



200702200210

Skagit County Auditor

WHEN RECORDED RETURN TO:

Land Title Company
P.O. Box 445
Burlington, WA 98233

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Escrow#123605-SE

LAND TITLE OF SKAGIT COUNTY

DOCUMENT TITLE(S):

Subordination, Non-Disturbance and Attornment Agreement

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

Unrecorded Lease and Deed of Trust under Auditor's File No. 200102200 206

GRANTOR:

Public Hospital District No. 1 of Skagit County

GRANTEE:

KeyBank National Association

ABBREVIATED LEGAL DESCRIPTION:

Lot 4, Lots 5-8 and Lots 11-13, DALE AND SHEA'S ADD TGW VAC. MONTGOMERY ST.

TAX PARCEL NUMBER(S):

P125065

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT**

(Medical Office Space)

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENMENT AGREEMENT (the "**Agreement**") is made as of February 20th, 2007, between PUBLIC HOSPITAL DISTRICT NO. 1 of SKAGIT COUNTY, a Washington municipal corporation, whose address is 1415 E. Kincaid Street, Mount Vernon, Washington 98274 ("**Tenant**"), MV INVESTORS LLC, a Washington limited liability company, whose address is 1001 Fourth Avenue Plaza, Suite 4400, Seattle, Washington 98154 ("**Landlord**" or "**Borrower**"), and KEYBANK NATIONAL ASSOCIATION, a national banking association, its successors and/or assigns, whose address is 911 Main Street, Suite 1500, Kansas City, Missouri 64105 (hereinafter "**Lender**").

Recitals of Fact

A. Tenant is the tenant under a Linear Accelerator Space Lease Agreement dated September 9, 2005 (as now or hereafter amended, the "**Lease**") by and between Tenant, as lessee, and Landlord, as lessor, for certain premises more particularly described in the Lease (the "**Premises**") located on the property legally described on Exhibit "A" (the "**Property**").

B. Lender intends to make or is making a loan (the "**Loan**") to Borrower, which will be evidenced by a Promissory Note (the "**Note**") from Borrower to Lender and secured in part by a first deed of trust, mortgage, or deed to secure debt (which is herein called the "**Security Instrument**"). The Security Instrument, the Note and all other documents and instruments evidencing and/or securing the Note or now or hereafter executed by Borrower or others in connection with or related to the Loan including any assignments of leases and rents, other assignments, security agreements, financing statements, guarantys, indemnity agreements (including environmental indemnity agreements), letters of credit, or escrow/holdback arrangements, together with all amendments, modifications, substitutions or replacements thereof, are sometimes herein collectively referred to as the "**Loan Documents**".

(Deed of Trust recorded under Auditor's File No. 200702200 2006.)

C. Lender, Landlord and Tenant desire to enter into this Agreement to establish certain rights, safeguards and obligations with respect to their interests and provide further for various contingencies as hereinafter set forth.

Agreement

In consideration of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree and covenant as follows:



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1. **Warranties and Representations.** Tenant represents and warrants to Lender that (a) the Lease is in full force and effect, (b) Tenant is not in default thereunder, past any permitted grace or cure period in the Lease, (c) Landlord is not in default thereunder, past any permitted grace or cure period in the Lease, and (d) Tenant has not previously subordinated the Lease to any other security instrument or lien on the Property.

2. **Subordination.** Tenant hereby subordinates its interest in the Lease and all of its right, title and interest in and to the leasehold estate created thereby, to the liens, terms, covenants, provisions and conditions of the Security Instrument and the other Loan Documents and to all present or future advances under the obligations secured thereby. The interests subordinated hereby include without limitation any and all provisions of the Lease, including any extension or renewal rights, options to purchase, rights of first refusal, and other such rights.

3. **Non-Disturbance.** Notwithstanding the subordination agreement contained above, Lender agrees that, so long as (i) the Lease remains in full force and effect including the duration of any properly exercised extension or renewal provisions therein), (ii) Tenant remains in full compliance with the terms of the Lease, beyond any cure period provided therein, and (iii) Tenant is not in default under this Agreement, then:

(a) Lender shall not diminish or interfere with Tenant's possession of the Premises, and Tenant's rights and privileges under the Lease, including any extension or renewal rights shall not be diminished or be the subject of any interference by Lender; and

(b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would terminate or extinguish the Lease or Tenant's leasehold interest in and estate under the Lease.

Notwithstanding the foregoing provisions, Lender may name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument if under the laws of the State where the Property is located it is procedurally necessary or desirable to do so, but in such event Lender shall in no way diminish or otherwise affect the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

4. **Attornment; Payment of Rent to Lender in Event of Default.** Tenant agrees that in the event Borrower is in default under the Security Instrument or any other Loan Documents, and after Lender gives notice to Tenant (in the manner hereinafter provided) respecting such default, then Tenant shall be deemed to have attorned to Lender as its new landlord under the Lease, and Tenant shall thereafter pay directly to Lender all rentals and all other payments to be made by Tenant under the Lease. Such payments will be made regardless of any right or setoff, counterclaim or other defense which Tenant may have against Landlord, whether as tenant under the Lease or otherwise. No proof of default shall be required. Tenant is hereby irrevocably authorized by Borrower to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any rental or other amounts which may be or



become due under the Lease, or for the performance of any obligations under the Lease. Borrower irrevocably agrees that Tenant shall not be liable to Borrower or any person claiming under Borrower, for making any payment or rendering any performance to Lender. Tenant shall have no obligation or right to inquire whether any default has actually occurred or is then existing. By its execution of this Agreement, Borrower irrevocably makes and delivers the above instructions.

5. Attornment to Subsequent Owners.

(a) If Lender or its nominee or designee succeeds to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed in lieu of foreclosure or otherwise, or if another person or entity purchases the Property upon or following designee, or such purchaser (hereinafter collectively the "**New Landlord**"), such New Landlord shall be fully bound and obligated under the provisions of Section 3, "Non-Disturbance" and Tenant shall attorn to and recognize the New Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that the New Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as a direct lease between the New Landlord and Tenant upon all terms, conditions, and covenants as are set forth in the Lease.

(b) Notwithstanding the foregoing subsection, in such event the New Landlord shall not in any event be liable for any of the following:

(i) any previous act or omission of Landlord or any prior landlord under the Lease occurring prior to New Landlord obtaining possession or title to the Property;

(ii) any setoff, defense or counterclaim which has previously accrued to Tenant against Landlord, which arises prior to the date New Landlord obtains possession or title to the property;

(iii) the performance or observance of any amendment or modification to the Lease made without the written consent of Lender;

(iv) any prepayment of rent or additional rent for more than one (1) month which Tenant might have paid to Landlord, unless previously approved in writing by Lender or received by Lender; or

(v) Intentionally Omitted.

6. Lease Modifications. Tenant agrees that, without the prior written consent of Lender, Tenant shall not: (a) materially amend or modify, terminate or cancel the Lease or any extensions or renewals thereof; (b) make any prepayments of any rent or additional rent in excess of one (1) month; or (c) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument.



7. Notice of Default; Opportunity to Cure. Tenant agrees that prior to exercising any of its rights and remedies under the Lease in the event of any default by Landlord thereunder, including any rights of termination, offset, defense or self-help provisions contained in the Lease, Tenant shall give written notice to Lender of the occurrence of default by Landlord and Landlord's failure to cure such default pursuant to the terms of the Lease, specifying, with reasonable clarity, the events constituting such default. In the event of a monetary default, Tenant shall give Lender ten (10) calendar days after the date of receipt of such notice to cure such monetary default. In the event of a non-monetary default, Tenant shall give Lender a cure period equal to the longer of (i) 30 days after the cure period provided to Landlord under the Lease; (ii) 30 days after Lender's receipt of Tenant's notice to Lender of a Landlord default, or (iii) if the cure of such default requires possession of the Property, 30 days after Lender has obtained possession of the Property; provided that in each case, if such default cannot reasonably be cured within such cure period and Lender has affirmed its obligation to remedy any default and provided to Tenant a reasonable and good faith estimate of the time expected to cure any default and has diligently commenced to cure such default within the time contemplated by this Section 7, such cure period shall be extended for so long as reasonably necessary for Lender, in the exercise of due diligence, to cure such default. Tenant acknowledges that Lender is not obligated to cure any Landlord default unless Lender succeeds to the rights of Landlord, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default so long as Lender acts in compliance with the Lease and this Agreement. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

8. Notices. Any notice required or permitted to be given hereunder must be in writing and given (a) by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (b) by delivering the same in person to such party; (c) by transmitting a facsimile copy to the correct facsimile phone number of the intended recipient; or (d) by depositing the same into the custody of a nationally recognized overnight delivery service addressed to the party to be notified. In the event of mailing, notices shall be deemed effective three (3) days after posting; in the event of overnight delivery, notices shall be deemed effective on the next business day following deposit with the delivery service; in the event of personal service or facsimile transmissions, notices shall be deemed effective when delivered. For purposes of notice, the addresses of the parties shall be as follows:



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If to Lender, to:

KeyBank National Association
911 Main Street, Suite 1500
Kansas City, Missouri 64105
(816) 221-8848 (facsimile)

With a copy to:

Daniel Flanigan, Esq.
Polsinelli Shalton Flanigan Suelthaus, PC
700 W. 47th Street, Suite 1000
Kansas City, Missouri 64112
(816) 753-1536 (facsimile)

If to Borrower, to:

MV Investors LLC
1001 Fourth Avenue Plaza, Suite 4400
Seattle, Washington 98154
Attn: Kirk Johnson

If to Tenant, to:

Public Hospital District No. 1 of Skagit County
1415 E. Kincaid Street
Mount Vernon, Washington 98274
Attn: Gregg A. Davidson, CEO

From time to time either party may designate another or additional addresses for all purposes of this Agreement by giving the other party no less than ten (10) days' advance notice of such change of address in accordance with the notice provisions hereof.

9. Notice Assignment/Termination—Costs. Lender shall upon any assignment of its interest in the Note and/or Security Instrument provide promptly to Tenant the name, address, telephone number and facsimile number of such assignee. Upon full reconveyance or release of its Security Instrument or any other security instrument, Lender shall give written notice thereof to Tenant of such termination ("**Lender's Notice**"). Lender and Tenant agree that Lender or Tenant shall reimburse Landlord any costs incurred by Tenant to provide notices to Lender required hereunder, where Lender has failed to provide Lender's Notice.

10. Notice Under Lease. If the Lease entitles Tenant to notice of the existence of any Security Instrument and the identity of any lender, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and this Lender. However, this provision shall not be deemed to indicate that Tenant has reviewed and approved the Note or Security Instrument as may be allowed under the Lease.

11. Limitation of Liability. Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, unless specifically set forth herein.

12. Miscellaneous. This Agreement may not be modified or terminated orally. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs,



representatives, successors and assigns. The term "**Lender**" shall mean the holder of any interest in the Security Instrument, from time to time. The term "**Landlord**" shall mean the holder of the lessor's interest in the Lease, from time to time. The term "**person**" shall mean any individual, joint venture, corporation, partnership, trust, unincorporated association or other entity. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved in favor of this Agreement.

13. Waivers. BORROWER, TENANT AND LENDER EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, THE SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, TENANT AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER, TENANT AND LENDER EACH ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

[REMAINDER OF PAGE IS BLANK; SIGNATURES APPEAR ON NEXT PAGE.]



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as the day and year first stated above.

Tenant:

**PUBLIC HOSPITAL DISTRICT NO. 1,
SKAGIT COUNTY, WASHINGTON**

By:


Thomas Litaker, CFO

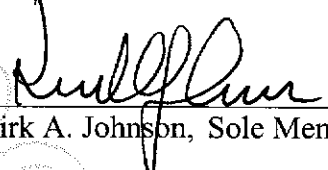
Borrower:

**MV INVESTORS LLC,
a Washington limited liability company**


By: Capstone Partners NW, LLC,
a Washington limited liability company,
its managing member

By: CBIL Group, LLC, a
Washington limited liability
company, Authorized Member

By:


Kirk A. Johnson, Sole Member

By:


Michael K. Hubbard, Authorized Member

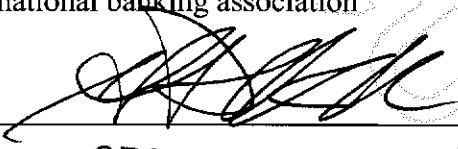
Lender:

**KEYBANK NATIONAL ASSOCIATION,
a national banking association**

By:

Name:

Title:


GRANT WUELLNER
DESIGNATED SIGNER



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as the day and year first stated above.

Tenant:

**PUBLIC HOSPITAL DISTRICT NO. 1,
SKAGIT COUNTY, WASHINGTON**

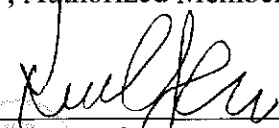
By: _____
Name: _____
Title: _____

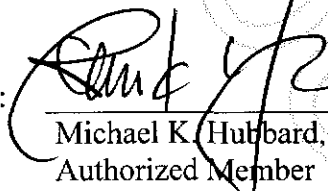
Borrower:

**MV INVESTORS LLC,
a Washington limited liability company**

By: Capstone Partners NW, LLC,
a Washington limited liability company,
its managing member

By: CBIL Group, LLC, a
Washington limited liability
company, Authorized Member

By: 
Kirk A. Johnson,
Sole Member

By: 
Michael K. Hubbard,
Authorized Member

Lender:

**KEYBANK NATIONAL ASSOCIATION,
a national banking association**

By: _____
Name: _____
Title: _____



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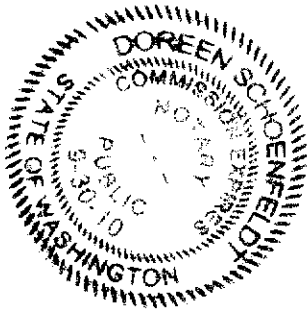
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STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

On this 7th day of February, 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared **Thomas Litaker**, known to me to be the CFO of **PUBLIC HOSPITAL DISTRICT NO. 1 OF SKAGIT COUNTY**, a Washington municipal corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



Signature

Doreen Schoenfeldt
Doreen Schoenfeldt

(Type, print or stamp the Notary's name below his or her signature)

NOTARY PUBLIC in and for the State of

Washington, residing at Sedro-Woolley

My commission expires 09/30/2010



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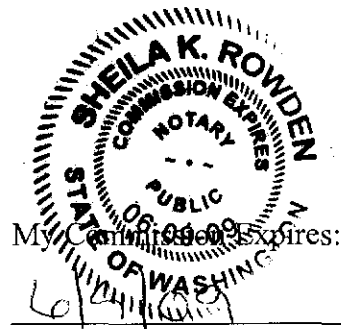
STATE OF Washington)
COUNTY OF King) ss.

On this 16th day of February, 2007, before me, Sheila Rowden, a Notary Public in and for said state, personally appeared Kirk A. Johnson, who being by me duly sworn did say that he is the sole member of CBIL Group, LLC, a Washington limited liability company, the authorized member of Capstone Partners NW, LLC, a Washington limited liability company, the managing member of **MV INVESTORS LLC**, a Washington limited liability company, and that the within instrument was signed and sealed in behalf of said limited liability company by authority of its members, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Sheila K Rowden
Notary Public in and for Said County and State

Sheila K. Rowden
(Type, print or stamp the Notary's name below
his or her signature)



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STATE OF Washington
COUNTY OF King) ss.

On this 16th day of February, 2007, before me, Sheila K Rowden, a Notary Public in and for said state, personally appeared Michael K. Hubbard, who being by me duly sworn did say that he is the authorized member of Capstone Partners NW, LLC, a Washington limited liability company, the managing member of **MV INVESTORS LLC**, a Washington limited liability company, and that the within instrument was signed and sealed in behalf of said limited liability company by authority of its members, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



My Commission Expires
6/30/09

Sheila K Rowden
Notary Public in and for Said County and State
Sheila K Rowden
(Type, print or stamp the Notary's name below
his or her signature)

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STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

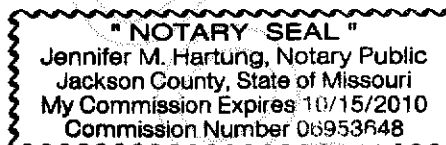
On this 16th day of February, 2007, before me, appeared Grant Wuellner to me personally known, who being by me duly sworn, did say that s/he is the Designated Signer of KeyBank National Association, a national banking association, and that the said instrument was signed on behalf of said national banking association by authority, and said Grant Wuellner, acting as the Designated Signer of said national banking association acknowledged said instrument to be the free act and deed of said national banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Jennifer M. Hartung
Notary Public in and for Said County and State

(Type, print or stamp the Notary's name below his or her signature.)

My Commission Expires:



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EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1:

The West half of the Tracts described as follows:

That portion of Lot 4 lying West of the West line of 13th Street, as conveyed to the City of Mount Vernon by deeds recorded October 28, 1955 and May 21, 1956, under Auditor's File Nos. 526414 and 536375, respectively, and all of Lots 5-8, inclusive in "DALE & SHEA'S ADDITION TO THE CITY OF MT. VERNON," as per plat recorded in Volume 3 of Plats, page 68, records of Skagit County, Washington.

Parcel 2:

The East half of the Tracts described as follows:

That portion of Lot 4 lying West of the West line of 13th Street, as conveyed to the City of Mount Vernon by deeds recorded October 28, 1955 and May 21, 1956, under Auditor's File Nos. 526414 and 536375, respectively, and all of Lots 5-8, inclusive in "DALE & SHEA'S ADDITION TO THE CITY OF MT. VERNON," as per plat recorded in Volume 3 of Plats, page 68, records of Skagit County, Washington.

Parcel 3:

Those portions of vacated East Montgomery Street as described in those City of Mount Vernon Ordinance Nos. 3333 and 3310 as recorded on September 7, 2006 and January 9, 2006, under Auditor's File Nos. 200609070012 and 200601090167, records of Skagit County, Washington.

Parcel 4:

The North 72.00 feet of the East 187 feet of the West 202.00 feet of Lots 11 through 13 in "DALE AND SHEA'S ADDITION TO THE CITY OF MT. VERNON," as per plat recorded in Volume 3 of Plats, page 68, records of Skagit County, Washington.

All situate in the City of Mount Vernon, County of Skagit, State of Washington.



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