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Skagit County Auditor

9/24/2012 Page 1 of 19 2:33PM

**RETURN ADDRESS:**

First Federal Savings and Loan  
P O Box 351  
Port Angeles WA 98362

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**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

GRANTOR: MOUNT VERNON PLAZA ASSOCIATES, L.L.C.  
GRANTEE: FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF PORT ANGELES  
ADDITIONAL ON PAGE 1: FIRST AMERICAN TITLE INSURANCE COMPANY  
ABBREVIATED LEGAL DESCRIPTION: SECTION 17, TOWNSHIP 34 NORTH, RANGE 4 EAST; PTN. NW SW; SKAGIT COUNTY, WA  
(SEE PAGE 19 FOR FULL LEGAL DESCRIPTION)  
ASSESSOR'S TAX PARCEL NO(S): 340417-3-005-0006 (P25984); 340417-0-080-0000 (P25678)

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GUARDIAN NORTHWEST TITLE CO.

103663-5

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Deed of Trust") is made this 19th day of September, 2012, by MOUNT VERNON PLAZA ASSOCIATES, L.L.C., a Washington limited liability company, as grantor and debtor ("Grantor"), whose address is 650 South Orcas Street, Suite 210, Seattle, Washington 98108; FIRST AMERICAN TITLE INSURANCE COMPANY, as trustee ("Trustee"), whose address is 818 Stewart Street, Suite 800, Seattle, Washington 98101; for the benefit of FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF PORT ANGELES, as beneficiary and secured party ("Beneficiary"), whose address is 105 West Eighth Street, Port Angeles, Washington 98362.

**RECITALS:**

A. Beneficiary has made a loan to Grantor in the amount of Two Million Five Hundred Thousand and 00/100 Dollars (US\$2,500,000.00) (the "Loan"). The Loan is evidenced by a Promissory Note of even date herewith executed by Grantor and delivered

to Beneficiary in the original principal amount of the Loan (hereinafter said Promissory Note, together with interest thereon, and together with any renewals, extensions, amendments or modifications thereof and any replacements or substitutions therefore is called the "Note").

B. Grantor owns an undivided two-fifths (2/5) interest in and to certain real property located in Skagit County, Washington (the "Real Property"), which Real Property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

C. Grantor owns a leasehold interest in the remaining undivided three-fifths (3/5) of the Real Property pursuant to that certain Ground Lease dated September 1, 1968, between Mt. Vernon Plaza Associates, a partnership (Grantor's predecessor in interest), as tenant, and Bert Cyr and Mildred Cyr, his wife, Paul Rockey and Eleonore Rockey, his wife, DeVere Burtenshaw and Isobel Burtenshaw, his wife, Margaret Horwitz, Bernard Jaffe and Audrey Jaffe, his wife, and Julian Lewis and Diane Lewis, his wife, as landlord (said Ground Lease, as now or hereafter amended, modified, extended and renewed is hereinafter called the "Mortgaged Lease"), a Memorandum of which was recorded under Skagit County Auditor's File No. 723389.

D. Grantor is granting Beneficiary a security interest in the Property (as hereinafter defined) pursuant to this Deed of Trust to secure the prompt payment and performance of the Note in full when due.

#### AGREEMENT:

NOW, THEREFORE, Grantor, for an in consideration of the Recitals, which are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees for the benefit of Beneficiary and its successors, indorsees, transferees, participants and assigns as follows, which agreements shall, to the extent permitted by law, be deemed to run with the land:

1. Grant of Security. Grantor does hereby bargain, sell and convey to Trustee, its successors and assigns, in trust, with power of sale, for the benefit of Beneficiary, and creates a security interest for the benefit of Beneficiary in and to all of Grantor's right, title and interest in and to the following property whether now owned or held or hereafter acquired (collectively, the "Property"):

a. The lessee's interest and estate in the Mortgaged Lease and in all recorded or unrecorded extensions, amendments, supplements and restatements thereof, together with all right, title and interest of the lessee under the Mortgaged Lease in and to any and all easements, rights-of-way, sidewalks, gores of land, streets, ways, alleys,



passages, passageways, sewer rights, waters, water courses, water rights and powers, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way demised under the Mortgaged Lease, or any part thereof, or which hereafter shall in any way be demised under the Mortgaged Lease, and all reversions, remainders, income, rents, issues, revenues and profits thereof (collectively, the "Leasehold").

b. Grantor's interest in all buildings and improvements, equipment, inventory, fittings, fixtures and any articles of personal property of every kind and nature whatsoever now or hereafter (1) leased to Grantor under the Mortgaged Lease, or (2) owned by Grantor and either attached, affixed or stored on the Real Property, and any and all alterations now or hereafter located or erected on the Leasehold.

c. Any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, necessary for the operation and use of the Real Property, including, without limitation, permits, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation.

d. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation or other awards or payments with respect to the Property, including interest thereon.

TO HAVE AND TO HOLD the Property, with all of the tenements, hereditaments, easements, appurtenances and other rights and privileges thereunto belonging or in any manner now or hereafter appertaining thereto, for the use and benefit of Beneficiary upon the conditions hereinafter set forth.

Pursuant to Revised Article 9A of the Uniform Commercial Code (RCW Chapter 62A), Grantor, as the debtor, grants Beneficiary, as the secured party, a security interest in that portion of the Property which is properly classified as personal property under Washington law to secure the Secured Obligations (as defined below). This Deed of Trust also constitutes a financing statement filed as a fixture filing pursuant to Revised Article 9A of the Uniform Commercial Code (RCW 62A.9A-334). In this regard, Grantor's organizational identification number is: 602773772.

2. Secured Obligations. This Deed of Trust secures the following (collectively, the "Secured Obligations"):

a. The full and prompt payment of the principal of and interest of the Note (including any and all extensions, renewals, modifications, replacements, and



substitutions thereof) when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter.

b. Payment of such further sums as Grantor may hereafter borrow from Beneficiary when evidenced by another note or instrument reciting it is so secured, payable to Beneficiary or order and made by Grantor or any successor in ownership, together with all extensions, renewals, modifications, amendments and replacements thereto.

c. Payment of all other amounts agreed or provided to be paid by Grantor and such further sums as may be advanced or loaned by Beneficiary to Grantor hereunder or under the Note or under the other Loan Documents (as hereinafter defined).

d. Performance of each agreement of Grantor herein contained or contained in any other agreement given by Grantor or any other persons or entity to Beneficiary for the purpose of further securing any indebtedness hereby secured or executed in connection with the making of the loan secured hereby (hereinafter, the Note, this Deed of Trust, and any and all other agreements or documents executed in connection with the Note are collectively referred to herein as the "Loan Documents").

3. Representations, Warranties, and Agreements. Grantor represents and warrants to Beneficiary and agrees that:

a. Grantor will pay the principal, interest and all other charges payable under the Note according to its terms, and will perform and comply with each and every term, covenant and condition hereof, and of the Note and Loan Documents.

b. At the time of the delivery of this Deed of Trust:

i. Grantor owns the lessee's interest in the Mortgaged Lease, subject to the terms and conditions of the Mortgaged Lease;

ii. The Mortgaged Lease is a valid and subsisting lease;

iii. The Mortgaged Lease is in full force and effect, no default (nor any event which, with notice or lapse of time or both, would constitute such a default) has occurred or is continuing under the Mortgaged Lease;

iv. There have been no renewals or extensions of or supplements, modifications or amendments to the Mortgaged Lease not previously disclosed in writing to Beneficiary;

v. There are no liens or encumbrances against or upon the Mortgaged Lease other than those liens and encumbrances permitted by Beneficiary on



its mortgagee's leasehold policy of title insurance insuring the lien of this Deed of Trust, and none will be created or suffered to be created by Grantor during the term of this Deed of Trust, except as have been disclosed to and approved by Beneficiary in writing and upon such terms and conditions as may be satisfactory to Beneficiary; and

vi. Grantor has good right to make this Deed of Trust.

c. The Real Property that is the subject of this Deed of Trust is not used principally or primarily for agricultural purposes.

d. The indebtedness evidenced by the Note shall not be used for personal, family or household use.

4. Mortgaged Lease. Upon the reasonable request of Beneficiary, Grantor shall, subject to the terms of the Mortgaged Lease, request from the current landlord thereunder ("Landlord") an estoppel certificate, addressed to Beneficiary, stating that there is no default under the Mortgaged Lease, or any state of facts which, with the passage of time or notice or both, would constitute a default thereunder, or if there be any default under the Mortgaged Lease, giving the details thereof. Grantor shall promptly notify Beneficiary in writing of the occurrence of any default (or any event which, with the lapse of time or notice or both, would constitute a default) on the part of or caused by Grantor which would reasonably be expected to result in Landlord having the right to terminate the Mortgaged Lease. If for any reason Grantor cannot timely make any payment under the Mortgaged Lease or perform or comply with any of its obligations under the Mortgaged Lease, Grantor shall notify Beneficiary in sufficient time to enable Beneficiary (but Beneficiary shall not be obligated) timely to make such payments and/or to perform or comply with such other obligations. On receipt by Beneficiary from Grantor pursuant to this Section 4, or from Landlord under the Mortgaged Lease, of any such notice of default by, or inability to make any payment by, Grantor thereunder, Beneficiary may rely thereon and, unless such default or payment is being contested by Grantor, after notice to Grantor, take such action as Beneficiary deems necessary or desirable to cure such default.

In addition, Beneficiary shall have the right to request from Landlord a written notice of any default by Grantor under the Lease and the opportunity (but not the obligation) to cure such default.

5. Taxes, Assessments, and Insurance Premiums. Grantor shall perform the following:

a. Pay all taxes, assessments and other charges and encumbrances levied on the Property before any penalty for nonpayment attaches thereto.



b. Keep the Property continuously insured against loss by fire, windstorm, and other hazards, casualties and contingencies, in such amounts and for such periods as may be required from time to time by Beneficiary. All insurance shall be carried in companies approved by Beneficiary and the policies and renewals thereof shall be held by, and pledged to, Beneficiary (unless Beneficiary shall direct or permit otherwise) as additional security hereunder, and shall have attached thereto a mortgagee clause acceptable to Beneficiary, making all loss or losses under such policies payable to Beneficiary, its successors and assigns, as its or their interest may appear. In the event of loss or damage to the Property, Grantor shall give immediate notice in writing to Beneficiary, who may make proof of loss if not made promptly by Grantor, and each insurance company concerned is hereby authorized and directed to make payment for such loss, to the extent of the indebtedness hereby secured, directly to Beneficiary instead of to Grantor and Beneficiary jointly, and the insurance proceeds or any part thereof may be applied by Beneficiary toward reimbursement of all costs and expenses of Beneficiary in collecting such proceeds, and the balance, at Beneficiary's option, to the indebtedness due or to become due under the Note, to fulfill any other covenant herein or any other obligation of Grantor to Beneficiary, to the restoration or repair of the property damaged, or released to Grantor. In the event Beneficiary releases such proceeds to Grantor, Grantor shall be obligated to use such proceeds to restore or repair the Property unless Beneficiary otherwise specifies in writing.

c. In the event of foreclosure of this Deed of Trust or other transfer of Grantor's interest in the Mortgaged Lease in extinguishment of the indebtedness secured hereby, all right, title, and interest of Grantor in and to any insurance policies then in force shall pass to the purchaser or grantee. Grantor hereby irrevocably appoints Beneficiary as Grantor's attorney-in-fact, in Grantor's name, to file all proofs of claim, to negotiate, accept, and endorse all settlements, to assign and transfer all insurance policies and proceeds to a purchaser upon foreclosure of this Deed of Trust and to otherwise deal in all respects with all insurance carriers with respect to any and all insurance carried or required hereby to be carried by Grantor with respect to the Property of any portion thereof.

If Grantor fails to timely pay or perform any obligation set forth above in this Section 5, Beneficiary, in its sole discretion, may (but in no event shall be obligated to), at Grantor's expense, pay and perform such obligation, and all sums advanced by Beneficiary for such purposes shall be deemed to have been advanced pursuant to Section 10 of this Deed of Trust.

6. Repairs, Modifications, and Waste. Grantor will abstain from and will not suffer the commission of waste on the Property and will keep any and all buildings, improvements, fixtures, equipment and appliances now or hereafter thereon in good repair and will make replacements thereto as and when the same become necessary. Failure by Grantor to pay taxes and/or assessments assessed against the Property, or any



installment thereof, or any insurance premium upon policies covering the Property or any part thereof, shall, without limitation, constitute waste, and shall entitle Beneficiary to all remedies provided for by law. Grantor further agrees to and does hereby consent to the appointment of a receiver, should Beneficiary elect to seek such relief. Grantor will comply promptly with all laws, ordinances, regulations, and orders of all public authorities having jurisdiction over the Property relating to the use, occupancy, and maintenance thereof, and shall upon request promptly submit to Beneficiary evidence of such compliance. Nothing herein shall be deemed to prohibit Grantor from contesting the enforceability or applicability of any law, ordinance, regulation, or order; provided, however, that Beneficiary, in its sole discretion, may require that Grantor comply with any such law, ordinance, regulation, or order during the pendency of any such contest and all appeals therefrom. Beneficiary may at any time and from time to time upon notice and during regular business hours, unless Beneficiary, in its sole discretion, deems that entry is required on a more immediate basis, enter or cause entry to be made upon the Property. If the Property, in the sole judgment of Beneficiary, requires inspection, repair, care, or attention of any kind or nature not theretofore given by Grantor, Beneficiary shall provide Grantor with prior written notice of the required inspection, repair, care, or attention and a reasonable designated period of time in which Grantor shall have an opportunity to cure the problem. If uncured at the end of this period, and Beneficiary, in its sole discretion, deems that the required inspection, repair, care, or attention needs immediate attention, Beneficiary may (but in no event shall be obligated to), at Grantor's expense, inspect, repair, and/or maintain the same as Beneficiary deems necessary or advisable, and all sums advanced by Beneficiary for such purposes shall be deemed to have been advanced pursuant to Section 10 of this Deed of Trust. Grantor will not permit the Property or any portion thereof to be used for any unlawful purpose. No underground storage tanks shall be installed on the Property. No building or other improvement on any part of the Property shall be removed, demolished, or altered without the prior written consent of Beneficiary, except that Grantor shall have the right, without such consent, to remove and dispose of, free from the lien of this Deed of Trust, such personalty and equipment as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal, any such equipment shall be replaced with other new equipment of like kind and quality, free from any security interest, lien, or encumbrance, and by such removal and replacement, Grantor shall be deemed to have subjected the replacement equipment to the lien of this Deed of Trust.

7. Due on Sale. Grantor shall not sell, assign, transfer or convey all or any part of its interest in the Mortgaged Lease and the Property or any portion thereof without the prior written consent of Beneficiary. If Grantor should convey its interest in the Property or any portion thereof, Beneficiary shall have the right, at its sole option, thereafter to declare all sums secured hereby and then unpaid to be immediately due and payable, together with any prepayment charge, and thereupon to exercise all of its rights and remedies for an Event of Default (as defined below) under this Deed of Trust. For



purposes hereof, a "conveyance" of Grantor's interest in the Property shall include, without limitation (a) any voluntary or involuntary disposition (by operation of law or otherwise) of legal or beneficial title to the Property by whatever means, (b) any voluntary or involuntary disposition (by operation of law or otherwise) of legal or beneficial title to controlling interests in Grantor, and (c) there is a transfer of more than fifty percent (50%) of the beneficial interests in Grantor, or more than fifty percent (50%) of the beneficial interest in any member of Grantor which owns more than fifty percent (50%) of the beneficial interests in Grantor.

Subject to the restrictions set forth in this Section, if ownership of the Property or any part thereof become vested in a person or persons other than Grantor, Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and the Loan, without in any way releasing, discharging, or otherwise affecting Grantor's liability hereunder or thereunder. No sale of the Property, and no forbearance or extension by Beneficiary, shall in any way whatever operate to release, discharge, or otherwise affect the lien of this Deed of Trust or the liability of Grantor hereunder.

8. No Other Financing. Grantor has not, and will not, without the prior written consent of Beneficiary, mortgage or pledge the Property or any part thereof as security for any other loans or indebtedness of Grantor or any other party. If any such mortgage or pledge is entered into without the prior written consent of Beneficiary, the entire indebtedness secured hereby may, at the option of Beneficiary, be declared immediately due and payable without notice. Further, Grantor also shall pay any and all other obligations, liabilities, or debts which may become liens, security interests, or encumbrances upon or charges against the Property for any repairs or improvements that are now or may hereafter be made thereon, and shall not, without Beneficiary's prior written consent, permit any lien, security interest, encumbrance, or charge of any kind to accrue and remain outstanding against the Property or any part thereof, or any improvements thereon, irrespective of whether such lien, security interest, encumbrance, or charge is junior to the lien of this Deed of Trust. Notwithstanding the foregoing, if any personal property by way of additions, replacements, or substitutions is hereafter purchased and installed, affixed, or placed by Grantor on the Property under a security agreement the lien or title of which is superior to the lien created by this Deed of Trust, all the right, title, and interest of Grantor in and to any deposits or payments made thereon by Grantor, shall nevertheless be and are hereby assigned to Beneficiary and are covered by the lien of this Deed of Trust.

9. Default. Any one of the following acts or occurrences shall constitute an event of default ("Event of Default") under this Deed of Trust and shall entitle Beneficiary to exercise any one or any combination of the remedies available to Beneficiary under Section 10 below:



a. Default in payment when due of any indebtedness evidenced by the Note or secured hereby, the failure to pay when due any other sums of money required to be paid under any of the Loan Documents or a default under Subsections b through h below; or

b. Failure by Grantor or any other party, including any guarantor of the Note, to comply, after thirty (30) days prior written notice, with any of the covenants, terms, conditions, restrictions or agreements contained in this Deed of Trust, any of the other Loan Documents, or any other note, deed of trust, guaranty or other loan document delivered by Grantor, or any guarantor of the Note, to Beneficiary for any other obligation of Grantor, except a failure to pay money as required in Subsection a above or a default under Subsections c through h below; or

c. Failure by Grantor to comply with any of the covenants, terms, conditions, restrictions or agreements contained in the Mortgaged Lease; or

d. Grantor, any member of Grantor, or any guarantor of the Note (collectively, a "Loan Party") applies for or consents to the appointment of a receiver or trustee for it or any portion of its property, or if such receiver or trustee is appointed for any Loan Party or its property, or any Loan Party makes an assignment for the benefit of creditors, or any Loan Party admits in writing its inability to pay its debts as they become due, or any Loan Party becomes insolvent, or a petition is filed by any Loan Party pursuant to any of the provisions of the United States Bankruptcy Code, as amended; or

e. A petition is filed against any Loan Party pursuant to any of the provisions of the United States Bankruptcy Code, as amended, or there is an attachment or sequestration of any of the property of any Loan Party and the same is not discharged or bonded within sixty (60) days; or

f. Any representation or disclosure made to Beneficiary, in this Deed of Trust, the Note or any other Loan Document, by any Loan Party proves to be materially false or misleading on the date when such representation or disclosure was made, whether or not that representation or disclosure appears in this Deed of Trust, or any Loan Party omits to provide any information that makes any such representation or disclosure materially false or misleading; or

g. A transfer of the Property in violation of Section 7 hereof occurs;  
or

h. A default occurs (after any applicable cure period) under any loan Grantor, any guarantor of the Note, any beneficial owner of Grantor, or any entity in which a beneficial owner of Grantor has an interest, may now or hereafter have with Beneficiary.



10. **Remedies.** Upon the occurrence of an Event of Default, Beneficiary shall immediately have the option without further notice, except as may be required by law, in addition to and not in lieu of or substitution for, all other rights and remedies provided herein or at law or in equity, to do all or any of the following:

a. Beneficiary may, at its option and without notice to or demand upon Grantor, independently, concurrently, or successively exercise any one or more of the following rights and remedies: (i) declare all of the Secured Obligations immediately due and payable, (ii) give notice of such Event of Default to Landlord, (iii) act in all respects as lessee in respect of the Mortgaged Lease and perform on behalf of and for the account of Grantor any of the obligations of the lessee thereunder, (iv) enter into and upon all or any part of the Property and exclude Grantor, its agents and servants wholly therefor, (v) bring a court action to enforce its rights and remedies, (vi) judicially foreclose this Deed of Trust as a mortgage, (vii) nonjudicially foreclose this Deed of Trust under the power of sale, (viii) exercise its rights with respect to the leases and the rents of the Property pursuant to this Deed of Trust, and/or (ix) exercise any other rights and remedies provided in this Deed of Trust, the Note and under any other Loan Document, or available at law or equity. Without limiting the generality of the foregoing, to the extent permitted by RCW 61.24.100 or otherwise permitted by law, Beneficiary may seek and obtain a deficiency judgment following the completion of a trustee's sale of all or part of the Property.

b. Advance such sums as Beneficiary, in its sole discretion, deems necessary to cure the default. In making any such advance, Beneficiary shall be entitled to rely upon the genuineness and accuracy of any demand, document, claim, statement, or invoice presented to Beneficiary, and Beneficiary shall be under no duty whatever to independently investigate or confirm the genuineness or accuracy of, or any other fact pertaining to, the demand, document, claim, statement, or invoice so presented. Repayment of all monies so advanced by Beneficiary shall be secured hereby and shall constitute a further lien upon the Property, payable upon demand with interest from the date of each advance to the date of payment at the rate of default set forth in the Note (the "Default Rate"). Beneficiary shall in no event be obligated to make any advance to or for the benefit of Grantor and no advance by Beneficiary shall cure Grantor's default nor preclude Beneficiary from foreclosing this Deed of Trust or from exercising any other right or remedy available to Beneficiary on account of such default.

c. For any sale under the power of sale granted by this Deed of Trust, Trustee shall record and give all notices required by law, after which the Property may be sold upon such terms and conditions as may be specified by Beneficiary and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place designated for the sale. If the Property includes separate lots or parcels, Beneficiary may designate their order of sale or elect to sell them as a whole. Any personal property may be sold separately or as a whole at the same time and place as a



sale of any real property or at different times and places. Grantor and the holder of any subordinate lien on any portion of the Property waive any right to require the marshaling of assets or to otherwise direct the order in which any of the Property is sold. Trustee shall be acting as the agent of Beneficiary if directed to sell any personal property. Upon any sale, Trustee shall execute and deliver to the purchaser a deed or bill of sale conveying the Property sold, without any covenant or warranty, express or implied. The recitals in the Trustee's deed indicating that the sale was conducted in compliance with all the requirements of law shall be presumptive evidence of compliance.

d. With respect to any personal property, Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code and all other rights and remedies provided in this Deed of Trust, the Note and any other Loan Document and under the power of sale granted by this Deed of Trust. In exercising its remedies, Beneficiary may proceed against the real property and personal property separately or together and in any order whatsoever. The personal property may be sold at any one or more public or private sales as permitted by applicable law. Beneficiary shall give Grantor five (5) days' prior written notice of the time and place of any public or private sale of the personal property, which notice Grantor agrees is commercially reasonable.

e. Grantor shall pay on demand all of Beneficiary's and Trustee's costs and expenses incurred in administering and enforcing this Deed of Trust, collecting any amounts payable under this Deed of Trust, and realizing on the Property and any other collateral securing any portion of the Secured Obligations, including legal and other professional fees, foreclosure costs and title charges, together with interest from the date of payment at the Default Rate.

f. Except as otherwise required by law, the proceeds of any sale under this Deed of Trust shall be applied against the Secured Obligations in such order of priority as Beneficiary shall determine in its sole discretion.

g. If the Property is sold at a judicial foreclosure sale, the purchaser may make such repairs or alterations to the Property as the purchaser deems appropriate in its sole discretion for the proper operation, care, preservation, and protection of the Property. The costs of the repairs or alterations, together with interest from the date of payment at the Default Rate, shall be added to and become a part of the amount required to be paid upon any redemption.

h. Except as otherwise specifically provided in this Deed of Trust, any prepayment premium required under the Note shall be payable by Grantor upon any voluntary or involuntary payment of principal before the original due date under the Note. Without limiting the generality of the foregoing, Grantor expressly agrees that any principal payment made after an Event of Default shall constitute a prepayment requiring



payment of the prepayment premium notwithstanding an acceleration of the Loan by Beneficiary. The debt owing to Beneficiary at the time of any judicial or nonjudicial foreclosure sale of the Property shall include the prepayment premium calculated on the principal balance owing on the date of sale.

i. Every right and remedy provided in this Deed of Trust, the Note and any other Loan Document, or by law or equity, shall be distinct and cumulative to all other rights or remedies, and may be exercised concurrently, independently, or successively in any order whatsoever, without regard to the adequacy of Beneficiary's security. Any forbearance by Beneficiary in exercising any right or remedy shall not be a waiver of or preclude the exercise of the right or remedy, and no waiver by Beneficiary of any particular default shall constitute a waiver of any other default in the future. The exercise of any right or remedy shall not constitute a cure or waiver of any Event of Default or otherwise prejudice Beneficiary of any of its other rights or remedies.

j. To the extent the Deed of Trust Act of the State of Washington (RCW Chapter 61.24, as now existing or hereafter amended) or other statute requires that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Grantor or any other party liable for repayment of the obligations secured by this Deed of Trust, the term "fair market value" or "fair value" shall include those matters required by law and shall also include the additional factors set forth below:

i. The Property shall be valued "AS IS" and "WITH ALL FAULTS" and there shall be no assumption of restoration or refurbishment of improvements, if any, after the date of the foreclosure; and

ii. An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs relating to the sale of the Property, including but not limited to brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges which are incurred by a seller of property.

Grantor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value and/or fair value.

11. Condemnation. In the event the Property or any part thereof is taken under the power of eminent domain, the entire award or payment in lieu of condemnation, to the full extent of the indebtedness secured hereby, shall be paid to Beneficiary and applied toward reimbursement of all of Beneficiary's costs and expenses incurred in connection with collecting such award or payment, and all or any portion of the balance, at Beneficiary's option, to the indebtedness due or to become due under the Note, to satisfy any other Secured Obligation or to repair or restore the Property.



Beneficiary is hereby empowered in the name of Grantor to receive, and give acquittance for, any such award or payment, whether it is joint or several; provided, however, that Beneficiary shall not be held responsible for failure to collect any such award or payment, regardless of the cause of such failure. Application by Beneficiary of any condemnation proceeds toward payment of any principal and interest due or to become due under the Note shall not excuse Grantor from making any regularly scheduled payments due thereunder, nor shall such application extend or reduce the amount of such payments.

12. Assignment of Rents, Income, and Profits. As additional security for the due and punctual performance and observance of the Secured Obligations, Grantor assigns, transfers, and sets over unto Beneficiary, all the rents, issues, profits, and income under all leases or occupancy agreements or arrangements, however evidenced or denominated, upon or affecting the Property (including any extensions, amendments, or renewals thereof), whether such rents, issues, profits, and income are due or are to become due, including all such leases in existence or coming into existence during the period this Deed of Trust is in effect. This Deed of Trust shall run with the land and be good and valid as against Grantor and those claiming by, under, or through Grantor, from the date of recording of this Deed of Trust. This Deed of Trust shall continue to be operative during the foreclosure or any other proceedings taken to enforce this Deed of Trust. In the event of a foreclosure sale which results in a deficiency, this Deed of Trust shall stand as security during the redemption period for the payment of such deficiency. This Deed of Trust is given as collateral security only and does not and shall not be construed as obligating Beneficiary to perform any of the covenants or undertakings required to be performed by Grantor in any leases.

Prior to any Event of Default, Grantor shall collect and receive all rents for the benefit of Beneficiary and Grantor. Grantor shall apply the rents first to the payment of taxes, assessments, and other charges on the Property, second to the costs of insurance, maintenance and repairs required under this Deed of Trust, third to the costs of discharging the obligations of Grantor under any leases, and fourth to the Secured Obligations then due and payable, with the balance, if any, for the account of Grantor. Upon Beneficiary's delivery of written notice to Grantor of an Event of Default stating that Beneficiary is exercising its rights to the rents, and without the necessity of Beneficiary or a receiver taking control of the Property, Grantor shall pay to Beneficiary all rents then held or subsequently collected by Grantor, and direct each tenant to pay all future rents to Beneficiary. Grantor appoints Beneficiary as Grantor's attorney-in-fact to make such direction to tenants upon Grantor's failure to do so. Grantor agrees that all payments made to Beneficiary by any tenant shall be in full discharge of the tenant's obligations to Grantor.

After any Event of Default, Grantor appoints Beneficiary as Grantor's attorney-in-fact to take full control of the Property and perform all acts necessary and



appropriate for the operation and maintenance of the Property, including (i) the execution, enforcement, cancellation, or modification of any lease, (ii) the collection of rents, (iii) the removal and eviction of tenants, (iv) the making of alterations and repairs to the Property, and (v) the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as Beneficiary deems appropriate in its sole discretion to protect the security of this Deed of Trust. After an Event of Default, Grantor agrees that Beneficiary shall be entitled to the appointment of a receiver, regardless of the adequacy of Beneficiary's security. Grantor waives any right to notice of any application for a receiver, it being intended that Beneficiary may seek the appointment of a receiver ex parte. The receiver shall serve without bond and may be Beneficiary or an employee or agent of Beneficiary. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by receivers, all the rights and powers granted to Beneficiary in this Section. Beneficiary or the receiver shall receive a reasonable fee for managing the Property. Entry upon and taking possession by a receiver other than Beneficiary shall not constitute possession by Beneficiary, and Beneficiary shall not be a "mortgagee in possession" before its actual entry upon and taking possession of the Property. Beneficiary shall not be liable to Grantor, anyone claiming under or through Grantor, or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section.

All rents collected after the delivery of written notice to Grantor of an Event of Default shall be applied first to the costs of managing the Property and collecting the rents; including attorneys' fees, receiver's fees and costs, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments, and other charges on the Property, and the costs of discharging the obligations of Grantor under the leases. All remaining rents shall be applied to the other Secured Obligations in such order of priority as Beneficiary may determine in its sole discretion. To the extent the costs of managing the Property, collecting the rents and discharging the obligations of Grantor under the leases exceed the rents collected, the excess costs shall be payable by Grantor upon demand, together with interest from the date of payment at the Default Rate.

Beneficiary shall at no time have any obligation whatever to attempt to collect rent from any tenant or occupier of the Property notwithstanding that such tenants and occupiers may not be paying rent to either Grantor or Beneficiary. Further, Beneficiary shall at no time have any obligation whatever to enforce any other obligations owed by tenants or occupiers of the Property to Grantor.

Grantor shall at no time collect advance rent under any lease upon, affecting or pertaining to the Property or any part thereof in excess of one month (other than as a security deposit) and Beneficiary shall not be bound in any respect by any rent prepayment made or received in violation of the terms hereof.



Grantor expressly covenants and agrees that if the lessee or any of the lessees under any lease or leases heretofore or hereafter entered into by Grantor with respect to the Property, shall fail to perform and fulfill any term, covenant, condition, or provision in any said lease or leases, or any of them, on its or their part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Grantor shall suffer or permit to occur any breach or default under the provisions of any such lease or leases of the Property and such failure, breach, or default shall continue for thirty (30) days without Grantor commencing and pursuing in good faith and with due diligence its available remedies under the lease or leases, if commercially reasonable under the circumstances, then, and in any such event, such failure to act by Grantor shall constitute an Event of Default hereunder and at the option of Beneficiary, and without notice to Grantor, all unpaid indebtedness secured by this Deed of Trust shall become immediately due and payable.

13. Attorneys' Fees and Expenses. Grantor shall reimburse Beneficiary for all costs, including reasonable attorneys' fees, incurred by Beneficiary in enforcing any of its rights or remedies on account of a default and/or an Event of Default under this Deed of Trust. Grantor shall reimburse Beneficiary for all costs, including reasonable attorneys' fees, incurred by Beneficiary in case Beneficiary becomes a party, either as plaintiff or defendant, to any legal proceedings in relation to the Property or the lien granted hereby. Payment of such sums shall be secured hereby and shall be payable upon demand with interest from the date of each advance to the date of payment at the Default Rate.

14. Additional Documents and Security Agreement. Grantor shall execute, acknowledge, and deliver any and all such further conveyances, documents, mortgages, and assurances as Beneficiary may reasonably require for accomplishing the purposes hereof, including financing statements required by Beneficiary to protect its interest under the provisions of the Washington Uniform Commercial Code, as amended, forthwith upon the written request of Beneficiary. Beneficiary may execute, record, file, rerecord, and refile any and all such documents for and in the name of Grantor and Grantor hereby irrevocably appoints Beneficiary as agent and attorney-in-fact of Grantor for the foregoing purposes. This instrument is intended by the parties to be, and shall be construed as, a security agreement, as that term is defined and used in Revised Article 9 of the Washington Uniform Commercial Code, as amended, and shall grant to Beneficiary a security interest in that portion of the Property with respect to which a security interest can be granted under Revised Article 9 of the Washington Uniform Commercial Code, as amended, which security interest shall also include a security interest in all tangible and intangible personal property, including without limitation, to the extent of Grantor's present or future interest and subject to the limitations set forth in Section 15 below, all licenses, permits, and general intangibles now or hereafter located upon the Property, or related to or used or usable in connection with any present or future operation upon such property, and a security interest in the proceeds of all insurance policies now or hereafter covering all or any part of such collateral.



15. Other Contracts. Grantor hereby assigns to Beneficiary, as further security for the indebtedness secured hereby, Grantor's interest in all agreements, contracts (including contracts for the lease or sale of the Property or any portion thereof), licenses, and permits affecting the Property. Such assignment shall not be construed as a consent by Beneficiary to any agreement, contract, license, or permit so assigned, or to impose upon Beneficiary any obligations with respect thereto. Grantor shall not cancel or amend any of the agreements, contracts, licenses, and permits hereby assigned (nor permit any of the same to terminate if they are necessary or desirable for the operation of the Property) without first obtaining, on each occasion, the written approval of Beneficiary; provided, however, that the change of a subcontractor or change to a contract that does not materially affect the operation of the Property shall not require Beneficiary's prior written approval. This Section shall not be applicable to any agreement, contract, license, or permit that terminates if it is assigned without the consent of any party thereto (other than Grantor) or issuer thereof, unless such consent has been obtained or this Deed of Trust is ratified by such party or issuer; nor shall this Section be construed as a present assignment of any contract, license or permit that Grantor is required by law to hold in order to operate the Property for the purposes intended.

16. INTENTIONALLY DELETED.

17. Notices. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail (return receipt requested and postage prepaid), sent by a reputable overnight delivery service, or personally delivered to the parties at the addresses set forth on page one of this Deed of Trust (or at such other addresses as shall be given in writing by any party to the other), and shall be deemed complete upon any such mailing, sending or delivery.

18. Successors and Assigns. All of the covenants and conditions hereof shall run with the land and shall be binding upon the successors and assigns of Grantor, and shall inure to the benefit of the successors and assigns of Beneficiary.

19. No Waiver. No waiver by Beneficiary of any right or remedy granted hereunder shall affect or extend to any other right or remedy of Beneficiary hereunder, nor affect the subsequent exercise of the same right or remedy by Beneficiary for any further or subsequent default by Grantor hereunder, and all such rights and remedies of Beneficiary hereunder are cumulative. Time is of the essence.

20. Controlling Law and Severance. This Deed of Trust shall be construed in each and every respect in accordance with the laws of the State of Washington. In the event any provision herein should be held unenforceable by a court of competent jurisdiction, such court is hereby authorized to amend such provision so that it will be enforceable to the fullest extent permitted by law, and all remaining provisions shall continue in full force without being affected, impaired, or invalidated thereby in any way.



Grantor acknowledges and agrees that this document constitutes, among others, four (4) separate agreements: a Deed of Trust, a Security Agreement, an Assignment of Leases and Rents and a UCC fixture filing, each of which may be construed and enforced independently of the others even though the provisions hereof are common to all.

21. Jury Trials. It is mutually agreed by Grantor and Beneficiary that they each waive trial by jury in any action, proceeding, or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way connected with the Note, this Deed of Trust or the loan secured hereby.

22. Pronouns. Whenever required by the context, any pronoun used in this Deed of Trust shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa

23. Oral Agreements. Notice is hereby given that:

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the date first written above.

"GRANTOR"

MOUNT VERNON PLAZA ASSOCIATES, L.L.C.,  
a Washington limited liability company

By

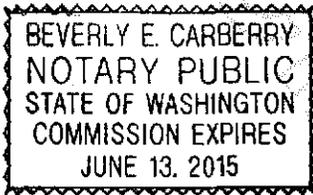
  
Eli Genauer, Managing Member



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that ELI GENAUER 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 Managing Member of MOUNT VERNON PLAZA ASSOCIATES, L.L.C., to be the free and voluntary act and deed of said limited liability company, for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed this 19<sup>th</sup> day of September, 2012.



Beverly E. Carberry  
(Signature of Notary)

(Print or stamp name of Notary)  
NOTARY PUBLIC in and for the State  
of Washington  
My Appointment Expires: \_\_\_\_\_



**EXHIBIT A  
LEGAL DESCRIPTION**

**PARCEL "A":**

THAT PORTION OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., LYING WEST OF THE PACIFIC NORTHWEST TRACTION COMPANY RIGHT OF WAY, EXCEPT THE SOUTH 450 FEET THEREOF, AND EXCEPT THOSE PORTIONS THEREOF LYING WITHIN THE BOUNDARIES OF THE COUNTY ROAD AND STATE HIGHWAY RIGHTS OF WAY, AND EXCEPT THAT PORTION THEREOF LYING EAST OF A LINE RUNNING SOUTH FROM A POINT ON THE SOUTH LINE OF THE A.W. FURBER ROAD THAT IS 262.33 FEET WEST OF THE WEST LINE OF THE OLD PACIFIC NORTHWEST TRACTION COMPANY RIGHT OF WAY, AND EXCEPT THE NORTH 10 FEET CONVEYED TO THE CITY OF MOUNT VERNON BY DEEDS RECORDED UNDER AUDITOR'S FILE NOS. 816623 THROUGH 816628, INCLUSIVE.

ALSO EXCEPT THAT PORTION OF ROAD RIGHT-OF-WAY AWARDED TO CITY OF MOUNT VERNON UNDER SKAGIT COUNTY SUPERIOR COURT NO. 08-2-00768-8.

**PARCEL "B":**

THAT PORTION OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST SIDE OF THE STATE HIGHWAY, 450 FEET NORTH OF THE SOUTH LINE OF SAID SUBDIVISION; THENCE SOUTH ALONG THE EAST LINE OF SAID HIGHWAY, 115 FEET; THENCE EAST PARALLEL TO THE SOUTH LINE OF SAID SUBDIVISION, 211 FEET; THENCE NORTH TO A POINT 211 FEET EAST OF THE POINT OF BEGINNING AND 450 FEET NORTH OF THE SOUTH LINE OF SAID SUBDIVISION; THENCE WEST TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION OF ROAD RIGHT-OF-WAY AWARDED TO CITY OF MOUNT VERNON UNDER SKAGIT COUNTY SUPERIOR COURT NO. 08-2-00768-8.

ALL SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

