



201207020068

Skagit County Auditor

7/2/2012 Page

1 of

13 10:29AM

**Return Address**

U.S. BANK NATIONAL ASSOCIATION  
Commercial Banking  
1420 Fifth Avenue, 11<sup>th</sup> Floor  
Seattle, Washington 98101  
Attn: Antonio D. Mason

CHICAGO TITLE  
620015533

**Document Title(s) (or transactions contained therein):**

1. SUBORDINATION, NON-DISTURBANCE, ESTOPPEL AND ATTORNMENMENT AGREEMENT

**Reference Number(s) of Documents assigned or released:**

(on page \_\_\_ of document(s))

Unrecorded lease and 201207020066

**Grantor(s) (Last name first, then first name and initials):**

1. MJB PROPERTIES LLC, a Washington limited liability company
2. PACIFIC MARINE CENTER, LLC, a Washington limited liability company
3. ☐ Additional names on page \_\_\_ of document.

**Grantee(s) (Last name first, then first name and initials):**

1. U.S. BANK NATIONAL ASSOCIATION, a national banking association
- 2.
3. ☐ Additional names on page \_\_\_ of document.

**Legal description (abbreviated: i.e. lot, block, plat or section, township, range)**

PTN 19-35-02

☒ Full legal is on page \_\_\_ of document.**Assessor's Property Tax Parcel/Account Number**

P78000, 4198-000-041-0005, P78001, 4198-000-041-0104, P77998, 4198-000-028-0002,  
P78006, 4198-000-044-0101, P32974, 350219-0-065-0008, P32975, 350219-0-066-0007,  
P32976, 350219-0-067-0006, P78002, 4198-000-043-0003, P32972, 350219-0-062-0001,  
P78007, 4198-000-048-0008, P32977, 350219-0-068-0005, P32979, 350219-0-069-0012, P32981 and  
350219-0-070-0019

**SUBORDINATION, NON-DISTURBANCE,  
ESTOPPEL AND ATTORNMENT AGREEMENT**

**Date:** June 25, 2012

**From:** PACIFIC MARINE CENTER, LLC, a Washington limited liability company ("Tenant") and  
MJB PROPERTIES LLC, a Washington limited liability company (as successor to MJB Properties, a Washington general partnership, "Landlord")

**To:** U.S. BANK NATIONAL ASSOCIATION ("Lender")  
Commercial Real Estate Loan Administration  
1420 Fifth Avenue, 8th Floor  
Seattle, Washington 98101

**Lease Dated:** April 25, 2012

**Initial Lease Term:** 78 Months

**W I T N E S S E T H :**

WHEREAS, the Tenant has made and entered into a lease as of April 25, 2012 (the "Lease") with Landlord covering a portion of the premises (the "Premises") described more particularly on attached Exhibit A; and

WHEREAS, the Lender has made a loan of \$5,000,000 to the Landlord secured by a Deed of Trust, hereinafter referred to as "mortgage" (which mortgage also secures any future advances made by Lender); provided, however, that said Lease is subordinate to the lien of the mortgage. The Deed of Trust was recorded on July 2, 2012, under Skagit County Recorder's file No. 201207020066; and

WHEREAS, Lender has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant;

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of the Tenant in and to said Premises, including but not limited to any option or right of first refusal to purchase Premises, or any acquisition



of title to the Premises by Tenant during the term of the mortgage and to advances made or to be made thereunder, are and shall be subject and subordinate to the mortgage and to all of the terms and conditions contained therein, and to any renewals, modifications, increases, replacements, consolidations and extensions of the indebtedness secured thereby.

2. Lender consents to the Lease and, in the event of foreclosure of said mortgage, or in the event Lender comes into possession or acquires title to the Premises as a result of the enforcement or foreclosure of the mortgage or mortgage note, or as a result of any other means, Lender agrees to recognize Tenant and further agrees that Tenant shall not be disturbed in its possession of the Premises for any reason other than one which would entitle the Landlord to terminate the Lease under its terms or would cause, without further action by such Landlord, the termination of the Lease or would entitle such Landlord to dispossess the Tenant from the Premises.

3. Tenant agrees with Lender that if the interests of Landlord in the Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it, or by any other manner, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Lender succeeding to the interest of the Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Lender after Lender receives title to the Premises, to promptly execute an instrument in confirmation of the foregoing provisions, satisfactory to Lender, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

4. Tenant agrees with Lender that if Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be (a) liable for any action or omission of any prior landlord under the Lease, or (b) subject to any offsets or defenses which Tenant might have against any prior landlord, or (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, or (d) bound by any security deposit which Tenant may have paid to any prior landlord, unless such deposit is in an escrow fund available to Lender, or (e) bound by any amendment or modification of the Lease made without Lender's consent, or (f) bound by any provision in the Lease which obligates the Landlord to erect or complete any building or to perform any construction work or to make any improvements to the Premises, or (g) liable for or incur any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise, including, without limitation, any warranties, or representations respecting use, compliance with zoning, landlord's title, landlord's authority, habitability and/or fitness for any purpose or possession, or (h) liable for consequential damages. Tenant further agrees with Lender that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Lender's consent.



5. In the event that the Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to the Lender and the Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including and without limitation, any action in order to terminate, rescind or void the Lease or to withhold any rental thereunder for a period of 10 days after receipt of such written notice thereof by the Lender with respect to any such default capable of being cured by the payment of money and for a period of 30 days after receipt of such written notice thereof by the Lender with respect to any other such default; provided, that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty 30-day period because of the nature of such default or because Lender requires time to obtain possession of the Premises in order to cure the default, if Lender shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

6. Tenant agrees with Lender that Tenant's estate in the Premises shall not be conveyed or encumbered without the written consent of the Lender so long as the Lease is in effect.

7. Landlord and Tenant hereby covenant and agree with Lender as follows:

(a) The Lease has been properly executed and delivered by Tenant, is valid and binding upon Tenant, has not been modified, and is in full force and effect;

(b) There exist no defaults under the terms of the Lease by Landlord or Tenant;

(c) Tenant has not paid any rental to Landlord more than one month in advance;

(d) Tenant has no defense, claim of lien or offset, under the Lease or against the rental payable thereunder; and

(e) Tenant has no claims to or interest in the Premises, legal or equitable, or any contract or option therefore, other than as a tenant under the Lease.

Tenant hereby agrees that it will promptly notify Lender in writing of and when any of the above conditions should become untrue or incorrect in any material respect.

8. This Agreement shall bind and inure to the benefit of all parties hereto, their successors and assigns. As used herein the term "Tenant" shall include the Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure, and the word "Lender" shall include the Lender herein



specifically named and any of its successors and assigns, including anyone who shall succeed to Landlord's interest in the Premises by, through or under foreclosure of the mortgage.

9. This Agreement shall not be modified or amended except in writing signed by the parties hereto.

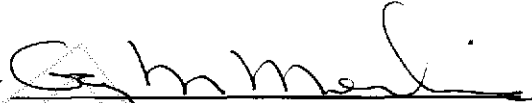
10. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

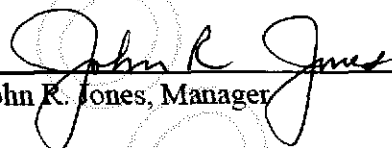
11. Notwithstanding any of the other provisions hereof, this Agreement is not intended to create and shall not be deemed to create any personal liability on the part of tenant for repayment of the loan secured by the mortgage.

IN WITNESS WHEREOF the parties hereto have placed their hands and seals the day and year first above written.

**Landlord:**

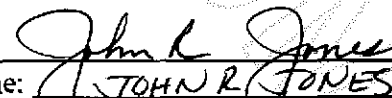
MJB PROPERTIES LLC, a Washington limited liability company

By   
Gary M. Merlino, Manager

By   
John R. Jones, Manager

**Tenant:**

PACIFIC MARINE CENTER, LLC, a Washington limited liability company

By:   
Name: JOHN R. JONES  
Title: manager



**Lender:**

**U.S. BANK NATIONAL ASSOCIATION**

By: *Frederick Sexton*  
Name: Frederick Sexton  
Title: EVP

SUBORDINATION, NON-DISTURBANCE, ESTOPPEL AND ATTORNMENT AGREEMENT  
12187-5135/LEGAL23536065.2

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[EXECUTION COPY]

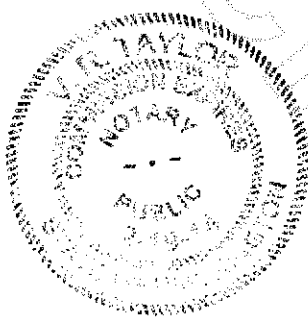


201207020068  
Skagit County Auditor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Gary M. Merlino is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Manager of MJB PROPERTIES LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: JUNE 26, 2012.



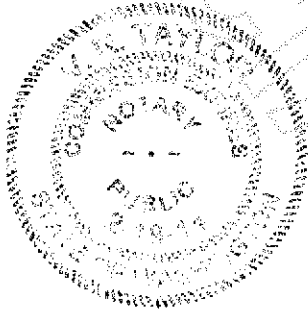
VR Taylor  
(Signature of Notary)  
Valerie Taylor  
(Print or stamp name of Notary)  
NOTARY PUBLIC in and for the State of  
Washington, residing at: REDMOND  
My appointment expires: 2.19.2014



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that John R. Jones is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Manager of MJB PROPERTIES LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: JUNE 26, 2012.



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

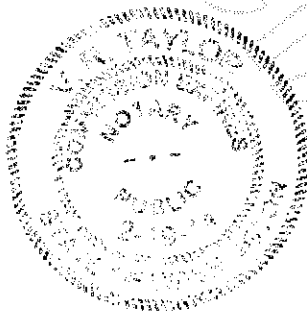




STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that JOHN JONES is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the MANAGER of PACIFIC MARINE CENTER, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: JUNE 26, 2012.



Valerie 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



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that FREDRICK SEYON is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the EVP of U.S. Bank National Association, a national banking association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6/28, 2012.



[Signature]  
(Signature of Notary)  
GARTH BRANDENBURG  
(Print or stamp name of Notary)  
NOTARY PUBLIC in and for the State of  
Washington, residing at: SEATTLE, WA  
My appointment expires: 12/19/15



**EXHIBIT A**  
**to Subordination, Non-Disturbance,**  
**Estoppel and Attornment Agreement**

**LEGAL DESCRIPTION**

**PARCEL "1":**

Lots 27, 28, 31, 32, 34, and 35, "ANACORTES INDUSTRIAL PARK ADDITION," as per plat recorded in Volume 10 of Plats, pages 19 to 21, inclusive, records of Skagit County, Washington;

AND TOGETHER WITH that portion, if any, of vacated 26th Street (vacated under Ordinance Nos. 1487 and 1637, respectively) that upon said vacations reverted to said premises by operation of law.

Situate in the City of Anacortes, County of Skagit, State of Washington.

**PARCEL "2":**

Lot 44, "ANACORTES INDUSTRIAL PARK ADDITION," as per plat recorded in Volume 10 of Plats, pages 19 to 21, inclusive, records of Skagit County, Washington;

TOGETHER WITH that portion of 26th Street vacated by Ordinance No. 255, lying between the East line of "T" Avenue and the inner harbor line.

ALSO a 5-foot-wide strip lying inside the meander line and adjacent thereto and between the North and South lines of the South 40 feet of Lot 6, Block 14 and between the North and South lines of the South ½ of Block 14, vacated Plat of "CURTIS' FIRST ADDITION TO THE CITY OF ANACORTES, WASH.," as per plat recorded in Volume 2 of Plats, page 35, records of Skagit County, Washington.

Situate in the City of Anacortes, County of Skagit, State of Washington.

**PARCEL "3":**

The South 40 feet of Tract 26, all of Tract 27, and the North ½ of Tract 28, PLATE NO. 10, ANACORTES TIDE AND SHORE LANDS in Section 19, Township 35 North, Range 2 East, W.M., according to the official map thereof on file in the office of the State Land Commissioner at Olympia, Washington.



Situate in the City of Anacortes, County of Skagit, State of Washington.

PARCEL "4":

The South 100 feet of the following described tract:

Lot 43, "ANACORTES INDUSTRIAL PARK ADDITION," as per plat recorded in Volume 10 of Plats, pages 19 to 21, inclusive, records of Skagit County, Washington.

ALSO that portion of Tract 26, PLATE NO. 10, ANACORTES TIDE AND SHORE LANDS in Section 19, Township 35 North, Range 2 East, W.M., according to the official map thereof on file in the office of the State Land Commissioner at Olympia, Washington, lying adjacent to the South 100 feet of said Lot 43, between the North and South lines of said South 100 feet extended Easterly.

Situate in the City of Anacortes, County of Skagit, State of Washington.

PARCEL "5":

Lots 45, 46, and 47, "ANACORTES INDUSTRIAL PARK ADDITION," as per plat recorded in Volume 10 of Plats, pages 19 to 21, inclusive, records of Skagit County, Washington, and the vacated portion of 28th Street as vacated by Ordinance 1487 lying East of the Burlington Northern Railroad right-of-way (formerly Great Northern Railroad);

EXCEPT that portion of said Lot 47 lying South of the South line of PLATE NO. 10, ANACORTES TIDE AND SHORE LANDS in Section 19, Township 35 North, Range 2 East, W.M., according to the official map thereof on file in the office of the State Land Commissioner at Olympia, Washington, extended West to the Southwesterly line of said Lot 47.

Situate in the City of Anacortes, County of Skagit, State of Washington.

PARCEL "6":

Tracts 28, 29, and 30, PLATE NO. 10, ANACORTES TIDE AND SHORE LANDS in Section 19, Township 35 North, Range 2 East, W.M., according to the official map thereof on file in the office of the State Land Commissioner at Olympia, Washington; EXCEPT that portion of said Tract 28, lying North of the North line of Lot 45, "ANACORTES INDUSTRIAL PARK ADDITION," as per plat recorded in Volume 10 of Plats, pages 19 to 21, inclusive, records of Skagit County, Washington, extended East to the inner harbor line.



TOGETHER WITH vacated 27th, 28th, and 29th Streets adjoining thereto.

Situate in the City of Anacortes, County of Skagit, State of Washington.

PARCEL "7":

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 degree 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.

Situated in Skagit County, Washington.

