

Doc # 2007164933
Page 1 of 7
Date: 02/08/2007 01:30P
Filed by: CLARK COUNTY TITLE
Filed & Recorded in Official Records
of SKAMANIA COUNTY
SKAMANIA COUNTY AUDITOR
J MICHAEL GARVISON
Fee: \$38.00

FILED FOR RECORD AT REQUEST OF/RETURN TO:

VELIKANJE, MOORE & SHORE, P.S.
Attention: Morris G. Shore
P. O. Box 22550
Yakima, Washington 98907

MORTGAGE OF REAL PROPERTY

Reference number(s) of related document:

Grantor: HIGHLAND ORCHARDS, LLC

Grantee: WINTER PEAR, LLC

Abbreviated Legal Description: Secs. 18 and 19, T3N, R10 - Ptn SE1/4 NE1/4 NW1/4 Sec. 19; NE1/4 NE1/4 NW1/4 Sec. 19; Ptn of SW1/4 NE1/4 NW1/4 Sec. 19; Ptn of NW1/4 NE1/4 NW1/4 Sec. 19; Ptn of Parcel V W1/2 E1/2 W1/2 SW1/4 Sec. 18
Complete legal description is on pages 1 and 2 of this document.

**Assessor's Tax Parcel ID Nos.: 03 10 19 0 0 0300 00; 03 10 19 0 0 0300 03;
and 03 10 19 0 0 0300 80**

THIS MORTGAGE is granted this 30th day of January, 2007, by **HIGHLAND ORCHARDS, LLC**, a Washington limited liability company, Mortgagor, whose address is 3858 W. Carson Street, Suite 220; Torrance, California 90503, to **WINTER PEAR, LLC**, a Washington limited liability company, Mortgagee, whose address is P. O. Box 1588, Yakima, Washington 98907. Mortgagor hereby irrevocably mortgages the following described real property in Skamania County, Washington:

A parcel located in Sections 18 and 19, Township 3 North, Range 10 East of the Willamette Meridian, Skamania County, Washington, more specifically described as:

**The East 8 rods of the Southeast quarter of the Northeast quarter of the Northwest quarter of said Section 19;
EXCEPT County roads.**

The described tract of land recorded in Book 85 of Skamania County Deed Records, page 213 as found in the second paragraph of Parcel II;

The Northeast quarter of the Northeast quarter of the Northwest quarter of Section 19;

MORTGAGE OF REAL PROPERTY

1

g-3651\cm\pears\highland orchards\highland orchards-winter pear mtg (lot 5)

That portion of the Southwest quarter of the Northeast quarter of the Northwest quarter of Section 19, lying North of the centerline of an existing road located approximately 860 feet, more or less, South of the North line of said Section 19, said centerline is oriented East and West and said South line includes the East and West extension of said centerline to the East and West lines of the Southwest quarter of the Northeast quarter of the Northwest quarter of said Section 19;

That portion of the Northwest quarter of the Northeast quarter of the Northwest quarter of Section 19, lying East of the East line of the West half of the East half of the West half of the Northwest quarter of the Northeast quarter of the Northwest quarter of Section 19.

That portion of land described in Book 85 of Skamania County Deeds, page 213 as Parcel V lying East of the East line of the West half of the East half of the West half of the Southwest quarter of the Southeast quarter of the Southwest quarter of Section 18, Skamania County, Washington.

EXCEPTING THEREFROM County roads.

Also EXCEPT, that portion described in Summary Judgment entered in Skamania County Court Cause No. 86-2-00038-2.

together with all interest and estate therein that Mortgagor may now own or hereafter acquire, and together with all the rents, issues and profits therefrom, however evidenced or manifested, and all appurtenances, fixtures, attachments, irrigation equipment, tenements, privileges, minerals, including, without limitation, oil and gas, upon and under the property and all mineral rights and reservations pertaining thereto; irrigation and water rights and all permits, certificates and shares evidencing the same; and hereditaments, now or hereafter belonging or appertaining to the property.

This Mortgage shall secure Mortgagor's Promissory Note obligations as set forth in that certain Promissory Note of even date herewith in the principal amount of **One Hundred Eighty-Seven Thousand Five Hundred and No/100 Dollars (\$187,500.00)**, together with the obligation to pay the Earn-Out Adjustment as defined in the said Promissory Note. In addition, this Mortgage shall secure the payment of all interest due with respect to the secured obligations, any and all future advances, with interest thereon, any extensions or renewals of the indebtedness, or any advances made or incurred by Mortgagee in order to preserve, protect, enforce or realize upon Mortgagor's interest in the property (*hereinafter collectively referred to as the "Indebtedness"*).

Mortgagor further covenants and agrees with Mortgagee as follows:

1. Mortgagor is lawfully seized in fee simple of the property conveyed herein and owns outright every part thereof.
2. Mortgagor agrees to keep the property free from future statutory liens, governmental liens, and any and all other liens or encumbrances of any kind, without the prior express written consent of Mortgagee, and to keep all prior liens on the property paid current.

MORTGAGE OF REAL PROPERTY

2

g-3651\cm\pears\highland orchards\highland orchards-winter pear mtg (lot 5)

MC # 2007164933
Page 2 of 7

3. Mortgagor agrees to pay promptly when due the principal and interest of the Indebtedness secured by this Mortgage.
4. Mortgagor agrees to maintain the buildings, if any, and all other improvements on the property in a rentable and tenantable condition and state of repair, except as expressly approved by Mortgagee in writing, to neither commit nor suffer any waste, to comply promptly with all requirements of the federal, state and municipal authorities and all other laws, ordinances, regulations, covenants, conditions and restrictions respecting the property or the use thereof, and to pay all fees or charges of any kind in connection with the property. Mortgagor further covenants to farm any orchard properties covered by this Mortgage in a good and husband-like manner consistent with the farming practices for the area. Specifically, it is understood that no orchard trees shall be removed from the property without the consent of Mortgagee until the deferred purchase price portion of the Promissory Note obligation has been paid in full, it being understood that Mortgagee will consent to the removal of orchard trees necessary for Mortgagor to make appropriate infrastructure improvements so that the property can be sold to third persons and improvements can be made to allow for a single-family residence to eventually be constructed on the Subject Property.
5. Mortgagor agrees to pay all taxes, assessments, fines and other charges attributable to the property which may attain a priority over this Mortgage, including leasehold payments and ground rents, if any, by making payment, when due, directly to the party entitled to the payment. Mortgagor shall furnish to Mortgagee all notices of amounts due under this paragraph. In the event Mortgagor shall make payment directly to the party entitled to the payment, Mortgagor shall furnish receipts to Mortgagee evidencing such payments.
6. Mortgagor shall maintain insurance on the property, together with any improvements thereon, insuring against any loss by fire, hazards, or any other casualties or contingencies as may be reasonably required from time to time by Mortgagee. The insurance shall be in such amounts and for such periods of time as Mortgagee may designate. All such insurance shall have a loss payable clause in favor of and in form satisfactory to Mortgagee.
7. Mortgagee may make or cause to be made reasonable entries upon and inspections of the property, provided that Mortgagee shall give Mortgagor notice prior to any such inspections.
8. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid directly to Mortgagee. In the event of a partial or total condemnation or other taking of the property, the proceeds shall be applied to the Indebtedness secured by this Mortgage, with the excess, if any, paid to Mortgagor. Unless otherwise agreed in writing by Mortgagee, any such application of proceeds to the Indebtedness secured by this Mortgage shall not extend or postpone the due date of the regular installment payments provided for by the terms of the Promissory Note or any other indebtedness secured by this Mortgage.
9. Mortgagor agrees that if Mortgagee extends, renews or modifies the terms of any Indebtedness secured by this Mortgage or if Mortgagee releases any other security securing such

Indebtedness, any and all such extensions, renewals, modifications or releases shall not operate to release, discharge or diminish the liability of Mortgagor for all Indebtedness secured by this Mortgage.

10. Unless otherwise agreed in writing by Mortgagee and Mortgagor, in the event of a transfer of all or any part of Mortgagor's interest in the property, whether voluntary, involuntary or by operation of law, Mortgagee may, at its option, treat such transfer as a default by Mortgagor and may resort to the remedies provided for in this Mortgage. In the event Mortgagee does not choose to treat such transfer as a default under the terms of this Mortgage, Mortgagee may, at its option, require all of the following from Mortgagor:
 - (a) Not less than *thirty (30) days* prior to any such transfer, Mortgagor shall notify Mortgagee in writing of the proposed transfer and shall provide Mortgagee with such information concerning the terms and conditions of the transfer and the creditworthiness and financial condition of any proposed transferee as Mortgagee may reasonably require.
 - (b) In the event Mortgagee shall consent to such a transfer, Mortgagee shall be entitled to collect from Mortgagor the cost of any credit investigation and assumption fee which shall not exceed *three percent (3%)* of the remaining balance on the Indebtedness secured by this Mortgage.
 - (c) Mortgagee may require Mortgagor to continue to be bound as principals to repay all Indebtedness herein secured.
11. Mortgagor hereby agrees that this Mortgage shall also be construed as a security agreement under Article Nine of the Washington Uniform Commercial Code. At Mortgagee's request, Mortgagor agrees to execute and deliver such financing statements as Mortgagee may require to perfect its security interest under the Uniform Commercial Code.
12. As further security for the Indebtedness secured by this Mortgage, Mortgagor hereby assigns to Mortgagee any and all rents, issues and profits of the property and Mortgagor's interest in all leases now or hereafter affecting the property. Upon notice by Mortgagee, and, in any event, upon default, Mortgagee may directly collect all such lease, rent and other payments due Mortgagor. Nothing contained in this paragraph shall obligate Mortgagee to perform any of Mortgagor's duties or obligations under any lease or other agreement affecting the property.
13. The following shall be Events of Default under this Mortgage: (a) default in the payment or performance, when due or payable, of any Indebtedness secured by this Mortgage; (b) breach by Mortgagor of any representation, covenant, or warranty contained in this Mortgage or any other agreement, instrument or document affected or secured by this Mortgage; (c) the making by Mortgagor of any material misrepresentation to Mortgagee for the purpose of obtaining credit or an extension of credit; (d) the issuance of any injunction, attachment, garnishment or levy against any property of the Mortgagor; or (e) the insolvency of Mortgagor, an admission by Mortgagor in writing of Mortgagor's inability to pay Mortgagor's debts as they mature or the institution by or against Mortgagor of any bankruptcy, insolvency, reorganization, debt arrangement, liquidation, dissolution or receivership proceeding.

14. Upon the happening of any of the above Events of Default, Mortgagee shall have, in addition to all other rights and remedies at law or in equity, the following rights and remedies: (a) to declare any and all Indebtedness secured by this Mortgage to be immediately due and payable; (b) to apply, with or without notice to Mortgagor and upon filing a suit to enforce or preserve its rights under this Mortgage, for the appointment of a receiver, without bond, to take possession of the property and the rents, issues, profits and proceeds affecting the property; (c) to cause foreclosure of this Mortgage (i) as a mortgage under RCW Chapter 61.12, et seq., and (ii) under Article Nine of the Washington Uniform Commercial Code; and (d) all the other rights and remedies provided for in this Mortgage.
15. All rights and remedies of Mortgagee provided for in this Mortgage are intended to be cumulative and not in substitution for any other right or remedy otherwise available to Mortgagee.
16. Mortgagor hereby expressly waives:
- (a) Any right to require Mortgagee to marshal, or to foreclose in the inverse order of alienation, any of the above-described property or any other collateral securing Mortgagor's Indebtedness to Mortgagee;
 - (b) Any notice from Mortgagee of any events giving rise to Indebtedness by Mortgagor to Mortgagee and of any default by Mortgagor, except as required by law to foreclose the security interest herein granted; and
 - (c) Presentment, protest, demand, or notice of payment or nonpayment of any Indebtedness of Mortgagor, or the taking of any collateral securing such Indebtedness, and notices of every other kind, including those of action or nonaction on the part of Mortgagor, Mortgagee, or any other person.
17. This Mortgage shall not be qualified or supplemented by course of dealing. No waiver or modification by Mortgagee of any of the terms of this Mortgage shall be effective unless the waiver or modification is in writing and signed by Mortgagee. No waiver or modification by Mortgagee of any required performance or obligation of Mortgagor on any occasion shall be construed as a waiver of Mortgagee's right to require strict performance of all the terms of this Mortgage on any future occasion.
18. Any notice to Mortgagor provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Mortgagor at the property address or at such other address as Mortgagor may designate by written notice to Mortgagee. Any notice to Mortgagee shall be given by certified mail to Mortgagee's address stated herein.
19. Mortgagor agrees to pay to Mortgagee any and all costs and expenses, including attorneys' fees, incurred or paid by Mortgagee in protecting or enforcing its rights under the terms of this Mortgage, whether or not a lawsuit is commenced. Attorneys' fees shall include services rendered at both the trial and appellate level, as well as services rendered subsequent to the judgment and obtaining execution thereon. The award of such fees, costs and expenses shall

18. Any notice to Mortgagor provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Mortgagor at the property address or at such other address as Mortgagor may designate by written notice to Mortgagee. Any notice to Mortgagee shall be given by certified mail to Mortgagee's address stated herein.
19. Mortgagor agrees to pay to Mortgagee any and all costs and expenses, including attorneys' fees, incurred or paid by Mortgagee in protecting or enforcing its rights under the terms of this Mortgage, whether or not a lawsuit is commenced. Attorneys' fees shall include services rendered at both the trial and appellate level, as well as services rendered subsequent to the judgment and obtaining execution thereon. The award of such fees, costs and expenses shall bear interest at the highest lawful rate until paid in full. Payment of costs and expenses, including attorneys' fees, shall be secured by this Mortgage.
20. The covenants and agreements contained in this Mortgage shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor. All covenants and agreements of Mortgagor shall be joint and several.
21. This Mortgage shall be governed by the laws of the state of Washington.

EXECUTED as of the date and year first above written.

HIGHLAND ORCHARDS, LLC

By: 

Alexander S. Mecl, Manager

STATE OF CALIFORNIA)

) ss.

County of _____)

On this day personally appeared before me **ALEXANDER S. MECL**, to me known to be the Manager of **HIGHLAND ORCHARDS, LLC**, a Washington limited liability company, and who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the LLC, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of January, 2007.

[SEAL]

(print name)

NOTARY PUBLIC in and for the state
of California, residing at _____
My appointment expires _____

MORTGAGE OF REAL PROPERTY

g-3651/cm/pears/highland orchards/highland orchards-winter pear mtg (lot 5)

6

SEE LOOSE ATTACHED
DOCUMENT

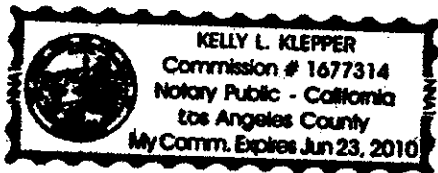
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

} ss.

On January 30, 2007, before me, Kelly L. Klepper Notary Public
personally appeared Alexander S. Meel
Name and Title of Officer (e.g., "Jane Doe, Notary Public")
Name(s) of Signer(s)



☐ personally known to me

☒ 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.

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here