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Skagit County Auditor

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**Restrictive Covenants and Reciprocal Easements  
for Access, Signage and Parking**

**Grantor:** State Street Retail Center, LLC, a Washington limited  
liability company

**Grantee:** Business Bank

**Legal Description (abbreviated)**

Lots 1, 2, 5 and 6 of South Mount Vernon Business Park under Binding Site Plan  
recorded under Skagit County Auditor's File No. 200709100133.

**Assessor's Property Tax**

**Parcel or Account No.:** P126614, P126615, P126618, P126619

**Reference Nos. of Documents**

**Assigned or Released:** None.

**AGREEMENT**

THIS AGREEMENT is made as the 25<sup>TH</sup> day of August, 2011, by and between State  
Street Retail Center, LLC, a Washington limited liability company ("State Street"), Grantor, and  
the Business Bank ("Business Bank"), Grantee.

State Street is the owner of certain real property described as Lots 2, 5 and 6 of the South  
Mount Vernon Business Park Binding Site plan recorded under Skagit County Auditor's File No.  
200709100133 (the "State Street Parcels"). On Lot 5 of this Parcel, State Street intends to  
construct a building and parking area as shown on the site plan, which is attached hereto as  
Exhibit A and incorporated by this reference as if set forth in full herein.

Business Bank is the owner of certain real property located in the City of Mount Vernon,  
Washington, more particularly described as Lot 1 of the said South Mount Vernon Business Park  
Binding Site Plan (the "Business Bank Parcel").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, State Street and Business Bank hereby agree as follow:

## **I. EASEMENTS**

1.1 **Parking.** Business Bank hereby grants and conveys to State Street, its successors and assigns, a non-exclusive easement and right of use appurtenant to and for the benefit of the State Street Lot 2, 5 and 6. Said easement shall be for ingress and egress to and from the adjacent public roads in and over the Business Bank Parcel. In addition, Business Bank hereby grants and conveys to State Street an easement for the purpose of vehicular parking on Lot 1, which may be used at all times, for the benefit of State Street Lot 5 only.

1.2 **Parking.** State Street hereby grants and conveys to Business Bank, its successors and assigns, a non-exclusive easement, and right of use appurtenant to and for the benefit of the Business Bank Parcel. Said easement shall be for ingress and egress to and from the adjacent public roads in and over the State Street Lots 2, 5 and 6. In addition, State Street grants and conveys an easement for the purpose of vehicular parking on Lot 5, which may be used at all times, for the benefit of the Business Bank Parcel.

1.3 **Signs.** Each party grants to the other party a non-exclusive Easement for the installation and maintenance of a monument or pylon sign within the areas designated on the face of Binding Site Plan per Exhibit A where the location for signage is specified. The rights granted hereunder shall include the right to access the subject premises for the purpose of installation, maintenance and replacement of the sign. If the parties hereto share use of the sign, then each shall pay for the cost of maintenance in proportion to the square footage of signage area utilized by the party. Should any party elect not to make use of the sign, then they shall not be required to pay for maintenance costs. Each party shall bear the expense, individually, of replacement of lighting or ballast, and the physical sign components related to the party's business. Business Bank is specifically granted an Easement for the installation of a sign in the area located in the Southwest corner of the said Lot 5, as depicted in Exhibit A as "Sign Easement", which Easement is in accordance with the dimensions specified in said Exhibit.

## **II. MAINTENANCE AND OPERATIONS**

2.1. **Maintenance and Expenses.** Each of the parties hereto shall, at its own expense, supervise, operate, manage, police, repair, replace and maintain the parking areas and driveways on its Parcel in good repair and in a safe sound condition, free from refuse, rubbish and dirt, and in conformity with all governmental regulations. To "operate" and "maintain" will include, but not be limited to, the furnishing of and/or payment of or for all utilities, labor, snow removal and ice treatment, cleaning, policing, striping, sealing, repaving, storm drain maintenance, maintenance equipment and tools and any personal property taxes assessed to such maintenance equipment and tools, insurance and anything else necessary for the everyday maintenance of said areas.

Until such time as Lot 5 is developed, the owner of Lot 1 shall have exclusive use of the

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parking on Lot 1, and the sole obligation to maintain Lot 1 parking areas. Upon completion of development of Lot 5, and at the option of the owner of Lot 1, the owner of Lot 1 or their agent may coordinate and manage maintenance of the parking areas on Lots 1 and 5, in accordance with this Agreement. In the exercise of such management function, the owner of Lot 1 shall determine the timing of maintenance, the scope of such maintenance and repairs, and is authorized to advance the sums necessary to pay such expenses. After any such advance is made, the owner of Lot 5 shall be informed of their fair share of the costs, which shall be reimbursed within 45 days from the date of billing. The costs of such expenses shall be allocated 44.5% to the owner of Lot 1, and 55.5% to the owner of Lot 5, based on the fact that Lot 1 has an area of 33,796 square feet, and Lot 5 has an area of 42,199 square feet, for a combined area of 75,995 square feet. The resulting ratio based on the size of the two lots is roughly equal to the percentage allocation for maintenance. Further, at the election of the owner of Lot 1, and upon the condition that they are engaging in supervision of maintenance of the common parking areas, then an annual or quarterly assessment, in advance of actual expenditures, may be assessed against the owners of Lot 1 and Lot 5, in order to create a fund for the payment of anticipated maintenance expenses. Such funds shall be maintained in a segregated account and a statement of actual expenses shall be provided on a quarterly basis.

2.2. **Lighting**. Each of the parties hereto shall at its own expense keep the parking areas and driveways on its Parcel lighted from dusk to dawn and open to use by the customers and other invitees of the parties hereto at all times except for those times reasonably required for maintenance and repair.

2.3. **Future Modification**. Each of the parties hereto agrees that if it modifies the improvements on its own Parcel it shall only do so if it is able to and does provide on its own Parcel not less than the number of parking spaces required by code and local regulation, but in no event less than the spaces shown on Exhibit A. No party to this Agreement shall permit any changes to functionality of the existing ingress, egress, utility facilities or parking without the written approval of the other party to this Agreement.

2.4. **Parking without charge**. The parties hereto agree that no metered or other charge shall be made to anyone for the right to enter, exit, travel through, or park on or in, its own or the other party's Parcel.

2.5 **Construction Damage**. In the event that any party utilizes the easement area or parking area upon the property of the other during periods of construction, which use results in damage to the party's property or to the parking area, in the event of disturbance due to construction activity, installation of utilities or other activity related to one party's improvement of their property, then the cost of repair of such damage shall be borne by the party making the improvements, and the access areas and parking areas shall be restored to their condition prior to the commencement of such construction.

### III. GENERAL PROVISIONS

3.1 **Nuisances**. Each party to this Agreement, together with their agents,  
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customers and invitees, shall make use of the parking easement in a manner so as not to cause unnecessary noise or nuisance which would negatively impact the other party hereto or their tenants.

3.2 **Retail Sales in Parking Area.** No parking lot sales (retail or garage sales) shall be conducted within the parking areas.

3.3 **Indemnification.** Unless caused by the negligence or willful misconduct of the other, or its agents or contractors, the parties hereto agree to indemnify and hold the other harmless from and against any and all liability, cost and expense arising out of use, the construction or maintenance of the access and parking areas.

#### **IV. RESTRICTIVE COVENANTS**

4.1 State Street hereby covenants that Lots 2, 5 and 6 shall be subject to the restrictions on operations and uses stated in Section 2 hereof. Similarly, Business Bank agrees that Lot 1 shall be subject to the restrictions on operations and uses stated in Section 4.2. No operation or use set forth in the restrictions stated in 4.2 shall occur or be maintained on the parcels which are the subject of this Agreement, unless the prior, written consent of the owner of the benefitted parcel is first obtained, which consent may be given or withheld in the sole discretion of the said owner.

4.2 The following operations and uses shall not be permitted:

- 4.2.1 Uses which involve exterior flashing lights, strobe lights, search lights or video screens;
- 4.2.2 Auction house operations;
- 4.2.3 Central laundry, dry cleaning plant, coin-operated laundry, outdoor Laundromat;
- 4.2.4 Car wash or facility for the storage or sale of gasoline or diesel fuel, provided that gasoline and diesel fuel sales are permitted on Lot 2, only;
- 4.2.5 Funeral parlor, crematorium or mortuary;
- 4.2.6 Flea market, second-hand store, thrift store;
- 4.2.7 Gambling establishment, bingo parlor;
- 4.2.8 Shop engaging in the sale of paraphernalia for the use of illegal drugs;
- 4.2.9 Movie theater, social club, church or other house of worship;
- 4.2.10 Pool or billiard hall, bowling alley, ice or roller skating rink, dance hall, nightclub, video or game center, amusement center;
- 4.2.11 Probation office, rehabilitation facilities for convicted felons; or
- 4.2.12 Establishments featuring adult entertainment, books, magazines or other visual media.

#### **V. EFFECT OF AGREEMENT**

5.1 **Mortgages.** Any mortgage or deed of trust entered into on or after the date of this Agreement and affecting any portion of the subject Parcels shall at all times be subject and Restrictive Covenant and Easement-4



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subordinate to the terms of this Agreement, and any person or entity foreclosing any such mortgage or deed of trust or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title to such premises subject to all of the terms of this Agreement.

**5.2 Effect on Transferees.** Any transferee of any part of the State Street Parcels or the Business Bank Parcel shall automatically be deemed, by acceptance of title, to have assumed all obligations of this Agreement relating thereto and to have agreed with the then owners of all other portions of said Parcels to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement. If any transferor shall expressly condition the transfer of its interest in such portion of its Parcel on the assumption by its transferee of the obligations imposed on such transferor, such transferor shall on the completion of such transfer be relieved of all further liability under this Agreement except such liability as may have arisen during its period of ownership of the portion so conveyed and which remains unsatisfied.

**5.3 No Dedication to the Public.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of any Parcel to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns, that nothing in this Agreement, expressed or implied, shall confer on any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

**5.4 Allocation of Parking Stalls.** The parties shall have the right to restrict parking in parking stalls which are located immediately adjacent to any building constructed on the said Lot 1 or Lot 5, for the exclusive use of the customers or tenants of the businesses located within the building constructed on said Lot. This restriction shall include the right to install "Customer Only" signs for the purpose of enforcing this provision. At the time of making this Agreement, the site plan, as set forth in Exhibit A, calls for approximately 107 parking stalls on Lots 1 and 5, with 32 stalls being located within the confines of Lot 1, and 75 stalls located within the confines of Lot 5. Since parking lot maintenance is allocated 44.5% to Lot 1 and 55.5% to Lot 5, parking space use shall be allocated accordingly. Based on this calculation of available parking stalls, Lot 1 shall have the right of use of not less than 48 parking stalls at such time as the improvements are completed on Lot 5. Lot 5 shall have the right of use of 59 spaces. Provided that the parties agree the parking plan in Exhibit A is a projection of future development of Lot 5, such that Lot 5 may be developed in a manner differently than shown in Exhibit A. Therefore, the parties, or their successors in interest, agree that the parking plan, space allocation and maintenance allocation may be equitably adjusted to reflect actual development of Lot 5, but in no event shall the owner of Lot 1 have use of less than 32 parking stalls. In the event the parties cannot reach an agreement on such adjustment then the same shall be submitted to binding arbitration under the provisions of RCW 7.04A. The owners of Lot 1 and Lot 5 may designate, within the parking located within their respective parcels, areas specifically for employee/tenant parking, in order to maximize customer access to the buildings located on each parcel.

## VI. REMEDIES

**6.1 Default.** If any party to this Agreement shall default in its performance of its obligations herein, then each other party shall, in addition to all other remedies it may have in law or in equity, have the rights granted under this section VI "Remedies". Unless otherwise provided in this Agreement, no party shall be deemed in such default until it shall have been given written notice describing the nature of such default, and within fifteen (15) days after the receipt of such notice (except in the case of an emergency), shall have failed to commence to cure such default and to proceed diligently to complete the curing of such default as soon as possible. In an emergency the notice shall so state, and the cure or the diligent effort to commence and complete said cure must be accomplished with all reasonable haste.

**6.2 Interest and Collection Expenses.** If the so notified party has failed to cure or commence curing and expeditiously complete curing within said period, then any other party shall have the right to perform such obligation on behalf of the defaulting party, and be reimbursed by the defaulting party for the cost thereof, together with interest at the rate of twelve percent (12%), plus reasonable collection fees including but not limited to reasonable attorney fees and court costs, including those of appeal.

**6.3 Lien.** Any such claim for reimbursement, together with interest as aforesaid, shall automatically be secured by a lien therefor and shall attach to the defaulting party's Parcel and improvements thereon, effective upon recording of a notice thereof in the Office of the Skagit County Auditor or such other office as then records documents affecting real estate within the county. Such lien shall be subordinate to any first mortgage or deed of trust now or hereafter affecting said Parcel and/or improvements thereon. The party making any advance for expenses may record such lien, but the same shall not be mandatory to create the lien rights conferred hereunder. Any such lien may be foreclosed as a mortgage as provided under RCW 61.12.

**6.4 Breach.** In the event of a breach, or attempted or threatened breach, of any of the obligations of this Agreement, the parties hereto shall be entitled forthwith (1) to obtain an injunction to specifically enforce the performance of such obligation, the parties hereby acknowledging the inadequacy of the legal remedies and the irreparable harm which would be caused by such breach, and/or (2) to relief by all other available legal and equitable remedies from the consequences of such breach.

**6.5 Acts in Contravention of Easements.** Any action or document made in violation of this Agreement shall be void and may be set aside upon the petition of either of the parties hereto. All costs and expenses of any such proceeding shall be assessed against the defaulting party and shall constitute a lien against its land and any improvements thereon, or its interests therein, in the manner provided in paragraphs 6.1 – 6.3.

**6.6 No Waiver.** No delay or omission of either party in the exercise of any right accruing upon any default of the other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default, provided however that any right of reimbursement may be enforced at any time allowed

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by the appropriate statute of limitations. A waiver by either party of a breach of, or a default in, any of the terms and conditions of this Agreement by the other party, shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. No remedy provided herein shall be exclusive and each shall be cumulative with all other remedies provided in this Agreement and at law or in equity.

**6.7 Enforceability.** It is expressly agreed that no breach of the provisions of this Agreement shall entitle either party to cancel, rescind or otherwise terminate this Agreement; but such limitation shall not affect, in any manner, any other rights or remedies which either party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall cause a defect in or render invalid any mortgage or deed of trust made in good faith and for value covering any part of any Parcel covered by this Agreement and/or any improvements thereon. The provisions of this Agreement shall be binding upon and effective against any owner of any covered Parcel or any portion thereof, whose title is acquired by trustee's sale or any grantee by deed in lieu of foreclosure or trustee's sale.

**6.8 Delay.** In the event any party shall be significantly (1) delayed, (2) hindered, or (3) prevented from the performance of any act required to be performed by such party by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power or other necessary utility, prohibitive governmental laws or regulations, riots, insurrections, the act or failure of any other party to this Agreement, adverse weather conditions preventing the performance of work as certified to by an architect, war or any other reason beyond such party's control, then the time for performance of such act shall be extended for the period of such delay. Lack of funds or financial inability to perform shall not be deemed to be a cause beyond the control of the party.

## **VII. NOTICES**

Any notice or demand required or permitted to be given under this Agreement ("Notice") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the third business day after it is mailed by registered or certified mail, return receipt requested, to the respective parties, addressed as follows, or to such other addresses as the parties may from time to time designate by Notice:

**Grantor:**

State Street Retail Center, LLC  
David Allegre, Registered Agent  
9623 32<sup>nd</sup> Street S.E., Ste. D112  
Lake Stevens, WA 98258-5783

**Grantee:**

Business Bank  
1854 So. Burlington Blvd.  
Burlington, WA 98233

## **VII. MISCELLANEOUS**

**7.1 Runs with Land, Successors in Interest Bound.** The terms of this Agreement shall constitute covenants running with the land, and such terms shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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**7.2 No Additional Easements.** Neither State Street nor Business Bank shall, subsequent to the date of this Agreement, grant additional easements of any type to any person, entity, or parcel for the benefit of parcels not including the Business Bank and State Street Parcels, which would unduly burden or adversely affect the easements granted herein.

**7.3 Entire Understanding.** This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them respecting the subject matter hereof. No amendment of or supplement to this Agreement shall be valid or effective unless executed by the parties hereto, or their respective successors and assigns and recorded in the Records of Skagit County, Washington.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

Grantor: State Street Retail Center, LLC

Grantee: Business Bank

By

[Signature]  
Member

By

[Signature]  
Print Name/Title: Todd Anderson, SVP

Date: August 25<sup>th</sup>, 2011.

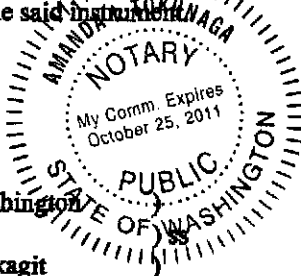
Date: August 25, 2011.

State of Washington )

) ss

County of Skagit )

On this 25 day of August, 2011, before me, the undersigned Notary Public, personally appeared David Albee, to me known to be a Member of State Street Retail Center, LLC, and acknowledged that he executed the foregoing Agreement as such Member of said Company, and as the free and voluntary official act and deed of said Company, for the uses and purposes stated therein, and on oath stated that he was properly authorized to execute the said instrument.



[Signature]  
Notary Public for the State of WA, residing at Sciro woolley  
My commission expires 10-25-2011

State of Washington )

County of Skagit )

On this 25 day of August, 2011, before me, the undersigned Notary Public, personally appeared Todd Anderson, to me known to be the SVP of the Business Bank, and acknowledged that he executed the foregoing Agreement as such officer of said corporation, and as the free and voluntary official act and deed of said corporation, for the uses and purposes stated therein, and on oath stated that he was properly authorized to execute the said instrument.



[Signature]  
Notary Public for the State of WA, residing at Sciro woolley  
My commission expires 10-25-2011

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Exhibit A

PORTION OF THE SW 1/4, SECTION 29, T10N 34N, R10E, W10E

