



200706110181

Skagit County Auditor

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AFTER RECORDING RETURN TO:

HOLMES WEDDLE & BARCOTT
999 Third Avenue, Suite 2600
Seattle, WA 98104

WASHINGTON STATE COUNTY AUDITOR'S/RECORDER'S INFORMATION
(RCW 65.04):

SUBORDINATION, ASSIGNMENT OF RENTS, NONDISTURBANCE AND
ATTORNMENMENT AGREEMENT

FIRST AMERICAN TITLE CO.

GRANTOR:

1. BCG NORTHWEST, L.L.C.

91736-2

GRANTEE: BANK OF AMERICA, N.A., Beneficiary
PRLAP, INC., Trustee

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LEGAL DESCRIPTION:

PARCEL ONE: Lot 68, ASSESSOR'S TAX PARCEL NUMBER: 8012-000-068-0200 L 118244, SKAGIT COUNTY, WASHINGTON.

PARCEL TWO: Lot 67 ASSESSOR'S TAX PARCEL NUMBER: 8012-000-067-0100 L 105860, SKAGIT COUNTY, WASHINGTON.

Subordination of an unrecorded Sub Lease



SUBORDINATION, ASSIGNMENT OF RENTS, NONDISTURBANCE AND ATTORNMMENT AGREEMENT

THIS AGREEMENT is entered into by and among NORDIC TUGS, INCORPORATED ("Tenant"), BCG NORTHWEST, L.L.C. ("Landlord") and BANK OF AMERICA, N.A. ("Beneficiary") and affects the Property described in Schedule A attached hereto. This Agreement is entered into with reference to the following facts:

A. Landlord and Tenant have entered into a lease covering the premises in the Property.

B. Beneficiary has agreed to make a Loan to Landlord to be evidenced by the Note and other Credit Documents, which Note is to be secured by the Deed of Trust covering the Property, provided that the lease is subordinated to the lien of the Deed of Trust.

C. For the purposes of completing the Loan, the parties hereto desire expressly to subordinate the Lease to the lien of the Deed of Trust and assign the rents from Tenant to Beneficiary, it being a condition precedent to Beneficiary's obligation to consummate the Loan that the lien of the Deed of Trust be unconditionally and at all times prior and superior to the leasehold interests and estates created by the lease and that Landlord assign the rents from the Lease to the Beneficiary.

D. Tenant has requested that Beneficiary agree not to disturb Tenant's possessor rights in the premises in the event Beneficiary should foreclose the Deed of Trust; provided that Tenant is not then in default under the Lease; and provided further that Tenant attorns to Beneficiary or the purchaser at any foreclosure or trustee's sale of the Property.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Subordination.** Notwithstanding anything to the contrary set forth in the Lease, the Lease and the leasehold estate created thereby and all of Tenant's rights thereunder shall be and shall at all times remain subject, subordinate and inferior to the Deed of Trust and the lien thereof, and all rights of Beneficiary thereunder and to any and all renewals, modifications, consolidations, replacements and extensions thereof.

2. **Assignment of Rents and Leases.** Landlord hereby grants, conveys, transfers, and assigns to Beneficiary, and grants to Beneficiary a security interest in, all of Landlord's right, title, and interest in and to any lease or leases now existing or hereafter made for all or any part of the Property together with all rents, income, profits, revenues



proceeds, and royalties due and becoming due therefrom and all cash or security deposits made to secure performance by the lessees of their obligations thereunder, whether such cash or security deposits are to be held until the expiration of the terms of such leases or are to be applied to one or more installments of rent coming due immediately prior to expiration of such terms (reserving, however, in Landlord a license, terminable by Beneficiary upon the occurrence of an Event of Default, to collect and receive the same) as further security and collateral for the payment of the Obligations. Each month, upon Landlord's compliance with all of Landlord's obligations hereunder and under the other Credit Documents, Landlord may retain the rents collected that month and held in trust for the Beneficiary. Upon the occurrence of an Event of Default, the license granted to Landlord may be automatically and immediately revoked without notice to Landlord. Upon the revocation of such license, the Beneficiary may notify all tenants under any leases that the Beneficiary will thereafter collect all rents directly and not through Landlord. The assignment set forth in this subsection is intended to be an assignment of any interest in rents and profits under Washington state law.

Landlord shall (i) not, without the prior written consent of Beneficiary, assign or transfer the rents, income, and profits from time to time accruing from, or any lease or leases of, the Property or any part thereof to any person other than Beneficiary as further collateral and security for the Obligations, and any assignment thereof without such consent shall be null and void, and (ii) promptly, upon request of Beneficiary, assign and transfer to Beneficiary, in the form of an assignment satisfactory in form and content to Beneficiary, all of the rights and interests of Landlord in and to any existing or future lease or leases of the Property or any part thereof and all rents, income, and profits accruing therefrom.

3. **Nondisturbance.** If it becomes necessary to foreclose the Deed of Trust, Beneficiary shall neither terminate the Lease nor join Tenant in summary or foreclosure proceeding so long as Tenant is not in default under any of the terms, covenants, or conditions of the Lease.

4. **Attornment.** Tenant shall attorn to and recognize any purchaser at a foreclosure sale under the Deed of Trust, any transferee who acquires the premises by deed in lieu of foreclosure, and the successors and assigns of such purchaser(s), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease on the same terms and conditions set forth in the Lease.

5. **Acknowledgment and Agreement by Tenant.** Tenant acknowledges and agrees that:

- (a) Beneficiary would not make the Loan without this Agreement;
- (b) It consents to and approves the Deed of Trust and the agreements evidencing and securing the Loan; and



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(c) Beneficiary, in making any disbursements to Landlord, is under no obligation or duty to oversee or direct the application of the proceeds of such disbursements.

(d) From and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right: (i) until it has given written notice of such act or omission to Beneficiary; and (ii) until the same period of time as is given to Landlord under the Lease to cure such act or omission shall have elapsed following such giving of notice to Beneficiary and following the time when Beneficiary shall have become entitled under the Deed of Trust to remedy the same.

(e) It has notice that the Lease and the rent and all other sums due thereunder have been assigned or are to be assigned to Beneficiary as security for the Loan secured by the Deed of Trust. In the event that Beneficiary notifies Tenant of a default under the Deed of Trust and demands that Tenant pay its rent and all other sums due under the Lease to Beneficiary, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Beneficiary or as otherwise required pursuant to such notice.

(f) It shall send a copy of any notice or statement under the Lease to Beneficiary at the same time such notice or statement is sent to Landlord.

(g) It has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option the same is hereby acknowledged to be subject and subordinate to the Deed of Trust and is hereby waived and released as against Beneficiary.

(h) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement.

6. Foreclosure and Sale. In the event of foreclosure of the Deed of Trust, or upon a sale of the Property pursuant to the trustee's power of sale contained therein, or foreclosure, then:

(a) So long as Tenant complies with this Agreement and is not in default under any of the terms, covenants, or conditions of the Lease, the Lease shall continue in full force and effect as a direct lease between the succeeding owner of the Property and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease, Tenant hereby agrees to adhere to and accept any such successor owner as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, and Beneficiary, or any such successor owner of the Property, will not disturb the possession of Tenant, and will be bound by all of the obligation imposed on the Landlord by the Lease, provided, however, that Beneficiary, or



any purchaser at a trustee's or sheriff's sale or any successor owner of the Property, shall not be:

- (i) liable for any act or omission of a prior landlord (including Landlord);
- (ii) liable for the return of any security deposit unless such deposit has been delivered by Beneficiary, by Landlord or is deposited in an escrow fund available to Beneficiary;
- (iii) liable or obligated to expand the Property, pay tenant improvement allowances, construct additional improvements or otherwise expend funds which are capital in nature, other than expenses for ordinary maintenance and repair;
- (iv) liable to reconstruct the premises or the Property to the extent insurance proceeds are not available therefore;
- (v) liable for any obligation to indemnify or reimburse Tenant, any leasehold mortgagee, or any other third party or any of their respective successors and assigns from and against any loss, liability, damage or cost relating to or arising from the presence of any toxic or hazardous materials on, under or about the Property.
- (vi) liable or bound by any right of first refusal or option to purchase all or any portion of the Property set forth in the Lease;
- (vii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord);
- (viii) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for a period in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord); or
- (ix) bound by any agreement or modification of the Lease made without the prior written consent of Beneficiary.

(b) Upon the written request of either Beneficiary or Tenant to the other given at the time of any foreclosure, trustee's sale or conveyance in lieu thereof, the parties agree to execute a lease of the premises upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure.



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(c) The provisions of the Lease shall be of no force or effect and shall not be binding upon Beneficiary or any purchaser or transferee acquiring the Property as a result of such foreclosure, trustee's sale or conveyance in lieu thereof.

(d) Beneficiary shall have no responsibility to provide (or liability for not providing) any additional space for which Tenant has any option or right under the Lease unless Beneficiary at its option elects to provide the same and Tenant hereby releases Beneficiary from any obligation it may otherwise have to provide the same, and agrees that Tenant shall have no right to cancel the Lease, abate rent or assert any claim against Beneficiary as a result of the failure to provide any option space.

(e) Beneficiary shall have no liability to Tenant or any other party for any conflict between the provisions of the Lease and the provisions of any other lease affecting the Property, including, but not limited to, any provisions relating to renewal options and options to expand, and in the event of such a conflict, Tenant shall have no right to cancel the Lease or take any other remedial action against Beneficiary or action against any other party for which Beneficiary would be liable.

7. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and mortgagor or trustor under the Deed of Trust, acknowledges and agrees for itself and its heirs, successor and assigns, that:

(a) This Agreement does not (i) constitute a waiver by Beneficiary or any of its rights under the Deed of Trust; and/or (ii) in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Deed of Trust;

(b) The provisions of the Deed of Trust remain in full force and effect and must be complied with by Landlord; and

(c) In the event of a default under the Deed of Trust, Tenant may pay all rent and all other sums due under the Lease to Beneficiary as provided in this Agreement.

8. No Obligation of Beneficiary. Beneficiary shall have no obligation or incur any liability with respect to the erection or completion of the improvements in which the premises are located or for completion of the premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

9. Notice. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid to Beneficiary at 641 West Ewing Street, Seattle, WA 98119 (or at such other address as shall be given in writing by Beneficiary to Tenant) and shall be deemed complete upon any such mailing.



10. **Miscellaneous.**

- (a) This Agreement supersedes any inconsistent provisions of the Lease.
- (b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Deed of Trust.
- (c) Beneficiary shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.
- (d) In the event that the Beneficiary shall acquire title to the premises or the Property, Beneficiary shall have no obligation, nor incur any liability, beyond Beneficiary's then equity interest, if any, in the premises, and Tenant shall look exclusively to such equity interest of Beneficiary, if any in the premises for the payment and discharge of any obligations imposed upon Beneficiary hereunder or under the Lease, and Beneficiary is hereby released and relieved of any other obligations hereunder and under the Lease.
- (e) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns; provided however, that in the event of the assignment or transfer of the interest of Beneficiary, all obligations and liabilities of Beneficiary under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Beneficiary's interest is assigned or transferred; and provided further that the interest of Tenant under this Agreement may not be assigned or transferred without the prior written consent of Beneficiary.
- (f) This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- (g) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement, (such meanings to be equally applicable to both the singular and plural forms of the terms defined).
- (i) "Loan" means the term loan made pursuant to the Loan Agreement.
- (ii) "Loan Agreement" means the Business Loan Agreement dated as of May 30, 2007 between Landlord and Beneficiary.
- (h) The parties hereto do hereby knowingly, voluntarily and intentionally (i) covenant and agree not to elect a trial by jury of any issue triable of right

by a jury and (ii) waive any right to trial by jury fully to the extent that such right shall now or hereafter exist. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and this waiver is intended to encompass individually each instance and each issue as to which the right to a jury trial would otherwise accrue. Each party is hereby authorized and requested to submit this Agreement to any court having jurisdiction over the subject matter and the parties hereto, so as to serve as conclusive evidence of the other parties' herein contained waiver of the right to trial by jury. Further, each party hereby certifies that no representative or agent of Beneficiary (including Beneficiary's counsel) has represented, expressly or otherwise, that Beneficiary will not seek to enforce this waiver of right to trial by jury provision. This provision is a material inducement for Beneficiary entering into this Loan Agreement and shall survive until all of Landlord's obligations to Beneficiary are fully satisfied. Each party also waives all rights to set-off and rights to interpose permissive counterclaims and cross-claims in any litigation arising in connection with this Agreement.

(i) Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

(j) This Agreement supersedes all oral negotiations or agreements between the parties with respect to the subject matter hereof and constitutes the entire understanding and Agreement of the parties with respect to the matters set forth in this Agreement. If any provision of the Agreement is held to be invalid or unenforceable, then such provision shall be deemed modified to the least extent necessary in order to make such provision enforceable consistent with the intent of the Agreement, or if not possible, such provision shall be deemed stricken and all other provisions shall remain in full force and effect. The parties agree that no rule of law regarding construction of agreements against the drafter shall apply.

11. **Counterparts.** This Agreement may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement.

12. **Effectiveness of Facsimile Documents and Signatures.** This Agreement and related Credit Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as manually-signed originals and shall be binding on the Borrower, any Obligor and the Bank. The Bank may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.



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Address where notices to
the Beneficiary are to be sent:

Bank of America, N.A.
GCIB Credit Services
9000 Southside Blvd., Bldg. 100
Jacksonville, FL 32256
Attn: Jamee DeGeorge
Mail Code: FL9-100-03-17

Address where notices to
the Landlord are to be sent:

BCG Northwest, L.L.C.
P.O. Box 726
Anacortes, WA 98221

Address where notices to
the Tenant are to be sent:

Nordic Tugs, Incorporated
11367 Higgins Airport Way
Burlington, WA 98233

[signature pages follow]



TENANT:

NORDIC TUGS, INCORPORATED

By: [Signature]

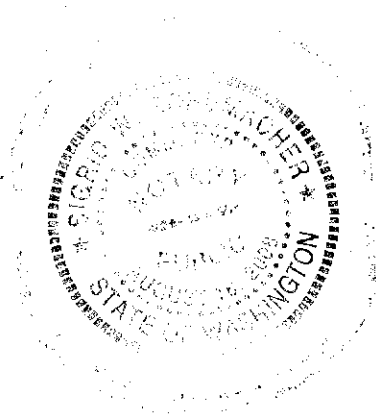
Its: CHAIRMAN / CEO.

STATE OF WASHINGTON)

COUNTY OF Skagit)

On this 30th day of May, 2007, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared James Cross, to me known to be the individual who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate first above written.



[Signature]
(Signature of Notary)
Sigrid Schumacher
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Washington, residing at Wa.
My appointment expires: 8/16/2008



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LANDLORD:

BCG NORTHWEST, L.L.C.

By: James A. Cress

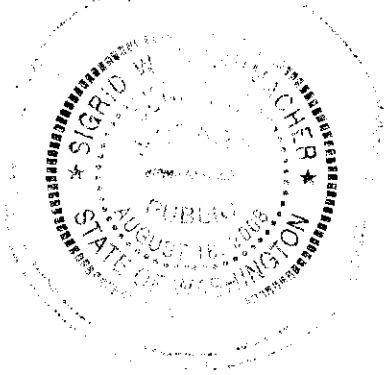
Its: MEMBER

STATE OF WASHINGTON)

COUNTY OF Skagit)

On this 30th day of May, 2007, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared James A. Cress, to me known to be the individual who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate first above written.



Sigrid Schumacher
(Signature of Notary)
Sigrid Schumacher
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Washington, residing at Skagit
My appointment expires: 8/18/08



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BENEFICIARY:

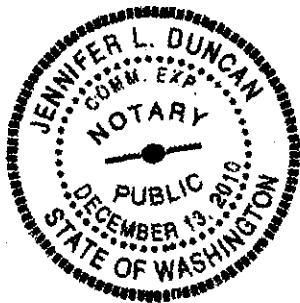
BANK OF AMERICA, N.A.

By: Sigrid Schumacher
Its: Vice President & Client Mgr.

STATE OF WASHINGTON)
COUNTY OF Skagit)

On this 30th day of May, 2007, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Sigrid Schumacher, to me known to be the individual who executed the within and foregoing instrument, and acknowledged that She signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate first above written.



Jenny Duncan
(Signature of Notary)
Jenny Duncan
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Washington, residing at 121 N 4th St Mt. Vernon, WA 98273
My appointment expires: Dec. 13, 2010



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SCHEDULE A

LEGAL DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE STATE OF WASHINGTON,
COUNTY OF KING, AND IS DESCRIBED AS FOLLOWS:

LOTS 6 AND 7, BLOCK 7, ROSS SECOND ADDITION TO THE CITY OF
SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF
PLATS, PAGE 140, IN KING COUNTY, WASHINGTON.



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