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Recording requested by:  
**WELLS FARGO BANK, N.A.**

When recorded return to:  
**WELLS FARGO BANK, N.A.**  
Business Lending Division  
177 Park Center Plaza, MAC  
#0514-011  
San Jose, CA 95113

MTC 45117-KR

State of Oregon

Space Above This Line For Recording Data

**DEED OF TRUST**  
**(With Future Advance Clause)**

**DATE AND PARTIES.** The date of this Deed of Trust ("Security Instrument") is July 01, 1998 and the parties are as follows:

**GRANTOR: Holing Family Partners, L.P.**  
whose address is: 32371 Caribbean Drive  
Dana Point, CA 926293533

**TRUSTEE: WELLS FARGO BANK (ARIZONA), N.A.**  
4832 East McDowell Rd.  
Phoenix, AZ 85008

**BENEFICIARY ("Lender"):** **WELLS FARGO BANK, N.A.**  
Business Lending Division  
177 Park Center Plaza, MAC #0514-011  
San Jose, CA 95113

1. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$172,298.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. The Note matures on or about June 15, 2013.
2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, all of that certain real property (the "Real Property") located in the County of KLAMATH, State of Oregon, described as follows:

See Exhibit A attached hereto and made a part hereof.

with the address of 3224 Summers Lane, Klamath Falls, OR 97603, Assessor's Parcel No. 3909-010AA-04100, together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water, waste water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be attached to or placed upon the Real Property, and all utility rights, connections, permits, licenses, deposits, plans, specifications, certificates, privileges and other

interests relating to the Real Property, and all proceeds, revenues, rents, leases, insurance proceeds and other rights arising from or relating to any of the foregoing (the Real Property and all other property collectively referred to as the "Property").

Grantor grants Lender a Uniform Commercial Code security interest in the Rents and the personal property described above. Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

3. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
  - A. Debt incurred under the terms of the promissory note, credit agreement, confirmation letter and disclosure or other evidence of debt (the "Note") dated July 01, 1998 in the principal amount of \$172,298.00, executed by **Holing Family Partners, L.P.** (the "Borrower"), together with all extensions, renewals, modifications or substitutions.
  - B. All future advances from Lender to Borrower under such evidence of debt. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances which exceed the amount shown in Section 3. Any such commitment must be agreed to in a separate writing.
  - C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value or Lender's liens and interests, and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.
  - D. Additional loans and advances made by Lender to Grantor and/or Borrower with interest thereon, late charges, prepayment penalties, attorneys fees, and any other fees and charges according to the terms of any additional promissory notes, credit agreements, and extension, modification or revision agreement, provided that such notes and/or agreements specifically recite that they are secured by this Deed of Trust.
4. **PAYMENTS.** Borrower shall pay the Secured Debt as it becomes due, and Borrower and Grantor shall strictly perform all of their respective obligations under the Note and this Security Instrument.
5. **WARRANTY OF TITLE.** Grantor warrants that Grantor holds good and marketable title to the Property in fee simple, and has the right to irrevocably grant, sell and convey the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
6. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees:
  - A. To make all payments when due and to perform or comply with all covenants.
  - B. To promptly deliver to Lender any notices that Grantor receives from the holder of such prior liens.
  - C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.
7. **TAXES AND OTHER CHARGES; CLAIMS AGAINST TITLE; SUBROGATION.** Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property, or any part thereof or interest therein, whether senior or subordinate hereto, when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor agrees to preserve the priority of the lien and security interest created hereunder as a first priority lien and first priority perfected security interest, as applicable. Grantor will defend title to the Property against any claims that would impair the liens of this Security Instrument. Grantor

agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property. In the event any portion of the Secured Debt is advanced to pay amounts secured by any prior lien or security interest (the "Prior Liens") on the Property, Lender shall be subrogated to all of the liens, security interests, rights, powers and equities of the owners and holders of said indebtedness and Prior Liens, and it is agreed that the Prior Liens are hereby renewed, extended and carried forward by this Security Instrument in full force and effect to secure payment of the Secured Debt.

8. **DUE ON SALE OR ENCUMBRANCE.** Grantor promises not to sell, lease, rent or otherwise convey any portion of the Property without Lender's prior written consent until all Secured Debt has been fully paid and satisfied. Upon sale, transfer, hypothecation, assignment or encumbrance, whether voluntary, involuntary, or by operation of law, of all or any part of the Property or any interest therein without Lender's prior written consent, then at its option Lender may declare the Secured Debt immediately due and payable, except to the extent such action may be prohibited by law.
9. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor will not remove or demolish the Property, or any part thereof. Grantor will keep the Property free of noxious weeds and grasses. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit, and Grantor will not rely on Lender's inspections in any manner whatsoever.

10. **AUTHORITY TO PERFORM.** If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.
11. **LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the property is a unit in a Condominium Project or is part of a Planned Unit Development ("PUD"), Grantor agrees to the following:
  - A. **Obligations.** Grantor shall perform all of Grantor's obligations under the Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Projects or PUD and any homeowners association or equivalent entity ("Owners Association"); (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Grantor shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.
  - B. **Hazard Insurance.** So long as the Owners Association maintains, with a generally

accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project or PUD which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then Grantor's obligation under Section 19 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Grantor shall give Lender prompt notice of any lapse in required hazard insurance coverage. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to Property, whether to the unit or to common elements, any proceeds payable to Grantor are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to Grantor.

**C. Flood Insurance.** Grantor agrees to maintain flood insurance for the life of the Secured Debt which is acceptable, as to form, amount and extent of coverage to Lender.

**D. Public Liability Insurance.** Grantor shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**E. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Grantor in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sum secured by the Security Instrument as provided in Section 18.

**F. Lender's Prior Consent.** Grantor shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project or PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management by the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**G. Remedies.** If Grantor does not pay condominium or PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this section shall become additional debt of Grantor secured by this Security Instrument. Unless Grantor and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement as specified herein and shall be payable, with interest, upon notice from Lender to Grantor requesting payment.

## 12. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.**

Except when prohibited by law, Grantor agrees to pay (i) all of Lender's expenses if Grantor breaches or fails to perform any covenant, obligation or agreement of Grantor in this Security Instrument, (ii) any amounts incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property, and (iii) all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's liens, security interests, and other rights under this Security Instrument. These amounts may include, but are not limited to, attorneys' fees, court costs, and other legal expenses, including (without limitation) reasonable attorneys' fees (outside counsel fees as well as allocated costs of Bank's in-house counsel, to the extent legally permitted) incurred in connection with enforcing Bank's rights, collecting any amounts due, protecting Bank's interests in any bankruptcy proceeding relating to Grantor or this Security Instrument (including without limitation, cash collateral, valuation, stay, transfer and preference actions, and general monitoring), and prosecuting or defending any actions relating to this Security Instrument or the Secured Debt, including actions for declaratory relief. These amounts, costs and expenses shall bear interest from the date paid or incurred until paid in full at the highest interest rate in effect with respect to any Secured Debt, and shall be paid by Grantor to Lender immediately upon Lender's request, to the extent allowed by applicable law. This Security

Instrument shall remain in effect until released.

13. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environment Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material", "toxic substances", "hazardous waste", "hazardous substance", or "regulated substances" under any Environmental Law.
- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property used in compliance with all Environmental Laws.
  - B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
  - C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
  - D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
14. **CONDEMNATION.** Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
15. **INSURANCE.** Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires or is required by applicable law. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.
- If Lender determines at any time during the term of the Secured Debt that the Property securing the Secured Debt is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required by law, Lender will notify Grantor that Grantor should obtain flood insurance at Grantor's expense. If Grantor fails to obtain adequate flood insurance which is acceptable to Lender, Lender shall purchase flood insurance on Grantor's behalf at Grantor's expense.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard

"mortgagee clause", with losses payable to Beneficiary where applicable. Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

16. **ESCROW FOR TAXES AND INSURANCE.** At Beneficiary's option and upon its demand, Grantor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. So long as there is no Default, Beneficiary shall apply said amounts to the payment of, or at Beneficiary's sole option release said funds to Grantor for application to and payment of, such taxes, assessments, levies, charges and insurance premiums. If a Default exists, Beneficiary at its sole option may apply all or any part of said amounts to any portion of the Secured Debt and/or to cure such Default, in which event Grantor shall be required to restore all amounts so applied, as well as to cure any Default not cured by such application. Grantor hereby pledges, transfers and grants to Beneficiary a security interest in all amounts so paid and held in Beneficiary's possession, and all proceeds thereof, to secure the payment and performance of the Secured Debt. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect thereto. The existence of said impounds shall not limit Beneficiary's rights under any other provision of this Deed of Trust or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of foreclosure), the balance of such amounts in Beneficiary's possession shall be paid to Grantor, and no other party shall have any right or claim thereto.
17. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.
18. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and several. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

Grantor agrees that Lender may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Grantor's consent. Such a change will not release Grantor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.

19. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or as shown in Lender's records, or to any other address designated in writing. Notice to one Grantor will be deemed to be notice to all Grantors.
20. **ARBITRATION PROGRAM; AGREEMENT FOR BINDING ARBITRATION.** Lender, Grantor, or any other party to this agreement may require that any Dispute be resolved by binding arbitration in accordance with the terms of this Arbitration Program, administered by the American Arbitration Association (the "AAA") pursuant to its Commercial Arbitration Rules and the Federal Arbitration Act (Title 9 of the United States Code). A "Dispute" shall include any dispute, claim, or controversy of any kind, whether in contract or in tort, legal or equitable, now existing or hereafter arising, relating in any way to this agreement or any related agreements (the "Documents"), or all past, present, or future loans, transactions, contracts, agreements, relationships, incidents or injuries of any kind whatsoever relating to or involving the Business Banking Group or any successor group or department of Lender. **DISPUTES SUBMITTED TO ARBITRATION ARE NOT RESOLVED IN COURT BY A JUDGE OR JURY.** Any party who fails to submit to binding arbitration following a lawful demand by the opposing party shall bear all costs and expenses incurred by the opposing party in compelling arbitration of a Dispute. Arbitration may be compelled by summary proceedings in Court.

Arbitrators: Preservation of Remedies. A Dispute involving claims or amounts in controversy of \$5,000,000 or less shall be decided by a single arbitrator who shall not render an award of greater than \$5,000,000 (including damages, costs, fees and expenses), and each party expressly waives any right or claim to recover more than \$5,000,000 in such cases. A Dispute involving greater amounts shall be heard by and decided by a majority vote of a panel of three arbitrators. Every arbitrator must be a retired member of the state or federal judiciary or a practicing attorney experienced and knowledgeable in the substantive laws applicable to the subject matter of the Dispute. Arbitrator(s) (i) may grant any remedy or relief within the scope hereof that a court of competent jurisdiction could, including ancillary relief as is necessary to make effective any award, (ii) shall have the power to award recovery of all costs and fees, and (iii) may impose sanctions and take other actions as they deem necessary to the same extent a judge could. The determination of the arbitrator(s) shall be binding on all parties and shall not be subject to further review or appeal except as otherwise allowed by applicable law. Judgment upon an award made hereunder may be entered in any court having jurisdiction. Any claim or dispute related to the exercise of any self-help, auxiliary or other rights under this paragraph shall be a Dispute hereunder. However, no provision of, nor the exercise of any rights under, this Arbitration Program shall limit the right of any party to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of (i) preserving, foreclosing, or obtaining possession of real or personal property, (ii) exercising self-help remedies including setoff and repossession rights, or (iii) obtaining provisional or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction. Such rights can be exercised at any time, unless contrary to a final award or decision in an arbitration proceeding, and shall not constitute a waiver of the arbitration rights of any party. Any party may proceed against all liable persons, or against any one or more of them, and may release or settle with any of them, without impairing rights against other liable persons.

Judicial Review: Real Property Collateral: Judicial Reference. Notwithstanding anything herein to the contrary, in any arbitration in which the amount in controversy exceeds \$25,000,000, the



arbitrators shall be required to make specific, written findings of fact and conclusions of law. In such arbitrations (i) the arbitrators shall not have the power to make any award which is not supported by substantial evidence or which is based on legal error, (ii) an award shall not be binding upon the parties unless the findings of fact are supported by substantial evidence and the conclusions of law are not erroneous under applicable substantive law, and (iii) the parties shall have, in addition to the grounds referred to in the Federal Arbitration Act for vacating, modifying or correcting an award, the right to judicial review of whether the findings of fact rendered by the arbitrators are supported by substantial evidence, and whether the conclusions of law are erroneous under applicable substantive law. Judgment confirming an award in such a proceeding may be entered only if a court determines the award is supported by substantial evidence and not based on legal error under applicable substantive law. Notwithstanding contrary provisions herein, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured by real property and if arbitration of the Dispute would preclude enforcement of a mortgage, lien or security interest securing such indebtedness, unless the holder of such mortgage, lien or security interest specifically elects in writing to proceed with the arbitration. If such a Dispute is not submitted to arbitration under such circumstances, the Dispute shall be determined by Judicial Reference at the election of any Party. If such an election is made, the Dispute shall be determined by a reference in accordance with California Code of Civil Procedure Section 638, et seq., or the judicial reference procedures of some other state if such state in which the real property is located offers a comparable judicial reference procedure. A referee shall be selected pursuant to AAA procedures and must meet the selection criteria set forth herein for an arbitrator.

Miscellaneous. To the maximum extent practicable, the AAA, the arbitrator and the parties shall act to assure that any arbitration proceeding shall be concluded within 180 days of the filing of the Dispute with the AAA. Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then in the state of the applicable substantive law designated in the Documents relating to the Dispute at a location selected by the AAA. All discovery activities shall be expressly limited to matters directly relevant to the Dispute. No party or arbitrator may disclose the existence, content, or results of any arbitration hereunder, except for disclosures of information required in the ordinary course of a party's business or by applicable law or regulation. The parties agree that by engaging in activities with or involving each other as described above, they are participating in transactions involving interstate commerce. This Arbitration Program shall be administered and construed in accordance with the Federal Arbitration Act, other applicable Federal law, and to the extent inapplicable or unenforceable, other applicable law providing for arbitration. If there is any inconsistency between the terms hereof and any governing rules or statutes, the terms hereof shall control. This Arbitration Program constitutes the entire agreement of the parties and supersedes all prior arrangements and other communications on dispute resolution concerning Disputes, except for other arbitration programs entered into by the parties after October 1, 1996. In the event more than one arbitration program entered into by the parties is potentially applicable to a Dispute, the one most directly related to the Documents or transaction that is the subject of the Dispute shall control. The provisions of this Arbitration Program shall survive any termination, amendment, or expiration of the Documents or relationships of the parties.

**21. THIRD PARTY GRANTOR.** In the event Grantor is not also the Borrower:

(i) Grantor represents and warrants to Lender that this Security Instrument is executed at the request of the Borrower; Grantor will not, without prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of the Property; and Grantor has established adequate means of obtaining from Borrower, on a continuing basis, financial and other information pertaining to the financial condition of Borrower. Grantor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect the risks of Grantor, and Grantor further agrees that Lender has no obligation to disclose to Grantor information or material acquired in the course of



**Lender's relationship with Borrower.**

(ii) Grantor hereby waives any right to require Lender to proceed against any person, including Borrower; proceed against or exhaust any collateral held from Borrower or any other person; pursue any other remedy in Lender's power; or make any presentments, demands for performance or give any notices of nonperformance, protests, notices of protest of dishonor in connection with the Secured Debt and this Security Instrument.

(iii) Grantor also waives any defense arising by reason of any disability or other defense of Borrower or any other defense of Borrower or any other person; the cessation from any cause whatsoever, other than payment in full of the obligations of Borrower under this Security Instrument and Secured Debt; the application by Borrower of the proceeds of the Secured Debt; for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender to Grantor; any act or omission by Lender which directly or indirectly results in or aids the discharge of Borrower by operation of law or otherwise, including any impairment or loss of any right of reimbursement or subrogation or any right or remedy of Grantor against Borrower or any against any security resulting from the exercise or election of any remedies by Lender, including, without limitation, election by Lender to exercise any of Lender's rights, now or hereafter obtained, under any power of sale set forth in any deed of trust securing repayment of the indebtedness of Borrower and the consequent loss, limitation or impairment of the right to recover any deficiency from Borrower in connection therewith or due to any fair value limitations or determinations in connection with a judicial foreclosure; or any modification of the Secured Debt in any form whatsoever, including, without limitation, the renewal, extension, acceleration or other change in time for payment or any increase in the rate of interest. Until all amounts secured shall have been paid in full, Grantor further waives any right to enforce any remedy which Lender now has or may hereafter have against Borrower or any other person and waives any benefit of, or any right to participate in, any security whatsoever now or hereafter held by Lender.

(iv) Grantor acknowledges, warrants and agrees that each of the waivers set forth in this section are made with the full knowledge of their significance and consequence and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of said waivers are determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law.

- 22. APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the State of Oregon and applicable federal law. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
- 23. COLLECTION OF RENTS.** Lender confers on Grantor the authority to collect and retain rents, issues and profits of the Property ("Rents") as they become due and payable, subject, however, to the right of Lender to revoke said authority at any time in its sole discretion and without notice to Grantor. Lender may revoke said authority and collect and retain the Rents, whether or not Grantor is in default, and without taking possession of all or any of the Property. At Lender's request, Grantor will promptly provide Lender with true and correct copies of all existing and future Leases. Grantor irrevocably designates Lender as Grantor's attorney-in-fact to receive, endorse, negotiate and collect payments, checks and instruments. The right to collect Rents shall not grant to Lender or Trustee the right to possession, except as otherwise expressly

provided; nor impose upon Lender or Trustee the duty to collect or produce Rents or maintain the Property in whole or in part.

Grantor agrees that this conferral of authority is immediately effective between the parties, and is effective as to third parties on Grantor's default when Lender takes actual possession of the Property, when a receiver is appointed, or as the law otherwise provides. Grantor agrees that Lender or Trustee may take actual possession of the property without the necessity of commencing legal action and that actual possession is deemed to occur when Lender, or its agent, notifies Grantor of default and demands that any tenant pay all future Rents directly to Lender. On receiving notice of default, Grantor will endorse and deliver to Lender any Rents in Grantor's possession and any Rents subsequently coming into Grantor's possession and will not be commingled with any other funds. All such Rents will be held in trust for and delivered to Lender, and any amounts collected will be applied as provided in this Security Instrument. Grantor warrants that no default exists under the leases or any applicable law. Grantor agrees to require tenants to comply with the terms of the leases and applicable law.

24. **DEFAULT.** Grantor will be in default if any party obligated on the Secured Debt fails to make payment when due, or if a breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt. A good faith belief by Lender that Lender at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired shall also constitute an event of default.
25. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law after default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or at any time thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the Property.

If there is a default, Trustee shall, either personally or by agent, in addition to any other permitted remedy, at the request of the Lender, and in accordance with applicable law, give notice of foreclosure sale as required by the Texas Property Code, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale including the time, terms and place of sale and a description of the property to be sold as required by the applicable law in effect at the time of the proposed sale.

Upon sale of the property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser. Trustee shall apply the proceeds of the sale in the following order: (1) to the costs and expenses of exercising the power of sale and the sale, including the payment of Trustee fees, and reasonable attorney's fees actually incurred; (2) to the payment of the contract or contracts secured by this Deed of Trust; (3) to the payment of all other obligations provided in or secured by this Deed of Trust; (4) to the junior lienholders or encumbrances in order of their priority, or any other amounts required by law to be paid before payment to Grantor. After payment in full of all such amounts, payment shall be made to Grantor. Lender may purchase the Property at foreclosure sale by offering the highest bid and then having the bid credited on the obligation together with all of Trustee fees and costs. All obligors on the Secured Debt shall remain liable for any deficiency. The recitals in

any deed of conveyance shall be prima facie evidence of the facts set forth therein.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

26. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove the Trustee (or any successor trustee) and appoint a successor trustee by an instrument in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon the Trustee by this Deed of Trust and applicable law.
27. **STATEMENT OF CONDITION.** From time to time, as required by law, Lender shall furnish to Grantor or its agent such statements as may be required concerning the condition of the Secured Debt. Lender will charge a fee for such statement equal to \$60 or such other fee as may be permitted by law.
28. **RECONVEYANCE.** Upon payment of all sums and performance of all obligations secured by this Security Instrument, and termination of any line of credit or commitment secured hereby, at Grantor's request and expense, Lender shall request Trustee to reconvey the Property and shall surrender this Security Interest and any note or instrument evidencing the Secured Debt to the Trustee. Trustee shall reconvey, without warranty, the Property or that portion secured by this Security Instrument. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto". Neither Lender nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. Lender will charge a fee for such reconveyance equal to \$65 or such other fee as may be permitted by law.
29. **THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.**
30. **AGREEMENT FOR BINDING ARBITRATION.** Lender and Grantor agree to the terms of the Arbitration Program set forth in paragraph 20 above concerning the resolution of Disputes.
31. **FINAL AGREEMENT.** To the extent allowed by law, the parties hereto agree to be bound by the terms of the following notice:

**NOTICE:** THIS DOCUMENT AND ALL OTHER DOCUMENTS RELATING TO THIS LOAN CONSTITUTE A WRITTEN LOAN AGREEMENT WHICH REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES RELATING TO THIS LOAN.

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**SIGNATURES:** By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument.

**GRANTOR:**

Holing Family Partners, L.P.

By: 

Name: John E. Filing

Title: Managing General Partner

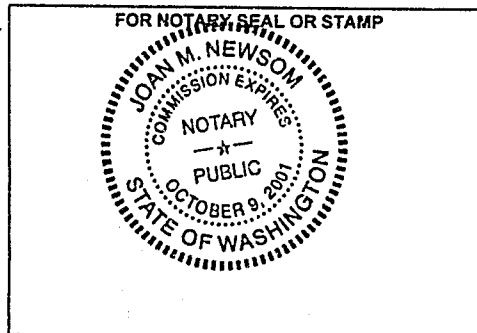
By: \_\_\_\_\_

STATE OF ~~CALIFORNIA~~ <sup>Washington</sup> }  
COUNTY OF King } SS.

On July 8, 1996, before me, Joan M. Newsom  
a Notary Public in and for said County and State, personally appeared John E. Holmg

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature

Joan M. Newsom

## EXHIBIT "A"

That portion of the SE1/4 NE1/4 NE1/4 of Section 10, Township 39 South, Range 9 East of the Willamette Meridian, described as follows:

Beginning at a point on the West line of Summers Lane, which point is North 377.9 feet from the South boundary line of the NE1/4 of NE1/4, Township and Range aforesaid, and which point is also on the North line of the U.S.R.S. drainage canal; thence continuing North along the West line of Summers Lane, a distance of 85 feet; thence South 88 degrees 54' West a distance of 233.7 feet to a point on the Easterly boundary of a second U.S.R.S. drainage canal; thence along said drainage canal South 4 degrees 22' East a distance of 85.1 feet; thence North 88 degrees 54' East a distance of 229 feet more or less to the point of beginning.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle the 17th day  
of July A.D., 19 98 at 3:31 o'clock P M., and duly recorded in Vol. M98,  
of Mortgages on Page 26182.

FEE \$75.00

By Kathleen Ross Bernetha G. Letsch, County Clerk