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No. 69791-9-I

DIVISION 1, COURT OF APPEALS
OF THE STATE OF WASHINGTON

WASHINGTON FEDERAL, a federally chartered savings association,

Plaintiff-Appellant,

v.

LANCE HARVEY, individually and the marital community comprised of LANCE HARVEY and "JANE DOE" HARVEY, husband and wife,

Defendants-Respondents.

ON APPEAL FROM SNOHOMISH COUNTY SUPERIOR COURT
(Hon. Eric Z. Lucas)

BRIEF OF RESPONDENTS

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I. INTRODUCTION

In this appeal, the Court is asked to decide whether a guarantor of a commercial loan has any further obligation to the lender, under the loan documents and the anti-deficiency provisions of the Washington Deed of Trust Act, RCW 61.24.100, after the lender non-judicially forecloses a deed of trust securing the guarantor's obligations.

The loan documents at issue in this case were drafted in their entirety by the lender, Horizon Bank. In preparing the loan documents, Horizon Bank chose to have its Deed of Trust secure not only the obligations of the borrower Kaydee Gardens 9, LLC ("Kaydee Gardens") under the Promissory Note for the loan, but also the obligations of the guarantors of the loan, including Lance Harvey and his wife, the defendants below and the respondents in this appeal.

Horizon Bank was shut down by state regulators in January 2010, and the bank's assets (including the Kaydee Gardens Promissory Note, Deed of Trust and other loan documents) were taken over by the FDIC as receiver and sold to appellant Washington Federal under a loss-sharing agreement. In May 2011, a dispute arose between Kaydee Gardens and Washington Federal over the amount due on the loan, and Kaydee Gardens stopped making payments. Rather than choosing to sue Kaydee Gardens for a money judgment on the Promissory Note obligation, and/or

suing the Harveys on their Commercial Guaranty following the default, and rather than choosing to foreclose its Deed of Trust judicially, Washington Federal elected the expedient remedy of foreclosing the Kaydee Gardens Deed of Trust non-judicially. The bank purchased the Kaydee Gardens property through a credit bid at the trustee's sale held on November 14, 2011. Washington Federal then brought this action, seeking to recover a deficiency judgment against the Harveys.

On cross-motions for summary judgment below, the trial court confirmed that the Deed of Trust secured the Harveys' obligations under their Guaranty, and interpreted RCW 61.24.100 to bar any further claims against the Harveys on those secured guaranty obligations once the non-judicial foreclosure sale had been completed. The trial court also found that any purported waivers of the anti-deficiency protections of RCW 61.24.100 were void as contrary to public policy and the language of the statute. The trial court awarded prevailing party attorney's fees to the Harveys, with the amount of that award still awaiting determination below. Those determinations were correct and should be affirmed by this Court.

II. COUNTER-STATEMENT OF ISSUES

Three central issues are presented to the Court in this appeal:

A. By its terms, did the non-judicially foreclosed deed of trust

prepared by Horizon Bank secure the guaranty obligations of the Harveys, in addition to the obligations of the borrower/grantor Kaydee Gardens 9, LLC? ***YES***

B. After electing to non-judicially foreclose the deed of trust securing the guaranty obligations of the Harveys, was successor beneficiary Washington Federal precluded by RCW 61.24.100 from pursuing post-trustee's sale deficiency claims against the Harveys? ***YES***

C. Are the anti-deficiency protections of RCW 61.24.100 subject to contractual waiver by a guarantor? ***NO***

III. COUNTER-STATEMENT OF THE CASE

A. Key Provisions of Horizon Bank's Loan Documents

In July 2007, Horizon Bank made a $2.56 million real estate loan to Kaydee Gardens 9, LLC ("Kaydee Gardens"), secured by a Deed of Trust against property which Kaydee Gardens was then purchasing for redevelopment and construction of nine townhomes.[1] At the time of the

[1] The history of the Kaydee Gardens loan transaction is set forth in the Declaration of Lance Harvey in Support of Cross Motion for Summary Judgment ("First Harvey Declaration") CP 533-37, and in the Declaration of Lance Harvey in Opposition to Plaintiff's Cross Motion for Summary Judgment ("Second Harvey Declaration"), CP 694-703. Copies of the Kaydee Gardens Deed of Trust, Harvey Commercial Guaranty and other loan documents are attached to the First Harvey Declaration as Exhibits C through K. CP 553-99. A copy of the Trustee's Deed issued to Washington Federal following the November 14, 2011 non-judicial foreclosure sale is attached to the First Harvey Declaration as Exhibit L. CP 600-07. Because the copies of the loan documents included in the Clerk's Papers are difficult to read, more legible copies of Exhibit C and Exhibits E through K from the First Harvey Declaration are attached to this Brief as Appendix C.

2007 loan, the two members (owners) of Kaydee Gardens were Mark Tapert and Lance Harvey, and each signed a Commercial Guaranty with respect to the loan. CP 534. Construction of the townhomes commenced in late 2007 and they were substantially completed by July 2008. CP 695.

After Mr. Tapert withdrew as co-owner of Kaydee Gardens in mid-2008, Horizon Bank re-documented the loan in November 2008, with only Lance Harvey as guarantor. CP 535-36. The $2.56 million loan to Kaydee Gardens continued to be secured by the July 2007 Kaydee Gardens Deed of Trust, but Horizon Bank prepared a new Promissory Note, Business Loan Agreement, Assignment of Rents, Commercial Guaranty and other loan documents for execution by Kaydee Gardens and its sole member Lance Harvey. CP 535-36 and 553-99. Neither Mr. Harvey nor anyone else acting on behalf of Kaydee Gardens played any role in the drafting of the 2007 or 2008 loan documents, and their provisions were never discussed between the parties prior to execution. CP 535. There is no "intent" evidence here to aid in their interpretation, beyond the language of the documents themselves.

By its terms, Horizon Bank's Deed of Trust (CP 554-64) secured not only the obligations of Kaydee Gardens under its Promissory Note (CP 582-82), but also the obligations of respondents Harvey under their Commercial Guaranty (CP 585-88). On page 3 (CP 556), the Deed of

Trust stated:

> **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. [Emphasis added.]

The terms "Indebtedness" and "Related Documents" were specifically defined in the 2007 Kaydee Gardens Deed of Trust at page 9 (CP 562):

> The word "Indebtedness" means all principal, interest, and any 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. [Emphasis added.]
>
> 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. [Emphasis added.]

The Deed of Trust expressly referred to the Harvey Commercial

Guaranty in other places as well, including the following Definitions on page 9 (CP 562):

> 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.

At page 5 (CP 558), in defining Events of Default, the Deed of Trust specifically included "Events Affecting Guarantor," such as the death or disability of a guarantor. Near the top of page 7 (CP 560), the Deed of Trust also included an "entire agreement" clause, stating that "This Deed of Trust, <u>together with any Related Documents</u>, constitutes the entire understanding and agreement of the parties as to the matters set forth in this deed of trust." (Emphasis added.)

In short, the Harveys' obligations under their Commercial Guaranty were secured by the Deed of Trust under its clear language, both because the Guaranty was a "Related Document" and also because the Guaranty obligations were part of the "Indebtedness," as Horizon Bank chose to define those terms.[2]

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[2] At pages 21-24 of Appellant's Brief, Washington Federal argues that the Kaydee Gardens Deed of Trust was intended to secure <u>only</u> the borrower's obligations under the Promissory Note. The primary purpose of the Deed of Trust was to secure payment of the Note, and naturally most of its provisions were devoted to the borrower/grantor's obligations to make payment and protect the property collateral, but that was not its only purpose. Through Horizon Bank's choice, it also secured the Harvey's obligations as guarantors. It is perfectly permissible for the grantor's deed of trust to secure the

This interpretation of the secured obligations need not be based solely on the language of Deed of Trust itself. Horizon Bank's "belt and suspenders" approach, tying all loan-related obligations together and securing them with the Deed of Trust, was repeated in other loan documents prepared by the bank in November, 2008 for execution by Mr. Harvey, individually and as member of Kaydee Gardens.

The bank's November 2008 Notice of Final Agreement (CP 568) defined the scope of the parties' overall agreement very broadly, confirming that the term "Loan Agreement" meant "one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions are documents, relating to the Loan, <u>including without limitation the following LOAN DOCUMENTS</u>" (emphasis added). The Notice then went on to list the "Loan Documents" making up the "Loan Agreement" between the parties. That list included not only the Promissory Note, Business Loan Agreement, Assignment of Rents and other items, but also the "WA Commercial Guaranty: Lance Harvey." How could anyone

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obligations of a third party, in this case the guarantors. *See Seattle-First National Bank v. Hart*, 19 Wn. App. 71, 73, 573 P.2d 827 (1978); *Restatement (3rd) of Property: Mortgages* § 1.3 ("An obligation whose performance is secured by a mortgage may be that of the mortgagor *or of some other person*.") As stated in RCW 61.24.020, "A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor <u>or another</u> to the beneficiary may be foreclosed by trustee's sale." (Emphasis added.) While the Kaydee Gardens Promissory Note and Harvey Commercial Guaranty are separate obligations, Horizon Bank chose to tie them together by securing both with the Deed of Trust.

seriously contend that the Harvey Guaranty was not a "Related Document" under the Deed of Trust, when it was specifically listed as a "Loan Document" making up part of the "Loan Agreement" among Kaydee Gardens, Lance Harvey and Horizon Bank as confirmed by the bank's own Notice of Final Agreement (CP 568)?

Although it scarcely seems necessary, other loan documents prepared by Horizon Bank reiterated the same point again and again. In the Business Loan Agreement (CP 574-80), under the heading "Conditions Precedent to Each Advance," the first listed condition was as follows:

> Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interest in the Collateral; ... (5) guaranties; ... (6) together with all such Related Documents as Lender may require for the Loan … [Emphasis added.]

At page 2 (CP 575), under the heading "Affirmative Covenants," the Business Loan Agreement specifically identified the Borrower's agreement to provide the Guaranty of Lance Harvey. In its Definitions section on pages 5-6 (CP 578-79), the Business Loan Agreement also included essentially the same definitions of "Guarantor," "Guaranty," "Indebtedness," and "Related Documents" contained in the Deed of Trust.

Although Horizon Bank did not require the execution and recording of a new Deed of Trust with the other new loan documents in November

2009, it did require Kaydee Gardens to execute an Assignment of Rents (CP 590-96) with respect to the income to be derived from the completed townhomes. At page 4 (CP 593), the Assignment of Rents reiterated that "This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment" (emphasis added). At page 6 (CP 595), it set forth essentially the same definitions of "Guarantor," "Guaranty" and "Indebtedness" as the Deed of Trust, as well as the same "Related Documents" definition covering "all ... guaranties ... executed in connection with the Indebtedness." (Emphasis added.)

Finally, turning to the Commercial Guaranty itself (CP 585-88), the interlocking obligations created by Horizon Bank in its loan documents were reiterated in its language under which Harvey guarantied "full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender and discharge of all of Borrower's obligations under the Note and Related Documents." (Emphasis added.) The Guaranty contained essentially the same definitions of "Guarantor," "Guaranty," "Indebtedness" and "Related Documents" as were set forth in the Deed of Trust and Business Loan Agreement, as well as the statement under "Amendments" on page 3 (CP 587) that "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." (Emphasis added.)

B. Default and Washington Federal's Election of Remedies

Horizon Bank was closed by state banking regulators in January 2010. Its assets were taken over by the FDIC and sold to appellant Washington Federal. CP 536. Kaydee Gardens continued to make payments on its loan until May 2011, when a dispute with Washington Federal over the amount due brought the parties to an impasse. CP 696-99.

At that point, a number of default remedy options were available to Washington Federal. It could have sued Kaydee Gardens for a money judgment on the Promissory Note, and/or sued respondents Harvey for a money judgment on their Commercial Guaranty. Alternatively, as confirmed by the terms of the Deed of Trust itself, the bank had the right to choose between judicial and non-judicial foreclosure. At pages 7-8 (CP 560-61), the Deed of Trust recited:

> 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.
>
> Trustee. . . . 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.

Washington Federal voluntarily elected to pursue the remedy of non-judicial foreclosure under RCW Chapter 61.24. It initiated that process with the service of a Notice of Default in June 2011, and completed it by acquiring the Kaydee Gardens property at the trustee's sale held on November 14, 2011. CP 536-37 and 602-07.

Prior to completion of the non-judicial foreclosure of the Kaydee Gardens Deed of Trust through its purchase of the property by Trustee's Deed (CP 602-07), Washington Federal was well aware of the "problem" created by Horizon Bank's decision to include "guaranties" within the "Related Documents" definition in the Kaydee Gardens Deed of Trust. Again, that definition read in its entirety as follows:

> 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. [Emphasis added.]

In its revised Deed of Trust form put into use before the November 14, 2011 trustee's sale of the Kaydee Gardens property, Washington Federal changed the definition of "Related Documents" so that environmental agreements were expressly included, and "guaranties" were expressly excluded. CP 631 and 671-92. The revised form reads as follows:

> The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, **environmental agreements**, 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 **guaranties** are not "Related Documents" and are not secured by this Deed of Trust. [Emphasis added.]

Obviously, Horizon Bank could have made the same drafting choice when it prepared the 2007 and 2008 loan documents for execution by Kaydee Gardens and Lance Harvey. However, it did not do so and it is the language actually employed by Horizon Bank which controls this case.

IV. ARGUMENT

A. Standard of Review

The Trial Court decided the issues presented on this appeal on summary judgment, properly determining that there were no genuine issues of material fact and that the case should be decided as a matter of law. The Harveys agree with appellant Washington Federal that this Court reviews statutory interpretations by the trial court *de novo*. They also agree that this Court reviews the trial court's summary judgment decision *de novo*, to the extent that it was based upon matters of contract construction.

Summary judgment is properly granted when the pleadings, affidavits, depositions and admissions presented with respect to the motion

demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986); *Lauritzen v. Lauritzen*, 74 Wn. App. 432, 437, 874 P.2d 861 (1994) (citing *Kesinger v. Logan*, 113 Wn.2d 320, 325, 779 P.2d 263 (1989)). A material fact is one upon which the outcome of the trial would depend, in whole or part. *Kendall v. Public Hospital District*, 118 Wn.2d 1, 820 P.2d 497 (1991). The purpose of a summary judgment is to avoid a useless trial when no genuine issue of material fact remains to be decided. *Nielson v. Spanaway General Medical Clinic*, 135 Wn.2d 255, 956 P.2d 312 (1998); *Olympic Fish Products, Inc. v. Lloyd*, 93 Wn.2d 596, 611 P.2d 737 (1980).

The burden is on the moving party to demonstrate that there is no genuine issue of material fact. *Iwai v. State of Washington*, 129 Wn.2d 84, 95, 915 P.2d 1089 (1996) (citing *Young v. Key Pharmaceuticals, Inc.,* 112 Wn.2d 216, 225, 770 P.2d 182 (1989)). The burden then shifts to the responding party to set forth specific facts which show there is a genuine issue for trial. *Iwai*, 129 Wn.2d at 95-96; *Marquis v. City of Spokane*, 130 Wn.2d 97, 922 P.2d 43 (1996). The Court must consider all of the facts in the record and all reasonable inferences therefrom in favor of the non-moving party. *Phillips v. King County*, 136 Wn.2d 946, 956, 968 P.2d 871

(1998).

Before the trial court below, and in its opening brief on this appeal, appellant Washington Federal has failed to identify <u>any</u> genuine issue of material fact which should have precluded the trial court from entering summary judgment in favor of the Harveys.

B. The Trial Court Correctly Construed the Deed of Trust to Secure the Harveys' Commercial Guaranty

Interpretation of an unambiguous contract is a question of law. *Absher Constr. Co. v. Kent School District No. 415*, 77 Wn. App. 137, 141, 890 P.2d 1071 (1995). "If a contract is unambiguous, summary judgment is proper even if the parties dispute the legal effect of a certain provision." *Voorde Poorte v. Evans,* 66 Wn. App. 358, 362, 832 P.2d 105 (1992).

In construing a written contract, basic principles dictate that (1) the intent of the parties controls; (2) the Court ascertains the intent from reading the contract as a whole; and (3) the Court will not read an ambiguity into a contract that is otherwise clear and unambiguous. *Felton v. Menan Starch Co.*, 66 Wn.2d 792, 797, 405 P.2d 585 (1965). Courts are to determine the parties' intent based on the "objective manifestations of the agreement, rather than on unexpressed subjective intent of the parties." *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.3d

493, 503, 115 P.3d 262 (1993). The Court "is not authorized to rewrite the contract; [its] task is to construe it." *Rodenbough v. Grange Ins. Ass'n*, 33 Wn. App. 137, 140, 652 P.2d 22 (1982).

When several instruments are made as part of one transaction, they 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 rule applies "even though they do not refer to one another, or even though they are not executed by the same parties." *Turner v. Wexler*, 14 Wn. App. 143, 146, 538 P.2d 877 (1975). In the present case, however, the Deed of Trust, Commercial Guaranty and other loan documents do expressly refer to each other (*see* Section III.A, above) and must be read together.

Words used in a contract should be given their ordinary meaning. *MacLean Townhomes, LLC v. America 1st Roofing & Builders, Inc.*, 133 Wn. App. 828, 831, 138 P.3d 155 (2006). A contract is ambiguous if its terms are uncertain or they are subject to more than one reasonable meaning. *Mayer v. Pierce County Med. Bureau, Inc.,* 80 Wn. App. 416, 421, 909 P.2d 1323 (1995). If a contract can reasonably be interpreted in two ways, one of which is ambiguous and one of which is not, the latter interpretation should be adopted when each clause can be given effect. *Dice v. City of Montesano*, 131 Wn. App. 675, 685, 128 P.3d 1253, 1258 (2006) "[A]mbiguity will not be read into a contract where it can be

reasonably avoided." *McGary v. Westlake Investors*, 99 Wn.2d 280, 285, 661 P.2d 971 (1983).[3]

There is no ambiguity in the Deed of Trust on the subject of whether it secured the Harveys' obligations under their Commercial Guaranty. It expressly stated that it secured payment of the "Indebtedness" and the performance of all obligations under the "Related Documents," and defined the latter to term to include all "guaranties ... executed in connection with the Indebtedness." Essentially the same definition of Related Documents was set forth in the Business Loan Agreement, the Assignment of Rents, and in the Commercial Guaranty itself. The Business Loan Agreement expressly referenced the Harvey Guaranty as one of the Required "Loan Documents" through its Conditions Precedent and Affirmative Covenants provisions. The Notice of Final Agreement (CP 568) defined the "Loan Agreement" between the parties to include all of the "Loan Documents," specifically listing the Harvey Guaranty as one

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[3] Again, Washington Federal has not identified any language of the Kaydee Gardens Deed of Trust which it claims to be ambiguous. Even if the document did contain ambiguous language, such ambiguities must be construed against Horizon Bank as drafter. *Sprague v. Safeco Ins. Co. of America*, 174 Wn.2d 524, 528, 276 P.3d 1270 (2012). As assignee, Washington Federal stepped into the shoes of Horizon Bank. *Puget Sound National Bank v. Dept. of Revenue*, 123 Wn.2d 284, 292, 868 P.2d 127 (1994); *Morse Electro Products Corp. v. Beneficial Industrial Loan Co.*, 90 Wn.2d 195, 198, 579 P.2d 1341 (1978) (assignee of receiver's claims stands in shoes of the receiver, who stands in the shoes of the insolvent debtor in receivership). An assignee from a party who drafted a contract must have any ambiguities in the contract construed against that assignee, to the same extent as if it were the drafter. *Sunset Oil Co. v. Vertner*, 34 Wn.2d 268, 276, 208 P.2d 906 (1949) ("The contract was prepared by respondent's assignor and should therefore, generally speaking, be construed in appellant's favor.").

of those documents. See discussion and quoted language in Section III.A, above.

Washington courts will not construe contracts in a manner which would lead to absurd conclusions or would render contractual language nonsensical or ineffective. *MacLean Townhomes, L.L.C. v. Am. 1st Roofing & Builders Inc.*, 133 Wn. App. 828, 831, 138 P.3d 155, (2006); *Seattle–First Nat'l Bank v. Westlake Park Assocs.,* 42 Wn.App. 269, 274, 711 P.2d 361 (1985). There is only one reasonable construction here: The Deed of Trust expressly secured "performance of any and all obligations under . . . the Related Documents"; the term Related Documents included "guaranties ... executed in connection with the Indebtedness"; and the Harvey Commercial Guaranty was the only "guaranty" executed at the time of the November 2008 loan documents (CP 650-51 and 669-70) and was therefore secured by the Deed of Trust.

Although the Harveys are not aware of any Washington appellate decision construing deeds of trust containing similar "Related Documents" provisions, that same language has been construed elsewhere. *Greenville Lafayette, LLC v. Elgin State Bank*, 296 Mich. App. 284, 818 N.W.2d 460 (2012), involved a Deed of Trust form securing obligations including all those arising under the "Related Documents." That term was defined in the same manner as the Deed of Trust here, to include "all ... guaranties

... executed in connection with the Indebtedness." The Michigan appellate court concluded that obligations under a guaranty of the loan clearly fell within the definition and were secured by the plain language of the Deed of Trust: "We agree with plaintiff that the plain language of the mortgage contract specifically includes guaranties of the indebtedness secured by the mortgage." *Id.* at 290-291. The trial court applied the same construction to the language of the Kaydee Gardens Deed of Trust, and it should also be applied by this Court.

C. The Trial Court Correctly Construed RCW 61.24.100 to Preclude Washington Federal's Post-Trustee's Sale Claims Against the Harveys

1. History of the Washington Deed of Trust Act

The Washington Deed of Trust Act, RCW Chapter 61.24, was enacted for the public benefit. The Act was designed by the Legislature to avoid time-consuming judicial foreclosure proceedings and to save substantial time and money for both the buyer and the lender. This feature of the Act has been applauded as meeting the needs of modern real estate financing. *Peoples Nat'l Bank of Wash. v. Ostrander*, 6 Wn. App. 28, 491 P.2d 1058 (1971) (citing Comment, *The Deed of Trust Act in Washington*, 41 Wash.L.Rev. 94 (1966)). One purpose of the Act was to keep non-judicial foreclosure process efficient and inexpensive. *Meyers Way Development Ltd. Partnership v. University Sav. Bank*, 80 Wn. App. 655, 910 P.2d 1308

(1996).

Reading RCW Chapter 61.24 in the context of the mortgage laws and the history of deed of trust legislation, it is apparent that its enactment involved a "quid pro quo between lenders and borrowers." *Thompson v. Smith*, 58 Wn. App. 361, 793 P.2d 449 (1990) (quoting *Donovick v. Seattle-First Nat'l Bank*, 111 Wn.2d 413, 416, 757 P.2d 1378 (1988)). Debtors, for example, relinquished their right to redeem the property within one year after a foreclosure sale, as well as the right to a judicially-imposed upset price. *Thompson*, 58 Wn. App. at 365. Lenders, on the other hand, gave up any right to a deficiency judgment by electing to proceed with a non-judicial foreclosure under RCW 61.24. *Id.*

Prior to the substantial rewording of the statute in 1998, RCW 61.24.100 was relatively brief and direct in barring deficiency judgments on obligations secured by a deed of trust following a non-judicial foreclosure (except to the extent of realizing on other collateral held by the lender for those obligations):

> Foreclosure, as in this chapter provided, shall satisfy the obligation secured by the deed of trust foreclosed, regardless of the sale price or fair value, and no deficiency decree or other judgment shall thereafter be obtained on such obligation, except that if such obligation was not incurred primarily for personal, family, or household purposes, such foreclosure shall not preclude any judicial or nonjudicial foreclosure of any other deeds of trust, mortgages, security agreements, or other security interests

> or liens covering any real or personal property granted to secure such obligation. Where foreclosure is not made under this chapter, the beneficiary shall not be precluded from enforcing the security as a mortgage nor from enforcing the obligation by any means provided by law. [Emphasis added.]

As stated by the Washington Supreme Court in *Washington Mutual v. United States*, 115 Wn.2d 52, 58, 763 P.2d 969 (1990), "Washington law provides that no deficiency judgment may be obtained when a trustee's deed is foreclosed."

Although there were no reported decisions under that Act regarding the post-sale liability of guarantors, there is no reason to conclude that they would have been subject to a post-sale deficiency judgment where the deed of trust secured their guarantor obligations. On the contrary, as stated in the statute, "foreclosure … shall satisfy the obligation secured by the deed of trust foreclosed," barring any further judgment on such obligation. *See Udall v. T.D Escrow Services, Inc.*, 159 Wn.2d 903, 916, 154 P.3d 882 (2007) ("… the debt secured by the trustee's deed is *per se* satisfied by the foreclosure sale due to the Act's anti-deficiency provision.").

2. 1998 Deed of Trust Act Amendments

RCW 61.24.100 was extensively rewritten in 1998, in part to address

the subject of guarantor liability.[4] However the new version of the statute retained the basic statement of public policy -- a "no deficiency" rule for obligations secured by the deed of trust prevails, unless the foreclosing lender can show that a specific exception applies:

> 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. [Emphasis added.]

Subsection (3) of RCW 61.24.100 goes on to provide that as to commercial loans, the Act does not preclude certain actions, including "(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" (emphasis added).

There are multiple limitations on deficiency claims against guarantors contained in Section 61.24.100, as referenced in the "subject to" language of subsection 3(c). The deficiency action must be commenced within one year after the trustee's sale; the guarantor must be given proper notices; the guarantor is entitled to a judicial determination of "fair value"; if the deed of trust was granted by the guarantor, liability is limited to waste or wrongfully retained rents; if the beneficiary excepts a deed in lieu of foreclosure, the guarantor is exonerated; the beneficiary may waive by

[4] For ease of reference, a full copy of RCW 61.24.100 is included as Appendix A to this Brief.

contract any right to a deficiency claim against a guarantor; and as set forth in subsection (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**. [Emphasis added.]

This final limitation on deficiency actions against guarantors is the one at issue in this case.

3. Interpretation of Subsection (10) of RCW 61.24.100

As indicated above, Section 61.24.100 applies solely to deficiency actions brought after the trustee's sale, with respect to obligations secured by a deed of trust. Subsection (10) only permits post-trustee's sale claims against a guarantor if such claims are not based on the obligations, or the substantial equivalent of the obligations, secured by the foreclosed deed of trust. If the foreclosed deed of trust did secure the guarantors' obligations, then the manifest intent of the Legislature is that any further action against the guarantors on those secured obligations is precluded by the statute.

Washington Federal elected to take advantage of the expedited mechanism of a non-judicial foreclosure of the Kaydee Gardens Deed of Trust. The Harveys' obligations as guarantors' were secured by the Deed of Trust, and were also the "substantial equivalent" of the Note obligations also secured by the Deed of Trust. Subsection (10) accordingly bars

plaintiff's claims against the Harveys under their Guaranty. This result does not represent a "windfall" to the Harveys, any more than it was a "windfall" to the Kaydee Gardens as borrower when its liability to the bank on the loan was limited by RCW 61.24.100 to the proceeds of the trustee's sale. Rather, it is simply the outcome designated by the Legislature as one of the trade-offs for granting lenders the cheap and expedient remedy of non-judicial foreclosure. The release of the Harveys from further liability under their Guaranty results directly from the bank's choice to secure their guarantor obligations with the same Deed of Trust securing Kaydee Gardens' obligation to pay the Note.

Washington Federal seeks to argue that subsection (10) is permissive only. Appellant's Brief at 13-14. Such a construction of subsection (10) would render it meaningless, by allowing lenders to bring deficiency actions both against guarantors whose obligations were secured by the non-judicially foreclosed deed of trust, and against guarantors whose obligations were not secured. It would be as if the Legislature had enacted a statute governing traffic lights, stating that it is permissible to drive through an intersection if the light is not red, and a defendant in traffic court tried to argue that the Legislature did not intend to ban driving through intersections where the traffic light is red.

Legislative inclusion of certain items within a category necessarily

implies that other items in that category were intended to be excluded. *Bour v. Johnson*, 122 Wn.2d 829, 836, 864 P.2d 380 (1993). "Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius* ...." *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999); *State ex rel. Port of Seattle v. Department of Pub. Serv.*, 1 Wn.2d 102, 112-13, 95 P.2d 1007 (1939) (the expression of one thing in a statute excludes all others).

Thus, in *Adams v. King County*, 164 Wn.2d 640, 650, 192 P.3d 891 (2008), the Supreme Court was asked to decide whether a provision of the Washington Uniform Anatomical Gift Act stating that gifts of human body parts "may be accepted by any hospital," also permitted gifts of such items to non-hospitals. The Court rejected that contention:

> The canons of statutory construction do not permit such an interpretation. This court recognizes that "[o]missions are deemed to be exclusions." *In re Det. of Williams*, 147 Wash.2d 476, 491, 55 P.3d 597 (2002) ("Under expressio unius est exclusio alterius, ... to express one thing in a statute implies the exclusion of the other."); *State v. Delgado*, 148 Wash.2d 723, 729, 63 P.3d 792 (2003). Hospitals are one of several qualifying donees under subsection (1), but hospitals are the only donee listed in subsection (2) as authorized to accept an undesignated gift. If the legislature did not intend to limit undesignated gifts to hospitals, then we assume that subsection (2) would have stated that any qualifying donee could accept such gifts.

Similarly, in the present case if the Legislature had intended to allow post-trustee's sale deficiency claims against guarantors, regardless of whether their obligations were secured by the foreclosed deed of trust, it would have stated in subsection (10) that "For deeds of trust securing commercial loans, a deficiency judgment may be obtained against any guarantor after a trustee's sale under that deed of trust, regardless of whether the guarantor's obligations were secured by the deed of trust." But the Legislature did not do that. It drew a clear distinction between guarantor obligations secured by the non-judicially foreclosed deed of trust, and guarantor obligations which were not so secured. Only with respect to unsecured obligations did the legislature determine that a post-sale deficiency claim could be pursued against a guarantor.

Washington Federal also argues that construing subsection (10) as described above would conflict with the language of subsection (6), which makes a guarantor liable for a post-sale deficiency to the extent of waste or wrongful withholding of rents by the guarantor, if the guarantor's obligations were secured by the guarantor's own property. Certainly the legislature could have been clearer in articulating how all of the parts of RCW 61.24.100 fit together. However, the duty of this Court is to construe the statute so as to effectuate the legislative intent. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

It does so by interpreting the statute as a whole, giving effect to all of its provisions, and not rendering some of them meaningless or superfluous. *Muckleshoot Indian Tribe v. Washington Dept. of Ecology*, 112 Wn. App. 712, 720 (2002). *See also Timberline Air Service, Inc. v. Bell Helicopter-Textron, Inc.,* 125 Wn.2d 305, 314-15, 884 P.2d 920 (1994); *Whatcom v. City of Bellingham,* 128 Wn.2d at 546.

The only reasonable interpretation of RCW 61.24.100(10) is that it states a general rule that post-trustee's sale deficiency claims against guarantors are precluded where, as here, the guarantors' obligations were secured by the non-judicially foreclosed deed of trust. RCW 61.24.100(6) should be read as presenting a limited exception to that general rule, allowing claims for waste and wrongful retention of rents committed by the guarantor, where the guarantors' obligations were secured by a deed of trust against the guarantors' own property.[5]

Such an interpretation of the anti-deficiency statute gives guarantors the same very limited liability which borrowers have <u>with respect to obligations secured by the non-judicially foreclosed deed of trust</u>. The general rule is that borrowers have no post-sale liability for a deficiency on such obligations, but the narrow exception under subsection 3(c)(1)

[5] That limited exception has no application here, where the property subject to the deed of trust was owned by Kaydee Gardens rather than the Harveys individually, and where there were no allegations of waste or wrongful retention of rents by Washington Federal.

allows them to be held liable to the extent of waste or wrongful retention of rents committed by them.

Counsel for the Harveys has been unable to locate any legislative history which would be of assistance to the Court in construing subsection (10).[6] However, there is an extensive discussion of RCW 61.24.100's anti-deficiency provisions at page 4 of the Summer 1998 edition of the WSBA Real Property, Probate & Trust Section Newsletter, entitled "An Overview of Washington's 1998 Deed of Trust Act Amendments," published shortly after the amendments became effective.[7] That discussion ended with the following paragraph addressing subsection (10), confirming the parallel obligations of borrowers and guarantors with respect to obligations which had been secured by the foreclosed deed of trust:

> Finally, as long as the guarantor is not a borrower, the guarantee itself may be secured by a deed of trust. A trustee's sale under such a deed of trust extinguishes the liability of the guarantor under the guarantee to the same extent a borrower's liabilities are terminated by a trustee's sale. However, if the foreclosed property is the guarantor's principal residence, the guarantor as the first right to the sales proceeds in an amount equal to the homestead exemption, which, under RCW

[6] At page 19 of Appellant's Brief, Washington Federal refers to the House Bill Report for Engrossed Substitute Senate Bill 6191, 55th Leg. Reg. Sess. (Wash. 1998) and its summary of revised RCW 61.24.100's requirements for seeking a deficiency judgment against a guarantor. That summary did not purport to be exhaustive, and instead qualified the items listed as conditions with the phrase "if certain conditions are met, including the following: ..." The restrictions in Subsection (10) are not the only ones omitted from the brief summary in the Bill Report.

[7] A copy of the article is attached for reference as Appendix B to this Brief.

> 60.13.030, is the lesser of $30,000 or the guarantor's equity in the property. [Emphasis added.]

Read as a whole, RCW 61.24.100 reflects the legislative intent to preclude deficiency judgments against secured commercial loan guaranty obligations through subsection (10), by applying the general no-deficiency rule of subsection (1) to such claims, excepting only those narrow situations (not applicable here) where the guarantors granted the deed of trust and then committed waste or similar wrongdoing as referenced in subsection (6).

While there are as yet no reported Washington cases construing subsection (10), a determination that it bars post-trustee sale deficiency claims on secured guarantor obligations is consistent with other decisions interpreting the Deed of Trust Act. Washington courts have created a clear line of demarcation prohibiting deficiency actions on obligations secured by a non-judicially foreclosed deed of trust. This line of demarcation was recently reiterated in *Beal Bank, SSB v Sarich*, 161 Wn.2d 544, 550, 552, 167 P.3d 555 (2007). *Beal Bank* held that while a non-judicially foreclosing deed of trust holder was barred from seeking a deficiency judgment on the foreclosed obligation, junior deed of trust holders were entitled to enforce the debt obligations owed to them because those obligations were not secured by the foreclosed deed of trust.

Similarly, in *Glenham v. Palzer*, 58 Wn. App. 294, 298, 792 P.2d 551 (1990), defendants who did not have an obligation secured by the foreclosed trust deed sought to avoid tort claims against them related to the foreclosed loan transaction. Recognizing that the no-deficiency rule protects those with obligations secured by the deed of trust, the *Glenham* court refused to bar further action against the defendants, because their tort obligations were not secured by the trust deed. *Id.; see also Thompson v. Smith*, 58 Wn. App. 361, 366, 793 P.2d 449 (1990) (deed of trust beneficiary who accepted deed in lieu of foreclosure, then resold the property, was barred from seeking a deficiency judgment since the beneficiary had in effect non-judicially foreclosed the deed of trust securing the obligation).

In the present case, Horizon Bank could have taken the more normal approach and drafted its Deed of Trust to secure only the borrower's obligations under the Promissory Note. Instead, it elected to have the Deed of Trust also secure the Harveys' obligations under their Commercial Guaranty. Washington Federal could have chosen to sue borrower Kaydee Gardens on the Promissory Note and/or the Harveys on the Commercial Guaranty, obtaining a money judgment without pursuing its Kaydee Gardens property collateral. It could have chosen to foreclose the Deed of Trust judicially, preserving the right to deficiency judgments

but taking the property subject to upset price limitations and a one year redemption period. Instead, it chose the more expedient remedy of a non-judicial foreclosure and trustee's sale.

These choices have legal consequences. Because the obligations of the Harveys under their Commercial Guaranty were secured by the Deed of Trust, their liability to Washington Federal ended with the trustee's sale. The Trial Court correctly dismissed this action as having been brought in violation of RCW 61.24.100.

D. The Protections of RCW 61.24.100 Are Not Waivable

At page 27 of its opening brief, Washington Federal argues that the protections afforded guarantors through RCW 61.24.100 were waived by boilerplate language buried in the fine print on page 2 of the Harveys' Commercial Guaranty (CP 586), referencing "anti-deficiency law" but failing to explain or define that term. As an alternative argument below, the Harveys contended that they did not understand the meaning of the term "anti-deficiency" and that the requirements for a valid waiver of RCW 61.24.100's protections had not been established. CP 518-20 and 696. It is long established law in Washington that "[a] 'waiver' is the intentional and voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right. The person against whom a waiver is claimed must have intended to relinquish

the right, advantage, or benefit, and his actions must be inconsistent with any other intention than to waive them." *Birkeland v. Corbett*, 51 Wn.2d 554, 565, 320 P.2d 635 (1958).

However, it was not necessary for the trial court to consider that alternative argument, because it properly determined that waivers of the protections of the Deed of Trust Act are not waivable as a matter of law. First, the language of opening sentence of the statute is mandatory -- except as provided in RCW 61.24.100, a deficiency judgment "shall not be obtained" against a borrower or guarantor. Nothing in the statute even suggests, much less provides, that its protections are waivable. On the contrary, subsection (9) allows a deed of trust beneficiary to contractually waive the right to a deficiency following a trustee's sale, but contains no corresponding provision sanctioning waivers from borrowers or guarantors with respect to the statutory protections against deficiency judgments. Again, "*expressio unius est exclusio alterius.*" *Landmark Dev., Inc. v. City of Roy*, *supra*.

If the anti-deficiency protections set forth in RCW 61.24.100 were waivable, such waivers would be included in every Washington loan document, and lenders would have the best of both worlds: they would receive the speedy non-judicial foreclosure remedy afforded by the Deed of Trust Act, without the burdens of redemption periods, upset price

hearings or other aspects of the judicial foreclosure process, while still retaining the right to recover deficiency judgments against the borrowers and guarantors following the trustee's sale. Such an outcome would be totally at odds with the fundamental "quid pro quo between lenders and borrowers" underlying the Deed of Trust Act. *Thompson v. Smith*, 58 Wn. App. 361, 793 P.2d 449 (1990).

It would also be contrary to the Washington Supreme Court's recent decision under the Deed of Trust Act in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 107-108, 385 P.3d 34 (2012), involving the contention that MERS could non-judicially foreclose deeds of trust granted to it as "nominee," even though it could not prove that it was the holder of the promissory note secured by the deed of trust. The Supreme Court rejected an argument by MERS that a deed of trust grantor had contractually waived a statutory requirement, that only a holder of the obligation secured by the deed of trust could exercise the rights of a "beneficiary" under the statute through non-judicial foreclosure. The Court stated:

> This is not the first time that a party has argued that we should give effect to its contractual modification of a statute. ... The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly.

These principles were reiterated by the Washington Supreme Court in *Schroeder v. Excelsior Management Group, LLC*, ___ Wn.2d ___, ___ P.3d ___, No. 86433-1 (Feb. 28, 2013), which presented the issue of whether a deed of trust grantor could waive the statutory requirement that deeds of trust on agricultural land must be foreclosed judicially. Rejecting that waiver argument, the Court stated:

> This is not the first time we have confronted the argument that statutory requirements of the deeds of trust act may be waived contractually. In *Bain v. Metropolitan Mortgage Group,* 175 Wn.2d 83, 285 P.3d 34 (2012), we held the statutory requirement that the beneficiary hold the note or other instrument of indebtedness could not be waived. *Id.* at 108. In *Bain,* we followed the reasoning of other cases in which we have held other statutory requirements could not be contractually waived. *Id.* at 107-08 (citing *Godfrey v. Hartford Cas. Ins. Co.,* 142 Wn.2d 885, 16 P.3d 617 (2001); *Nat'l Union Ins. Co. of Pittsburgh v. Puget Sound Power & Light,* 94 Wn. App. 163, 177, 972 P.2d 481 (1999); *State ex rel. Standard Optical Co. v. Superior Court,* 17 Wn.2d 323, 329, 135 P.2d 839 (1943)).

PDF slip opinion at pages 12-13.

The same fundamental principles should be applied to the anti-deficiency protections of RCW 61.24.100. Nothing in the *Bain* or *Schroeder* decisions suggests that they are limited to <u>pre</u>-foreclosure <u>procedural</u> requirements, as contended by Washington Federal at page 31 of its opening brief, nor that the Supreme Court intended any different a policy to apply to the statutory limits upon a beneficiary's right to obtain deficiency judgments <u>after</u> the trustee's sale is completed. On the

contrary, the language of RCW 61.24.100 is quite emphatic and unconditional, beginning with the words "Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained ..." Allowing waivers of those protections would gut the statute, permitting banks to obtain all of their side of the "quid pro quo" under the statute, while denying it to the parties intended to be protected, i.e. borrowers, grantors and guarantors.

E. The Harveys Seek an Award of Prevailing Party Attorney's Fees in This Appeal

The Harveys were awarded prevailing party attorney's fees by the trial court below, and seek a similar award from this Court, based upon the agreements between the parties and RCW 4.84.330.

At page 2 under the heading "Attorneys' Fees; Expenses," the Kaydee Gardens Promissory Note (CP 583) provided for the recovery of attorney's fees incurred by the Lender in collecting the Note. Washington Federal as Lender was also entitled to recover its attorney's fees under the provision on that subject included under "Miscellaneous Provisions" near the bottom of page 4 of the Business Loan Agreement (CP 577). The Harvey Commercial Guaranty, through its "Indebtedness" section on the first page (CP 585), also included the obligation to pay attorney's fees incurred by the Lender.

While the loan documents did not expressly for the recovery of attorney's fees against the bank, the gap in those one-sided provisions is filled by RCW 4.84.330, which states as follows:

> In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements. Attorneys' fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorneys' fees is void. As used in this section "prevailing party" means the party in whose favor final judgment is rendered. [Emphasis added.]

In the final paragraph of its November 29, 2012 Order Granting Defendants Summary Judgment Dismissing Plaintiff's Complaint (CP 275) the trial court ruled that "defendants Harvey are entitled to recover their prevailing party attorney's fees and costs, in amounts to be determined by the Court at a subsequent hearing." An application for an award of such fees and costs was subsequently submitted to the trial court, and is awaiting a decision. Harveys submit that, based upon the same contractual provisions referenced above and RCW 4.84.330, they are entitled to an award of their reasonable attorney's fees against Washington Federal upon prevailing in this appeal.

V. CONCLUSION

For all of the reasons stated above, the trial court's dismissal of Washington Federal's complaint against the Harveys should be upheld, and the Harveys should be awarded attorney's fees incurred on this appeal.

RESPECTFULLY SUBMITTED this 4th day of April, 2013.

LASHER HOLZAPFEL
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By

Dean A. Messmer, WSBA No. 5738
Attorneys for Defendants-Respondents Lance Harvey, individually and the marital community comprised of Lance Harvey and "Jane Doe" Harvey, husband and wife

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2013, I caused to be served a copy of the foregoing **BRIEF OF RESPONDENTS** on the following person in the manner indicated below at the following address:

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☐ **by CM/ECF**
☑ **by Electronic Mail**
☐ **by Facsimile Transmission**
☑ **by First Class Mail, postage pre-paid**
☐ **by Hand Delivery**
☐ **by Overnight Delivery**

Joy K. Lawrence, Legal Assistant to
Dean A. Messmer

APPENDIX A

TEXT OF RCW 61.24.100

(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.

APPENDIX B

WASHINGTON REAL PROPERTY & PROBATE SECTION SUMMER 1998 NEWSLETTER ARTICLE

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An Overview of Washington's 1998 Deed of Trust Act Amendments

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On June 11, 1998, a set of comprehensive amendments to Washington's Deed of Trust Act, chapter 61.24 RCW (the "Act"), took effect. The 1998 amendments revise 12 of the 14 sections of the prior Act, create 4 new sections, and modify RCW 7.28.300 (quieting title against a real property security lien) and RCW 7.60.020 (appointment of a receiver). This article provides only a thumbnail sketch of the most significant substantive changes and clarifications contained in the 1998 amendments, and the practitioner is advised to carefully review the amended Act in its entirety.

I. NEW DEFINITIONS

The starting point of any analysis of the 1998 amendments is the Act's new definitions section. Unlike the prior version of the Act, which did not define many of the key terms used throughout the statute, the 1998 amendments define eleven key terms: *grantor, beneficiary, affiliate of beneficiary, trustee, borrower, grantor, commercial loan, trustee's sale, fair value, record* and

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Sale of Residential Real Property From an Estate:

Practical Suggestions and Ways to Limit the Personal Representative's Liability

Matthew B. McCutchen[1]
Perkins Coie LLP, Seattle

The standard Northwest Multiple Listing Service ("NWMLS") forms for the sale of residential real property contemplate that the seller is the owner who is familiar with the property. Typically, this familiarity is because the property is either the seller's primary residence or rental property. However, when the owner has died and the seller becomes the personal representative who may be a son, daughter, friend or corporate fiduciary, this familiarity is lost. In this situation, using the standard NWMLS forms without modification can result in the personal representative incurring unnecessary liability by making broad representations and warranties based on little or inaccurate knowledge. The following points can help you limit the personal representative's liability and lay the groundwork for a smoother closing.

1. The Basics.

The following assumes that you have covered the basics: (1) the personal representative has the authority to sell the property, either under nonintervention powers or court order; (2) the sale is consistent with the terms of the Will and no beneficiary wants the property as all or part of his or her distributive share; and (3) the property is adequately insured against loss pending the sale.

However, there is one additional basic step that is often overlooked: Confirm that the decedent held title to the real property. From experience, individuals can creatively transfer real property, especially after they have received estate planning advice. For example, the decedent may have sold, gifted or transferred all or a fraction of the property to an individual, trust or limited liability company. The personal representative may not be aware of the transfer and, assuming that the decedent held title, will proceed to list the property for sale.

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recorded, and *person.* The newly defined terms not only promote consistency and clarity in the statute, but they contain important substantive changes as well. For example, the amended Act specifically distinguishes among a "borrower," "grantor" and "guarantor." In short, a guarantor cannot also be a borrower. Since the amended Act treats borrowers and guarantors differently with respect to their potential liability for a deficiency judgment, this distinction prevents a lender from requiring the same person to act in both capacities in an attempt to circumvent the statutory limitations on post-sale liability. However, the Act does not prevent a guarantor from being a grantor under a deed of trust that is given to secure the borrower's note, provided the grantor is not also a borrower. The new definitions contain other substantive changes as well, some of which are highlighted below.

II. ANTI-DEFICIENCY PROVISIONS

Among the most notable of the 1998 amendments are the changes to RCW 61.24.100 regarding the Act's anti-deficiency rules. Under the prior version of that section, the borrower had no personal liability for a deficiency following a trustee's sale. Under the new Act, however, if the underlying obligation is a "commercial loan" (defined as a loan that is not made primarily for "personal, family or household purposes"), and the deed of trust does not encumber the borrower's principal residence on the date of the trustee's sale, a lender who purchases the property at such sale now has limited recourse against a borrower. Specifically, if and to the extent the "fair value" (another newly defined term) of the property as of the date of the trustee's sale is less than the amount of the debt, and regardless of the amount of the lender's bid, the lender may obtain a judgment against the borrower (a) for the wrongful retention of any rents, insurance proceeds or condemnation awards that are owed to the lender, and (b) to the extent such difference is caused by waste to the property committed by the borrower after the date the deed of trust is granted. Both of those provisions also apply to the deed of trust grantor (who may or may not be the borrower). In both cases, the liable party must have been given the statutory notices of the foreclosure, and the action must be brought within one year after the date of the trustee's sale, as opposed to the normal six-year statute of limitations. The one year period is extended to the extent that action is tolled by bankruptcy or any other debtor protection statute.

The amended Act also provides that 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, is not secured by the deed of trust. RCW 61.24.100(10). Thus, the parties may segregate liabilities into those that may be included in the lender's bid price, and therefore recovered from the sale if the lender is outbid, and those that will survive a trustee's sale. Because of the "substantially similar" qualification, however, the lender cannot have it both ways: that is, both secure a specific obligation and require the borrower to execute an unsecured indemnification and cause that obligation to survive the sale.

The amended RCW 61.24.100 also clarifies the scope of a guarantor's liability for a post-sale deficiency, an issue which the Washington courts have declined to resolve. 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). Under the new Act, the guarantor of a commercial loan is liable for a deficiency judgment, but only if the guarantor was given the same statutory notices that are required to be given to the borrower and the action is brought within the limitations period applicable to the borrower and grantor. In any such action, the guarantor may plead the "fair value" of the property as a defense to some portion or all of its liability. Under this defense, the guarantor's liability is equal to the debt as of the sale date, less the greater of the successful bid amount or the fair value of the property sold at the sale, plus interest on the amount of the deficiency from the sale date at the rate provided in the applicable loan documents, plus such costs, expenses and fees as are agreed to in the guaranty. If any other collateral for the same debt is sold prior to the entry of the deficiency judgment, the fair value of that property is added to the other fair values for the purpose of determining the extent of the guarantor's liability. This "fair value" defense avoids the inequities of a double recovery that would otherwise result from a successful bid that is significantly less than both the debt and the value of the property.

Finally, as long as the guarantor is not a borrower, the guaranty itself may be secured by a deed of trust. A trustee's sale under such a deed of trust extinguishes the liability of the guarantor under the guaranty to the same extent a borrower's liabilities are terminated by a trustee's sale. However, if the foreclosed property is the guarantor's principal residence, the guarantor has the first right to the sale proceeds in an amount equal to the homestead exemption, which, under RCW 6.13.030, is the lesser of $30,000 or the guarantor's equity in the property.

III. OTHER REMEDIES

The 1998 amendments address other remedies as well. Washington prohibits a "concurrent action" on the same debt in the context of a judicial or nonjudicial foreclosure. RCW 61.12.120, 61.24.030(4). A 1990 amendment to the Deed of Trust Act clarified that with respect to a trustee's sale in commercial loan, a request for the appointment of a receiver is not such an "action." It also permitted concurrent and subsequent foreclosures of other security granted for a commercial loan. A new subsection (2) to RCW 61.24.100 addresses two additional points. First, by taking a deed of trust, a lender is not precluded from bringing another type of action prior to commencing a trustee's sale. In other words, Washington has no "security first" rule. Second, if

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the other action has been concluded and any portion of the debt remains outstanding, the lender may thereafter judicially or nonjudicially foreclose a deed of trust. This should avoid concerns over whether a lender is precluded from obtaining a "pre-foreclosure deficiency" against the borrower because it may not seek a personal judgment after a trustee's sale is held. While these provisions were not previously codified, neither represents a departure from existing law.

IV. BANKRUPTCY CONCERNS

Another significant provision of the new Act attempts to circumvent a common bankruptcy problem by specifically defining the exact time when a trustee's sale is deemed "final." The problem arises when a bankruptcy is filed after the conclusion of a trustee's sale, but before the trustee's deed is recorded. In this situation, four sections of the Bankruptcy Code—Sections 362(a), 541, 544(a)(3), 549(a)—combine to bring the foreclosed property into the bankruptcy estate, stay the recordation of the trustee's deed, and permit the bankruptcy trustee to avoid the transfer of the debtor's interest in the property. See, e.g., *In re Williams*, 124 B.R. 311 (Bankr. C.D. Cal. 1991); *In re Walker*, 861 F.2d 597 (9th Cir. 1988).

The amended RCW 61.24.050 attempts to avoid this result by providing that a trustee's sale is "final" as of the time and date the trustee accepts a bid, provided the trustee's deed is recorded within fifteen days. This "relation back" approach follows a similar 1993 attempt by the California legislature to circumvent the same bankruptcy concern. California's relation back statute, Section 2924h(c) of the California Civil Code, has been tested and proven effective in at least two cases, *In re Engles*, 193 B.R. 23 (Bankr. S.D. Cal. 1996), and *In re Garner*, 208 B.R. 698 (Bankr. N.D. Cal. 1997). The California approach successfully avoids the automatic bankruptcy stay because Section 362(b)(3) of the Code excepts from the stay certain acts to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under Section 546(b) of the Code; Section 546(b), in turn, gives effect to state law provisions permitting retroactive perfection.

V. EXCLUSION OF AGRICULTURAL LAND

In order to provide farmers and other owners of agricultural property facing foreclosure the opportunity to harvest seasonal crops from their land, Washington law provides that the foreclosure of agricultural property must be accomplished judicially, thus allowing the land owner a longer foreclosure process as well as a one year redemption period. To accomplish this result, the prior version of RCW 61.24.030 required that a deed of trust, as a prerequisite to being non-judicially foreclosed, contain a statement that the secured property "is not used principally for agricultural or farming purposes." Under an amended RCW 61.24.030, this requirement remains, although the term "farming" has been eliminated due to its ambiguous meaning. However, the new Act requires that, in addition to the statement that the encumbered property is not used for agricultural purposes, the property is not in fact so employed. To this end, the revised section requires that if the statement is false as of both the date the deed of trust was granted and the date of the trustee's sale, the property must be foreclosed judicially. Thus, a non-judicial foreclosure is allowed if the statement is true as of either of those two dates. This prohibits the grantor from changing non-agricultural property to an agricultural use in an attempt to circumvent the beneficiary's contractual right to foreclose nonjudicially. However, if the property was originally used for agricultural purposes but its use changes during the term of the deed of trust, the deed of trust may be amended to include the non-agricultural use statement, thus providing to the beneficiary the remedy of nonjudicial foreclose.

The new Act also specifically defines the term "agricultural purposes" as "an operation that produces crops, livestock, or aquatic goods." RCW 61.24.030. This definition is consistent with an approach used in other security contexts, most notably in the proposed, new Article 9 of the Uniform Commercial Code. See Draft Revision of Uniform Commercial Code Article 9 — Secured Transactions; Sales of Accounts and Chattel Paper, Sections 9-102(3), (23), (29); and 9-105(c).

VI. TRUSTEES AND THE FORECLOSURE PROCESS

In 1981, the Act was amended to allow any "domestic corporation" to act as a trustee. Since that amendment, a number of out-of-state entities have been incorporating in Washington with no physical presence within the state for the sole purpose of acting as trustees in nonjudicial foreclosures. Unlike the other

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Sale of Residential Real Property From an Estate

the property. Recognize, however, that the broker, real estate agent and buyer may not agree with all or any or your suggested revisions, and negotiation may be necessary.

The foregoing points cover the basic forms and highlight some suggested revisions. As always, carefully review all forms and addenda related to the sale and determine what, if any, additional revisions are required. By considering these issues when conducting your review, you can limit the personal representative's liability and lay the groundwork for a smoother closing.

[1] The author gratefully acknowledges the significant contributions by Ellen Conedera Dial and Carol Kirby to this article

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Notes from the Chair

preparing the Trust and Estate Dispute Resolution Act for re-submission to the legislature, and may have some additional proposals for changes to the durable power of attorney statutes. As bills reach proposal status they will be included on our Web page. This will allow you to see the actual terms of the specific proposals, and will give you opportunity to give us your feedback.

It has been my pleasure to serve as your Chair over this past year. Thank you for all of your assistance and support. With John Riley as your new Chair, and Mark Roberts as the new Chair Elect, I know that our Section will continue its tradition of excellence in leadership.

As always, questions, comments and suggestions are welcome and encouraged! Please provide us with your thoughts by contacting me or John Riley at:

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parties authorized to act as trustees under the Act, these out-of-state entities are essentially unregulated and may offer the grantor no in-state contact. To rectify this problem, the modified RCW 61.24.010 requires that at least one officer of a domestic corporation trustee be a Washington resident. The amended RCW 61.24.030 also requires trustees to maintain a street address in Washington prior to the date of the notice of trustee's sale through the trustee's sale for purposes of personal service of process.

Another change concerns successor trustees. Under the prior RCW 61.24.010, the beneficiary could appoint a successor trustee at its discretion. Under the amendments to that section, any such appointment is deemed an automatic resignation of the predecessor trustee. This eliminates the previous requirement that the predecessor trustee resign, which simply complicated the process and increased the costs, particularly when the original trustee was difficult to locate.

The amended Act also makes several other changes and clarifications to various aspects of the foreclosure process, including the following: codifying the existing practice of allowing the beneficiary to "credit bid" the amount of its debt at the trustee's sale (RCW 61.24.070); creating specific procedures for the handling of surplus sales proceeds (RCW 61.24.080); providing that certain anti-competitive efforts to interfere with the bidding process at trustees' sales are violations of the Washington Consumer Protection Act (new section); clarifying that a beneficiary may "pick and choose" which junior interests in the property will remain after the trustee's sale by simply not serving those parties (RCW 61.24.040(1)(b), .060); and codifying in the Act an existing practice under RCW 62A.9-501(4), whereby a trustee can sell a grantor's interest in any personal property which is secured by a deed of trust with security agreement provisions (RCW 61.24.020, .050).

** Craig A. Fielden is an attorney with Stoel Rives LLP, where he practices primarily in the areas of real estate finance, development and leasing. Mr. Fielden would like to thank Gordon Tanner, Chair of the committee that drafted the 1998 Deed of Trust Act amendments, and David Rockwell, Chair of the subcommittee that addressed post-foreclosure liability, for their help in the preparation of this article, and David Levant for his assistance with the bankruptcy portions of this article. Messrs. Rockwell, Tanner and Levant are also with Stoel Rives LLP.*

APPENDIX C

FIRST HARVEY DECLARATION

LOAN DOCUMENTS EXHIBIT C AND EXHIBITS E - K

EXHIBIT C

Exhibit C

7-11-2007 Kaydee Deed of Trust

Unofficial Document

RETURN ADDRESS:
Horizon Bank
CML % Brandi Reid
2211 Rimland Dr, Ste 230
Bellingham, WA 98226

200707240659 11 PGS
07/24/2007 1:27pm $51.00
SNOHOMISH COUNTY, WASHINGTON

PNWT 1042494

CONSTRUCTION DEED OF TRUST

DATE: July 11, 2007

Reference # (if applicable) _____ Additional on page ____

Grantor(s)
1 Kaydee Gardens 9, LLC

Grantee(s)
1 Horizon Bank
2 Westward Financial Services Corporation, Trustee

Legal Description A PORTION OF THE NE QUARTER OF 19-28-5, Additional on page 2
Records of Snohomish County

Assessor's Tax Parcel ID# 280519-001-022-00

THIS DEED OF TRUST is dated July 11, 2007, among Kaydee Gardens 9, LLC; A Washington Limited Liability Company ("Grantor"); Horizon Bank, whose mailing address is Snohomish Commercial Center, 2211 Rimland Drive, Suite 230, Bellingham, WA 98226 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Westward Financial Services Corporation, whose mailing address is 1500 Cornwall Avenue, Bellingham, WA 98225 (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 Snohomish County, State of Washington:**

ALL THAT PORTION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 19,

TOWNSHIP 28 NORTH, RANGE 5 EAST, W.M., LYING WESTERLY OF THE WEST LINE OF P.U.D. NO. 1 RIGHT OF WAY AND LYING SOUTHERLY OF THE FOLLOWING DESCRIBED 60 FOOT STRIP OF LAND:

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 28 NORTH, RANGE 5 EAST, W.M. IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND 60.00 FEET IN WIDTH, THE NORTH LINE OF WHICH IS PARALLEL WITH AND 30.00 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 19 AND THE EASTERLY LINE BEING THE WEST LINE OF PUGET SOUND POWER AND LIGHT COMPANY RIGHT OF WAY NOW HELD OF RECORD BY THE PUBLIC UTILITY DISTRICT NO 1 OF SNOHOMISH COUNTY, AS ESTABLISHED BY DEED RECORDED UNDER AUDITOR'S FILE NUMBER 178970, LYING 30.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19;

THENCE SOUTH 00 08'24" EAST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 30 02 FEET;

THENCE SOUTH 87 49'05" EAST, A DISTANCE OF 33.13 FEET TO A POINT ON THE CENTERLINE OF SAID PARCEL OF LAND, ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 23 19'05" EAST A DISTANCE OF 195.43 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY,

THENCE ALONG SAID CURVE, HAVING A RADIUS OF 275.00 FEET, THROUGH A CENTRAL ANGLE OF 49 31'17" AN ARC DISTANCE OF 237.69 FEET TO A POINT ON THE WEST LINE OF SAID PUGET SOUND POWER AND LIGHT COMPANY RIGHT OF WAY AND THE TERMINUS OF SAID CENTERLINE;

EXCEPT ANY PORTION THEREOF LYING WITHIN THE NORTH 30 FEET OF THAT PORTION OF SAID WEST HALF OF THE NORTHEAST QUARTER LYING WEST OF P.U.D. NO. 1 RIGHT OF WAY;

EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19;

THENCE NORTH 87 49'05" WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19 A DISTANCE OF 1,038.49 FEET TO A POINT ON THE WEST LINE OF PUGET SOUND POWER AND LIGHT COMPANY RIGHT OF WAY, NOW HELD OF RECORD BY THE PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY AND AS ESTABLISHED BY DEED RECORDED UNDER AUDITOR'S FILE NUMBER 1789070, SNOHOMISH COUNTY RECORDS;

THENCE SOUTH 00 29'25" EAST ALONG SAID WEST LINE, A DISTANCE OF 435 48 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE SOUTH 00 29'25" EAST A DISTANCE OF 120.13 FEET;

THENCE NORTH 87 49'05" WEST A DISTANCE OF 222.46 FEET;

THENCE NORTH 00 08'24" WEST PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 120.10 FEET;

THENCE SOUTH 87 49'05" EAST A DISTANCE OF 221.72 FEET TO THE TRUE POINT OF

CP555

BEGINNING;

EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19;

THENCE NORTH 87 49'05" WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 1,038.49 FEET TO A POINT ON THE WEST LINE OF THE PUGET SOUND POWER AND LIGHT COMPANY RIGHT OF WAY, NOW HELD OF RECORD BY THE PUBLIC UTILITY DISTRICT NO 1 OF SNOHOMISH COUNTY AND ESTABLISHED BY DEED RECORDED UNDER AUDITOR'S FILE NUMBER 178970, SNOHOMISH COUNTY RECORDS;

THENCE SOUTH 00 29'25" EAST ALONG SAID WEST LINE, A DISTANCE OF 435.48 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 87 49'05" WEST A DISTANCE OF 221.72 FEET;

THENCE NORTH 00 08'24" WEST PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19, A DISTANCE OF 267.38 FEET;

THENCE SOUTH 23 19'05" EAST A DISTANCE OF 57.02 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY;

THENCE ALONG SAID CURVE, HAVING A RADIUS OF 305.00 FEET, THROUGH A CENTRAL ANGLE OF 51 18'19", AN ARC DISTANCE OF 273.11 FEET TO A POINT ON THE WEST LINE OF AFORESAID PUGET SOUND POWER AND LIGHT COMPANY RIGHT OF WAY (SAID POINT HAVING A RADIAL BEARING OF NORTH 15 22'36" EAST);

THENCE SOUTH 00 29'25" EAST ALONG SAID WEST LINE, A DISTANCE OF 50.11 FEET TO THE POINT OF BEGINNING;

AND EXCEPT ANY PORTION THEREOF LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 19;

THENCE SOUTH 00 08'24" EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 19 A DISTANCE OF 900.80 FEET TO TRUE POINT OF BEGINNING;

THENCE SOUTH 87 48'58" EAST A DISTANCE OF 284.62 FEET TO THE END OF SAID LINE;

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

The Real Property or its address is commonly known as 11XX Bruskrud Rd, Lots 1-9, Everett, WA 98208. The Real Property tax identification number is 280519-001-022-00.

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

CONSTRUCTION MORTGAGE This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Washington

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

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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

Construction Loan If some or all of the proceeds of the loan creating the indebtedness are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the maturity date of the Note (or such earlier date as Lender may reasonably establish) and Grantor shall pay in full all costs and expenses in connection with the work Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by this Deed of Trust shall have priority over all possible liens, including those of material suppliers and workmen Lender may require, among other things, that disbursement requests be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request

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 ten (10) 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)

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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

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,

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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

Insecurity Lender in good faith believes itself insecure

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 thirty (30) days, or (2) if the cure requires more than thirty (30) 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 available at law or in equity

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

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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 Snohomish 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

ASSOCIATION OF UNIT OWNERS The following provisions apply if the Real Property has been submitted to unit ownership law or similar law for the establishment of condominiums or cooperative ownership of the Real Property

Power of Attorney Grantor grants an irrevocable power of attorney to Lender to vote in Lender's discretion on any matter that may come before the association of unit owners Lender shall have the right to exercise this power of attorney only after Grantor's default, however, Lender may decline to exercise this power as Lender sees fit

Insurance The insurance as required above may be carried by the association of unit owners on Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property If not so used by the association, such proceeds shall be paid to Lender

Default. Grantor's failure to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder, shall be an event of default under this Deed of Trust If Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, any failure by Grantor to perform any of the obligations imposed on Grantor by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor as a member of an association of unit owners to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association shall be an Event of Default under this Deed of Trust

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 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 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 Whatcom 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

CP 561

Waive Jury All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

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 Horizon Bank, and its successors and assigns

Borrower The word "Borrower" means Kaydee Gardens 9, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns

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 Kaydee Gardens 9, 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 Horizon Bank, its successors and assigns

Note. The word "Note" means the promissory note dated July 11, 2007, **in the original principal amount of $2,561,625.00** 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 Westward Financial Services Corporation, whose mailing address is 1500 Cornwall Avenue, Bellingham, WA 98225 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

KAYDEE GARDENS 9, LLC

By _____
Lance Noble Harvey, Member of Kaydee Gardens 9, LLC

By _____
Mark Christopher Tapert, Member of Kaydee Gardens 9, LLC

UNOFFICIAL DOCUMENT

CP 562

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF WA)
) SS
COUNTY OF Snohomish)

On this 20th day of July, 20 07, before me, the undersigned Notary Public, personally appeared ~~Lance Noble Hartley, Member,~~ **Mark Christopher Tapert, Member of Kaydee Gardens 9, LLC,** and personally known to me or proved to me on the basis of satisfactory evidence to be members or designated agents 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 they are authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company

By [signature] Residing at Monroe

Notary Public in and for the State of WA My commission expires 6/18/08

SUSAN K. FLEEK
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
JUNE 18, 2008

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 _____

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UNOFFICIAL DOCUMENT

CP563

NOTARY PAGE

STATE OF WASHINGTON }
} ss.
County of _____ }

I hereby certify that I know or have satisfactory evidence that _____

is the person(s) who appeared before me, and said person(s) acknowledged that (he, she, they) signed this instrument and acknowledged it to be (his, her, their) free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

_____
Notary Public in and for the State of Washington

_____
Printed Name

Residing at _____
My appointment expires _____

STATE OF WASHINGTON }
} ss.
County of Snohomish }

I hereby certify that I know or have satisfactory evidence that Lance Noble Harvey

is the person(s) who appeared before me, and said person(s) acknowledged that (he, she, they) signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledge it as the member of Kandee Gardens 9, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument

Dated: 7-20-07

_____
Notary Public in and for the State of Washington

mara R Clark
Printed Name
Residing at Stanwood
My appointment expires 11-29-09

MARA R CLARK
NOTARY PUBLIC
COMMISSION EXPIRES
11-29-09
STATE OF WASHINGTON

UNOFFICIAL DOCUMENT

CP564

EXHIBIT E

Exhibit E

11-20-2008 Kaydee Notice of Final Agreement

NOTICE OF FINAL AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$2,559,482.25	11-20-2008	11-15-2011	6000002892	3001		JDC	

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: Kaydee Gardens 9, LLC
10325 Airport Way
Snohomish, WA 98296

Lender: Horizon Bank
Snohomish Commercial Center
2211 Rimland Drive, Suite 230
Bellingham, WA 98226
(877) 423-9742

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

By signing this document each Party acknowledges receipt of the above notice. In addition (and not as a limitation on the legal effect of the notice), by signing this document each Party represents and agrees that: (a) The written Loan Agreement represents the final agreement between the Parties, (b) There are no unwritten oral agreements between the Parties, and (c) The written Loan Agreement may not be contradicted by evidence of any prior, contemporaneous, or subsequent oral agreements or understandings of the Parties.

As used in this Notice, the following terms have the following meanings:

Loan. The term "Loan" means the following described loan: a Fixed Rate (3.000% initial rate) Nondisclosable Loan to a Limited Liability Company for $2,559,482.25 due on November 15, 2011.

Loan Agreement. The term "Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, relating to the Loan, including without limitation the following:

LOAN DOCUMENTS

Amortization Schedule
Business Loan Agreement
WA Commercial Guaranty: Lance Harvey
COLLECT INTEREST - Collect Interest
Notice of Final Agreement
LLC Resolution: Kaydee Gardens 9, LLC
Promissory Note
WA Assignment of Rents
Disbursement Request and Authorization

Parties. The term "Parties" means Horizon Bank and any and all entities or individuals who are obligated to repay the loan or have pledged property as security for the Loan, including without limitation the following:

Borrower: Kaydee Gardens 9, LLC
Grantor(s): Kaydee Gardens 9, LLC
Guarantor 1: Lance Harvey

COUNTERPARTS. This Agreement may be executed in a number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts shall collectively constitute one agreement.

Each Party who signs below, other than Horizon Bank, acknowledges, represents, and warrants to Horizon Bank that it has received, read and understood this Notice of Final Agreement. This Notice is dated November 20, 2008.

BORROWER:

KAYDEE GARDENS 9, LLC

By: _____
Lance Harvey, Member of Kaydee Gardens 9, LLC

GUARANTOR:

X _____
Lance Harvey, Individually

LENDER:

HORIZON BANK

X_____
Authorized Signer

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EXHIBIT F

Exhibit F

11-20-2008 Kaydee Limited Liability Company
Resolution to Borrow

CP57C

LIMITED LIABILITY COMPANY RESOLUTION TO BORROW / GRANT COLLATERAL / SUBORDINATE DEBT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$2,559,482.25	11-20-2008	11-15-2011	6000002892	3001		JDE	

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.

Company: Kaydee Gardens 9, LLC
10325 Airport Way
Snohomish, WA 98296

Lender: Horizon Bank
Snohomish Commercial Center
2211 Rimland Drive, Suite 230
Bellingham, WA 98226
(877) 423-9742

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE COMPANY'S EXISTENCE. The complete and correct name of the Company is Kaydee Gardens 9, 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 is duly authorized to transact business in all other states in which the Company is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which the Company is doing business. Specifically, the Company is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. 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 10325 Airport Way, Snohomish, WA 98296. 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 November 20, 2008, 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.

MEMBER. The following named person is a member of Kaydee Gardens 9, LLC:

NAMES	TITLES	AUTHORIZED	ACTUAL SIGNATURES
Lance Harvey	Member	Y	X

ACTIONS AUTHORIZED. The authorized person listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Company. Specifically, but without limitation, the authorized person is 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 his or her 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 theretofore 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 terms 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.

Subordination. To subordinate, in all respects, any and all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be owed, now or hereafter, from any person or entity to the Company to all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be owed, now or hereafter, from such person or entity to Lender ("Subordinated Indebtedness"), together with subordination by the Company of any and all security interests of any kind, whether now existing or hereafter acquired, securing payment or performance of the Subordinated Indebtedness; all on such subordination terms as may be agreed upon between the Company's Members and Lender and in such amounts as in his or her judgment should be subordinated.

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 he or she 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, including agreements waiving the right to a trial by jury, as the member may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

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.

COUNTERPARTS. This Agreement may be executed in a number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts shall collectively constitute one agreement.

CERTIFICATION CONCERNING MEMBERS AND RESOLUTIONS. The member named above is duly elected, appointed, or employed by or for the Company, as the case may be, and occupies the position set opposite his or her respective name. 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, I have hereunto set my hand and attest that the signature set opposite the name listed above is his or her genuine signature.

I have read all the provisions of this Resolution, and I 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 / Subordinate Debt is dated November 20, 2008.

CERTIFIED TO AND ATTESTED BY:

X _____
Lance Harvey, Member of Kaydee Gardens 9, LLC

NOTE: If the member signing this Resolution is 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.

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EXHIBIT G

Exhibit G

11-20-2008 Kaydee Business Loan Agreement

BUSINESS LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$2,559,432.25	11-20-2008	11-15-2011	60000002892	300		JDE	

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: Kaydee Gardens 9, LLC
10325 Airport Way
Snohomish, WA 98296

Lender: Horizon Bank
Snohomish Commercial Center
2211 Rimland Drive, Suite 230
Bellingham, WA 98226
(877) 423-9742

THIS BUSINESS LOAN AGREEMENT dated November 20, 2008, is made and executed between Kaydee Gardens 9, LLC ("Borrower") and Horizon Bank ("Lender") on the following terms and conditions. Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement. Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

TERM. This Agreement shall be effective as of November 20, 2008, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements and all other documents perfecting Lender's Security Interests; (4) evidence of insurance as required below; (5) guaranties; (6) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Borrower's Authorization. Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

Representations and Warranties. The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any indebtedness exists:

Organization. Borrower 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. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower 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. Borrower maintains an office at 10325 Airport Way, Snohomish, WA 98296. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower 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 Borrower and Borrower's business activities.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Borrower's articles of organization or membership agreements, or (b) any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with the following:

Tax Returns. As soon as available, but in no event later than thirty (30) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by a tax professional satisfactory to Lender.

Additional Requirements. Borrower to provide annual financial statements, prepared by Borrower, due with tax returns.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Insurance. Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, 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 ten (10) 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 Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Guaranties. Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the guarantor named below, on Lender's forms, and in the amount and under the conditions set forth in those guaranties.

Name of Guarantor	Amount
Lance Harvey	Unlimited

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

Loan Proceeds. Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in

writing.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Provided however, Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim so long as (1) the legality of the same shall be contested in good faith by appropriate proceedings, and (2) Borrower shall have established on Borrower's books adequate reserves with respect to such contested assessment, tax, charge, levy, lien, or claim in accordance with GAAP.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Operations. Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Environmental Compliance and Reports. Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower'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 any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. 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 Borrower. 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.

NEGATIVE COVENANTS. Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

Continuity of Operations. (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

Agreements. Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

CESSATION OF ADVANCES. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

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, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement 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.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement 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.

Defective Collateralization. This Agreement 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.

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.

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

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cure the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

EFFECT OF AN EVENT OF DEFAULT. If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. 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 Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

COUNTERPARTS. This Agreement may be executed in a number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts shall collectively constitute one agreement.

PARTIAL RECONVEYANCE. If Borrower is current in all of Borrower's obligations on the Note, Credit Agreement and Related Loan Documents, in order to obtain from Lender a Partial Reconveyance of its Deed of Trust for any portion of the property, Borrower must make a principal payment equal to:

the agreed release price assigned to each lot, unit, parcel or pad, as follows:
100% of seller's net proceeds, not to be less than $285,000.00 per unit.

If Borrower is delinquent in one or more of Borrower's obligations on the Note, Credit Agreement or Related Loan Documents, in order to obtain a Partial Reconveyance of Lender's Deed of Trust, Borrower must make a principal payment equal to the greater of (a) 100% of the net sales proceeds generated from the sale of the lot, unit, parcel or pad, or the release amount as specified above. "Net sales proceeds" shall be equal to the gross selling price for the lot, unit, parcel or pad, reduced by the sum of Borrower's real estate commission, real estate excise tax, recording fees, escrow fee, title insurance premium and other incidental fees customarily paid by a seller. Irrespective of whether Borrower is current or in delinquent in Borrower's obligations to Lender, Borrower must also satisfy the following additional conditions: (a) Borrower must bring current all of its obligations on the Note, Credit Agreement and Related Loan documents, including the payment of accrued interest; (b) Borrower must be current in its obligations, covenants and conditions contained in any other agreements between Lender and Borrower; (c) Borrower must pay Lender a $150.00 per lot processing fee for each property to be Reconveyed; and, if necessary (c) Borrower must pay the Trustee's Normal Reconveyance fees associated with the recordation of any partial or full Reconveyance.

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

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement 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. Borrower 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 Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower 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. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

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

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Governing Law. This Agreement 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. This Agreement 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 Whatcom County, State of Washington.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement 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 Agreement 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 Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, 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.

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 Agreement 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 Agreement. Any party may change its address for notices under this Agreement 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, Borrower agrees to keep Lender informed at all times of Borrower'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 Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

Severability. If a court of competent jurisdiction finds any provision of this Agreement 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 Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Subsidiaries and Affiliates of Borrower. To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any of Borrower's subsidiaries or affiliates.

Successors and Assigns. All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

Survival of Representations and Warranties. Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. 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 Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

Agreement. The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

Borrower. The word "Borrower" means Kaydee Gardens 9, LLC and includes all co-signers and co-makers signing the Note and all their

successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

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

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

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

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

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

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

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Note. The word "Note" means the Note executed by Kaydee Gardens 9, LLC in the principal amount of $2,559,482.25 dated November 20, 2008, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

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 Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED NOVEMBER 20, 2008.

BORROWER:

KAYDEE GARDENS 9, LLC

By: _____
Lance Harvey, Member of Kaydee Gardens 9, LLC

LENDER:

HORIZON BANK

By:_____
Authorized Signer

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EXHIBIT H

Exhibit H

11-20-2008 Kaydee Promissory Note

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$2,559,482.25	11-20-2008	11-15-2011	600000028892	300		JDE	

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: Kaydee Gardens 9, LLC
10325 Airport Way
Snohomish, WA 98296

Lender: Horizon Bank
Snohomish Commercial Center
2211 Rimland Drive, Suite 230
Bellingham, WA 98226
(877) 423-9742

Principal Amount: $2,559,482.25 **Date of Note:** November 20, 2008

PROMISE TO PAY. Kaydee Gardens 9, LLC ("Borrower") promises to pay to Horizon Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Two Million Five Hundred Fifty-nine Thousand Four Hundred Eighty-two & 25/100 Dollars ($2,559,482.25), together with interest on the unpaid principal balance from November 20, 2008, until paid in full.

PAYMENT. Borrower will pay this loan in accordance with the following payment schedule, which calculates interest on the unpaid principal balances as described in the "INTEREST CALCULATION METHOD" paragraph using the interest rates described in this paragraph: 15 monthly consecutive interest payments, beginning January 15, 2009, with interest calculated on the unpaid principal balances using an interest rate of 3.000% per annum based on a year of 360 days; 19 monthly consecutive principal and interest payments of $10,852.29 each, beginning April 15, 2010, with interest calculated on the unpaid principal balances using an interest rate of 3.000% per annum based on a year of 360 days; and one principal and interest payment of $2,481,266.05 on November 15, 2011, with interest calculated on the unpaid principal balances using an interest rate of 3.000% per annum based on a year of 360 days. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Note. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any late charges; and then to any unpaid collection costs. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

PREPAYMENT. 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 under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. 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: Horizon Bank, Commercial Banking Center, 2211 Rimland Drive, Suite 230 Bellingham, WA 98226.

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, the interest rate on this Note shall be increased by adding a 4.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. After maturity, or after this Note would have matured had there been no default, the Default Rate Margin will continue to apply to the final interest rate described in this Note. If judgment is entered in connection with this Note, interest will continue to accrue after the date of judgment at the rate in effect at the time judgment is entered. However, in no event will the interest rate exceed the maximum interest rate limitations under 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.

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.

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.

Insecurity. Lender in good faith believes itself insecure.

Transfer File

CP582

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 thirty (30) days; or (2) if the cure requires more than thirty (30) 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 under 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.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Note 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. 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 Whatcom County, State of Washington.

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, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein:

(A) a Construction Deed of Trust dated July 11, 2007, to a trustee in favor of Lender on real property located in Snohomish County, State of Washington.

(B) an Assignment of All Rents dated November 17, 2008, on real property located in Snohomish County, State of Washington.

PAYMENT CHANGE. The calculated Payment amount may change due to a variety of circumstances or events, including, but not limited to: an increase in interest rate resulting from a change in the index or Borrower's default; the date payment is received; or, the actual number of calendar days remaining in the amortization of the indebtedness.

COUNTERPARTS. This Agreement may be executed in a number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts shall collectively constitute one agreement.

PRIOR NOTE. This Note is a renewal and replacement of Promissory Note from Borrower to Lender dated July 11, 2007 in the original amount of $2,561,625.00. All references in the loan documents to the old Note shall be deemed to be a reference to the new Note.

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.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. 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. BORROWER AGREES TO THE TERMS OF THE NOTE.

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

BORROWER:

KAYDEE GARDENS 9, LLC

By: _____
Lance Harvey, Member of Kaydee Gardens 9, LLC

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EXHIBIT I

Exhibit I

11-20-2008 Harvey Commercial Guaranty
re: Kaydee Loan

COMMERCIAL GUARANTY

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: Kaydee Gardens 9, LLC
10325 Airport Way
Snohomish, WA 98296

Lender: Horizon Bank
Snohomish Commercial Center
2211 Rimland Drive, Suite 230
Bellingham, WA 98226
(877) 423-9742

Guarantor: Lance Harvey
10325 Airport Way
Snohomish, WA 98296

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 suretyship; 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 than 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. If I am married, I hereby expressly agree that I am acting on behalf of my marital community, that the Guaranty benefits or is expected to benefit the community, and that recourse may be had against both my 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 FINANCIAL STATEMENTS. Guarantor agrees to furnish Lender with the following:

Tax Returns. As soon as available, but in no event later than thirty (30) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by a tax professional satisfactory to Lender.

Additional Requirements. Guarantor to provide personal financial statements, prepared by Guarantor, due annually with tax returns.

Furnish such additional information and statements, as Lender may request from time to time. All financial reports required to be provided under this Guaranty shall be submitted on Lender's forms, or otherwise be in form and substance acceptable to and as required by Lender.

All financial reports required to be provided under this Guaranty shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Guarantor as being true and correct.

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 Whatcom 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.

Waive Jury. Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Guarantor against the other.

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 Kaydee Gardens 9, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

GAAP. The word "GAAP" means generally accepted accounting principles.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation Lance Harvey, 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 Horizon 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 NOVEMBER 20, 2008.

GUARANTOR:

X _____
Lance Harvey

LASER PRO Lending, Ver. 5.41.00.004 Copr. Harland Financial Solutions, Inc. 1997, 2008. All Rights Reserved. - WA c:\CFI\LPL\G201.FC TR-1428

EXHIBIT J

Exhibit J

11-20-2008 Kaydee Assignment of Rents

ELECTRONICALLY RECORDED
200811210193 7
11/21/2008 11:27 AM . 48.00
SNOHOMISH COUNTY, WASHINGTON

RETURN ADDRESS:
Horizon Bank
% Documentation Dept -
TA
2211 Rimland Dr. Ste 230
Bellingham, WA 98226

PNWT 10424914

200811210193

ASSIGNMENT OF RENTS

Reference # (if applicable): 200707240659/CMLG2892 Additional on page ____
Grantor(s):
1. Kaydee Gardens 9, LLC

Grantee(s)
1. Horizon Bank

Legal Description: A PORTION OF THE NE QUARTER OF 19-28-5
Additional on page ____

Assessor's Tax Parcel ID#: 280519-001-022-00

THIS ASSIGNMENT OF RENTS dated November 20, 2008, is made and executed between Kaydee Gardens 9, LLC; A Washington Limited Liability Company (referred to below as "Grantor") and Horizon Bank, whose mailing address is 2211 Rimland Drive, Suite 230, Bellingham, WA 98226 (referred to below as "Lender").

Said document(s) were filed for record by Pacific N.W. Title as accommodation only. It has not been examined as to proper execution or as to its effect upon title.

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CP590

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Snohomish County, State of Washington:

See Exhibit "A", which is attached to this Assignment and made a part of this Assignment as if fully set forth herein.

The Property or its address is commonly known as 1201 Bruskrud Rd, Everett, WA 98208. The Property tax identification number is 280519-001-022-00.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that:

Ownership. Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Assign. Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

No Prior Assignment. Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

No Further Transfer. Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS. Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with the laws of the State of Washington and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

Other Acts. Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that

Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

FULL PERFORMANCE. If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Assignment, the Note, and the Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

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 Assignment 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 Assignment 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 Rents or 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 Assignment 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.

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

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 Assignment 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.

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

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Assignment 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 Assignment 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 the Rents or 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.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

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

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under any Guaranty of the Indebtedness.

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.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. 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 Assignment 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 thirty (30) days; or (2) if the cure requires more than thirty (30) 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. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Grantor would be required to pay.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of 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 shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. 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.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

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 Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, 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.

COUNTERPARTS. This Agreement may be executed in a number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts shall collectively constitute one agreement.

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

Amendments. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment 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.

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

Governing Law. This Assignment 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. This Assignment 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 Whatcom County, State of Washington.

Merger. There shall be no merger of the interest or estate created by this assignment 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.

Interpretation. (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Assignment 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 Assignment 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 Assignment. 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 Assignment, 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.

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 Assignment 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 Assignment. Any party may change its address for notices under this Assignment 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.

Powers of Attorney. The various agencies and powers of attorney conveyed on Lender under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are renounced by Lender.

Severability. If a court of competent jurisdiction finds any provision of this Assignment 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 Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

Successors and Assigns. Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment 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 Assignment and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Assignment.

Waive Jury. All parties to this Assignment hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

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 Assignment.

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DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Assignment. 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 Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

Assignment. The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to this ASSIGNMENT OF RENTS from time to time.

Borrower. The word "Borrower" means Kaydee Gardens 9, LLC.

Default. The word "Default" means the Default set forth in this Assignment in the section titled "Default".

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

Grantor. The word "Grantor" means Kaydee Gardens 9, 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.

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 Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment.

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

Note. The word "Note" means the promissory note dated November 20, 2008, **in the original principal amount of $2,559,482.25** 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.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

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.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON NOVEMBER 20, 2008.

GRANTOR:

KAYDEE GARDENS 9, LLC

By: [redacted]
Lance Harvey, Member of Kaydee Gardens 9, LLC

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

RUANNE WEBBER
NOTARY PUBLIC
COMMISSION EXPIRES 04-27-2012
STATE OF WASHINGTON

STATE OF Washington)
) SS
COUNTY OF Snohomish)

On this 21st day of November, 2008, before me, the undersigned Notary Public, personally appeared Lance Harvey, Member of Kaydee Gardens 9, LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a member or designated agent of the limited liability company that executed the ASSIGNMENT OF RENTS and acknowledged the Assignment 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 Assignment and in fact executed the Assignment on behalf of the limited liability company.

By Ruanne Webber Residing at Snohomish Co

Notary Public in and for the State of WA My commission expires 4-27-12

LASER PRO Lending, Ver. 5.42.00.004 Copr. Harland Financial Solutions, Inc. 1997, 2008. All Rights Reserved. -
WA c:\CFIWIN\CFI\LPL\G14.FC TR-3488

EXHIBIT K

Exhibit K

11-20-2008 Kaydee Disbursement Request

DISBURSEMENT REQUEST AND AUTHORIZATION

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$2,559,482.25	11-20-2008	11-15-2011	6000002892	3001		JDE	

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: Kaydee Gardens 9, LLC
10325 Airport Way
Snohomish, WA 98296

Lender: Horizon Bank
Snohomish Commercial Center
2211 Rimland Drive, Suite 230
Bellingham, WA 98226
(877) 423-9742

LOAN TYPE. This is a Fixed Rate (3.000% initial rate) Nondisclosable Loan to a Limited Liability Company for $2,559,482.25 due on November 15, 2011.

PRIMARY PURPOSE OF LOAN. The primary purpose of this loan is for:

☐ **Personal, Family, or Household Purposes or Personal Investment.**

☒ **Business (Including Real Estate Investment).**

FLOOD INSURANCE. The property that will secure the loan is not located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards. Therefore, although flood insurance may be available for the property, no special flood hazard insurance protecting property not located in an area having special flood hazards is required by law for this loan at this time.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of $2,559,482.25 as follows:

Other Disbursements: $2,559,482.25 Current principal balance	$2,559,482.25
Note Principal:	$2,559,482.25

CHARGES PAID IN CASH. Borrower has paid or will pay in cash as agreed the following charges:

Prepaid Finance Charges Paid in Cash:	$0.00
Other Charges Paid in Cash: $3,850.00 Appraisal Fee to: McCaulay & Assoc.	$3,850.00
Total Charges Paid in Cash:	$3,850.00

DOCUMENT PREPARATION. In connection with this Loan, Lender has selected, prepared, drafted or completed certain instruments or documents which will affect Borrower's legal rights. Lender has done this solely for its own benefit and to protect its own interest in the transaction. BORROWER HAS BEEN ADVISED BY LENDER THAT BORROWER SHOULD CONSULT WITH BORROWER'S OWN LEGAL COUNSEL TO PROTECT BORROWER'S INTERESTS AND TO ANSWER ANY QUESTIONS BORROWER MAY HAVE ABOUT THE INSTRUMENTS, DOCUMENTS OR THE TRANSACTION.

AGENCY APPOINTMENT AGREEMENT. The Borrower and Guarantors, if any, hereby agree to be solely liable for payment of third party services. Further, Borrower has made arrangements with Horizon Bank (Lender) to obtain, assume or otherwise qualify for a loan. Borrower may have given Lender an application deposit for any expenses incurred during the processing of the loan. These expenses may include, but are not limited to, the cost of: appraisals, environmental assessments, title insurance reports, construction inspections, tax review services, credit reports, and flood determinations. Borrower will receive credit for the deposit at the time the loan is funded. If the loan request is withdrawn or denied by Lender, the Borrower and Guarantors, if any, agree to be responsible for all expenses incurred by Lender in processing the loan documentation. If the actual expenses are more than the deposit, Borrower agrees to pay the difference to Lender within thirty (30) days of receipt of the billing statement. If the actual expenses are less than the deposit, Lender agrees to refund the difference to Borrower.

Borrower hereby appoints Lender to act as agent in obtaining items furnished by third parties and acknowledges that Lender, in obtaining such items and rendering payments for said items, acts solely as the Borrower's agent for payment purposes only to third party providers, and assumes no contractual liability for payment of these expenses which are the Borrower's sole responsibility

COUNTERPARTS. This Agreement may be executed in a number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts shall collectively constitute one agreement.

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED NOVEMBER 20, 2008.

BORROWER:

KAYDEE GARDENS 9, LLC

By: _____
Lance Harvey, Member of Kaydee Gardens 9, LLC

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