

NO. 45014-3-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

L&P DEVELOPMENT, L.L.C., a Washington limited liability company;
PACIFIC RESOURCE DEVELOPMENT, INC., a Washington
corporation; PARKER FAMILY L.L.C., a Washington limited liability
company; RTB, INC.; RICHARD T. BRUNAUGH and AMANDA
BRUNAUGH, husband and wife, and the marital community composed
thereof; LYLE E. FOX and VICKY J. FOX, husband and wife, and the
marital community composed thereof; PAUL E. GREEN and ANNETTE
GREEN, husband and wife, and the marital community composed thereof;
DONALD C. LINKEM and ELIZABETH A. LINKEM, husband and
wife, and the marital community composed thereof; DAVID A. PARKER
and VELMA L. PARKER, husband and wife, and the marital community
composed thereof; PAUL E. WILSON and KELLY I. WILSON, husband
and wife, and the marital community composed thereof,

Appellants,

vs.

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

Respondent.

BRIEF OF RESPONDENT UNION BANK, N.A.

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I. INTRODUCTION

This Court should affirm the trial court's summary judgment ruling in favor of Respondent Union Bank, N.A. ("Union Bank") awarding a deficiency judgment on a defaulted commercial construction loan against multiple commercial guarantors (collectively "Guarantors").¹ Guarantors are liable on their commercial guaranties notwithstanding Union Bank's nonjudicial foreclosure of the deed of trust offered by the borrower, not by Guarantors. That nonjudicial foreclosure does not prevent this action, contrary to Guarantors' assertions. This Court should reject their legal defense and affirm the trial court's judgment in Union Bank's favor.

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

This Court should reject Guarantors' sole challenge on appeal that as a matter of law Union Bank could not seek a deficiency against them after Union Bank's nonjudicial foreclosure of the borrower's deed of trust.

¹ Guarantors (each of whom executed an identical guaranty) are L&P Development, LLC, Pacific Resource Development, Inc., Parker Family, LLC, RTB, Inc., Richard Brunaugh, Amanda Brunaugh, Lyle Fox, Vicky Fox, Paul Green, Annette Green, Donald Linkem, Elizabeth Linkem, David Parker, Velma Parker, Paul Wilson and Kelly Wilson.

If this Court rejects any part of their three-part legal argument, this Court should affirm. Each part of their argument fails for these reasons: 1) the deed of trust construed in context does *not* secure the Guarantors' obligations under their commercial guaranties, but only secures the obligations of the borrower/grantor; 2) even if the deed of trust secured the Guarantors' obligations, the Deed of Trust Act does not provide the defense asserted and, instead, provides at RCW 61.24.100(3)(c) a lender's right to a deficiency judgment against commercial guarantors like these; and 3) Guarantors waived any anti-deficiency defense. This Court should affirm.

Guarantors advise this Court of other litigation involving similar issues. *Op. Br.*, 1 n.1 Guarantors assert the other litigation involves "substantially identical" or "exact same" issues, but the evidence and documents in each case are not identical. The particular documents and context evidence of this transaction are material and determinative of the contract construction issue. They support affirmance in this case.

II. STATEMENT OF THE ISSUES

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

limited authority and intent demonstrated by its LLC resolutions?

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

III. STATEMENT OF THE CASE

This is an action to enforce personal commercial guaranties of a commercial construction loan of over \$5 million. The relevant facts, including the particular documents and context evidence that support Union Bank's position, are undisputed.

This Court reviews the trial court's summary judgment ruling that Union Bank may recover a deficiency judgment against these guarantors of a commercial loan after nonjudicial foreclosure of the borrower's deed of trust. CP 1107-1111 (Order Granting Summary Judgment) (App. 1).

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

To acquire undeveloped real estate intended for development, LFN, LLC ("LFN" or "Borrower") in June 2007 borrowed \$5,010,000 from Union Bank's predecessor in interest Frontier Bank by executing a promissory note ("Note"). CP 723-24 at ¶¶ 2, 3, 4; CP 728-30 (Note,

App. 4). The parties changed the terms multiple times. CP 731-36. As collateral for the Note, LFN granted to Frontier Bank a deed of trust (“Deed of Trust”) encumbering its real property. CP 724 ¶ 5; CP 738-45 (Deed of Trust, App. 5). The Note specifies that it “is secured” by the Deed of Trust. CP 729 at “COLLATERAL.”

To make the commercial loan, Frontier Bank relied upon additional sources of repayment that the guarantors had provided to the Bank: personal commercial guaranties. CP 1083-84; CP 748-810 (Guaranties) (*see* App. 3). The commercial guaranties are identical. *Id.* Each guarantor covenants “absolutely” and “unconditionally” to guarantee on a continuing basis full satisfaction of any and all debts, liabilities and obligations of LFN to Frontier Bank. *See* CP 748 (App. 3). These guaranties do not specify any collateral or security. *See* CP 748-50 (App. 3).

Guarantors were not parties to the Deed of Trust or the Promissory Note, which were executed by Borrower LFN and Frontier Bank. CP 738-45 (App. 5); CP 728-29 (App. 4). Guarantors did not own the property granted in the Deed of Trust. *Id.* No guarantor offered security for his or her guaranty. *Id.*

Shortly after the initial loan when the parties changed the terms, LFN provided Frontier Bank resolutions recognizing its members’

authority to grant the Deed of Trust to secure **its** obligations, not obligations of anyone else. CP 1083 ¶ 3; CP 1087-1090 (App. 2). The December 2007 resolutions state that LFN's members are authorized "[t]o mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber . . . any property . . . belonging to the Company . . . 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 . . ." CP 1087, 1089 (App. 2). Nowhere do the resolutions demonstrate or mention any authority of the LLC members to encumber the LLC's property as security for the obligations of third parties or individuals including the guarantors.

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

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

CP 739 (App. 5). The Deed of Trust specifies in this section that it concerns payment and performance by the “Grantor,” and nobody else. The Deed of Trust defines the “Grantor” as LFN. CP 744 (App. 5). This “Payment and Performance” section informs the meaning of the document and specifically the payment and performance obligations identified in the preceding paragraph.

Each of the guaranties provides as part of “GUARANTOR’S WAIVERS” a waiver of any defense related to anti-deficiency laws or laws that would prevent the Lender from seeking a deficiency after any foreclosure, as follows,

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

See CP 748-49 (Commercial Guaranty, p. 2 at “GUARANTOR’S WAIVERS” (emphasis added)) (App. 3). Additional provisions address these waivers, including one entitled “GUARANTOR’S UNDERSTANDING WITH RESPECT TO WAIVERS” (see CP 749 at “GUARANTOR’S WAIVERS” p. 2 (App. 3), and the Guarantor’s

acknowledgment that he or she read the provisions of the guaranty and agree to its terms. *See* CP 750 (App. 3).

B. The context evidence

The transaction documents include the Note, the Deed of Trust and the Guaranties, together with the LLC Resolutions provided shortly after the loan was made when the parties changed its terms.

Union Bank Vice President Andrew Bembry testified that the structure of this commercial construction loan “is customary in the banking industry.” CP 1083 ¶ 4. He testified that to fund a commercial loan like the one at issue, a commercial lender such as Frontier Bank would require not only a Deed of Trust from the borrower providing an interest in the property to be developed, but also would require additional security such as commercial guaranties to provide “an additional remedy” or “another source of credit support” or “repayment.” *Id.* He testified, “Where commercial guaranties are obtained, the bank has an additional remedy if the property does not satisfy the debt: it can look to the guarantors.” CP 1083-84. This loan file indicated no intent by the parties to deviate from these standard practices. CP 1084 ¶ 4 at 6-7. The loan file also does not demonstrate “that the guarantors made any special request that the Deed of Trust secure their Commercial Guaranties.” *Id.* at 7-8. Mr. Bembry noted that no guarantor testified that he or she made such a

request or stated to Frontier Bank any intent that the Deed of Trust secure his or her guaranty. *Id.* No evidence exists in this record to show that the parties intended an alternative structure to this customary commercial loan transaction.

C. Summary Judgment to Union Bank

After Borrower LFN defaulted on the Note, Union Bank nonjudicially foreclosed the Deed of Trust. CP 724 ¶¶ 7-8. Union Bank then commenced this action against Guarantors to enforce their personal guaranties and collect the deficiency. CP 4724-25 ¶¶ 9-11.

Union Bank moved for summary judgment, contending that it had the contractual and statutory right to recovery a deficiency from the Guarantors. CP 699-707.² Certain Guarantors (but not all) opposed the motion. CP 984-1019 (Opposition by Foxes),³ 1020-1028 (Opposition by remaining defendants except Greens). Defendants Green failed timely to object to Union Bank's motion. *See* CP 1031 at 5-7. *See also* CP 1213-17. After the deadline pursuant to Civil Rule 56 for a response passed, the Greens never sought or received any court authority to oppose tardily the relief requested by Union Bank.

² This motion practice began April 16, 2013, with the filing of Union Bank's motion for summary judgment. For purposes of this appeal, the relevant part of the record begins on this date, or at CP 699.

³ Defendants Fox also disputed the fair value of the property, an issue that the parties resolved and that Guarantors do not raise on appeal.

Some defendants (but not all) cross-moved for summary judgment based on the same legal defense raised in this appeal. CP 973-979 (Cross Motion for Summary Judgment by Defendants other than Foxes and Greens); CP 1208-1209 (Order Granting Motion to Shorten Time to Defendants other than Foxes and Greens).⁴

The trial court granted Union Bank's motion for summary judgment on liability, and denied the cross-motion for summary judgment brought by some defendants with permission on shortened time. CP 1109 at 7-12 (App. 1).

After the parties stipulated to the fair value of the property, the trial court entered judgment for the deficiency amount plus interest and attorney fees (totaling approximately \$2.9 million) against Guarantors jointly and severally. CP 1137-47 (Judgment).

Guarantors timely appealed. CP 1148-50, 1158-59, 1181-1203 (Notices of Appeal).

IV. STANDARDS OF REVIEW

The parties agree that this appeal presents purely legal issues

⁴ The Greens unilaterally purported to "join" in the late cross motion, *see* CP 1210-12, but never received any relief authorizing their joinder. Like the Foxes, the Greens were not included in the 5/10/13 order permitting the cross motion on shortened time. CP 1208-09. Unlike the Foxes, the Greens never timely opposed Union Bank's motion for summary judgment.

reviewed *de novo*. See *Op. Br. 5*. Appellate courts review summary judgment orders *de novo*. *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 908, 154 P.3d 882 (2007). Interpretation of a contract ordinarily is a question of law. *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Tanner Elec. Coop v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 574, 911 P.2d 1301 (1996). Statutory interpretation similarly is a legal issue reviewed *de novo*. *Udall*, 159 Wn.2d at 908.

CR 56(c) provides that summary judgment is appropriate where “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” Appellants raise no disputed issues of fact.

Application of these standards should result in affirmance.

V. ARGUMENT

This Court should affirm the trial court’s summary judgment in Union Bank’s favor based on any of three legal bases. The Court first should construe the Deed of Trust to secure only Borrower LFN’s obligations based on the language, context evidence and commercial purpose of the transaction. This defeats Guarantors’ defense. Guarantors fail to address the context evidence, reconcile their proposed construction with all the contemporaneous documents, or address the expression of

intent in Borrower LFN's resolutions to encumber its corporate property **only for its own obligations** (i.e., "as security for the payment of any loans, credit accommodations, . . . any promissory notes . . . or any other or further indebtedness of the Corporation to Lender."). CP 379. This uncontested evidence undermines Guarantors' incomplete analysis. This Court should reject their construction of the Deed of Trust.

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

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

Alternatively, this Court should affirm summary judgment against the Greens because they failed timely to oppose Union Bank's motion for relief.

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

Based on the authorities and undisputed evidence, this Court should affirm.

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

This Court should construe the Deed of Trust to secure only Borrower's obligations. This construction is supported by a full reading of the Deed of Trust, not the truncated reading urged by Guarantors. This construction supports affirmance without the need to construe the statute. While Guarantors begin their analysis with the statute, *see Op. Br. 5-9*, this Court first should construe the Deed of Trust and hold that it does not secure Guarantors' obligations. That correct conclusion renders the statutory analysis unnecessary.

The parties appear to agree about the law's framework for contract construction. While Guarantors appear to avoid use of the word "intent," *see Op. Br. 9*, neither do they dispute that determining the parties' intent is the court's objective under the objective manifestation theory of contracts applied in Washington. *See Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005) (a court's objective is to "determine the parties' intent by focusing on the objective manifestations of the

agreement, rather than on the unexpressed subjective intent of the parties.”); *Tanner Elec. Coop v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996). Courts are to “impute an intention corresponding to the reasonable meaning of the words used.” *Id.* at 503-04. To implement the context rule, the court focuses on the intent of the parties demonstrated by the written agreement and the context within which the agreement was executed. *Chatterton v. Business Valuation Research, Inc.*, 90 Wn. App. 150, 155, 951 P.2d 353 (1998).

Our Supreme Court in *Berg v. Hudesman* approved the tenet that “meaning can almost never be plain except in a context.” *Berg v. Hudesman*, 115 Wn.2d 657, 668, 801 P.2d 222 (1990) (disapproving plain meaning rule and adopting context rule for contract interpretation). Under the context rule, the court views the contract as a whole, including (1) the subject matter and objective of the contract; (2) all circumstances surrounding its formation; (3) the subsequent acts and conduct of the parties; (4) the reasonableness of the respective interpretations advocated by the parties; (5) statements made by the parties in the preliminary negotiations; and (6) usage of trade and course of dealings. *Tjart v. Smith Barney, Inc.*, 107 Wn. App. 885, 895 (2001), *rev. denied*, 145 Wn.2d 1027 (2002), *cert. denied*, 537 U.S. 954 (2002). The court construes the meaning in light of this evidence. Indeed, Guarantors agree that the

context rule is applicable here. *See Op. Br. 9.* They just proceed to ignore all the context evidence.

Guarantors argue that the Deed of Trust secures their obligations under their guaranties because the Deed of Trust secures “PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE . . . RELATED DOCUMENTS . . . ,” (caps and elipses original), and under the definition section “Related Documents” includes “guarantees.” *Op. Br. 10.* But they do not read far enough.

The Deed of Trust specifies *whose* obligations the parties intended to secure: “Grantor’s.” This is evident in two closely related sections. First, the Deed of Trust is given to secure “payment” and “performance,” as follows:

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

CP 739 (emphasis added) (App. 5). The “following terms” then appear in the very next section of the Deed of Trust, stating that *Grantor* must pay and perform, as follows:

PAYMENT AND PERFORMANCE. Except as

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

CP 130 (emphasis added) (App. 5). “Grantor” is LFN. CP 738, 744 (App. 5). The Deed of Trust thus secures the “payment” and “performance” of LFN according to its obligations “under the Note, Deed of Trust and the Related Documents.” Payment and performance by Guarantors nowhere is mentioned.

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

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

CP 742 (emphasis added) (App. 5). This also makes no mention of *Guarantors* paying or performing. The Deed of Trust is discharged when “Grantor”— LFN —“pays” and “performs.” Additionally, the warranty provision applies only until “the *Grantor’s* Indebtedness shall be paid in

full.” CP 741 (at Survival of Representations and Warranties) (emphasis added) (App. 5). The Deed of Trust read as a whole does not support a conclusion that it was intended to secure the payment and performance obligations of Guarantors. It was not.

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

This conclusion also is supported, if not compelled, by LFN’s corporate resolutions, in which LFN demonstrates its intent as Grantor of the Deed of Trust to encumber its corporate property solely to secure corporate debts, stating:

The resolution authorizes the LLC members “[t]o **mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber . . . any property . . . belonging to the Company . . . 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. . . .”**

CP 1087 (ACTIONS AUTHORIZED: GRANT SECURITY) (App. 2); *see also* CP 1089 (same) (App. 2). As Andrew Bembry testified, such resolutions are customary in a loan transaction like this to demonstrate that

an entity has authorized its members to take the actions that encumber its property. CP 1083 ¶ 3. In the resolutions, LFN did **not** authorize any encumbrance as security for obligations owed by anyone other than itself. Guarantors argue for a construction that defies this expression of corporate authority and intent. This Court should reject such a construction.

Additionally, other contemporaneous documents strongly support Union's Bank construction. These documents must be read together and construed with reference to each other. *Kenney v. Read*, 100 Wn. App. 467, 474, 997 P.2d 455 (2000). The Note recites that the Borrower's obligations are secured by the Deed of Trust, stating,

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

CP 729 (App. 4). The Commercial Guaranties **lack** a similar provision stating that the Guarantors' obligations are secured. This contrast supports Union Bank's construction.

The subject matter and objective of the contracts and the circumstances surrounding their formation also illustrate the parties' objective to provide the Bank with two sources of recovery: the deeded property and the guaranties. CP 1083-84 ¶ 4. This is the standard structure in the banking industry. *Id.* No utility arises by having the deed of trust

also secure the guaranties. Such a structure offers no advantage to a bank when a borrower's full debt already is secured by the Deed of Trust. It merely would be duplicative. Neither the bank file nor any testimony reveals any intent to deviate from this customary structure, including no request or documentation that the Deed of Trust also secure the obligations of the Guarantors. *Id.* at ¶¶ 4-5. No context evidence suggests the parties had a unique or different intent.

Guarantors' construction of the Deed of Trust simply is unreasonable given the entire context of the parties' transaction. This Court must reach a commercially reasonable interpretation of the documents. *Wilson Court Ltd. P'ship v. Tony Maroni's*, 134 Wn.2d 692, 705, 952 P.2d 590 (1998) (court must recognize "the commercial context" and "a commercially reasonable construction"). That construction is the one offered by Union Bank that reads the documents in concert and in context. While Guarantors purport to offer "A Textual Analysis of the Contracts at Issue," *Op. Br.* 10 at E.2, they do not. They spend all of one paragraph talking about the documents as drafted, and then devote the remaining paragraphs of that section to an irrelevant exercise examining how the parties might have drafted the documents differently. This Court should reject their short, incomplete analysis, and adopt Union Bank's comprehensive analysis and conclusion.

Although not directly argued to this Court, some guarantors argued below that the documents were ambiguous. CP 1027. This is wrong. The documents considered in context are not ambiguous. Union Bank has demonstrated why the documents, read in context, support affirmance. To this Court Guarantors make one reference to *contra proferentum*, although they never return to that reference or assert application of that rule to this case. *Op. Br. 9*. They cite *Rouse v. Glascom Builders, Inc.*, 101 Wn.2d 127, 677 P.2d 125 (1984), for the general rule to construe ambiguities against the drafter. *Id.* Not only are the documents not ambiguous, but *Rouse* does not support the contention that *non-parties* to a Deed of Trust can receive the benefit of the rule. Further, *contra proferentum* is a rule of “last resort.” *Kwik-Lok Corp. v. Pulse*, 41 Wn. App. 142, 148, 702 P.2d 1226 (1985). “[T]his rule applies only where, after examining the entire contract, the relation of the parties, their intention, and the circumstances under which they executed the contract, the ambiguity remains unresolved.” *Id.*, citing *United States v. Erickson Paving Co.*, 465 F.2d 396, 400 (9th Cir. 1972). Because the context evidence resolves the construction in Union Bank’s favor, this Court should not reach other interpretative rules such as *contra proferentum*. Further, Guarantors did not meet their burden to argue the rule or demonstrate that it benefits strangers to the document like themselves.

The trial court correctly construed the Deed of Trust. Its decision is consistent with the undisputed evidence and the law. This construction supports affirmance without reaching any other issues.

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

If this Court concludes that the Deed of Trust secured Guarantors' obligations under the guaranties, Guarantors' legal argument still fails because the Deed of Trust Act affirmatively permits this deficiency action. Guarantors assert that RCW 61.24.100(10) prevents this action. *Op. Br. 7*. But that subsection does not mean what Guarantors assert. RCW 61.24.100(3)(c) establishes the general rule applicable in commercial transactions: deficiency actions *are* permitted against commercial guarantors after nonjudicial foreclosure of a deed of a trust. This general rule applies to the transaction at issue. A contrary holding would contravene legislative intent.

“A court’s objective in construing a statute is to determine the legislature’s intent.” *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007) (citing *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007)). “[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Id.* “Plain meaning is ‘discerned from the ordinary

meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.* “If the statutory language remains susceptible to more than one reasonable interpretation, the statute is considered ambiguous, and the court may then employ statutory construction tools, including legislative history, for assistance in discerning legislative intent.” *Id.* Here, both the plain meaning of the Deed of Trust Act and its legislative history support Union Bank’s action to recover any deficiency from Guarantors.

- a. The Deed of Trust Act, RCW 61.24.100(3)(c), expressly authorizes Union Bank’s deficiency action against Guarantors

The Deed of Trust Act affirmatively authorizes this action. The Act begins with a blanket prohibition on actions for a deficiency judgment against any borrower, grantor, or guarantor except “as permitted” with respect to “commercial loans.” RCW 61.24.100(1).⁵ After first establishing that the Act treats commercial transactions specially, the Act goes on to authorize deficiency actions against commercial guarantors, as follows:

This chapter does not preclude . . . after a trustee’s sale under a deed of trust securing a commercial loan . . . [s]ubject 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.

⁵ RCW 61.24.100 is contained at Appendix 6.

RCW 64.24.100(3)(c). Subsection 3(c) permits a deficiency action against a guarantor of a commercial loan when notice under RCW 61.24.042 is proper, which Guarantors did not challenge. The statute goes on to provide that action must be brought within a year (RCW 61.24.100(4)), and that a guarantor can request judicial determination of the property's "fair value." See RCW 61.24.100(5).

This right to pursue a deficiency action under Subsection 3(c) against a commercial guarantor only is circumscribed—but is still viable—if a guarantor grants *his or her own* deed of trust to secure his or her guaranty. In that case, RCW 61.24.100(6) provides that the lender **still may seek a deficiency judgment**, but that deficiency judgment is limited to waste and/or wrongful retention of rents, just as it would be against a commercial borrower or grantor. See RCW 61.24.100(3)(a)(i). Because all parties agree that Guarantors in this case did not grant any deed of trust over their own property, subsection (6) does not apply.

Despite these provisions specifically addressing "deficiency actions," Guarantors focus on RCW 61.24.100(10) and assert that it bars this action. *Op. Br. 7*. Ironically, to state the supposed bar, Guarantors must re-write the subsection. *Id.* As rewritten by Guarantors, the statute supposedly "says that a creditor may sue a guarantor for a deficiency *if the*

guarantee was not secured by the deed of trust that was the subject of the non-judicial foreclosure.” Op. Br. 7 (emphasis original). But that is not what Subsection (10) says. It never even refers to deficiencies. The legislature addresses the right to a deficiency judgment at subsections (1), 3(a) and (c), and (6). Not in subsection (10). Where the legislature intended the Act to refer to actions for a “deficiency judgment,” it used that precise term. RCW 61.24.100(1) (“a deficiency judgment”); RCW 61.24.100(3)(a)(i) (“an action for a deficiency judgment”); RCW 61.24.100(3)(c) (same); RCW 61.24.100(6) (“shall be subject to a deficiency judgment”). The Court should reject Guarantors’ argument that requires adding to subsection (10) the words “deficiency judgment” that are not there.

Subsection (10) affirmatively provides protection of a lender’s right to pursue obligations unrelated to the debt that was secured, as follows:

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

RCW 61.24.100(10). On its face, this subsection has nothing to do with a lender’s right to seek a “deficiency judgment” against a borrower and guarantor. Subsection (10) by its plain language does not prohibit

“deficiency judgments.”

The plain meaning of RCW 61.24.100(6), moreover, conflicts with Guarantor’s attempt to use the permissive RCW 61.24.100(10) as a prohibition on Union Bank’s deficiency action. By its clear terms, subsection (6) *permits* a limited deficiency judgment against a guarantor when the guaranty is secured by a foreclosed deed of trust. Yet, at the same time, if subsection (10) *precludes* deficiency actions on guaranties that are secured by a foreclosed deed of trust, it would preclude what subsection (6) permits when a guarantor offered the foreclosed deed of trust. Guarantors’ interpretation is wrong because it places subsections (6) and (10) in direct conflict. It also places subsection 3(a)(i) and (10) in direct conflict where the borrower is concerned.

The Court can avoid the conflict by giving RCW 61.24.100(10) its plain and reasonable meaning. The legislature’s use of the phrase “an action to collect or enforce any obligation” in subsection (10)—a phrase that appears nowhere else in RCW 61.24.100—reflects a different meaning. Its reference to “an action to collect or enforce any obligation . . . not secured by the deed of trust” is directed to the situation where a borrower or guarantor has obligations to the lender separate from the commercial loan subject to foreclosure. Borrowers and guarantors can have multiple transactions or loans with the same lender. The section

makes clear foreclosure of a deed of trust securing one commercial loan does not affect a lender's ability to enforce unrelated debts or obligations against the same borrower or guarantor. Subsection (10) **protects** lenders from arguments that all other debts or obligations are discharged if the lender forecloses on one deed of trust. In short, subsection (10) is permissive and clarifies that nothing in the Deed of Trust Act prevents a lender from enforcing unrelated obligations.

Where subsection (10) demonstrates an intent to *permit* lenders to pursue separate debts, this Court should not interpret it to *prohibit* lenders from bringing an action for a deficiency judgment that subsections 3(a), (3)(c) and (6) permit. Courts "do not infer a prohibition absent specific language to that effect, unless the statute as a whole directs that conclusion." *Glasebrook v. Mut. of Omaha Ins. Co.*, 100 Wn. App. 538, 545, 997 P.2d 981 (2000). Use of subsection (10) as a bar in these circumstances would be contrary to the plain language of the statute. It also would thwart a primary purpose of the Deed of Trust Act because, in situations like this one, lenders would have to file lawsuits on the guaranty prior to nonjudicial foreclosure or initiate judicial foreclosure actions in lieu of a nonjudicial foreclosure altogether whenever it appears that the value of the foreclosed property is insufficient to cover the debt; otherwise, the guaranty is worthless. *See Cox v. Helenius*, 103 Wn.2d 383,

387, 693 P.2d 683 (1985) (three purposes of Deed of Trust Act are to keep the nonjudicial foreclosure process efficient and inexpensive, provide an adequate opportunity for interested parties to prevent wrongful foreclosure, and promote stability of land titles).

Guarantors argument ignores the provisions that demonstrate the legislature's intent to permit a deficiency against commercial guarantors after nonjudicial foreclosure, including 1) the central exception to the bar against deficiency actions of RCW 61.24.100(1) for commercial transactions, 2) the general rule for commercial guarantors established at RCW 61.24.100(3)(c) that an action for a deficiency exists after a nonjudicial foreclosure, and 3) the reality established by RCW 61.24.100(6) that even when the guarantor has offered a deed of trust to secure its obligations, that guarantor still remains subject to a deficiency action after nonjudicial foreclosure for certain categories of recovery.

This Court should conclude that Union Bank's deficiency action is permitted by subsection (3)(c), and not barred by subsection (10).

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

If the Court were to find subsection (10) subject to more than one reasonable construction, the Act's legislative history confirms Union Bank's interpretation. Prior to 1998, the Act did not address whether a deficiency judgment could be sought from a guarantor after a deed of trust

was foreclosed. *See* RCW 61.24.100 (1990) Washington courts also declined to decide the Act's effect on guarantor liability. *E.g.*, *Glenham v. Palzer*, 58 Wn. App. 294, 298 n.4, 792 P.2d 551 (1990); *Thompson v. Smith*, 58 Wn. App. 361, 367 n.4, 793 P.2d 449 (1990). This silence left an unsettling uncertainty. Nonjudicial foreclosure under the Act was recognized as an "efficient and inexpensive" remedy vital to lending. *Donovick v. Seattle-First Nat'l Bank*, 111 Wn.2d 413, 417, 757 P.2d 1378 (1988) (citation omitted). But with the right to pursue guarantors after a nonjudicial foreclosure unclear, creditors might opt for the longer, more expensive process of judicial foreclosure. Thus came a push for clarification of the Act to expressly allow lenders to seek deficiency judgments from guarantors after nonjudicial foreclosure.

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

The beneficiary may seek a deficiency judgment against a guarantor of the commercial loan if certain conditions are met, including the following: (1) the action must be commenced within one year; (2) the guarantor must have been given notice of the trustee's sale that contains the

guarantor's rights and defenses, and an opportunity to cure the default; and (3) the guarantor may ask the court to determine the fair value of the property, and the amount of the deficiency is the amount owed by the guarantor to the beneficiary less the greater of either the fair value of the property or the price paid at the sale.

H.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998) (CP 1073). These conditions are now reflected in RCW 61.24.100(3)(c), (4) and (5). Noticeably absent from the legislative analysis is any suggestion that subsection (10) provides a further condition on bringing a deficiency action against a guarantor or, more specifically, that such actions are prohibited if the deed of trust secures both the borrower's and guarantor's obligations.⁶ This absence strongly suggests that RCW 61.24.100(10) was not intended as Guarantors argue, especially when the Court then considers that the Legislature did not word subsection (10) as a bar prohibiting deficiency actions.

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

⁶ The Senate Final Bill Report for ESSB 6191 noted the drafters' intent "to avoid time consuming and expensive judicial foreclosure proceedings and to save time and money for both the borrower and the lender." S.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998) (CP 1075).

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

Contrary to Guarantors’ opening statutory argument, *see Op. Br.*, 5-6, Guarantors have **not** participated in the *quid pro quo* upon which the Act justifies barring a deficiency judgment. Courts have described the Deed of Trust Act as permitting the speedy remedy of a nonjudicial foreclosure to lender who gives up the right to a deficiency judgment in exchange for the borrower giving up the right to a one year post-sale redemption period, as well as the right to a judicially-imposed upset price. *Thompson v. Smith, supra* (referring to “quid pro quo between **borrowers** and lenders.”) (emphasis added); *Donovick, supra*, 111 Wn.2d at 416 (same). But Guarantors are *not* borrowers. And they did not offer the property as security. They are not participants in the *quid pro quo*. These Guarantors “gave up” nothing as a counterbalance to extinguishing the

Bank's right to a deficiency against them.

Because Guarantors are not borrowers, they also do not benefit from Supreme Court precedent providing that the Deed of Trust Act should be construed in favor of "borrowers." *See Op. Br.* at 7, citing *Schroeder v. Excelsior Mgmt. Group LLC*, 177 Wn.2d 94, 297 P.3d 677 (2013).

This Court should reject Guarantors' proffered interpretation of the statute as inconsistent with its plain language and structure. This Court, therefore, should affirm.

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

This Court also should affirm on a third independent ground: Guarantors' enforceable waivers. Even if Guarantors had an anti-deficiency defense, they voluntarily waived it. The Guarantors wrongly argue that the waivers are contrary to public policy as expressed in the Deed of Trust Act. *See Op. Br.* at 11-14. To the contrary, the waivers are enforceable.

The waivers in this case were clear and conspicuous, and Guarantors do not argue otherwise. To induce a loan of more than \$5 million, each Guarantor agreed to waive anti-deficiency defenses, stating,

...[Guarantor] waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A)

any ... 'anti-deficiency' law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale

CP 748-49 ("GUARANTOR'S WAIVERS") (App. 3). The waiver specifically refers to "'anti-deficiency' law" and the lender's right to bring an action "including a claim for deficiency" after any foreclosure action "either judicially or by exercise of a power of sale." *Id.* In addition to not objecting to the conspicuousness of the waivers,⁷ Guarantors do not dispute that this clause expresses an intent to waive the very rights Guarantors now assert.

Guarantors' argument that the waivers are unenforceable is unsupported by Washington law for many reasons. First, common law provides that a guarantor's surety and statutory defenses "may be explicitly waived in a guaranty agreement and such waiver provisions are enforceable." 38A C.J.S., *Guaranty* § 125 (2008); also 38 Am.Jur.2d, *Guaranty* § 67 ("the guaranty may provide, by its terms, that the guarantor remains liable despite the release of the principal debtor"). This rule is

⁷ Not only are the provisions quoted above plain, the guaranties contain a separate provision, "GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS," which further demonstrates the clarity, conspicuousness and completeness of the waiver. CP 749 (App. 3). Guarantors signed an acknowledgement, which appears immediately above the signature line, that they read and agreed to all the provisions of the guaranty. CP 750 (App. 3).

well recognized by Washington courts. *Fruehauf Trailer Co. of Can. v. Chandler*, 67 Wn.2d 704, 409 P.2d 651 (1966) (upholding guarantor's waiver of defense of discharge); *Seattle First Nat'l Bank v. West Coast Rubber, Inc.*, 41 Wn. App. 604, 609, 705 P.2d 800 (1985) (upholding guarantor "waivers of virtually all of surety defenses").

The Deed of Trust Act did not disturb this black letter law. When the legislature intends to deny contracting parties the freedom to bargain away statutory rights, it says so expressly. *See* RCW 19.118.130 (waiver of rights under lemon law void); RCW 19.100.220(2) (same under franchise act); RCW 21.20.430(5) (securities act); RCW 50.40.010 (unemployment compensation); RCW 51.04.060 (workers-compensation). Indeed, in the analogous context of UCC Article 9, the legislature prohibited waivers of a debtor's rights upon default, but preserved the common law rule permitting waiver of guarantor defenses. RCW 62A.9A-602 & cmt. ("Washington variations of this section ... preserve the ability of a guarantor to waive suretyship defenses"). Had the legislature intended to preclude parties from waiving guaranty defenses under the Deed of Trust Act, it would have said so. *See Save Columbia CU Comm. v. Columbia Cmty. Credit Union*, 134 Wn. App. 175, 191, 139 P.3d 386 (2006) (legislature's use of language in only one of two similar situations suggests a different legislative intent). This Court should find the

legislature's refusal to do so here conclusive on this issue.

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

The Washington Supreme Court's decisions in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 107-08, 285 P.3d 34 (2012); and *Schroeder v. Excelsior Mgmt. Group LLC*, 177 Wn.2d 94, 297 P.3d 677 (2013), do not require a different outcome. Guarantors assert that this case is analogous to *Schroeder*, *see Op. Br.* 13, but it is not. Neither *Schroeder* nor *Bain* address RCW 61.24.100(10), deficiency judgments,

commercial loans, guaranties or the enforceability of express waivers by commercial parties like Guarantors. Nor do these opinions disturb prior cases such as *Fruehauf Trailer* or *Seattle First Nat'l Bank*. Rather, in both cases the Court held that parties cannot contractually waive “statutory requirements” to hold a non-judicial foreclosure sale. *Bain*, 175 Wn.2d at 107-08; *Schroeder*, 177 Wn.2d at 107. As the Court noted, the rule that a person can ordinarily waive “rights or privileges” does not apply to **procedural requisites** because they “are not, properly speaking, rights held by the debtor; instead, they are limits on the trustee’s power to foreclose without judicial supervision.” *Schroeder* at 107. Such requirements antecedent to foreclosure must be followed to protect other interested parties (like junior lienholders) and prevent future title disputes—two key purposes of the Deed of Trust Act. *See Cox v. Helenius*, 103 Wn.2d at 387. Here, the guaranties do not seek to alter the requisites of a non-judicial foreclosure sale. They do not seek to expand any powers of the trustee. Commercial guarantors instead have waived a purported personal right. The reasoning of *Schroeder* and *Bain* do not apply. The Supreme Court’s concern for protecting homeowners present in *Schroeder* and *Bain* also has no applicability in a commercial transaction.

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

For any of the three legal bases offered by Union Bank, this Court should reject Guarantors' anti-deficiency defense and affirm.

B. Alternatively, judgment against the Greens should be affirmed for failure timely to oppose relief to Union Bank.

As an alternative basis to affirm the judgment against the Greens, the Greens failed timely to oppose Union Bank's motion for summary judgment. *See* CP 1031 at 5-7. (Union Bank's Reply noting that Defendants Green did not contest summary judgment). The Greens never sought or obtained relief from the trial court permitting them to oppose Union Bank's motion after expiration of their deadline to file opposition materials. Union Bank moved on April 16, 2013, noting its hearing for May 17, 2013. CP 699. CR 56(c) requires parties to file opposition materials to motions for summary judgment not later than 11 calendar days before the hearing. That deadline was May 6, 2013. The Greens let this deadline pass. Having failed to oppose the relief requested, the Greens may not on appeal dispute the judgment.

VI. REQUEST FOR ATTORNEY FEES AND COSTS

If Union Bank prevails on appeal, this Court should award Union Bank its fees and costs. Each commercial guaranty contains a fee provision obligating the guarantors to pay "attorneys' fees" and "legal expenses" "incurred in connection with the enforcement of this Guaranty."

See CP 749 (“Attorneys’ Fees and Expenses”) (App. 3). The fee provision specifically includes attorney fees and expenses incurred for appeals. *Id.* An award of fees and expenses pursuant to a contractual right is absolute, not discretionary. *Singleton v. Frost*, 108 Wn.2d 723, 727, 742 P.2d 1224 (1987). Pursuant to RAP 18.1(b), this Court should award fees and costs to Union Bank if this Court affirms.

VII. CONCLUSION

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

Alternatively, Subsection 3(c) of the Deed of Trust Act permits enforcement of commercial guaranties after nonjudicial foreclosure of a borrower’s deed of trust even if that deed of trust secured the guarantor’s performance and payment obligations. This Court should not read

subsection (10) to bar that right. Such a construction would place subsections 3(a), 3(c) and (6) in conflict with subsection (10). Subsection (10) is permissive and does not address “deficiency actions”; it does not indicate a legislative intent to bar a deficiency action like this against commercial guarantors who offered no property to secure their obligations and gave up nothing in exchange for exculpation. Even if subsection (10) provides an anti-deficiency defense in these circumstances, Guarantors waived it. That waiver is enforceable.

This Court should enforce the guaranties for which the parties bargained in this multi-million dollar commercial transaction. The record and the law support affirmance.

Respectfully submitted on this 4th day of November, 2013.

SCHWABE, WILLIAMSON & WYATT, P.C.

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APPENDIX

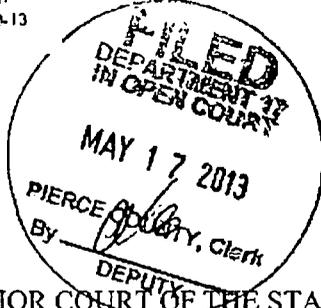
APPENDIX

APPENDIX



11-2-16499-9 40553145 OR 05-20-13

The Honorable Ronald Culpepper
Date of Hearing May 17, 2013
Time of Hearing: 9:00 A M



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

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

Plaintiff,

vs.

L&P DEVELOPMENT, L.L.C., a
Washington limited liability company;
PACIFIC RESOURCE DEVELOPMENT,
INC., a Washington corporation, PARKER
FAMILY L.L.C, a Washington limited
liability company; RTB, INC.; RICHARD T.
BRUNAUGH and AMANDA BRUNAUGH,
husband and wife, and the marital community
composed thereof; LYLE E. FOX and VICKY
J FOX, husband and wife, and the marital
community composed thereof; PAUL E
GREEN and ANNETTE GREEN, husband
and wife, and the marital community
composed thereof; DONALD C. LINKEM
and ELIZABETH A LINKEM, husband and
wife, and the marital community composed
thereof; DAVID A. PARKER and VELMA L.
PARKER, husband and wife, and the marital
community composed thereof; PAUL E.
WILSON and KELLY I. WILSON, husband
and wife, and the marital community
composed thereof,

Defendants.

No. 11-2-16499-9

ORDER GRANTING SUMMARY
JUDGMENT TO UNION BANK, N.A.,
AND DENYING DEFENDANTS'
CROSS MOTION FOR SUMMARY
JUDGMENT

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

ORDER GRANTING SUMMARY JUDGMENT TO UNION
BANK, N.A., AND DENYING DEFENDANTS' CROSS
MOTION FOR SUMMARY JUDGMENT - 1

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Attorneys at Law
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1420 5th Avenue, Suite 3400
Seattle WA 98101-4010
Telephone 206 622 1711

1 following:

2 **UNION BANK:**

- 3 1. Union Bank's Motion for Summary Judgment on All Causes of Action
4 Against Defendants;
- 5 2. Declaration of Andrew Bemby ISO Union Bank's Motion for Summary
6 Judgment on All Causes of Action Against Defendants;
- 7 3. [Proposed] Order Granting Union Bank's Motion for Summary Judgment on
8 All Causes of Action Against Defendants;
- 9 4. [Proposed] Final Judgment on All Causes of Action Against Defendants;
- 10 5. Defendant Fox's Response in Opposition to Plaintiff's Motion for Summary
11 Judgment on All Causes of Action Against Defendants;
- 12 6. Declaration of Lyle Fox ISO Defendant Fox's Response in Opposition to
13 Plaintiff's Motion for Summary Judgment on All Causes of Action
14 Against Defendants;
- 15 7. Defendants' Response to Union Bank's Motion for Summary Judgment
16 on All Causes of Action Against Defendants,
- 17 8. Union Bank's Reply to Defendant's Response to Union Bank's Motion for
18 Summary Judgment on All Causes of Action Against Defendants;
- 19 9. Declaration of Andrew Bemby in Support of Union Bank's Reply to
20 Defendants' Response to Union Bank's Motion for Summary Judgment on All
21 Causes of Action Against Defendants ("**Second Bemby Declaration**");

22 **L & P DEVELOPMENT:**

- 23 10. Defendants' Cross Motion for Summary Judgment Dismissing Complaint;
- 24 11. Declaration of Donald Linkem in Support of Defendants' Cross Motion for
25 Summary Judgment Dismissing Complaint;
- 26 12. Defendants' Motion for Order Shortening Time to Hear Cross Motion for
Summary Judgment Dismissing Complaint;
13. Declaration of Benjamin Riley in Support of Defendants' Motion for Order
Shortening Time to Hear Cross Motion for Summary Judgment Dismissing
Complaint;

ORDER GRANTING SUMMARY JUDGMENT TO UNION
BANK, N.A., AND DENYING DEFENDANTS' CROSS
MOTION FOR SUMMARY JUDGMENT - 2

PDXV100176V100514VAARV11558614 1

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1 14. [Proposed] Order Shortening Time to Hear Motion Defendants' Cross Motion
2 for Summary Judgment Dismissing Complaint;

3 15. Union Bank's Response to Defendants' Cross Motion for Summary
4 Judgment Dismissing Complaint; and

5 **GREEN:**

6 16. Defendant Green's Joinder in Defendants' Motion for Summary Judgment
7 Dismissing Complaint.

8 The Court deems itself apprised in the premises and, therefore, it is hereby
9 ORDERED, ADJUDGED, AND DECREED that Defendants' Cross Motion for Summary
10 Judgment Dismissing Complaint is DENIED. The Court rejects as a matter of law
11 Defendants' defense that the Deed of Trust secures the guaranties and that the Deed of Trust
12 Act bars a deficiency judgment against these guarantors. There being no contested issues of
13 material fact, Union Bank's Motion for Summary Judgment is GRANTED *as to liability.*

14 The Court FINDS that there is no genuine issue of material fact that would
15 necessitate a trial on the merits over the following:

16 1. That the Note (as defined in the Complaint) executed by borrower LFN, LLC
17 ("LFN") is in default as of its maturity date—November 15, 2009;

18 2. That, after the Property (as defined in the Complaint) securing the Note was
19 sold at the trustee's sale on December 10, 2010 for the bid amount of \$2,538,900.00, and the
20 proceeds therefrom were used to partial pay to Union Bank the indebtedness owing under the
21 Note, *which amount is not disputed.* and after deduction of ^N the fair market value ("FMV") of the Property at the time of the
22 trustee's sale, *^ will be determined later upon at a fair value hearing to consider* a deficiency amount of no less than \$2,768,845.14 remains
23 *the defendant's evidence of fair value limited to Mr. Fox's testimony* outstanding under the terms of the Note, calculated as follows: *that the value is \$3.5 million.*

24 ~~\$5,498,845.14 (Debt) - \$2,730,000.00 (FMV) = \$2,768,845.14;~~

25 3. That the Defendants have materially breached their respective Guaranties (as
26 defined in the Complaint) in which, by the terms therein, they each absolutely and
unconditionally guaranteed any and all indebtedness owing by LFN to Union Bank under the

ORDER GRANTING SUMMARY JUDGMENT TO UNION
BANK, N A., AND DENYING DEFENDANTS' CROSS
MOTION FOR SUMMARY JUDGMENT - 3
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SCHWABE, WILLIAMSON & WYATT P C
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206 622 1711

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terms of the Note; and

4. That, pursuant to the terms of the Guaranties, the Defendants are each liable to Union Bank for an amount of no less than ~~\$3,577,199.39~~ as of May 17, 2013, plus Union Bank attorneys' fees, costs, and expenses incurred to bring this litigation (the amount of Union Bank's attorneys' fees, costs, and expenses shall be determined by subsequent motion).

Defendants, and each of them, are jointly and severally liable for the judgment amount of ~~\$3,577,199.39~~ as of May 17, 2013, together with attorney fees, and expenses. Union Bank may make application for judicial determination of the amount of fees and costs by subsequent motion.

Post-judgment interest shall accrue on the total judgment of ~~\$3,577,199.39~~ at the rate of 12% per annum

DONE IN OPEN COURT this 17 day of May, 2013


The Honorable Ronald Culpepper
Washington Superior Court Judge



ORDER GRANTING SUMMARY JUDGMENT TO UNION BANK, N A , AND DENYING DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT - 4
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SCHWABE, WILLIAMSON & WYATT, P C
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue Suite 3400
Seattle, WA 98101-4010
Telephone 206 622 1711

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1 Presented By:

2 SCHWABE, WILLIAMSON & WYATT, P.C.

3
4 By Averil Rothrock

5 Matthew Turetsky, WSBA #23611
6 mturetsky@schwabe.com
7 Averil Rothrock, WSBA #24248
8 arothrock@schwabe.com
9 Milton A Reimers, WSBA #39390
10 mreimers@schwabe.com
11 *Attorneys for Plaintiff Union Bank, N A.*
12 *as successor in interest to the FDIC as*
13 *Receiver of Frontier Bank*

14
15 [Signature]
16 *Approved as to Form only*
17 *Dr. in Builders WSBA 11225*

18
19 Noel P Shillito
20 *Approved as to form only - Atty for Defs For*
21 *Noel P Shillito WSBA 6764*

22
23 Thomas H. Oldfield
24 *Thomas H. Oldfield WSBA #2651*
25 *attorney for defendants Green*
26 *Approved as to form only*

ORDER GRANTING SUMMARY JUDGMENT TO UNION BANK, N A , AND DENYING DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT - 5

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SCHWABE, WILLIAMSON & WYATT, P.C
Attorneys at Law
U S Bank Centre
1420 5th Avenue Suite 3400
Seattle WA 98101-4010
Telephone 206 622 1711

LIMITED LIABILITY COMPANY RESOLUTION TO BORROW / GRANT COLLATERAL

Principal: \$5,010,000.00	Loan Date: 12-15-2007	Maturity: 09-15-2008	Loan No.: 6719422955H	Call:	Coll.:	Account:	Officer:	Initials:
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: LFN, L.L.C.
108 W STEWART
PUYALLUP, WA 98371

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

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE COMPANY'S EXISTENCE. The complete and correct name of the Company is LFN, L.L.C. ("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 108 W STEWART, PUYALLUP, WA 98371. 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 5-27-1999, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Resolution were adopted.

MEMBERS. The following named entities are members of LFN, L.L.C.:

NAMES	TITLES	AUTHORIZED	ACTUAL SIGNATURES
PACIFIC RESOURCE DEVELOPMENT, INC.	Member	Y	
L&P DEVELOPMENT, L.L.C.	Member	Y	
PELZEL DEVELOPMENT, INC.	Member	N	
PARKER FAMILY L.L.C.	Member	N	
RTB, INC	Member	N	

ACTIONS AUTHORIZED. Any two (2) of the authorized entities listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Company. Specifically, but without limitation, any two (2) of such authorized entities are authorized, empowered, and directed to do the following for and on behalf of the Company:

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

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

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

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

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as the members may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

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 signatories; (E) change in the Company's principal office address; (F) change in the Company's state of organization; (G) conversion of the Company to a new or different type of business entity; or (H) change in any other aspect of the Company that directly or indirectly relates to any agreements between the Company and Lender. No change in the Company's name or state of organization will take effect until after Lender has received notice.

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

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

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

We each have read all the provisions of this Resolution, and we each personally and on behalf of the Company certify that all statements and

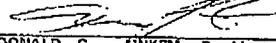
LIMITED LIABILITY COMPANY RESOLUTION TO BORROW GRANT COLLATERAL
(Continued)

Page 2

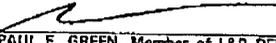
representations made in this Resolution are true and correct. This Limited Liability Company Resolution to Borrow / Grant Collateral is dated December 15, 2007.

CERTIFIED TO AND ATTESTED BY:

PACIFIC RESOURCE DEVELOPMENT, INC., Member of LFN, L.L.C.

By: 
DONALD C. LINKEM, President of PACIFIC
RESOURCE DEVELOPMENT, INC.

L&P DEVELOPMENT, L.L.C., Member of LFN, L.L.C.

By: 
PAUL E. GREEN, Member of L&P DEVELOPMENT,
L.L.C.

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

L&P Development, Inc. 6.25.02.0202 Corp. National Pro-Shop Schedule, Inc. 11/27/2007. All Rights Reserved. - MS. C:\COURCIS\PC TR #1269 14-0014ALDC

LIMITED LIABILITY COMPANY RESOLUTION TO BORROW / GRANT COLLATERAL

Principal 95,010,000.00	Loan Date 12-15-2007	Maturity 09-15-2008	Loan No. 67194229558	Call / Coll RT	Account	Officer 1100	Initials
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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: LFN, L.L.C.
108 W STEWART
PUYALLUP, WA 98371

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

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE COMPANY'S EXISTENCE. The complete and correct name of the Company is LFN, L.L.C. ("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 108 W STEWART, PUYALLUP, WA 98371. 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 5-25-99, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Resolution were adopted.

MEMBERS. The following named entities are members of LFN, L.L.C.:

NAMES	TITLES	AUTHORIZED	ACTUAL SIGNATURES
PACIFIC RESOURCE DEVELOPMENT, INC.	Member	Y	
L&P DEVELOPMENT, L.L.C.	Member	Y	
PARKER FAMILY L.L.C.	Member	N	
RTB, INC	Member	N	

ACTIONS AUTHORIZED. Any two (2) of the authorized entities listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Company. Specifically, but without limitation, any two (2) of such authorized entities are authorized, empowered, and directed to do the following for and on behalf of the Company:

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

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

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

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

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as the members may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

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 for 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 signers(s); (E) change in the Company's principal office address; (F) change in the Company's state of organization; (G) conversion of the Company to a new or different type of business entity; or (H) change in any other aspect of the Company that directly or indirectly relates to any agreements between the Company and Lender. No change in the Company's name or state of organization will take effect until after Lender has received notice.

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

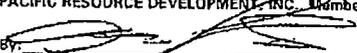
CONTINUING VALIDITY. Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation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

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

We each have read all the provisions of this Resolution, and we each personally and on behalf of the Company certify that all statements and representations made in this Resolution are true and correct. This Limited Liability Company Resolution to Borrow / Grant Collateral is dated December 15, 2007.

CERTIFIED TO AND ATTESTED BY:

PACIFIC RESOURCE DEVELOPMENT, INC. Member of LFN, L.L.C.

By: 
DONALD C. LINKEM, President of PACIFIC
RESOURCE DEVELOPMENT, INC.

L&P DEVELOPMENT, L.L.C., Member of LFN, L.L.C.

By: 
PAUL E. GREEN, Member of L&P DEVELOPMENT,
L.L.C.

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

LASER PRO Imaging, Inc. 8-11-2004 Copy, Method Patent Software, Inc. 1997, 2003 All Rights Reserved. WA C:\C:\P\1013\PC 10-1-05-10.COM\1013

COMMERCIAL GUARANTY

Principal	Loan Date	Maturity	Loan No.	Coll. Coll.	Account	Office	Initials
				01		100	

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: LFN, L.L.C.
108 W STEWART
PUYALLUP, WA 98371

Lender: Frontier Bank
Summer
801 Alder
PO Box 1650
Summer, WA 98380

Guarantor: L&P DEVELOPMENT, L.L.C.
1103 SHAW ROAD
PUYALLUP, WA 98372

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

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

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

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 date the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor;

(D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to pursue any other remedy within Lender's power; or (F) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

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

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

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

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold those 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 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), appraisals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

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

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

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

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parole 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.

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

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

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

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

Borrower. The word "Borrower" means LFN, L.L.C. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation L&P DEVELOPMENT, L.L.C., and in each case, any signer's successors and assigns.

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

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

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

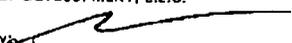
Note. The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for promissory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

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

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED DECEMBER 16, 2007.

GUARANTOR:

L&P DEVELOPMENT, L.L.C.

By: 
PAUL E. GREEN, Member of L&P DEVELOPMENT,
L.L.C.

PROMISSORY NOTE

Principal \$5,010,000.00	Loan Date 08/13/2007	Maturity 12/15/2007	Loan No. 20070818	Call Code BY	Account 227	Office 7100
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References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Borrower: LFN, LLC
108 W STEWART
MUYALLUP, WA 98371

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

Principal Amount: \$5,010,000.00 Initial Rate: 9.250% Date of Note: June 13, 2007

PROMISE TO PAY. LFN, LLC ("Borrower") promises to pay to Frontier Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million Ten Thousand & 00/100 Dollars (\$5,010,000.00), together with interest on the unpaid principal balance from June 13, 2007, until paid in full.

PAYMENT. Borrower will pay this loan in one principal payment of \$5,010,000.00 plus interest on December 15, 2007. This payment due on December 15, 2007, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning July 15, 2007, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year (365 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is the Frontier Bank Base Rate (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day as base rate changes. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 8.250% per annum. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 1.000 percentage point over the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 9.250% per annum. **NOTICE:** Under no circumstances will the interest rate on this Note be less than 8.500% per annum or more than (except for any higher default rate shown below) the lesser of 12.000% per annum or the maximum rate allowed by applicable law.

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

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 8.000% 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 5.000 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. 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.

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

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

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

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

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

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

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

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

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance 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

PROMISSORY NOTE
(Continued)

Page 2

law.

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 Pierce County, State of Washington.

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

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

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: a Deed of Trust dated June 13, 2007, to a trustee in favor of Lender on real property located in PIERCE County, State of Washington.

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

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

GENERAL PROVISIONS. 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 impact, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

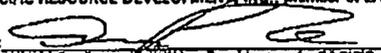
PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

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

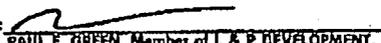
BORROWER:

LFN, LLC

PACIFIC RESOURCE DEVELOPMENT, INC., Member of LFN, LLC

By: 
DONALD C. LINKEM, President of PACIFIC
RESOURCE DEVELOPMENT, INC.

L & P DEVELOPMENT, L.L.C., Member of LFN, LLC

By: 
PAUL E. GREEN, Member of L & P DEVELOPMENT,
L.L.C.

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Loan No. 2955

ALLONGE

Allonge to Promissory Note dated June 13, 2007, in the original sum of Five Million Ten Thousand and 00/100 Dollars (\$5,010,000.00) executed by LFN, L.L.C., a Washington limited liability company, in favor of Frontier Bank, and to any and all modifications, amendments, or extensions to said Promissory Note.

This Allonge is being executed to evidence the sale and transfer of a loan held by Frontier Bank to Union Bank, N.A. pursuant to that certain Purchase and Assumption Agreement dated April 30, 2010 between the Federal Deposit Insurance Corporation (FDIC), as Receiver of Frontier Bank, and Union Bank, N.A. The undersigned, FDIC, does hereby assign, transfer, and convey all of its right, title and interest in and to the aforementioned Promissory Note, WITHOUT RECOURSE, REPRESENTATION, OR WARRANTY OF ANY KIND, either express or implied, by the FDIC in its corporate capacity or as Receiver to Union Bank, N.A. This Allonge is made pursuant to that certain Limited Power of Attorney executed by the FDIC dated March 25, 2011, recorded March 25, 2011, as Instrument No. 2011000155122, Official Records of Orange County, California, a certified copy of which was recorded on February 9, 2012 under Pierce County, Washington Recording No. 201202090483.

This Allonge shall be attached to and become a part of the original of said Promissory Note to have the same force and effect as if this endorsement had been placed thereon.

Dated: April 23, 2012

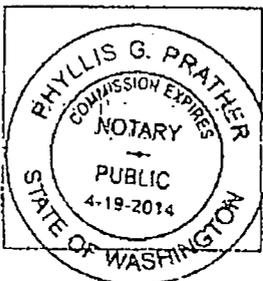
FEDERAL DEPOSIT INSURANCE CORPORATION
As Receiver for Frontier Bank, Everett WA

By: Elliott Pierce
Name: Elliott Pierce
Title: Attorney in Fact

STATE OF WASHINGTON)
COUNTY OF Snohomish) ss:

I certify that I know or have satisfactory evidence that Elliott Pierce is the person who appeared before me, and said person acknowledged that he signed this instrument, and on oath stated that he was authorized to execute the instrument and acknowledged it as Attorney-in-Fact of the Federal Deposit Insurance Corporation, as Receiver of Frontier Bank, Everett, WA to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: April 23, 2012



Phyllis G. Prather
Print Name Phyllis G. Prather
Notary Public in and for the
State of Washington
My Commission/Appointment expires on:
4-19-2014

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Talon Group
992680
A Division of First
American Title Insurance
Company

200706150844 9 PGS
05/15/2007 3:10pm SJJ/GO
PIERCE COUNTY, WASHINGTON

RETURN ADDRESS:
Frontier Bank
Sumner
801 Alder
PO Box 1850
Sumner, WA 98390

DEED OF TRUST

DATE: June 13, 2007

Reference # (if applicable): SUMN-XX2955 / ORDER NO. 992680 Additional on page _____

Grantor(s):

- 1. LFN, LLC

Grantee(s)

- 1. Frontier Bank
- 2. The Talon Group, Trustee

Legal Description: LOTS 24-37, 43-72, 87-101, 151 AND 202-214, LIPOMA FIRS NORTH
PDD, PHASE 2, REC. 200701245006

Additional on page 2

Assessor's Tax Parcel ID#: 602549-0240, 602549-0250, 602549-0260, 602549-0280,
602549-0290, 602549-0300, 602549-0310, 602549-0320, 602549-0330, 602549-0340,
602549-0350, 602549-0360, 602549-0370, 602549-0430, 602549-0440, 602549-0450,
602549-0460, 602549-0470, 602549-0480, 602549-0490, 602549-0500, 602549-0510,
602549-0520, 602549-0530, 602549-0540, 602549-0550, 602549-0560, 602549-0570,
602549-0580, 602549-0590, 602549-0800, 602549-0810, 602549-0820, 602549-0830,
602549-0840, 602549-0850, 602549-0860, 602549-0870, 602549-0880, 602549-0890,
602549-0700, 602549-0710, 602549-0720, 602549-0870, 602549-0880, 602549-0890,
602549-0900, 602549-0910, 602549-0920, 602549-0930, 602549-0940, 602549-0950,
602549-0960, 602549-0970, 602549-0980, 602549-0990, 602549-1000, 602549-1010,
602549-1510, 602549-2020, 602549-2030, 602549-2040, 602549-2050, 602549-2080,
602549-2070, 602549-2080, 602549-2090, 602549-2100, 602549-2110, 602549-2120,
602549-2130 and 602549-2140

THIS DEED OF TRUST is dated June 13, 2007, among LFN, LLC, a Washington limited liability
company, whose address is 108 W STEWART, PUYALLUP, WA 98371 ("Grantor"); Frontier
Bank, whose mailing address is Sumner, 801 Alder, PO Box 1850, Sumner, WA 98390
(referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and The Talon
Group, whose mailing address is 11400 SE 8th Street, Suite 250, Bellevue, WA 98004
(referred to below as "Trustee").

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DEED OF TRUST
(Continued)

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

LOT 24 THROUGH 37, 43 THROUGH 72, 87 THROUGH 101, 151 AND 202 THROUGH 214, INCLUSIVE OF LIPOMA FIRS NORTH PDD, PHASE 2, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 24, 2007 UNDER RECORDING NO. 200701245006, RECORDS OF PIERCE COUNTY, WASHINGTON.

The Real Property or its address is commonly known as 11519, 11523, 11527, 11605, 11609, 11611, 11617, 11625, 11629, 11540, 11512, 11520, 115424, 11606, 11612, 11618, 11626, 11630 185th AND 18603, 18609, 18616, 18619, 18713, 18721, 18727, 18733, 18735, 18801, 18805, 18809, 18813, 18817, 18821, 18825, 18829, 18833, 18835, 188605 AND 18618 117th AVENUE COURT EAST AND:

11718, 11714, 11710, 11706, 11622, 11614, 11608, 11602, 11508, 11504, 11221 189th STREET EAST AND;

18822, 18818, 18814, 18810, 18806, 18619, 18513, 18507, 18503 115th AVENUE EAST AND;

18712, 18718, 18722, 18726, 18730, 18810, 18816, 18822, 18828, 18834, 18902, 18906, 18910 110th AVENUE COURT EAST, PUYALLUP, WA 98373. The Real Property tax Identification number is 602549-0240, 602549-0250, 602549-0260, 602549-0280, 602549-0290, 602549-0300, 602549-0310, 602549-0320, 602549-0330, 602549-0340, 602549-0350, 602549-0360, 602549-0370, 602549-0430, 602549-0440, 602549-0460, 602549-0480, 602549-0470, 602549-0480, 602549-0490, 602549-0500, 602549-0510, 602549-0520, 602549-0530, 602549-0540, 602549-0550, 602549-0560, 602549-0570, 602549-0580, 602549-0590, 602549-0600, 602549-0610, 602549-0620, 602549-0630, 602549-0640, 602549-0650, 602549-0660, 602549-0670, 602549-0680, 602549-0690, 602549-0700, 602549-0710, 602549-0720, 602549-0870, 602549-0880, 602549-0890, 602549-0900, 602549-0910, 602549-0920, 602549-0930, 602549-0940, 602549-0950, 602549-0960, 602549-0970, 602549-0980, 602549-0990, 602549-1000, 602549-1010, 602549-1510, 602549-2020, 602549-2030, 602549-2040, 602549-2050, 602549-2060, 602549-2070, 602549-2080, 602549-2090, 602549-2100, 602549-2110, 602549-2120, 602549-2130 and 602549-2140.

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 95.08.070; the lien created by this assignment is intended to be specific, perfected and chaste 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 IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

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

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

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

Duty to Maintain. Grantor shall maintain the Property in tenable 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.

DEED OF TRUST
(Continued)

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

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

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, 1A) declare immediately due and payable all sums secured by this Deed of Trust or 1B) 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 occur 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, materialman'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 fair value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 48 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 expenditures, 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.

DEED OF TRUST
(Continued)

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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:

This 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 at Grantor's expense, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

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

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

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

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

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

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

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

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor

DEED OF TRUST
(Continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if

**DEED OF TRUST
(Continued)**

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Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

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

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

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

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

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

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

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

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or 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 notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of PIERCE County, State of Washington. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page or the

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(Continued)**

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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 address shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

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

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

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

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

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

Governing Law. This Deed of Trust will be governed by 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 Pierce County, State of Washington.

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

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

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

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

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

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

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

Borrower. The word "Borrower" means LFN, 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 LFN, LLC.

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

DEED OF TRUST
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Indebtedness.

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

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

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

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

Note. The word "Note" means the promissory note dated June 13, 2007, in the original principal amount of \$5,010,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

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

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

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

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

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

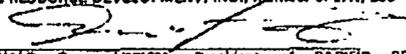
Trustee. The word "Trustee" means The Teton Group, whose mailing address is 11400 SE 8th Street, Suite 250, Bellevue, WA 98004 and any substitute or successor trustees.

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

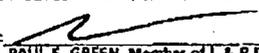
GRANTOR:

LFN, LLC

PACIFIC RESOURCE DEVELOPMENT, INC., Member of LFN, LLC

By: 
DONALD C. LINKEM, President of PACIFIC RESOURCE DEVELOPMENT, INC.

L & P DEVELOPMENT, L.L.C., Member of LFN, LLC

By: 
PAUL E. GREEN, Member of L & P DEVELOPMENT, L.L.C.

ANNOTATED REVISED CODE OF WASHINGTON

2013 by Matthew Bender & Company, Inc.,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct: That on the 4th day of November, I arranged for service *via U.S. Mail* of the foregoing BRIEF OF RESPONDENT UNION BANK, N.A. to the parties to this action as follows:

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DEPUTY
BY


Mary A. Williams

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