



201207020067
Skagit County Auditor

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After Recording Mail To:

U.S. BANK NATIONAL ASSOCIATION
Commercial Real Estate Division
1420 Fifth Avenue, 11th Floor
Seattle, Washington 98101
Attention: Antonio D. Mason

CHICAGO TITLE
620015533

ASSIGNMENT OF AQUATIC LANDS LEASE

Coversheet Recording Information:

GRANTOR / ASSIGNOR: MJB PROPERTIES LLC, a Washington limited liability company

GRANTEE / ASSIGNEE: U.S. BANK NATIONAL ASSOCIATION, a national banking association

ABBR. LEGAL DESCRIPTION: Section 19, Township 35 North, Range 2 East, W.M. The complete legal description is on Exhibit A.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER: P32977 and 350219-0-068-0005

Reference No. 2012062910123

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JUL 02 2012

Amount Paid \$
Skagit Co. Treasurer
By *nam* Deputy

ASSIGNMENT OF AQUATIC LANDS LEASE

THIS ASSIGNMENT OF AQUATIC LANDS LEASE ("Assignment") is made as of June 25, 2012, by MJB PROPERTIES LLC, a Washington limited liability company ("Assignor"), in favor of U.S. BANK NATIONAL ASSOCIATION ("Lender").

WITNESSETH:

For Value Received, Assignor does hereby assign, transfer, convey, set over, and deliver unto Lender all right, title and interest of Assignor in and to that certain Aquatic Lands Lease (Aquatic Lands Lease No. 22-078655) dated October 6, 2011, between the State of Washington, acting through the Department of Natural Resources as landlord ("Ground Lessor") and Assignor, which was recorded on June 29, 2012 in the real estate records of Skagit County, Washington, under file no. 201206290123 (together with all amendments, modifications, exhibits and supplements thereto, the "Aquatic Lands Lease"), covering certain real property located in Skagit County, Washington, legally described on Exhibit A attached hereto and by this reference incorporated herein ("Premises"), together with all other right, title and interest Assignor may now have or acquire in or to the Premises or under the Aquatic Lands Lease, whether created by or arising under the Aquatic Lands Lease or otherwise acquired, including without limitation all options to purchase or lease the Premises or any portion thereof or interest therein set forth in the Aquatic Lands Lease, and all rights and interests of Assignor in any bankruptcy proceeding involving the lessor under the Aquatic Lands Lease.

FOR THE PURPOSE OF SECURING:

1. Payment of indebtedness in the principal amount of \$5,000,000.00 with interest thereon, evidenced by that certain promissory note of even date herewith (the "Note") executed by Assignor, which has been delivered to, and is payable by Assignor to the order of Lender and which, by this reference, is made a part hereof, and any and all modifications, extensions and renewals thereof. The interest rate, payment terms or the balance due on the Note and the indebtedness evidenced thereby may be indexed, adjusted, renewed, or renegotiated without affecting the priority of this Assignment.

2. Payment of all sums which may become due from Assignor or advances by Lender or its successor, with interest thereon at the rate set forth in the Loan Agreement (defined below), which include but are not limited to, payment by Assignor of all attorney fees and costs incurred by Lender in realizing on this Assignment or realizing upon any of the collateral for the obligations which this Assignment secures; payment by Assignor of all attorney fees and costs incurred by Lender in defending the priority or validity of this Assignment or the title to the Premises; payment by Assignor of all sums advanced by Lender

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to or on behalf of Assignor for the purpose of clearing encumbrances or defects from the title to the Premises described in this Assignment where Lender, in good faith, believes such encumbrances to be superior to the lien of the Assignment, including, without limitation, payment of ad valorem taxes and mechanics' or materialmen's liens which may have gained priority over the lien of this Assignment; payment by Assignor of all attorney fees and costs incurred by Lender in any bankruptcy proceedings or any reorganization or arrangement proceeding under the United States Bankruptcy Code affecting any Borrower or this Assignment, payment of all amounts necessary to cure defaults under the Aquatic Lands Lease; and payment of all other sums advanced by Lender to protect the Aquatic Lands Lease, with interest thereon at the rate set forth in the Loan Agreement.

3. Payment of all other sums, with interest thereon, which may hereafter be loaned to Assignor, its successors or assigns, by Lender, when evidenced by a promissory note or notes reciting that they are secured by this Assignment.

4. Payment of all of the obligations of Assignor under the loan agreement of even date herewith to which Assignor and Lender are parties (together with all modifications, amendments, supplements and exhibits thereto, the "Loan Agreement").

5. The payment, observance, performance and discharge of all other obligations, covenants, conditions and warranties contained in the fee and leasehold deed of trust, assignment of leases and rents, security agreement and fixture filing of even date herewith ("Deed of Trust") and in any extensions, modifications, supplements and consolidations thereof, covering Assignor's interest in the Premises and securing the Note.

TO PROTECT THE SECURITY OF THIS ASSIGNMENT
IT IS COVENANTED AND AGREED AS FOLLOWS:

1. Assignor's Representations, Warranties and Covenants Regarding the Aquatic Lands Lease

(a) Assignor hereby covenants, warrants and represents to Lender with respect to the Aquatic Lands Lease and Assignor's leasehold estate thereunder as follows:

(1) The Aquatic Lands Lease is in full force and effect and, except as otherwise disclosed to the Lender prior to the date hereof, unmodified by any writing or otherwise;

(2) All rent, additional rent and/or other charges reserved in or payable under the Aquatic Lands Lease have been paid to the extent that they are payable to the date hereof;

(3) Assignor enjoys the quiet and peaceful possession of the leasehold estate;

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(4) Assignor has not delivered or received any notices of default under the Aquatic Lands Lease and is not in default under any of the terms of the Aquatic Lands Lease and to the best of Assignor's knowledge there are no circumstances which, with the passage of time or the giving of notice or both, would constitute a default under the Aquatic Lands Lease;

(5) To the best of Assignor's knowledge, the lessor under the Aquatic Lands Lease is not in default under any of the terms of the Aquatic Lands Lease on its part to be observed or performed;

(6) Assignor has delivered to Lender a true, accurate and complete copy of the Aquatic Lands Lease;

(7) Assignor promptly shall pay the rent and all other sums and charges mentioned in, and payable under, the Aquatic Lands Lease;

(8) Assignor promptly shall perform and observe all of the terms, covenants and conditions required to be performed and observed by the lessee under the Aquatic Lands Lease, the breach of which could permit lessor to validly terminate the Aquatic Lands Lease (including, but without limiting the generality of the foregoing, any payment obligations), shall do all things necessary to preserve and to keep unimpaired its rights under the Aquatic Lands Lease, shall not waive, excuse or discharge any of the material obligations of the lessor under the Aquatic Lands Lease without Lender's prior written consent in each instance and shall diligently and continuously enforce the material obligations of the lessor under the Aquatic Lands Lease;

(9) Assignor shall not do, permit or suffer any event or omission as a result of which there could occur a default under the Aquatic Lands Lease or any event which, with the giving of notice or the passage of time, or both, would constitute a default under the Aquatic Lands Lease which could permit lessor to validly terminate the Aquatic Lands Lease (including, but without limiting the generality of the foregoing, a default in any payment obligation);

(10) Assignor shall not cancel, terminate, surrender, modify or amend or in any way alter or permit the alteration of any of the provisions of the Aquatic Lands Lease or agree to any termination, amendment, modification or surrender of the Aquatic Lands Lease without Lender's prior written consent in each instance;

(11) Assignor will promptly notify Lender of any defaults by any party under the Aquatic Lands Lease and shall deliver to Lender copies of any notice of default by any party under the Aquatic Lands Lease, or of any notice from the lessor under the Aquatic Lands Lease of its intention to terminate the Aquatic Lands Lease



or to re-enter and take possession of the Premises, immediately upon delivery or receipt of such notice, as the case may be;

(12) Assignor shall promptly furnish to Lender copies of such information and evidence as Lender may request concerning Assignor's due observance, performance and compliance with the terms, covenants and conditions of the Aquatic Lands Lease;

(13) Assignor shall not consent to the subordination of the Aquatic Lands Lease to any mortgages of the fee interest and/or leasehold interest in the Premises;

(14) Any default under the Aquatic Lands Lease or any failure by Assignor to perform its obligations under the Aquatic Lands Lease shall constitute a default hereunder; and

(15) Assignor, at its sole cost and expense, shall execute and deliver to Lender, within five (5) days after request, such commercially reasonable documents, instruments or agreements as may be required to permit Lender to cure any default under the Aquatic Lands Lease.

(b) In the event of default by Assignor in the performance of any of its obligations under the Aquatic Lands Lease, including, but without limiting the generality of the foregoing, any default in the payment of any sums payable thereunder, then, in each and every case, Lender may, at its option, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Assignor thereunder in the name of and on behalf of Assignor. Assignor shall, on demand, reimburse Lender for all advances made and expenses incurred by Lender in curing any such default (including, without limiting the generality of the foregoing, reasonable attorneys' fees and disbursements), together with interest thereon computed at the Default Rate (as defined in the Loan Agreement) from the date that such advance is made, to and including the date the same is paid to Lender.

(c) Assignor shall give Lender notice of its intention to exercise each and every option, if any, to extend the term of the Aquatic Lands Lease, at least thirty (30) days prior to the expiration of the time to exercise such option under the terms thereof. If Assignor intends to extend the term of the Aquatic Lands Lease, it shall deliver to Lender, with the notice of such decision, a copy of the notice of extension delivered to the lessor thereunder, together with the terms and conditions of such extension.

(d) Assignor shall request and use diligent efforts to obtain within twenty (20) days after written demand by Lender, an estoppel certificate from the lessor under the Aquatic Lands Lease setting forth (i) the name of the lessee and the lessor thereunder, (ii) that the Aquatic Lands Lease is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification),



(iii) the basic rent payable under the Aquatic Lands Lease, (iv) the date to which all rental charges have been paid by the lessee under the Aquatic Lands Lease, (v) whether a notice of default has been received by the lessor under the Aquatic Lands Lease which has not been cured, and if such notice has been received, the date it was received and the nature of the default, (vi) whether there are any alleged defaults of the lessee under the Aquatic Lands Lease and, if there are, setting forth the nature thereof in reasonable detail, and (vii) if the lessee under the Aquatic Lands Lease shall be in default, the default.

(e) Anything contained herein to the contrary notwithstanding, this Assignment shall not constitute an assignment of the Aquatic Lands Lease within the meaning of any provision thereof prohibiting its assignment and Lender shall have no liability or obligation thereunder by reason of its acceptance of this Assignment. Lender shall be liable for the obligations of the lessee arising under the Aquatic Lands Lease for only that period of time which Lender is in possession of the Premises or has acquired, by foreclosure or otherwise, and is holding all of Assignor's right, title and interest therein.

(f) It is hereby agreed that, for as long as this Assignment is in effect, except upon express written consent of Assignee, the fee title and leasehold estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of any of said estates in either the sublessor under the Aquatic Lands Lease, Assignor or a third party, whether by purchase or otherwise.

(g) If any action or proceeding shall be instituted to evict Assignor or to recover possession of the Premises or any part thereof or interest therein or any action or proceeding otherwise affecting the Aquatic Lands Lease or this Assignment shall be instituted, then Assignor will, immediately upon service thereof on or to Assignor, deliver to Lender a true and complete copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(h) Except to the extent the Aquatic Lands Lease contains provisions which require mandatory arbitration for the resolution of any disputes arising under the Aquatic Lands Lease and, to the extent Assignor has any rights to agree to or approve such arbitration, Assignor will not agree to arbitrate any disputes arising under the Aquatic Lands Lease without the written consent of Lender, which consent can be withheld at the sole discretion of Lender. Notwithstanding, in the event that Lender consents to such an arbitration, Assignor will give Lender prompt written notice of the commencement of such arbitration and so long as no Event of Default shall have occurred and be continuing, (i) Lender shall have the right to intervene and participate in any such proceeding, (ii) Assignor shall confer with Lender to the extent which Lender reasonably deems necessary for the protection of Lender, upon the written request of Lender and (iii) Assignor shall select an arbitrator who is approved in writing by Lender; provided, however, that if at the time any such proceeding shall be commenced or shall be in progress an Event of Default shall have occurred and be



continuing, Assignor hereby irrevocably appoints and constitutes Lender as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to exercise, at the expense of Assignor, all right, title and interest of Assignor in connection with such arbitration, including the right to appoint arbitrators and to conduct arbitration proceedings on behalf of Assignor. Nothing contained herein shall obligate Lender to participate in such arbitration.

(i) Assignor shall, within ten (10) days after written demand therefor from Lender, deliver to Lender proof of payment of all items that are required to be paid by Assignor under the Aquatic Lands Lease, including, without limitation, rent and other charges required to be paid under the Aquatic Lands Lease.

(j) If the Aquatic Lands Lease shall be terminated prior to the natural expiration of its term, and if, pursuant to any provision of the Aquatic Lands Lease, Lender or its designee shall acquire from the lessor under such Aquatic Lands Lease a new lease of the Premises demised thereunder and the improvements located thereon, Assignor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

(k) Pay all costs and expenses of Lender, including reasonable attorney fees in any action or proceeding in which Lender may appear in connection herewith.

(l) Neither create nor permit any lien, charge or encumbrance upon its interest as sublessee of the Aquatic Lands Lease except the lien of the Deed of Trust or as provided in the Deed of Trust.

2. Default Deemed Default Under Deed of Trust

In the event any representation or warranty herein of Assignor shall be found to be materially false or inaccurate, which given time, could be expected to result in a material adverse effect, or Assignor shall default in the observance or performance of any obligation, term, covenant, condition or warranty herein and the same is not cured by Assignor within thirty (30) days after written notice thereof, then in each such instance, the same shall constitute and be deemed to be a default under the Note and the Deed of Trust, thereby entitling Lender to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all of the rights and remedies provided thereunder and herein, as well as those provided by law. The occurrence of a "Default" or an "Event of Default" under the Loan Agreement shall constitute a default under this Assignment.



3. Notice

All notices, demands, requests or documents of any kind which Lender may be required or may desire to serve upon Assignor hereunder shall be delivered as provided in the Deed of Trust.

4. Assignment Binds Successor

The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land and shall inure to the benefit of, and bind all parties hereto and their respective heirs, successors and assigns; all tenants and their subtenants and assigns; and all subsequent owners of the Premises and subsequent holder of the Note and Deed of Trust.

5. Additional Rights and Remedies

In addition to, but not in lieu of, and other rights hereunder, Lender shall have the right to institute suit and obtain a protective or mandatory injunction to prevent a breach or default of, or to enforce the observation by Assignor of the agreements, covenants, terms, and any condition contained herein and shall have the right to attorney fees at trial, on appeal, or in any bankruptcy proceeding, costs, expenses and ordinary and punitive damages occasioned by any such breach or default by Assignor.

6. Waiver of Jury Trial

ASSIGNOR AND ASSIGNEE, BY ITS ACCEPTANCE HEREOF, EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OUT OF THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT, WHETHER NOW OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND EACH OF THEM HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM MAY BE DECIDED BY TRIAL WITHOUT A JURY AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER AND AGREEMENT CONTAINED HEREIN.

[SIGNATURE PAGE FOLLOWS]

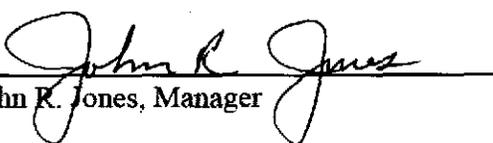


IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

ASSIGNOR:

MJB PROPERTIES LLC

By 
Gary M. Merlino, Manager

By 
John R. Jones, Manager

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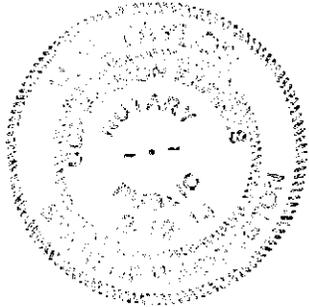


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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 26 day of June, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared GARY MERLINO, to me known to be the person who signed as MANAGER of MJB PROPERTIES LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he/she was duly elected, qualified and acting as said MANAGER of the limited liability company and that he/she was authorized to execute said instrument.

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



VR Taylor
(Signature of Notary)

Valerie R Taylor
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at REDMOND.
My appointment expires: 2.19.2014.



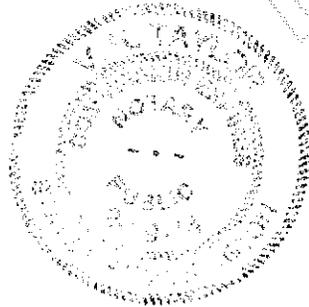
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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 26 day of June, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN JONES, to me known to be the person who signed as MANAGER of MJB PROPERTIES LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he/she was duly elected, qualified and acting as said MANAGER of the limited liability company and that he/she was authorized to execute said instrument.

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



VR Taylor
(Signature of Notary)

Valerie Taylor
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at REDMOND.
My appointment expires: 2.19.2014.



EXHIBIT A
to Assignment of Aquatic Lands Lease

LEGAL DESCRIPTION

That portion of the Harbor Area of Plate No. 10, Anacortes Harbor as shown on the official Tide and Shore Lands map of Section 19, Township 35 North, Range 2 East, W.M., being described as follows:

Commencing at the centerline intersection of 28th Street and "T" Avenue, as shown on Anacortes Industrial Park Addition, according to the plat thereof recorded in volume 10 of plats, pages 19 through 21, inclusive, records of Skagit County, Washington; thence North 01 degree 52'32" East, along said centerline of "T" Avenue, 596.77 feet to the intersection with the centerline of 26th Street; thence North 01 degree 52'45" East, along said centerline of "T" Avenue, 1.10 feet; thence South 88 degrees 06'43" East, 600.35 feet to the Inner Harbor Line of said Harbor Area and the true point of beginning; thence continuing South 88 degrees 06'43" East, a distance of 232.40 feet, thence South 01 degrees 53'17" West, a distance of 125.00 feet thence North 88 degrees 06' 43" West, a distance of 231.13 feet to said Inner Harbor Line; thence North 01 degree 18'10" East along said Inner Harbor Line, a distance of 125.01 feet to the true point of beginning. Situate in the County of Skagit, State of Washington. Contains 28,971 +/- sq. ft. or 0.67 +/- ac.

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