

Recorded at the Request of  
and after Recording Return to:

Vince Scotti  
5231 40<sup>th</sup> Avenue, NE  
Seattle, WA 98105



200002080072

Kathy Hill, Skagit County Auditor  
2/8/2000 Page 1 of 8 1:01:36PM

Skagit County, Washington, Complete legal(s) on Exhibit A.  
Assessor's Tax Parcel ID# 340406-4-001-0522.

PTN LOT 5 CASCADE MALL BSP

FIRST AMERICAN TITLE CO.  
ACCOMMODATION RECORDING ONLY

**DEED OF TRUST AND SECURITY AGREEMENT  
WITH FIXTURE FILING**

M7194

THIS DEED OF TRUST AND SECURITY AGREEMENT WITH FIXTURE FILING ("Deed of Trust") is made this 25 day of January, 2000, among JAMES W. LAGERQUIST, a married man as his separate property and obligation ("Grantor"), CHICAGO TITLE INSURANCE COMPANY ("Trustee"), and TOM ABEL ("Beneficiary").

Grantor is indebted to Beneficiary in the principal sum of TWO HUNDRED FIFTY TWO THOUSAND THREE HUNDRED TWELVE AND 50/100 DOLLARS (\$252,312.50) as evidenced by a promissory note of even date herewith (the "Note"), payable to the order of Beneficiary, and any and all extensions, substitutions, replacements, rearrangements, modifications, and/or renewals thereof (the "Note"). The Note and this Deed of Trust are referred to collectively as the "Loan Documents."

Grantor is or shall be the owner in fee of certain property described in Exhibit A hereto (the "Premises") and the buildings, improvements and other structures now or hereafter located thereon (the "Improvements", collectively with the Premises, the "Property").

**GRANTING CLAUSES**

NOW, THEREFORE, to secure the payment of all sums due under the Note, including the costs and expenses of enforcing any provision of the Note and performance by Grantor of all of the provisions of the Note, and in order to charge the Property with the obligation to perform the obligations of the Note, Grantor does hereby bargain, sell and convey to Trustee, in trust, with power of sale, all right, title and interest of Grantor now owned or hereafter acquired, in and to the Property;

The references to "Property" herein shall also include the following rights and interests:

- (a) All easements, rights-of-way, streets, alleys, sewer rights, water rights, and all right, title, and interest in any appurtenances of any nature, relating to the Property;

(b) All machinery, equipment, fixtures, supplies and other property owned by Grantor, now or hereafter located on the Property and used in connection with the present or future operation of the Property and any additions or alterations of any portion of the Property (the "Equipment"). All Equipment is part and parcel of the real estate and shall be deemed conclusively to be real estate and conveyed hereby;

(c) All awards which may be made with respect to all or any portion of the Property from the exercise of right of eminent domain (including any transfer made in lieu of condemnation) (collectively, the "Eminent Domain Awards");

(d) All leases and other agreements for the use or occupancy of the Property, including, without limitation, management agreements and licenses (collectively, the "Leases"), and the rents, issues and profits of the Property ("Rents"), together with the right, upon the occurrence of a default, to collect the Rents and apply the Rents to the payment of the Note;

(e) All proceeds of any insurance policies covering any portion of the Property including, without limitation, the right to receive and apply the proceeds of any insurance for damage to all or any portion of the Property (the "Insurance Proceeds"); and

(f) All general intangibles relating to the development or use of the Property, including, but not limited to, all governmental permits relating to operation of the Property.

AND, as additional security, Grantor hereby grants to Beneficiary a security interest in (collectively, the "Security Interest Property"): (1) the Equipment, (2) the Insurance Proceeds, (3) the Eminent Domain Awards, (4) the Leases, (5) the Rents, and (6) all proceeds of the foregoing, and this Deed of Trust shall be effective as a security agreement pursuant to the Uniform Commercial Code as in effect in the State of Washington (the "Code").

TO HAVE AND TO HOLD the Property, rights and privileges hereby conveyed or assigned, or intended so to be, unto Trustee, in trust, forever, with power of sale, for the uses and purposes herein set forth.

In order to induce Beneficiary to make the loan evidenced by the Note, Grantor further represents, warrants and covenants as follows:

**1. Not Agricultural.** The Property is not used principally for agricultural or farming purposes.

**2. Second Lien and Subordination.** This Deed of Trust is and shall at all times be subordinate to that certain Deed of Trust dated November 6<sup>th</sup>, 1992 (the "First Deed of Trust") in favor of The Lafayette Life Insurance Company, an Indiana Corporation ("First Lender"). Beneficiary agrees to execute promptly and deliver to First Lender that lender's form of subordination agreement, if required. Beneficiary further agrees that if requested, to execute promptly non-disturbance agreements with tenants of the Property, so long as such tenants concurrently agree to subordinate their leasehold interests to the lien created by this Deed of Trust, in a form reasonably acceptable to Beneficiary.



**3. Authority.** Grantor has full power and authority to encumber the Property, to carry on its business, and to execute, acknowledge, deliver, and perform the provisions of the Note. All actions on Grantor's part required for the due authorization, execution, acknowledgment, delivery, and performance of Note have been taken.

**4. No Breach.** The execution, delivery and performance of the Note do not contravene (a) any applicable law, or (b) any contract relating the Property; and the consents of all necessary entities to such execution, delivery and performance have been duly obtained.

**5. Covenants of Grantor as to Payment and Performance.**

(a) Grantor shall, without demand, make all payments when due under the Note shall perform and shall otherwise comply fully with all agreements, covenants and conditions imposed by the provisions of the Note.

(b) Grantor shall, without demand, make all payments when due under the note secured by the First Deed of Trust and shall perform and shall otherwise comply fully with all agreements, covenants and conditions imposed by the provisions of such note.

(c) Grantor shall comply with all requirements of any governmental authority or court applicable to Grantor or the Property or any part thereof.

**6. Insurance.** Grantor shall obtain and maintain all insurance policies required by First Lender pursuant to the terms of the First Deed of Trust.

**7. Payment of Taxes, etc.** Grantor shall pay, prior to delinquency, all taxes, assessments, and utilities, now or hereafter levied, assessed or imposed on any portion of the Property (collectively, the "Taxes").

**8. Compliance with Agreements, Laws, Etc.** Grantor shall comply with all covenants, agreements and restrictions affecting the Property and with all laws applicable to the Property.

**9. Cure of Defaults by Beneficiary.** If Grantor fails to perform any obligation under the First Deed of Trust, Beneficiary may, after the notice provided in herein ("Events of Defaults"), cure the defaults, and all amounts paid by Beneficiary to cure the defaults shall be immediately due and payable from Grantor with interest at the default rate provided in the Note.

**10. Indemnity.** Grantor shall indemnify Beneficiary and Trustee and hold Beneficiary and Trustee harmless from and against any and all losses, liabilities, damages, costs, including, without limitation, reasonable attorneys' fees, which are incurred by or asserted against Beneficiary and/or Trustee by reason of (i) any work or thing done in connection with the Property, (ii) any gross negligence by Grantor, or any of its agents, employees, licensees or invitees, (iii) any accident, injury, death or damage to any person or property occurring in, on or about the Property, or any adjacent property, (iv) any Event of Default, (v) any failure to operate the Property in compliance with all applicable laws, or (vi) any other manner or thing arising under or relating to the



ownership and operation of the Property or any part thereof to the extent such matters arise from and after the date of this Deed of Trust.

This indemnification shall survive any transfer of the Property, including a transfer pursuant to foreclosure. If any claim, action or proceeding is made or brought against Beneficiary and/or Trustee by reason of any event as to which Grantor is obligated to indemnify Beneficiary and/or Trustee, then, upon demand by Beneficiary, Grantor, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Beneficiary's and/or Trustee's name, as the case may be, if necessary, by such attorneys as Beneficiary shall reasonably approve.

**11. Events of Default.** The following matters shall each be referred to herein as an "Event of Default":

(a) Any payment due to Beneficiary from Grantor on the Note, is not made within thirty (30) days of the date any such amount is due;

(b) Grantor fails to pay any amounts, including but not limited to insurance premiums, taxes, assessments, or other amounts due from Grantor in connection with the Property within thirty (30) days of the date any such amount is due;

(c) Grantor fails to perform any term on its part to be performed under the Note, other than a default referred to in subparagraph (a) or (b) of this Paragraph, and such default continues unremedied for a period of forty five (45) days after such default, provided that if the nature of a nonmonetary default is such that it cannot be reasonably cured within forty five (45) days, if Grantor fails to commence curing the same within the forty five (45) days and to diligently prosecute such to a prompt completion;

(d) Grantor fails to cure any default under the loan documents secured by the First Deed of Trust within forty five (45) days of written notice from Beneficiary; or

(e) Grantor: (1) files a voluntary petition seeking an order for relief under Title 11 of the United States Code or any similar bankruptcy law now or hereafter in effect, or (2) is adjudicated a bankrupt or insolvent, or (3) files any petition seeking to or acquiescing in any order for relief or reorganization under bankruptcy law, or (4) makes an assignment for the benefit of creditors, or (5) seeks appointment of a trustee, receiver or similar official for all or any portion of the Property or (6) if, within sixty (60) days after the commencement of any bankruptcy proceeding against Grantor, such proceeding is not dismissed.

## **12. Remedies.**

(a) **General.** If an Event of Default occurs, Beneficiary may declare all amounts due under the Note immediately due and payable, and Beneficiary may have the Property sold by Trustee pursuant to the provisions of the laws of the State of Washington with respect to trustee sales under deeds of trust, Beneficiary may also elect to have this Deed of Trust foreclosed as a mortgage and/or to pursue any right or remedy provided herein or at law or in equity. Beneficiary may pursue such remedies in such order and at such times as Beneficiary may elect.

**(b) Costs and Expenses.** In any suit to foreclose the lien of this Deed of Trust or to enforce any other remedy of the Beneficiary under the Note, there shall be allowed and included, as additional indebtedness, all expenses incurred, including, but not limited to attorneys' fees, appraisers' fees, experts' fees, publication costs, and other costs. All such expenses, and the expenses incurred in protection of the Property and preservation of the lien of this Deed of Trust, shall be immediately due and payable by Grantor, with interest thereon at the default interest rate provided in the Note.

**(c) Cumulative Remedies.** All of Beneficiary's and Trustee's rights and remedies specified in this Deed of Trust and the Note are cumulative, not mutually exclusive and not in substitution for any rights or remedies available in law or in equity. In order to obtain performance of Grantor's obligations under the Loan Documents, without waiving its rights in the collateral, Beneficiary may proceed in such order and manner as Beneficiary may elect.

**(d) Exercise of Remedies.** The Property may be sold separately or as a whole, at the option of Beneficiary. Beneficiary may also realize on the personal property collateral in accordance with the remedies available under the Code or at law. Written notice mailed to Grantor, as provided herein, ten (10) days prior to the date of public sale of any personal property or prior to the date after which private sale of any personal property shall be made, shall constitute reasonable notice. Any sale made pursuant to the provisions of this Paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with the sale of such other property as provided in subparagraph (a) of this Paragraph. In the event of a foreclosure sale, Grantor and the holders of any subordinate liens or security interests waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation.

**13. Notices.** Any notice, demand or request required hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram or telecopying; (c) overnight courier; or (d) registered or certified, first class mail, return receipt requested.

If to Grantor:

James W. Lagerquist  
2115 Sixth Avenue  
Seattle, WA 98121  
Telephone: 206 443 1940  
Facsimile: 206 443 1329

with copies to:

Tousley Brain PLLC  
Attention: Kathleen J. Hopkins, Esq.  
56th Floor, Key Tower  
700 Fifth Avenue  
Seattle, WA 98104-5056  
Telephone: (206)682-5600  
Facsimile: (206) 682-2992



If to Beneficiary:

Thomas Abel  
176 Lejeune Street  
Oceanside, CA 92054  
Telephone: 760 385 1184  
Facsimile: 760 385 1184

with copy to:

Vince Scotti  
5231 40<sup>th</sup> Avenue, NE  
Seattle, WA 98105  
Telephone: 206 729 0997  
Facsimile: 206 729 1636

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either subsection (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to subsection (c) hereof shall be deemed received on the business day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received three (3) days following deposit in the U.S. mail.

**14. Headings, etc.** The headings and captions of the paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**15. Successors and Assigns.** The provisions of this Deed of Trust shall be binding upon Grantor and its successors and assigns, and shall inure to the benefit of and be enforceable by Beneficiary and its successors and assigns.

**16. Miscellaneous.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust shall be used interchangeably in singular or plural form. The word "Grantor" shall mean each Grantor and any subsequent owners of the Property or any part thereof or interest therein. The word "Beneficiary" shall mean Beneficiary or any subsequent holder of the Note. The word "Trustee" shall mean Trustee and any successor trustees. The word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity. The terms "herein", "hereof" or "hereunder" or similar terms used in this Deed of Trust refer to this entire Deed of Trust and not to the particular provision in which the term is used.

**17. Governing Law.** This Deed of Trust is to be construed in accordance with and governed by the internal law of the State of Washington, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, the parties have executed this Deed of Trust on the date first set forth above.



GRANTOR:

By:

James W. Lagerquist, as his  
separate property

STATE OF WA )  
 ) ss.

COUNTY OF King )

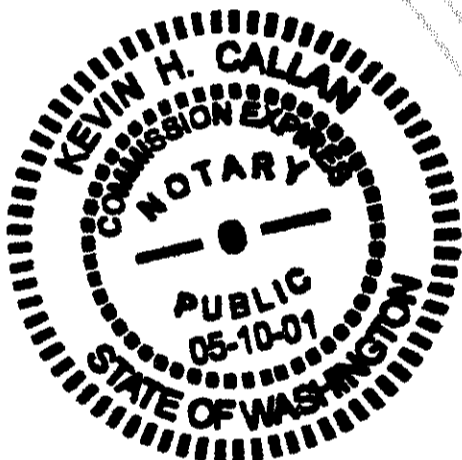
I certify that I know or have satisfactory evidence that JAMES W. LAGERQUIST is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 1-25-00

Kevin Callan  
(Signature of Notary Public)

Kevin Callan  
(Printed Name of Notary Public)

My Appointment expires: 05-10-01



**EXHIBIT A  
TO  
DEED OF TRUST, ASSIGNMENT OF RENTS AND  
SECURITY AGREEMENT WITH FIXTURE FILING**

**Description of the Premises**

**PARCEL A**

Lot 5A of City of Burlington Short Plat No. BURL-3-91, as approved April 21, 1992, and recorded April 27, 1992, in Volume 10 of Short Plats, Page 77, under Auditor's File No. 9204270026, records of Skagit County, Washington; being a portion of Lot 5 of the Cascade Mall Binding Site Plan recorded in Volume 8 of Short Plats, Pages 170 through 180;

Together with a non-exclusive easement for ingress and egress, as granted by easement recorded July 27, 1989, under Auditor's File No. 8907270006, records of Skagit County, Washington;

Together with an easement for storm drainage, as granted by easement recorded July 21, 1989, under Auditor's File No. 8907210036, records of Skagit County, Washington.

**PARCEL B**

Lot 5B of City of Burlington Short Plat No. BURL-3-91, as approved April 21, 1992, and recorded April 27, 1992, in Volume 10 of Short Plats, Page 77, under Auditor's File No. 9204270026, records of Skagit County, Washington; being a portion of Lot 5 of the Cascade Mall Binding Site Plan recorded in Volume 8 of Short Plats, Pages 170 through 180;

Together with a non-exclusive easement for ingress and egress, as granted by easement recorded July 27, 1989, under Auditor's File No. 8907270006, records of Skagit County, Washington; and

Together with an easement for storm drainage, as granted by easement recorded July 21, 1989, under Auditor's File No. 8907210036, records of Skagit County, Washington.

**Situate in Skagit County, Washington.**



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Kathy Hill, Skagit County Auditor  
2/8/2000 Page 8 of 8 1:01:36PM