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Skagit County Auditor

7/6/2011 Page 1 of 15 1:13PM

**AFTER RECORDING, MAIL TO:**

John W. O'Neil  
11711 SE 8<sup>th</sup> Street, Suite 310  
Bellevue, WA 98005-3543

GUARDIAN NORTHWEST TITLE CO.

ACCOMMODATION RECORDING ONLY

**DEED OF TRUST**

m4576

**GRANTORS:** Bruce Cowen and Barbara Cowen  
**TRUSTEE:** Chicago Title Insurance Company  
**BENEFICIARIES:** John W. O'Neil  
**LEGAL DESCRIPTION:** Lot 17, "SKYLINE NO. 7", per plat Vol. 9 Plats, pp. 70-71, records of Skagit County, and Portion Section 28, Township 35 North, Range 1 East W.M., Skagit County, Washington.  
Full legal description below on this page and page 2.

**ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER:** 38230000170000

THIS DEED OF TRUST (herein "Instrument") is made this 29 day of June, 2011, among the Trustor/Grantor, Bruce Cowen and Barbara Cowen, his wife, whose address is P.O. Box 924, Issaquah, WA 98023 (herein "Borrower"), Chicago Title Insurance Company, whose address is 701 Fifth Avenue, Suite 3400, Seattle, WA 98104 (herein "Trustee"), and the Beneficiary, John W. O'Neil, whose address is 11711 SE 8<sup>th</sup> Street, Suite 310, Bellevue, WA 98005-3043 (herein "Lender").

BORROWER, in consideration of the indebtedness described in this Instrument, irrevocably grants, bargains, sells, conveys, and assigns to Trustee, in trust, with power of sale, the following described property located in the County of Skagit, State of Washington:

**PARCEL "A":**

Lot 17, "SKYLINE NO. 7", as per plat recorded in Volume 9 of Plats, Pages 70 and 71, records of Skagit County, Washington.

**PARCEL "B":**

That portion of Section 28, Township 35 North, Range 1 East W.M., described as follows:

Beginning at the Southeasterly corner of Lot 17, "SKYLINE NO. 7", as per plat recorded in Volume 9 of Plats, pages 70 and 71, records of Skagit County, Washington; thence South 71°11'45" East 63.51 feet; thence North 23°32'00" East 32.33 feet; thence North 04°36'33" East 60.00 feet; thence North 75°44'40" West 65.55 feet to the Northeasterly corner of said Lot 17; thence Southerly along the Easterly line of said Lot 17, 87.00 feet to the point of beginning

TOGETHER with all buildings and Improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, franchise rights (subject, however, to the assignment of rents to Lender herein), licenses, governmental permits, license and permit applications, royalties, mineral, oil, gas and water rights appurtenant to the property or any business conducted on the described property, architectural and engineering plans, soils studies, appraisals, or other investigations relating to the property, insurance proceeds, condemnation proceeds, and all fixtures, equipment, materials, and personal property now or hereafter located on or used in connection with the described property. All of the foregoing, together with the legally described property are herein referred to as the "Property."

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by Borrower's note dated of even date herewith (herein "Note") in the principal sum of One Hundred Thousand and No/100 U.S. Dollars (\$100,000), together with interest thereon, with the balance of the indebtedness, if not sooner paid, due and payable on July 1, 2016, and all renewals, extensions, and modifications of the Note; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower (herein "Future Advances"); (c) the payment of all other sums, with interest thereon, advanced under the terms of this instrument; and (d) the performance of the agreements and warranties of Borrower contained in this Instrument.

Borrower warrants that Borrower owns the Property conveyed by this Instrument, has the right to grant, convey and assign the Property, that the Property is unencumbered, and subject to no easements and restrictions except land use restrictions general to the district and the Permitted Encumbrances. The Permitted Encumbrances are the two deeds of trust recorded under Skagit County Auditor's file numbers 200501100178 and 200704090089. Borrower warrants and will defend title to the Property against any claim or demand not listed in the exceptions in the preceding sentence. Notwithstanding any other provision of this Instrument or of the Note to the contrary, any default under or failure to comply with the terms and conditions of the allowed encumbrances or the obligations which they secure shall be a default under this Instrument and the Note entitling Lender to immediate payment in full of the Note and to all remedies in the event of default under this Instrument.



Borrower agrees and covenants as follows:

**1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this instrument.

**2. Fund for Taxes, Insurance and Other Charges.** After default by Borrower and expiration of any applicable Cure Period, Borrower shall pay to Lender monthly on the day installments of principal or interest are payable under the Note (or on another day designated in writing by Lender if the Note does not call for monthly payments), until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of (a) taxes and assessments which may be levied on the Property, and (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to this Instrument, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates. Any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. After default by Borrower and expiration of any applicable Cure Period, Lender may require Borrower to pay to Lender, in advance, such other Funds for other taxes, charges, premiums, assessments, and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions").

Lender may commingle the Funds with other monies held by Lender and may place the Funds in accounts containing other monies of Lender or deposits of third parties in unrelated matters.

Lender shall apply the Funds to pay said rates, rents, taxes, assessments, insurance premiums, and Other Impositions so long as Borrower is not in breach of any covenant or agreement of Borrower in this Instrument. Lender shall not be required to pay Borrower any interest, earnings, or profits on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this instrument. If the amount of the funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents, and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay water and sewer rates, taxes, assessments, insurance premiums, rents, and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within fifteen (15) days after notice from Lender to Borrower requesting payment thereof.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, and expiration of any applicable cure period, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay rates, rents, taxes, assessments, insurance premiums, and Other Impositions which are now or will hereafter become due, of (ii) as a credit against sums secured



by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**3. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of Priority: (i) any amounts payable to Lender by Borrower for taxes, insurance, and other charges; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to this Instrument; (v) principal advances made pursuant to this Instrument; (vi) interest payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to the numbered paragraph dealing with Protection of Lender's Security prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this numbered paragraph.

**4. Charges; Liens.** If Borrower does not pay all water and sewer rates, rents, taxes, assessments, premiums, and Other Impositions attributable to the Property to Lender, Borrower shall make payment, when due, directly to the property payee, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender, if Lender requires, all notices of amounts due under this paragraph and the receipts evidencing the payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, unless specifically allowed by this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property unless Borrower contests the lien in good faith and obtains title coverage for Lender with respect to the liens.

**5. Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage," rent loss and such other hazards, casualties, liabilities, and contingencies as Lender shall reasonably require and in such amounts and for such periods as Lender shall reasonably require, including, if lender desires, the amount of the full replacement value of the improvements on the Property, but in no event for less than the total amount of all allowed encumbrances on the Property, including this Instrument. All premiums on insurance policies shall be paid, by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender. Lender shall have no liability to Borrower nor to anyone else arising out of Lender's approval, for Lender's own purposes, of any insurance companies or policies under this section.



Lender shall have no liability to Borrower nor to anyone else arising out of the exercise of, or failure to exercise, Lender's right to approve the insurance carriers, policy forms and terms or amounts of insurance.

In the event of loss, Borrower shall give prompt written notice to the insurance carrier and to Lender. After default by Borrower and expiration of the applicable cure period, Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower, and if Lender in Lender's sole discretion chooses to do so, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing continued in this numbered paragraph shall require Lender to incur any expense or take any action hereunder after default by Borrower and expiration of the applicable cure period. Borrower further authorizes Lender, at Lender's option in Lender's sole discretion, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property or (b) to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in the numbered paragraph describing Application of Payments (subject, however, to the rights of any prior encumbrance specifically allowed to remain on the Property by the terms of this Instrument). If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statement of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the installments required by the Note or change the amounts of such installments. If the Property is sold as provided in the numbered paragraph describing Acceleration and Remedies or if Lender acquires title to the Property, Lender shall have all of the right, title, and interest of Borrower in and to any insurance policies and unearned premiums thereof and in and to the proceeds result in from any damage to the Property prior to such sale or acquisition.

**6. Preservation and Maintenance of Property; Franchises; Leaseholds.**

Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery, and appliances thereon in good repair and shall replace fixtures, equipment, machinery, and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of its Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any



improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery, or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery, and appliances with items of like kind.

If this Instrument allows any other encumbrance or lien on or interest in the Property, Borrower (i) shall comply with the provisions of the allowed encumbrance or lien, (ii) shall give immediate written notice to Lender of any default by the holder of the allowed encumbrance or lien or of any notice received by Borrower from the holder of the allowed encumbrance or lien of any default by Borrower, and (iii) shall give prompt written notice to Lender of the commencement of any remedial proceedings by any party thereto and, if required by Lender, shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in any allowed encumbrance on or interest in the Property, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants.

**7. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Instrument and if such failure continues beyond any applicable cure period, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearance, disburse such sums, and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance and (iv) exercise of any option on behalf of Borrower, and the curing of any default of Borrower, including, but not limited to, paying, at Lender's sole option and in Lender's sole discretion, any amounts to the holder of any prior lien. Any amounts disbursed by Lender pursuant to this numbered paragraph, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest amount or rate which is allowed to be imposed on Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the additional indebtedness. Nothing continued in this numbered paragraph shall require Lender to incur any expense or take any action.

**8. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property after prior written notice to Borrower.

**9. Condemnation.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. After default by Borrower and expiration of applicable cure period, Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such



condemnation or other taking. The proceeds of any awards, payment or claims or damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject to the rights of the holder of any prior encumbrance specifically allowed by this Instrument. Borrower authorized Lender, at Lender's sole option in Lender's sole discretion, to apply such awards, payments, proceeds, or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the installments referred to in the Note or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages, or claims arising in connection with such condemnation or taking as Lender may require.

**10. Borrower and Lien Not Released.** From time to time, Lender may, at Lenders option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any other lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefore, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period or amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this numbered paragraph shall not affect the obligation of Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership, or other entity for payment of the indebtedness secured hereby and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

**11. Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages as provided in this Instrument operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

**12. Estoppel Certificate.** Borrower shall within ten (10) days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums



secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

**13. Uniform Commercial Code Security Agreement.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for the rents listed in Paragraph 21 below which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and also a security agreement for the fixtures and personal property, including insurance proceeds and condemnation proceeds, permits, rights and other items which together with the real property comprise the "Property" as defined above, and a security agreement for the Funds deposited with Lender under Section 2 above, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file Uniform Commercial Code Financing and Fixture Filing (UCC-1 and UCC-2) or any other appropriate documents in the appropriate locations as financing statements for any of the items specified above as part of the Property. Borrower agrees that this Deed of Trust, upon filing with the appropriate county auditor or recorder, shall be a fixture filing for the fixtures which are subject to the security interest created by this Deed of Trust. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extension, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the other remedies provided in this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the other remedies provided in this Instrument.

**14. Remedies Cumulative.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

**15. Acceleration in Case of Borrower's Insolvency.** If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a Trustee or receiver shall be appointed for Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not





discharged within thirty days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by this Instrument. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other events described in its numbered paragraph shall be additional indebtedness of Borrower secured by this Instrument.

**16. Transfers of the Property or Beneficial Interest in Borrower; Junior Encumbrances; Assumption.** On sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) the attachment in violation of Section 4 of any lien or encumbrance on the Property junior to this Instrument, Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without regard to any provisions for notice and opportunity to cure which might otherwise be applicable, and Lender may invoke any remedies permitted by this Instrument, including, but not limited to, those stated in Section 22. At Lender's sole option, Lender may accept the transfer on any terms acceptable to Lender, in Lender's sole discretion, and, if the transfer is acceptable to Lender, require the transferee to execute, prior to the sale or transfer, a written assumption agreement containing such terms as Lender may require, including an increase in the rate of interest payable under the Note and if the interest in the note is increased, an increase in the dollar amount of the payments to the amount necessary to amortize this Note in the same number of payments as under the prior interest note. Because the rights described in this paragraph cannot be meaningfully exercised unless notice of a prospective sale or transfer and any reasonably requested information on the transferee (hereafter collectively referred to as "prior notice") are provided prior to a sale or transfer, the failure to give prior notice in writing to Lender shall itself constitute a breach of a material provision of this agreement.

**17. Notice.** Except for any notice require under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Instrument or in the Note shall be given by personal delivery or by mailing such notice by certified aill addressed to Borrower at Borrower's address stated in this Instrument or at such other address as Borrower may designate by notice to Lender, and (b) any notice to Lender shall be given by personal delivery or by certified mail, return receipt requested, to Lender's address stated in this Instrument or to such other address as Lender may designate by notice to Borrower. Any notice provided for in this Instrument or in the Note shall be deemed to have been given to Borrower or Lender on the earlier of the second day following the date of mailing or the date of actual receipt when given in the manner designated herein.

**18. Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the limitations on transfer described in this Instrument. All covenants and agreements of Borrower shall be joint and several. In exercising any rights or taking any actions provided for in this Instrument, Lender may act through its employees, agent or independent contractors. The captions and headings of the paragraphs of this Instrument are for convenience in locating provisions only and are not to be used to interpret or define the provisions.

**19. Governing Law; Severability.** This instrument shall be governed by the law of the State of Washington, without regard to its conflicts of laws principles. In the event that any



provision of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

**20. Waiver of Marshaling.** Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided by this Instrument. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured by this Instrument are satisfied from the proceeds realized upon the exercise of the remedies provided in this Instrument. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice of this Instrument hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or by this Instrument.

**21. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender, subject to the rights of any prior encumbrance allowed by this Instrument, all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice and opportunity to cure given by Lender to Borrower of the breach by the Borrower of any covenant or agreement of Borrower in this Instrument, Borrower shall collect and receive all rents and revenues of the Property as Trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in this Instrument with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and expiration of the applicable cure period, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in



person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues and franchise rights as specified in this numbered paragraph as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as Trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents directly to Lender or Lender's agents on Lender's written demand to each tenant therefore, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby warrants that Borrower has not executed any prior assignment of said franchise rights and rents except as included in the list of allowed encumbrances in this Instrument and that Borrower will not perform any acts and will not execute any instrument which would prevent Lender from exercising its rights under this numbered paragraph, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property except as a security deposit for not more than two months rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents except as security deposit for no more than two months rent. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument and after expiration of any applicable cure period, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the exercise of all franchise rights now operated at the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument, Borrower hereby expressly consent to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall at Lender's sole option be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or any having an interest in the Property by reason of anything done or left undone by Lender under this numbered paragraph, except if caused by Lender's gross negligence or willful misconduct.



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If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument. Unless Lender and Borrower agrees in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Anyone entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application or rents as provided shall not cure or waive any default or invalidate any other right or remedy of Lender under applicable law or provided in this Instrument. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

**22. Acceleration; Remedies.** If Lender contends Borrower is in default under the Note, this Deed of Trust, or any other loan document, Lender shall give Borrower written notice of such default and Borrower shall have a period of five days after receipt of the notice to cure any monetary default and a period of thirty days after receipt of the notice to cure any non-monetary default. After default by Borrower and following notice to borrower and the expiration of applicable cure period, upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender at Lender's option may declare all of the sums secured by this Instrument to be immediately due and payable. After giving Borrower notice of default in any manner prescribed by applicable law, Lender may invoke the power of sale and any other remedies permitted by applicable law or provided herein. Borrower acknowledges that the power of sale granted by this Instrument may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of a breach or any other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred pursuing such remedies, including, but not limited to, attorney's fees and costs of documentary evidence, abstracts and title reports.

At any time Grantor is in default under Grantor's obligations under the Note or the Deed of Trust, and if such default continues beyond any applicable cure period, all amounts secured by this Deed of Trust shall earn interest at the Default Rate in the Note.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall give such notices as the applicable laws may require to Borrower and to such other persons as the applicable laws prescribe, and after the lapse of such time as may be required by applicable law, Trustee shall sell the Property according to the applicable laws. Trustee may sell the Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property for a period or periods not exceeding a total of 30 days by public announcement at the time and place fixed in the notice of sale. Lender or Lender's designee may purchase the Property at any sale.



Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order; (a) to all costs and expenses of the sale, including but not limited to, Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this instrument in such order as Lender, in Lender's sole discretion, directs; and (c) the excess, if any, as provided by statute to the clerk of the superior court of the county in which the sale took place.

**23. Reconveyance.** Upon payment of all sums secured by this Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Instrument and all notes evidencing indebtedness secured by this Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

**24. Substitute Trustee.** In accordance with applicable law, lender may from time to time appoint a successor Trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor Trustee shall succeed to all the title, power and utilities conferred upon the Trustee herein and by applicable law.

**25. Use of Property.** The Property is not used principally for agricultural or farming purposes.

**26. Attorneys' Fees and Costs.** Borrower shall pay all Lender's attorney's fees and costs incurred as a result of any default by Borrower under this Deed of Trust or under the Note, and shall pay the Lender's attorney's fees and costs as required by other provisions of this Deed of Trust and the Note. In the event of any controversy, claim or dispute arising out of, or relating to, this agreement or the method and manner of performance thereof or the breach thereof, the prevailing party shall be entitled in addition to any other relief, a reasonable sum in attorneys' fees and litigation expenses. In the event neither party wholly prevails, the party that substantially prevails shall be awarded a reasonable sum for attorneys' fees and litigation expenses. In determining what is a reasonable sum for attorneys' fees and litigation's expenses, the actual amount of the attorneys' fees the party is obligated to pay its attorney or attorneys shall be presumed to be reasonable, which presumption is reputable, and the actual expenses incurred in the proceeding including all expenses of a party for travel, etc., shall be presumed to be reasonable, which presumption is reputable.

**27. Hazardous Substances.** Borrower warrants that to Borrower's knowledge no Hazardous Materials exist on, under or over the Property or on, under or over any properties immediately adjoining the Property, and the Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or the environmental conditions on, under or over the Land and the Property, including, without limitation, soil and groundwater conditions. "Hazardous Materials" shall mean: (i) substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 6901, et. seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 6901, et. seq.; (ii) substances covered and/or regulated pursuant to the Resources Conservation and Recovery Act, 42 U.S.C. Sec. 9601, et. seq., (iii) substances covered and/or regulated by the Washington Model Toxics Control Act, Chapter 70.105D RCW, and the Washington Hazardous Waste




Management Act, Chapter 70.105 RCW, (iv) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid or other fluids containing levels of polychlorinated biphenyl's; (v) petroleum and/or petroleum products or byproducts; and (vi) any other chemical, material or substance, including, but not limited to, biological materials or substances, exposure to which is prohibited, limited or regulated by any governmental authority or which may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of property adjacent to the Property. Borrower/Grantor agrees to pay, defend (including, but not limited to, payment of attorney's fees and costs of suit), indemnify and hold Lender harmless from any and all costs, actual and foreseeable consequential damages and losses, fines, penalties, remediation costs or other costs or expenses of any kind, arising from or related to the past, current or future presence of Hazardous Materials on, under or over the Property, whether or not known to Borrower/Grantor and whether prior to or following the repayment of the Note or prior to or following the foreclosure of this Instrument or trustee's sale under this Instrument. This indemnification is not secured by this Instrument. This indemnity shall survive any foreclosure or trustee's sale under this Instrument, or any deed in lieu of foreclosure or similar transfer, and is not included in any debt which is statutorily extinguished.

IN WITNESS OF THIS INSTRUMENT, Borrower has executed this Instrument:

**BORROWER:**

  
\_\_\_\_\_  
Bruce Cowen, Individually  
and on behalf of his marital community

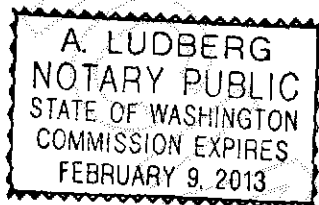
  
\_\_\_\_\_  
Barbara Cowen, His Wife, Individually  
and on behalf of her marital community



STATE OF WASHINGTON )  
 )ss.  
COUNTY OF King )

On this 29 day of June, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Bruce Cowen, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the foregoing instrument as his free and voluntary act and deed, for the uses and purposes therein mentioned.

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



A. Ludberg  
A. Ludberg  
Print/Type Name  
NOTARY PUBLIC in and for the  
State of Washington,  
residing at Seattle  
My appointment expires 2/9/2013

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

On this 5 day of July, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Barbara Cowen to me known to be the individual described in and 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.

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



David G. McCallum Jr.  
DAVID G. McCallum Jr.  
Print/Type Name  
NOTARY PUBLIC in and for the  
State of Washington,  
residing at NORTH BEND WA  
My appointment expires 4-19-2015

