislative history, for assistance in discerning legislative intent." *Id.* Here, both the plain meaning of the Deed of Trust Act and its legislative history support Union Bank's action to recover any deficiency from the Guarantors.

a. The Deed of Trust Act, RCW 64.24.100(3)(c), expressly authorizes Union Bank's deficiency action against Guarantors

The Deed of Trust Act affirmatively authorizes this action. The Act begins with a blanket prohibition on actions for a deficiency judgment

against any borrower, grantor, or guarantor except "as permitted" with respect to "commercial loans." RCW 61.24.100(1).[4] Guarantors fail to perceive this plain exception for commercial loans to the bar against deficiency actions. The Act then authorizes deficiency actions against commercial guarantors, as follows:

> This chapter does not preclude..., [s]ubject to this section [RCW 61.24.100], an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

RCW 61.24.100(3)(c). Subsection 3(c) permits a deficiency action against a guarantor of a commercial loan provided notice under RCW 61.24.042 is proper, which Guarantors did not challenge. The action must be brought within a year. RCW 61.24.100(4). The guarantor can request judicial determination of the property's "fair value." RCW 61.24.100(5).

This right to pursue a deficiency action under Subsection 3(c) against a commercial guarantor only is circumscribed if a guarantor grants ***his or her own*** deed of trust to secure his or her guaranty. In that case, RCW 61.24.100(6) provides that the lender still may seek a deficiency judgment, but that deficiency judgment is limited to waste and/or wrongful retention of rents, just as it would be against a commercial borrower or grantor. *See* RCW 61.24.100(3)(a). Because Guarantors in

[4] RCW 61.24.100 is contained at Appendix 7.

this case did not grant any deed of trust over their own property, subsection (6) does not apply.

Guarantors obliquely raise RCW 61.24.100(10). *See Am. Op. Br.* at 8. Subsection (10) reads:

> A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

RCW 61.24.100(10). On its face, this subsection has nothing to do with a lender's right to seek a "deficiency judgment" against a borrower and guarantor, a situation addressed in RCW 61.24.100(3) and (6). Where the legislature intended the Act to refer to actions for a "deficiency judgment," it used that precise term. RCW 61.24.100(3)(a)(i) ("an action for a deficiency judgment"); RCW 61.24.100(3)(c) (same); RCW 61.24.100(6) ("shall be subject to a deficiency judgment"). Subsection (10) by its plain language does not prohibit "deficiency judgments."

The plain meaning of RCW 61.24.100(6) conflicts with any attempt to use the permissive RCW 61.24.100(10) as a prohibition on Union Bank's deficiency action. By its clear terms, subsection (6) ***permits*** a limited deficiency judgment against a guarantor when the guaranty is secured by a foreclosed deed of trust. Yet, at the same time, if subsection (10) ***precludes*** deficiency actions against guarantors that are secured by a

foreclosed deed of trust, it would preclude what subsection (6) permits when a guarantor has offered the foreclosed deed of trust. This Court should reject any interpretation that places subsections (6) and (10) in direct conflict.

The Court can avoid the conflict by giving RCW 61.24.100(10) its plain and reasonable meaning. The legislature's use of the phrase "an action to collect or enforce any obligation" in subsection (10)—a phrase that appears nowhere else in RCW 61.24.100—reflects a different meaning. Its reference to "an action to collect or enforce any obligation ... not secured by the deed of trust" is directed to the situation where a borrower or guarantor has obligations to the lender separate from the commercial loan subject to foreclosure. Borrowers and guarantors can have multiple transactions or loans with the same lender. The section makes clear foreclosure of a deed of trust securing one commercial loan does not affect a lender's ability to enforce unrelated debts or obligations against the same borrower or guarantor. Subsection (10) **protects** lenders from arguments that all other debts or obligations are discharged if the lender forecloses on one deed of trust. In short, subsection (10) is permissive and clarifies that nothing in the Deed of Trust Act prevents a lender from enforcing unrelated debts.

Where subsection (10) demonstrates an intent to ***permit*** lenders to

pursue separate debts, this Court should not interpret it to ***prohibit*** lenders from bringing an action for a deficiency judgment. Courts "do not infer a prohibition absent specific language to that effect, unless the statute as a whole directs that conclusion." *Glasebrook v. Mut. of Omaha Ins. Co.*, 100 Wn. App. 538, 545, 997 P.2d 981 (2000). Use of subsection (10) as a bar in these circumstances would be contrary to the plain language of RCW 61.24.100(3)(c) and RCW 61.24.100(6). It would thwart a primary purpose of the Deed of Trust Act because, in situations like this one, lenders would have to file lawsuits on the guaranty prior to nonjudicial foreclosure or initiate judicial foreclosure actions in lieu of a nonjudicial foreclosure altogether whenever it appears that the value of the foreclosed property is insufficient to cover the debt; otherwise, the guaranty is worthless. *See Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985) (three purposes of Deed of Trust Act are to keep the nonjudicial foreclosure process efficient and inexpensive, provide an adequate opportunity for interested parties to prevent wrongful foreclosure, and promote stability of land titles).

This Court should conclude that Union Bank's deficiency action is permitted by subsection (3)(c).

b. Legislative history supports Union Bank's interpretation of the Deed of Trust Act

If the Court were to find subsection (10) subject to more than one

reasonable construction, the Act's legislative history confirms Union Bank's interpretation. Prior to 1998, the Act did not address whether a deficiency judgment could be sought from a guarantor after a deed of trust was foreclosed. *See* RCW 61.24.100 (1990) (CP 406-15). Washington courts also declined to decide the Act's effect on guarantor liability. *E.g.*, *Glenham v. Palzer*, 58 Wn. App. 294, 298 n.4, 792 P.2d 551 (1990); *Thompson v. Smith*, 58 Wn. App. 361, 367 n.4, 793 P.2d 449 (1990). This silence left an unsettling uncertainty. Nonjudicial foreclosure under the Act was recognized as an "efficient and inexpensive" remedy vital to lending. *Donovick v. Seattle–First Nat'l Bank*, 111 Wn.2d 413, 417, 757 P.2d 1378 (1988) (citation omitted). But with the right to pursue guarantors after a nonjudicial foreclosure unclear, creditors might opt for the longer, more expensive process of judicial foreclosure. Thus came a push for clarification of the Act to expressly allow lenders to seek deficiency judgments from guarantors after nonjudicial foreclosure.

That clarification became law through the 1998 amendments. A committee of the Washington State Bar Association drafted Engrossed Substitutive Senate Bill ("ESSB") 6191, enacted as Chapter 295 of the 1988 Session Laws and codified in RCW 61.24. The House Bill Report for ESSB 6191 summarized three conditions a lender had to meet in order to seek a deficiency judgment against a guarantor of a commercial loan:

> The beneficiary may seek a deficiency judgment against a guarantor of the commercial loan if certain conditions are met, including the following: (1) the action must be commenced within one year; (2) the guarantor must have been given notice of the trustee's sale that contains the guarantor's rights and defenses, and an opportunity to cure the default; and (3) the guarantor may ask the court to determine the fair value of the property, and the amount of the deficiency is the amount owed by the guarantor to the beneficiary less the greater of either the fair value of the property or the price paid at the sale.

H.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998) (CP 408). These conditions are now reflected in RCW 61.24.100(3)(c), (4) and (5). Noticeably absent from the legislative analysis is any suggestion that subsection (10) provides a further condition on bringing a deficiency action against a guarantor or, more specifically, that such actions are prohibited if the deed of trust secures both the borrower's and guarantor's obligations.[5]

If this Court were to conclude that the amended statute does not permit Union Bank's deficiency action in these circumstances, it would undo the effort and intent of the legislature, because, as noted above, it would force lenders to opt for judicial foreclosure. Indeed, the Supreme Court has refused to construe the Act in a manner that "would ignore the

[5] The Senate Final Bill Report for ESSB 6191 noted the drafters' intent "to avoid time consuming and expensive judicial foreclosure proceedings and to save time and money for both the borrower and the lender." S.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998) (CP 410).

intent of the statutory scheme and give an unjustified, unwarranted windfall to the debtor—a windfall completely without merit in logic or equity in principle." *Donovick*, 111 Wn.2d at 416. This Court similarly should reject Guarantors' arguments, which are based on a statutory interpretation that ignores the intent of the statutory scheme and would give commercial guarantors—who agreed to guaranty a borrower's debt "absolutely" and "unconditionally"—an unwarranted windfall. This Court can and should affirm on this basis as well.

Guarantors have **not** participated in the *quid pro quo* upon which the Act justifies barring a deficiency judgment. Courts have described the Deed of Trust Act as permitting the speedy remedy of a nonjudicial foreclosure to lender who gives up the right to a deficiency judgment in exchange for the borrower giving up the right to a one year post-sale redemption period, as well as the right to a judicially-imposed upset price. *Thompson v. Smith*, *supra* (referring to "quid pro quo between **borrowers** and lenders.") (emphasis added); *Donovick*, *supra*, 111 Wn.2d at 416 (same). But Guarantors are *not* borrowers. And they did not offer the property as security. They are not participants in the *quid pro quo*. These Guarantors "gave up" nothing as a counterbalance to extinguishing the Bank's right to a deficiency.

3. Guarantors expressly and unambiguously waived any anti-deficiency defenses they may have had

This Court also should affirm based on Guarantors' enforceable waivers. Even if Guarantors had an anti-deficiency defense, they voluntarily waived it. The Guarantors wrongly argue that the waivers are contrary to public policy as expressed in the Deed of Trust Act. *See Am. Op. Br.* at 12-15. To the contrary, they are enforceable.

The waivers in this case were clear and conspicuous. To induce a loan of over $8 million, each Guarantor agreed to waive anti-deficiency defenses, stating,

> ...[Guarantor] waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) any ... 'anti-deficiency' law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale ....

CP 74-75 (App. 4). The guaranties contain a separate provision, "GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS," which further demonstrates the clarity, conspicuousness and completeness of the waiver. CP 75 (App. 4). Guarantors signed an acknowledgement, which appears immediately above the signature line, that they read and agreed to all the provisions of the guaranty. CP 76 (App. 4). Guarantors do not claim that they did not have an opportunity to

read or understand the plain import of this waiver.

Common law provides that a guarantor's surety and statutory defenses "may be explicitly waived in a guaranty agreement and such waiver provisions are enforceable." 38A C.J.S., *Guaranty* § 125 (2008); *also* 38 Am.Jur.2d, *Guaranty* § 67 ("the guaranty may provide, by its terms, that the guarantor remains liable despite the release of the principal debtor"). This rule is well recognized by Washington courts. *Fruehauf Trailer Co. of Can. v. Chandler*, 67 Wn.2d 704, 409 P.2d 651 (1966) (upholding guarantor's waiver of defense of discharge); *Seattle First Nat'l Bank v. West Coast Rubber, Inc.*, 41 Wn. App. 604, 609, 705 P.2d 800 (1985) (upholding guarantor "waivers of virtually all of surety defenses").

The Deed of Trust Act did not disturb this black letter law. When the legislature intends to deny contracting parties the freedom to bargain away statutory rights, it says so expressly. *See* RCW 19.118.130 (waiver of rights under lemon law void); RCW 19.100.220(2) (same under franchise act); RCW 21.20.430(5) (securities act); RCW 50.40.010 (unemployment compensation); RCW 51.04.060 (workers-compensation). Indeed, in the analogous context of UCC Article 9, the legislature prohibited waivers of a debtor's rights upon default, but preserved the common law rule permitting waiver of guarantor defenses. RCW 62A.9A-602 & cmt. ("Washington variations of this section ... preserve the ability

of a guarantor to waive suretyship defenses"). Had the legislature intended to preclude parties from waiving guaranty defenses under the Deed of Trust Act, it would have said so. *See Save Columbia CU Comm. v. Columbia Cmty. Credit Union*, 134 Wn. App. 175, 191, 139 P.3d 386 (2006) (legislature's use of language in only one of two similar situations suggests a different legislative intent). This Court should find the legislature's refusal to do so here conclusive on this issue.

The waiver is not void as against "public policy." "An agreement that has a tendency to be against the public good, or to be injurious to the public violates public policy." *Scott v. Cingular Wireless*, 160 Wn.2d 843, 851, 161 P.3d 1000 (2007) (citation and internal quotation marks omitted). Enforcing a guarantor's express waiver of anti-deficiency defenses in the context of a commercial loan does not injure the public good or frustrate the policies underlying the Deed of Trust Act. As discussed above, the legislature did not give commercial guarantors the same anti-deficiency rights as borrowers or non-commercial guarantors. Thus, the general rule is that a lender ***can*** seek a deficiency judgment against commercial guarantors. RCW 61.24.100(3)(c). If subsection (10) creates a limited exception to that default rule, allowing commercial parties to agree to permit a deficiency action in conformity with subsection (3)(c) instead does not offend the public policies underlying the Act.

The Washington Supreme Court's decisions in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 107-08, 285 P.3d 34 (2012); and *Schroeder v. Excelsior Mgmt. Group LLC*, 177 Wn.2d 94, 297 P.3d 677 (2013), do not require a different outcome. Neither case addresses RCW 61.24.100(10), deficiency judgments, commercial loans, guaranties or the enforceability of express waivers by commercial parties like Guarantors. Nor do these opinions disturb prior cases such as *Fruehauf Trailer* or *Seattle First Nat'l Bank.* Rather, in both cases the Court held that parties cannot contractually waive "statutory requirements" to hold a non-judicial foreclosure sale. *Bain*, 175 Wn.2d at 107-08; *Schroeder*, 177 Wn.2d at 107. As the Court noted, the rule that a person can ordinarily waive "rights or privileges" does not apply to **procedural requisites** because they "are not, properly speaking, rights held by the debtor; instead, they are limits on the trustee's power to foreclose without judicial supervision." *Schroeder* at 107. Such requirements antecedent to foreclosure must be followed to protect other interested parties (like junior lienholders) and prevent future title disputes—two key purposes of the Deed of Trust Act. *See Cox v. Helenius*, 103 Wn.2d at 387. Here, the guaranties do not seek to alter the requisites of a non-judicial foreclosure sale. Commercial guarantors instead have waived a purported personal right. The Supreme Court's

concern for protecting homeowners has no applicability in a commercial transaction.

If it reaches this issue, this Court should enforce the waivers and affirm.

Guarantors only raise their anti-deficiency defense. If this Court were to reverse based on that legal defense, Guarantors would be entitled to dismissal of the action based on their cross motion for summary judgment. *See Am. Op. Br.*, 18. Any remand would be limited to that relief because Guarantors raise no other issues resolved on summary judgment including dismissal of Guarantors' CPA claim.

VI. REQUEST FOR ATTORNEY FEES AND COSTS

If Union Bank prevails on appeal, this Court should award Union Bank its fees and costs. Each commercial guaranty contains a fee provision obligating the guarantors to pay "attorneys' fees" and "legal expenses" "incurred in connection with the enforcement of this Guaranty." CP 74-84 (App. 4). An award of fees and expenses pursuant to a contractual right is absolute, not discretionary. *Singleton v. Frost*, 108 Wn.2d 723, 727, 742 P.2d 1224 (1987). The fee provision specifically includes attorney fees and expenses incurred for appeals. CP 74-84 (App. 4). Pursuant to RAP 18.1(b), this Court should award fees and costs to Union Bank if this Court affirms the trial court's order.

VII. CONCLUSION

Summary judgment in favor of Union Bank should be affirmed. Guarantors' three-part argument challenging that judgment fails as a matter of law. To induce the loan, Guarantors absolutely and unconditionally agreed—separate and apart from the Note—to repay the loan. Consistent with the LLC Agreement and the contemporaneous LLC resolution, the Borrower had no authority or intent to secure with its property the promises and obligations of the individual guarantors. The Deed of Trust repeatedly expresses that it secures the borrower/grantor's obligations. All of the context evidence supports this construction. This Court should affirm.

Subsection 3(c) of the Deed of Trust Act permits enforcement of commercial guaranties after nonjudicial foreclosure of a borrower's deed of trust. This Court should not read subsection (10) to bar that right. Such a construction would place subsection (6) and (10) in conflict. Subsection (10) is permissive and does not address "deficiency actions"; it does not indicate a legislative intent to bar a deficiency action like this against commercial guarantors who offered no property to secure their obligations. Even if subsection (10) provides an anti-deficiency defense in these circumstances, Guarantors waived it. That waiver is enforceable.

This Court should enforce the guaranties for which the parties bargained in this $8.4 million commercial transaction. The record and the law support affirmance of the trial court's order granting summary judgment in favor of Union Bank.

Respectfully submitted on this 3rd day of October, 2013.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: Averil Rothrock

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, I caused to be served *via E-mail (per the Stipulated Agreement)* the foregoing RESPONDENT UNION BANK, N.A.'S ANSWERING BRIEF on the following parties at the following addresses:

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Averil Rothrock

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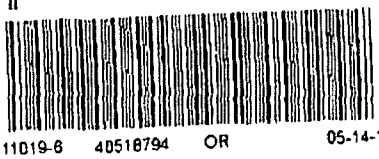
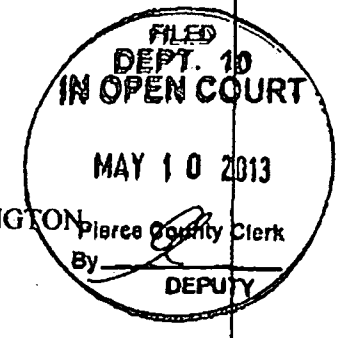
DIVISION II
2013 OCT -3 PM 1:06
STATE OF WASHINGTON
BY _____
DEPUTY

APPENDIX - 1



12-2-11019-6 40518794 OR 05-14-13

The Honorable Garold E. Johnson
Date of Hearing: Renoted to May 10, 2013
(originally noted to April 26, 2013)
Time of Hearing: 9:00 A.M.



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF PIERCE

UNION BANK, N.A., as successor in interest to the FDIC as Receiver of Frontier Bank, Plaintiff, vs. WILLIAM J. RILEY and ALTHEA V. RILEY, husband and wife, and the marital community composed thereof; WALTER V. THOMPSON and MARY L. THOMPSON, husband and wife, and the marital community composed thereof; Defendants.	No. 12-2-11019-6 [PROPOSED] ORDER GRANTING SUMMARY JUDGMENT TO UNION BANK, N.A., AND DENYING DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT

THIS MATTER has come before the Court on the parties' cross motions for summary judgment. The Court being fully advised and having specifically reviewed the following:

UNION BANK'S MOTION:

1. Union Bank's Motion for Summary Judgment and Corresponding Judgment Against Defendants and Exhibits;
2. Declaration of Andrew Bembry in Support of Union Bank's Motion for Summary Judgment Against Defendants and Exhibits;
3. Declaration of Charles L. Butler, III in Support of Union Bank's Motion for Summary Judgment and Corresponding Judgment Against Defendants;

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4. Defendants' Objection to Plaintiff's Motion for Summary Judgment;

5. Reply in Support of Union Bank's Motion for Summary Judgment;

6. Declaration of Matthew Turetsky in Support of Bank's Motion for Summary Judgment;

DEFENDANTS' MOTION:

7. Defendants' Cross Motion for Summary Judgment Dismissing Complaint;

8. Declaration of William J. Riley in Support of Defendants' Cross Motion for Summary Judgment Dismissing Complaint and Exhibits;

9. [Proposed] Order Granting Defendants' Cross Motion for Summary Judgment Dismissing Complaint;

10. Union Bank's Response to Defendants' Cross Motion for Summary Judgment and Appendix;

11. Declaration of Ed Kern in Support of Defendants' Cross Motion for Summary Judgment Dismissing Complaint and Exhibits;

12. Second Declaration of Andrew Bembry in Support of Union Bank's Response to Defendants' Cross Motion for Summary Judgment Dismissing Complaint and Exhibits

13. [Proposed] Order Denying Defendants' Cross Motion for Summary Judgment Dismissing Complaint;

14. Defendants' Reply to Plaintiff's Response to Cross Motion for Summary Judgment; and

15. Declaration of William J. Riley in Support of Defendants' Reply to Plaintiff's Response to Cross Motion for Summary Judgment and Exhibits.

The Court deems itself apprised in the premises and, therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that Defendants' Cross Motion for Summary Judgment Dismissing Complaint is DENIED. The Court rejects as a matter of law Defendants' defense. There being no contested issues of material fact, Union Bank's Motion for Summary Judgment is GRANTED. Defendants are jointly and severally liable for the

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deficiency amount of $9,611,286.58 as of April 19, 2013, additional pre-judgment interest from April 19, 2013 at the rate of $1,644.84 *per diem* in the amount of $34,541.64, together with attorney fees, expenses and post-judgment interest at the rate of 7% per annum.

In the issue of Union Bank's attorney fees and costs, the defendants did not oppose the award or the amounts sought. The Court FINDS:

1) Plaintiff's request for attorney fees and costs of $16,313.29 for work incurred through March 15, 2013, is reasonable;

2) All fees and costs were necessary and regularly incurred in the representation of Union Bank in this matter;

3) All hours were regularly billed at the timekeeper's regular hourly rates ($250-$325 for attorney time, and $125-$150 for paralegal time, with a total of 106.8 hours billed); these rates and hours are reasonable;

4) There is no further basis for adjustment of the lodestar.

Union Bank may for additional amounts incurred after March 15, 2013.

Post-judgment interest shall accrue on the total judgment of $9,662,141.51 at the rate of 7% per annum.

DONE IN OPEN COURT this 10 day of May, 2013.

The Honorable Garold E. Johnson
Washington Superior Court Judge

FILED
DEPT. 10
IN OPEN COURT
MAY 10 2013
Pierce County Clerk
By _____ DEPUTY

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Presented By:

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Approved as to form

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APPENDIX - 2

LIMITED LIABILITY COMPANY RESOLUTION TO BORROW / GRANT COLLATERAL

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$8,400,000.00	08-12-2004	02-16-2006	6719416627	17-45 / DT		272	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "***" has been omitted due to text length limitations.

Company: RED HAWK, LLC
PO BOX 73144
PUYALLUP, WA 98373

Lender: Frontier Bank
Sumner
601 Alder
PO Box 1660
Sumner, WA 98390

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE COMPANY'S EXISTENCE. The complete and correct name of the Company is RED HAWK, LLC ("Company"). The Company is a limited liability company which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Washington. The Company has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. The Company maintains an office at 850 39TH AVE SW, PUYALLUP, WA 98373. Unless the Company has designated otherwise in writing, the principal office is the office at which the Company keeps its books and records. The Company will notify Lender prior to any change in the location of the Company's state of organization or any change in the Company's name. The Company shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to the Company and the Company's business activities.

RESOLUTIONS ADOPTED. At a meeting of the members of the Company, duly called and held on 8/12/04, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Resolution were adopted.

MEMBERS. The following named persons are members of RED HAWK, LLC:

NAMES	TITLES	AUTHORIZED		ACTUAL SIGNATURES
WILLIAM J RILEY	Member	Y	X	
ALTHEA V RILEY	Member	Y	X	
WALTER V THOMPSON	Member	Y	X	
MARY L THOMPSON	Member	Y	X	

ACTIONS AUTHORIZED. Any four (4) of the authorized persons listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Company. Specifically, but without limitation, any four (4) of such authorized persons are authorized, empowered, and directed to do the following for and on behalf of the Company:

Borrow Money. To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Company and Lender, such sum or sums of money as in their judgment should be borrowed, without limitation.

Execute Notes. To execute and deliver to Lender the promissory note or notes, or other evidence of the Company's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Company's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

Grant Security. To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Company or in which the Company now or hereafter may have an interest, including without limitation all of the Company's real property and all of the Company's personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Company to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property therefore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

Execute Security Documents. To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the forms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances. Notwithstanding the foregoing, any one of the above authorized persons may execute, deliver, or record financing statements.

Negotiate Items. To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Company or in which the Company may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Company's account with Lender, or to cause such other disposition of the proceeds derived therefrom as they may deem advisable.

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as the members may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution. The following persons currently are authorized to request advances and authorize payments under the line of credit until Lender receives from the Company, at Lender's address shown above, written notice of revocation of their authority: WILLIAM J RILEY; Member of RED HAWK, LLC; ALTHEA V RILEY, Member of RED HAWK, LLC; WALTER V THOMPSON, Member of RED HAWK, LLC; and MARY L THOMPSON, Member of RED HAWK, LLC.

ASSUMED BUSINESS NAMES. The Company has filed or recorded all documents or filings required by law relating to all assumed business names used by the Company. Excluding the name of the Company, the following is a complete list of all assumed business names under which the Company does business: None.

NOTICES TO LENDER. The Company will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Company's name; (B) change in the Company's assumed business name(s); (C) change in the management or in the Members of the Company; (D) change in the authorized signer(s); (E) change in the Company's principal office address; (F) change in the Company's state of organization; (G) conversion of the Company to a new or different type of business entity; or (H) change in any other aspect of the Company that directly or indirectly relates to any agreements between the Company and Lender. No change in the Company's name or state of organization will take effect until after Lender has received notice.

CERTIFICATION CONCERNING MEMBERS AND RESOLUTIONS. The members named above are duly elected, appointed, or employed by or for the Company, as the case may be, and occupy the positions set opposite their respective names. This Resolution now stands of record on the books of the Company, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

CONTINUING VALIDITY. Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Company's agreements or commitments in effect at the time notice is given.

IN TESTIMONY WHEREOF, We have hereunto set our hand and attest that the signatures set opposite the names listed above are their genuine signatures.

We each have read all the provisions of this Resolution, and we each personally and on behalf of the Company certify that all statements and representations made in this Resolution are true and correct. This Limited Liability Company Resolution to Borrow / Grant Collateral is dated 8-12-04.

CERTIFIED TO AND ATTESTED BY:

X _____
WILLIAM J RILEY, Member of RED HAWK, LLC

X _____
ALTHEA V RILEY, Member of RED HAWK, LLC

X _____
WALTER V THOMPSON, Member of RED HAWK, LLC

X _____
MARY L THOMPSON, Member of RED HAWK, LLC

NOTE: If the members signing this Resolution are designated by the foregoing document as one of the members authorized to act on the Company's behalf, it is advisable to have this Resolution signed by at least one non-authorized member of the Company.

LASER PRO Lending, Ver. 5.34.00.003 Copy, Harland Financial Solutions, Inc. 1997, 2004. All Rights Reserved - WA C:\CFN\LPL\G15.FC TR-22188 PR-COMSLOC

APPENDIX - 3

LIMITED LIABILITY COMPANY AGREEMENT
OF
Red Hawk, a Washington Limited Liability Company

THIS AGREEMENT OF LIMITED LIABILITY COMPANY (the "Agreement") is made and entered into as of July 25, 2001, by and between Walt and Mary Thompson and Bill and Althea Riley (individually, a "Member" and collectively, the "Members"). The undersigned desire to form and operate a limited liability company under the laws of the State of Washington on the terms and conditions set forth below.

The parties hereto agree as follows:

ARTICLE 1 - FORMATION

1.1 **Name and Office**. The Members hereby form and agree to operate the Company to be known as "Red Hawk, LLC" in accordance with the Washington Limited Liability Company Act under the terms and conditions set forth herein. Except as otherwise provided herein, the rights and liabilities of the Members shall be governed by the Act (as defined in Article 2 - Definitions).

The initial principal place of business shall be the initial registered office. The initial registered office and the initial registered agent of the Company for service of process, notice or demand shall be:

Registered Agent: Bill Riley

Registered Office: 850 39th Ave. SW, Puyallup, WA. 98373

The registered agent and registered office may be changed from time to time by the Members, and the Members may from time to time elect to change the name of the Company.

1.2 **Purposes**. The primary purpose of the Company is to acquire, own, improve, mortgage, lease, sell and otherwise deal with any property acquired by or contributed to the Company, in any manner whatsoever, including the real property to be acquired in Pierce County, Washington. In addition, the Company may engage in any other business and shall have such other purposes as may be necessary, incidental or convenient to carry on the Company's primary purpose, or as may be decided upon by a Majority.

1.3 **Term**. The term of the Company shall commence on the filing of the Certificate of Formation with the Office of the Secretary of the State of Washington and

shall continue for thirty (30) years, unless sooner dissolved, wound up and terminated in accordance with the provisions of this Agreement and the Act.

1.4 **Company Assets**. The Company shall hold all Company Property in the name of the Company and not in the name or names of any Member or Members. The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for or in payment of any individual obligation of any Member unless otherwise provided for herein.

1.5 **Legal Effect**. Except as otherwise provided herein, the rights and liabilities of the Members shall be governed by the Act. A failure to observe any formalities or requirements of this Agreement, the certificate of formation for the Company or the Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

1.6 **Partnership Intended for Tax Purposes Only**. The Members are forming the Company under the Act and expressly do not intend for the Company to be a partnership under either the Washington Uniform Partnership Act or the Washington Uniform Revised Limited Partnership Act or to be a corporation under the Washington Business Corporation Act. The Members do not intend to be partners one to another or partners as to any third party. The Members hereto agree and acknowledge that the Company is to be treated as a partnership only for federal income tax purposes.

1.7 **Payments of Individual Obligations**. The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for or in payment of any individual obligation of any Member unless otherwise provided for herein.

1.8 **Powers**. Subject to the provisions of this Agreement, the Company shall have the following powers:

a) To conduct and operate the business of the Company and to execute documents and instruments relating to the Company business.

b) To procure an acquisition and development loan, upon such terms as a Majority shall agree. In connection with Company borrowing, the Company shall have the power to execute notes, mortgages, deeds of trust, leases, management agreements, contracts and other documents as a third-party lender shall reasonably require.

c) To procure and maintain insurance covering the various risks to which the Company or its operations may be subject.

d) To open bank accounts in the name of the Company, designate the authorized signatures therefore and make deposits and withdrawals from Company accounts on the signatures of one or more designated individuals.

e) To pay expenses incurred in performing the business and purposes of the Company.

f) To do all things necessary, incidental or convenient to the exercise of the foregoing powers and to the accomplishment of the foregoing purposes.

ARTICLE 2 - DEFINITIONS

The following terms used in the Agreement shall have the meanings specified below:

"Act" means the Washington Limited Liability Company Act, Chapter 25.15 of the Revised Code of Washington ("RCW"), as amended from time to time.

"Adjusted Contribution Amount" means with respect to each Member the Capital Contributions made by such Member to the Company and as reduced from time to time by distributions pursuant to Section 5(a).

"Assignee" means a person or entity that has acquired an Interest in the Company as allowed by this Agreement and has not been admitted to the Company as a Member. Except as otherwise provided in this Agreement, an Assignee shall have all duties and obligations of a Member with respect to an Interest acquired, but the sole right and/or entitlement of an Assignee shall be to receive distributions with respect to the Interest as if the Interest had not been assigned. An Assignee shall not be entitled to vote or otherwise participate in any decision with respect to the Company.

"Capital Account" means the account maintained for each Member in accordance with Section 4. In the case of a transfer or assignment of an Interest allowed under this Agreement, the person or entity acquiring an Interest, i.e., the Assignee or Member as the case may be, shall succeed to the Capital Account of the transferor or, in the case of a partial transfer, a proportionate share thereof.

"Capital Contribution" means the total amount of money and the fair market value of all property contributed to the Company by each Member pursuant to the terms of the Agreement. Capital Contribution shall also include any amounts paid directly by a Member to any creditor of the Company in respect of any guarantee or similar obligation undertaken by such Member in connection with the Company's operations. Any reference to the capital contribution of a Member shall include the capital contribution made by a predecessor holder of the interest of such Member.

"Cash Available for Distribution" means in any fiscal period, (i) all cash (and items immediately convertible to cash without substantial discount) received by the Company as revenue from operation; reduced by (ii) all cash expenses incurred by the Company in connection with the operation of its business, including, but not limited to, fees and other expenses payable by the Company to a Member or to any other person or entity, for developing and managing the property in interest payable on indebtedness of the Company, if any: and reduced further, (iii) required payments of principal and interest on any Company indebtedness amounts set aside by Members as reserves or contingency funds, and the cost of any capital improvements to the property made by the Company.

"Certificate" means the separate Certificate of Formation which is required, under RCW 25.15 to be executed and filed in the Office of the Secretary of State of the State of Washington to form the Company as a limited liability company under the laws of the State of Washington.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time.

"Company" means "Red Hawk LLC" created and governed by this Agreement.

"Company Property" or **"Property"** means all the real and personal (tangible and intangible) property owned by the Company.

"Deemed Capital Account" means a Member's Capital Account, as calculated from time to time, adjusted by (a) adding thereto the sum of (1) the amount of such Member's Mandatory Obligation, if any, and (2) each Member's share of Minimum Gain (determined after any decreases therein for such year) and (b) subtracting therefrom (1) allocations of losses and deductions that are reasonably expected to be made as of the end of the taxable year to the Members pursuant to Code Section 704(e)(2), Code Section 706(d) and Treasury Regulation Section 1.751-1(b)(2)(ii) and (2) distributions which at the end of the taxable year are reasonably expected to be made to the Member to the extent that said distributions exceed offsetting increases to the Member's Capital Account (including allocations of the Qualified Income Offset pursuant to Section 6.4 but excluding allocations of Minimum Gain Chargeback pursuant to Section 6.3) that are reasonably expected to occur during (or prior to) the taxable years in which such distributions are reasonably expected to be made.

"Deficit Capital Account" means with respect to any Unit Holder, the deficit balance, if any, in such Unit Holder's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amount that such Unit Holder is obligated to restore to the Company under Regulation Section 1.704-1(b)(2)(ii)(c), as

well as any addition thereto pursuant to the next to last sentences of Regulation Sections 1.704-2(g)(1) and (i)(5); and

(ii) Debit to such Capital Account the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of deficit capital account is intended to comply with the provisions of Regulation Sections 1.704-1(b)(2)(ii)(d) and 1.704-2, and will be interpreted consistently with those provisions.

"Economic Interest" means a Unit Holder's share of Net Profits, Net Losses, and other tax items of the Company and distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members.

"Economic Interest Owner" means the owner of an Economic Interest who is not a Member.

"Entity" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any other organization that is not a natural person.

"Majority" when referring to Members means 51% of the percentage interest owned by the Members of the Company.

"Mandatory Obligation" means the amount of a Member's remaining contribution obligation (including the amount of any Capital Account deficit such Member is obligated to restore upon liquidation), provided that such contribution must be made in all events within ninety (90) days of liquidation of the Member's interest as determined under Treasury Regulation Section 1.704-1(b)(2)(ii)(g).

"Member(s)" means those persons who own an Interest in the Company and execute this Agreement or a counterpart of this Agreement, and those persons who are hereafter admitted as Members as provided in Section 9.3.

"Membership Interest" means all of the Member's share in the Net Profits, Net Losses, and other tax items of the Company and distributions of the Company's assets pursuant to this Agreement and the Act and all of a Member's rights to participate in the management or affairs of the Company, including the right to vote on, consent to or otherwise participate in any decision of the Members.

"Minimum Gain" means the amount determined by computing, with respect to each nonrecourse liability of the Company, the amount of gain, if any, that would be realized by the Company if it disposed of the Company Property subject to such

nonrecourse liability in full satisfaction thereof in a taxable transaction, and then by aggregating the amounts so determined. Such gain shall be determined in accordance with Treasury Regulation Section 1.704-2(d). Each Member's share of Minimum Gain at the end of any taxable year of the Company shall be determined in accordance with Treasury Regulation Section 1.704-2(g)(1). Notwithstanding the foregoing, in the event the Company incurs "partner nonrecourse debt," appropriate adjustments shall be made to conform to the requirements of the Treasury Regulations governing partner nonrecourse debt.

"Net Income" and **"Net Loss"** means taxable income or loss (including items requiring separate computation under Section 702 of the Code) of the Company as determined by using the method of accounting chosen by the Members and used by the Company for federal income tax purposes.

"Notice" means a writing, containing the information required by this Agreement to be communicated to any Person, and given in accordance with this Agreement.

"Optional Loan" means any loan made by a Member to the Company pursuant to the terms of this Agreement.

"Percentage Interest" means, for any Member, the number of units owned by the Member divided by the aggregate number of units owned by all Members.

"Prime Rate" means the prime lending rate announced from time to time by Seattle First National Bank, or its successor, or if that rate is unavailable, the lending rate of any other bank located in Washington selected by the Members.

"Project Financing" or **"Property Financing"** means any Company indebtedness secured by property.

"Property or Project" means the real property to be acquired by the Company commonly referred to as the "40 acres located at 7724 160th street east" situated in Pierce County, Washington.

"Regulations" includes proposed, temporary and final Treasury regulations promulgated under the Code and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

"Reserves" means, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Members for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

"Revenue From Operations" means revenues received by the Company from the sale or rental of property or the provision of services in the ordinary course of the Company's business. The term does not include sale or refinancing proceeds, capital contributions, loan proceeds, repayments of loan previously made by the Company, amounts received as security deposits, or any other amounts received other than from the sale of rental of property or the provision of services in the ordinary course of the Company's business.

"Sale or Refinancing Proceeds" means (i) the gross proceeds resulting from a capital transaction, reduced by (ii) the expenses of the Company incident to the capital transaction, and reduced further by (iii) in the case of a refinancing or terminating capital transaction, the amount of any existing mortgage indebtedness, including principal, prepayment fees, if any, and accrued interest.

"Terminating Capital Transaction" means a "Capital Transaction" which is not an "interim capital transaction."

"Unit" means an interest in the Company, which entitles the holder to that percentage of each item of the Company's gain, income, loss, deduction, credit, or other tax items which is equal to 1 divided by the total number of units owned by all Members considered in the aggregate.

ARTICLE 3 - CAPITAL AND OWNERSHIP

3.1 **Percentage Interests.** In connection with the formation of the Company, the Members shall have the following Percentage Interests and ownership in the Company:

Member	Percentage Interest	Units Owned
Bill and Althea Riley	75	75
Walt and Mary Thompson	25	25

3.2 **Initial Capital Contributions of Members.** The initial capital contributions by the Members will be determined by the unanimous consent of all the Members who shall make such initial capital contribution within the time set forth for such initial capital contribution and that such initial capital contribution will be based on each Member's percentage interest in the Company. Members shall receive 8% interest on their capital contributions.

3.3 **Capital Contributions After Initial Capital Contribution.** If the Company requires funds from time to time in excess of the Initial Capital Contributions then the Members by percentage interest shall contribute such amounts in cash to the Company when required by a Majority. In addition, if the Members agree that the

APPENDIX - 4

COMMERCIAL GUARANTY

Principal	Loan Date	Maturity	Loan No	Call/Coll	Account	Officer	Initials
				01		272	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: RED HAWK LLC
PO BOX 73144
PUYALLUP, WA 98373

Lender: Frontier Bank
Sumner
801 Alder
PO Box 1650
Sumner, WA 98390

Guarantor: ALTHEA V RILEY
PO BOX 73144
PUYALLUP, WA 98373

CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are continuing.

INDEBTEDNESS. The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees, arising from any and all debts, liabilities and obligations of every nature or form, now existing or hereafter arising or acquired, that Borrower individually or collectively or interchangeably with others, owes or will owe Lender. "Indebtedness" includes, without limitation, loans, advances, debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, and any present or future judgments against Borrower, future advances, loans or transactions that renew, extend, modify, refinance, consolidate or substitute these debts, liabilities and obligations whether: voluntarily or involuntarily incurred; due or to become due by their terms or acceleration; absolute or contingent; liquidated or unliquidated; determined or undetermined; direct or indirect; primary or secondary in nature or arising from a guaranty or surety; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; originated by Lender or another or others; barred or unenforceable against Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated then reduced or extinguished and then afterwards increased or reinstated.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other unterminated guaranties.

CONTINUING GUARANTY. THIS IS A "CONTINUING GUARANTY" UNDER WHICH GUARANTOR AGREES TO GUARANTEE THE FULL AND PUNCTUAL PAYMENT, PERFORMANCE AND SATISFACTION OF THE INDEBTEDNESS OF BORROWER TO LENDER, NOW EXISTING OR HEREAFTER ARISING OR ACQUIRED, ON AN OPEN AND CONTINUING BASIS. ACCORDINGLY, ANY PAYMENTS MADE ON THE INDEBTEDNESS WILL NOT DISCHARGE OR DIMINISH GUARANTOR'S OBLIGATIONS AND LIABILITY UNDER THIS GUARANTY FOR ANY REMAINING AND SUCCEEDING INDEBTEDNESS EVEN WHEN ALL OR PART OF THE OUTSTANDING INDEBTEDNESS MAY BE A ZERO BALANCE FROM TIME TO TIME.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the Indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to new Indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new Indebtedness" does not include the Indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. For this purpose and without limitation, "new Indebtedness" does not include all or part of the Indebtedness that is: incurred by Borrower prior to revocation; incurred under a commitment that became binding before revocation; any renewals, extensions, substitutions, and modifications of the Indebtedness. This Guaranty shall bind Guarantor's estate as to the Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guarantor or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated that fluctuations may occur in the aggregate amount of the Indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of the Indebtedness, even to zero dollars ($0.00), shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the Indebtedness remains unpaid and even though the Indebtedness may from time to time be zero dollars ($0.00).

OBLIGATIONS OF MARRIED PERSONS. Any married person who signs this Guaranty hereby expressly agrees that recourse under this Guaranty may be had against both his or her separate property and community property.

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any

nonpayment of the indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to pursue any other remedy within Lender's power; or (F) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (D) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions.

Choice of Venue. If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of Pierce County, State of Washington.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means RED HAWK LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation ALTHEA V RILEY, and in each case, any signer's successors and assigns.

Guaranty. The word "Guaranty" means this guaranty from Guarantor to Lender.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means Frontier Bank, its successors and assigns.

Note. The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for promissory notes or credit agreements.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED FEBRUARY 20, 2009.

GUARANTOR:

x _____
ALTHEA V RILEY

LASER PRO Lending, Ver. 5.43.00.004 Copr. Harland Financial Solutions, Inc. 1997, 2008. All Rights Reserved. - WA C:\CFNLPL\L20.FC TR-57751 PR COMPLOC

APPENDIX - 5

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$8,400,000.00	08-12-2004	02-15-2006	16627	17-45 / DT		272	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "* * *" has been omitted due to text length limitations.

Borrower: RED HAWK, LLC
PO BOX 73144
PUYALLUP, WA 98373

Lender: Frontier Bank
Sumner
801 Alder
PO Box 1650
Sumner, WA 98390

Principal Amount: $8,400,000.00 **Initial Rate: 6.000%** **Date of Note: August 12, 2004**

PROMISE TO PAY. RED HAWK, LLC ("Borrower") promises to pay to Frontier Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Eight Million Four Hundred Thousand & 00/100 Dollars ($8,400,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on February 15, 2006. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning September 15, 2004, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year (366 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is the Frontier Bank Base Rate (the "Index"). The index is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion. If the index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current index rate upon Borrower's request. The interest rate change will not occur more often than each day as base rate changes. Borrower understands that Lender may make loans based on other rates as well. The index currently is 4.500% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate of 1.500 percentage points over the index, resulting in an initial rate of 6.000% per annum. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

PREPAYMENT; MINIMUM INTEREST CHARGE. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of $5.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Frontier Bank, Sumner, 801 Alder Sumner, WA 98390.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or $10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note to 6.500 percentage points over the index. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

GOVERNING LAW. This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Washington. This Note has been accepted by Lender in the State of Washington.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Pierce County, State of Washington.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of $20.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: a Deed of Trust dated August 12, 2004, to a trustee in favor of Lender on real property located in PIERCE County, State of Washington.

LINE OF CREDIT. This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. Advances under this Note may be requested either orally or in writing by Borrower or as provided in this paragraph. Lender may, but need not, require that all oral requests be confirmed in writing. All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. The following persons currently are authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of their authority: **WILLIAM J RILEY, Member of RED HAWK, LLC; ALTHEA V RILEY, Member of RED HAWK, LLC; WALTER V THOMPSON, Member of RED HAWK, LLC; and MARY L THOMPSON, Member of RED HAWK, LLC.** Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; or (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Frontier Bank 332 SW Everett Mall Way Everett, WA 98204

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

RED HAWK, LLC

By: _____
WILLIAM J RILEY, Member of RED HAWK, LLC

By: _____
ALTHEA V RILEY, Member of RED HAWK, LLC

By: _____
WALTER V THOMPSON, Member of RED HAWK, LLC

By: _____
MARY L THOMPSON, Member of RED HAWK, LLC

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APPENDIX - 6

F.A.T.
AUG 16 2004
404614

RETURN ADDRESS:
Frontier Bank
Sumner
801 Alder
PO Box 1650
Sumner, WA 98390

200408160246 ~~9 PGS~~ 10pgs
08-16-2004 11:18am $28.00
PIERCE COUNTY, WASHINGTON

DEED OF TRUST

DATE: August 12, 2004

Reference # (if applicable): SUMN-XX6627/ORDER NO. 4261-359800 Additional on page ___
Grantor(s):
1. RED HAWK, LLC

Grantee(s)
1. Frontier Bank
2. First American Title Insurance Company, Trustee

Legal Description: SECTION 29, TOWNSHIP 19 NORTH, RANGE 4 EAST, NORTHWEST QUARTER, NORTHEAST QUARTER Additional on page 2

Assessor's Tax Parcel ID#: 0419291023, 0419291024, 0419291025, 0419291026 & 0419292004

THIS DEED OF TRUST is dated August 12, 2004, among RED HAWK, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, whose address is 850 39TH AVE SW, PUYALLUP, WA 98373 ("Grantor"); Frontier Bank, whose mailing address is Sumner, 801 Alder, PO Box 1650, Sumner, WA 98390 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and First American Title Insurance Company, whose mailing address is 3866 South 74th St., Tacoma, WA 98409-9904 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys to Trustee in trust with power of sale, right of entry and possession and for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in PIERCE County, State of Washington:

LOTS 1, 2, 3, AND 4 AS SHOWN ON THAT CERTAIN SURVEY FILED NOVEMBER 4, 1997 IN BOOK 21 OF SURVEYS AT PAGE 7, UNDER RECORDING NO. 2007 BEING A PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M., IN ~~SNOHOMISH~~ COUNTY, WASHINGTON (FULL LEGAL SEE EXHIBIT "A") Pierce

The Real Property or its address is commonly known as PARCEL #6671A, 6671B, 6671C, 6671D, PUYALLUP, WA 98375. The Real Property tax identification number is 0419291023, 0419291024, 0419291025, 0419291026

Grantor hereby assigns as security to Lender, all of Grantor's right, title, and interest in and to all leases, Rents, and profits of the Property. This assignment is recorded in accordance with RCW 65.08.070; the lien created by this assignment is intended to be specific, perfected and choate upon the recording of this Deed of Trust. Lender grants to Grantor a license to collect the Rents and profits, which license may be revoked at Lender's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF GRANTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN GRANTOR AND LENDER OF EVEN DATE HEREWITH. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property (this privilege is a license from Lender to Grantor automatically revoked upon default). The following provisions relate to the use of the Property or to other limitations on the Property. The Real Property is not used principally for agricultural purposes.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply, and shall promptly cause compliance by all agents, tenants or other persons or entities of every nature whatsoever who rent, lease or otherwise use or occupy the Property in any manner, with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, (A) declare immediately due and payable all sums secured by this Deed of Trust or (B) increase the interest rate provided for in the Note or other document evidencing the indebtedness and impose such other conditions as Lender deems appropriate, upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Washington law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid without interest to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the

proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice all at Grantor's expense, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee shall be paid by Grantor, if permitted by applicable law. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto", and the recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness of any such matters or facts.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to exercise its power of sale and to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

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

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a

reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee (pursuant to Lender's instructions) are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless required by applicable law, or unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of PIERCE County, State of Washington. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page or the Auditor's File Number where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by, construed and enforced in accordance with federal law and the laws of the State of Washington. This Deed of Trust has been accepted by Lender in the State of Washington.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Pierce County, State of Washington.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Washington as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Frontier Bank, and its successors and assigns.

Borrower. The word "Borrower" means RED HAWK, LLC and includes all co-signers and co-makers signing the Note.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means RED HAWK, LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Frontier Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated August 12, 2004, **in the original principal amount of $8,400,000.00** from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all issues and profits thereon and proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness; provided, that the environmental indemnity agreements are not "Related Documents" and are not secured by this Deed of Trust.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means First American Title Insurance Company, whose mailing address is 3866 South 74th St., Tacoma, WA 98409-9904 and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

RED HAWK, LLC

By: _____
WILLIAM J RILEY, Member of RED HAWK, LLC

By: _____
ALTHEA V RILEY, Member of RED HAWK, LLC

By: _____
WALTER V THOMPSON, Member of RED HAWK, LLC

By: _____
MARY L THOMPSON, Member of RED HAWK, LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF WA)
) SS
COUNTY OF Pierce)

On this 14th day of August, 2004, before me, the undersigned Notary Public, personally appeared WILLIAM J RILEY, Member of RED HAWK, LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a member of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and that he executed the Deed of Trust on behalf of the limited liability company.

By Lori D. Morrison Residing at Puyallup
Notary Public in and for the State of WA My commission expires 1-21-07

NOTARY PUBLIC STATE OF WASHINGTON LORI D. MORRISON COMMISSION EXPIRES 01-21-07

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF WA)
) SS
COUNTY OF Pierce)

On this 14th day of August, 2004, before me, the undersigned Notary Public, personally appeared ALTHEA V RILEY, Member of RED HAWK, LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a member of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and that she executed the Deed of Trust on behalf of the limited liability company.

By Lori D. Morrison Residing at Puyallup
Notary Public in and for the State of WA My commission expires 1-21-07

NOTARY PUBLIC STATE OF WASHINGTON LORI D. MORRISON COMMISSION EXPIRES 01-21-07

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF WA)
) SS
COUNTY OF Pierce)

On this 14th day of August, 20 04, before me, the undersigned Notary Public, personally appeared WALTER V THOMPSON, Member of RED HAWK, LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By Lori D. Morrison Residing at Puyallup

Notary Public in and for the State of WA My commission expires 1-21-07

LORI D. MORRISON NOTARY PUBLIC COMMISSION EXPIRES 01-21-07 STATE OF WASHINGTON

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF WA)
) SS
COUNTY OF Pierce)

On this 14th day of August, 20 04, before me, the undersigned Notary Public, personally appeared MARY L THOMPSON, Member of RED HAWK, LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By Lori D. Morrison Residing at Puyallup

Notary Public in and for the State of WA My commission expires 1-21-07

LORI D. MORRISON NOTARY PUBLIC COMMISSION EXPIRES 01-21-07 STATE OF WASHINGTON

REQUEST FOR FULL RECONVEYANCE

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. You are hereby requested, upon payment of all sums owing to you, to reconvey without warranty, to the persons entitled thereto, the right, title and interest now held by you under the Deed of Trust.

Date: _____ Beneficiary: _____

By: _____

Its: _____

LASER PRO Lending, Ver. 5.24.00.003 Copr. Harland Financial Solutions, Inc. 1997, 2004. All Rights Reserved. - WA C:\CFI\LPL\G01FC TR-22188 PR-COMLRLOC

EXHIBIT A

LEGAL DESCRIPTION:

The East half of the Northeast Quarter of the Northwest Quarter of Section 29, Township 19 North, Range 4 East, W.M., in Pierce County, Washington; Except the North 30 feet for 160th Street East.

Lots 1, 2, 3 and 4 as shown on that certain survey filed November 4, 1977 in Book 21 of Surveys at Page 7, under Recording No. 2007 being a portion of the West half of the Northwest quarter of the Northeast quarter of Section 29, Township 19 North, Range 4 East, W.M., in ~~Snohomish~~ Pierce County, Washington.

EXHIBIT- 7

Rev. Code Wash. (ARCW) § 61.24.100

TITLE 61. MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

CHAPTER 61.24. DEEDS OF TRUST

§ 61.24.100. Deficiency judgments -- Foreclosure -- Trustee's sale -- Application of chapter

(1) Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2) (a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after June 11, 1998:

(a) (i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other

similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater, plus interest on the amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to June 11, 1998, shall be determined in accordance with the laws existing prior to June 11, 1998.

HISTORY: 1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.