

Return Address:

Daniel J. Bugbee
Karr Tuttle Campbell
1201 Third Avenue, Ste 2900
Seattle, Washington, 98101



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Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

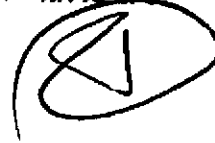
Document Title(s) (or transactions contained therein): (all areas applicable to your document <u>must</u> be filled in) Order Appointing Custodial Receiver Over Real Property And Fixtures And Equipment Related To The Real Property With Power Of Sale
Reference Number(s) of Documents assigned or released: N/A
Grantor(s) (Last name, first name, initials) 1. CHOI, ALAN 2. CHOI, SOON JA
Grantee(s) (Last name first, then first name and initials) 1. Whidbey Island Bank 2. McCallen & Sons, Inc.
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) (0.2300 ac) N 135FT OF W 110FT OF NW1/4 SW1/4 LESS DT 15 DK 1 RDS Please see full legal on attached (Exh. A to the Order)
Assessor's Property Tax Parcel/Account Number: P22430
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

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SKAGIT COUNTY, WA

2013 FEB -1 AM 10:18



SUPERIOR COURT OF WASHINGTON FOR SKAGIT COUNTY

WHIDBEY ISLAND BANK, successor-in-
interest to the Federal Deposit Insurance
Corporation, as receiver of City Bank,

Plaintiff,

vs.

ALAN CHOI and SOON JA CHOI,
husband and wife d/b/a Evergreen Food
Mart,

Defendants.

No. 13-2-00054-0

ORDER APPOINTING CUSTODIAL
RECEIVER OVER REAL PROPERTY
AND FIXTURES AND EQUIPMENT
RELATED TO THE REAL PROPERTY
WITH POWER OF SALE

For good cause shown, and pursuant to Chapter 7.60, RCW, the Court grants
Plaintiff's Application for Appointment of Custodial Receiver Over Real Property and
Fixtures and Equipment Related to the Real Property with the Power of Sale and makes
the following findings and enters the following order:

I. FINDINGS

The Receivership Property

1.1 The receivership property consists of the real property legally described
in the attached **Exhibit A** (the "Real Property"), and all fixtures and equipment related
to the Real Property and the former grocery/convenience store operations at the Real

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Property (the "Fixtures and Equipment") (collectively the Real Property and the Fixtures and Equipment are hereafter referred to as the "Receivership Property").

1.2 The address of the Real Property that is the subject of the Deed of Trust is 16016 McLean Road, Mount Vernon, Washington (formerly 1402 McLean Road) (Skagit County Parcel No. 340323-3-004-0000). The Real Property consists of a non-operating grocery/ convenience store.

1.3 The Plaintiff is Whidbey Island Bank, N.A. successor-in-interest to the Federal Deposit Insurance Corporation, as receiver of City Bank ("Plaintiff," "Lender," or "Beneficiary").

1.4 Defendants Alan Choi and Soon Ja Choi, are husband and wife, dba Evergreen Food Mart (collectively "Borrower", "Grantor", or "Defendants").

Note, Deed of Trust, Assignment of Rents & Security Agreement

Lender and Borrower are parties to a Promissory Note dated May 18, 1993, in the original principal amount of \$281,000.00, and a maturity date of May 18, 2018 (the "Note"). The Note is secured by:

(a) A Deed of Trust from Borrower, dated May 18, 1993, and recorded under Recording No. 9305210054, records of Skagit County, Washington ("Deed of Trust");

(b) A Commercial Security Agreement from Borrower, dated May 18, 2003 ("Security Agreement"); and



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MARSH MUNDORF PRATT SULLIVAN
+ McKENZIE, P.S.C.
16504 9TH AVENUE S.E., SUITE 203
MILL CREEK, WA 98012
(425) 742-4545 FAX: (425) 745-6060

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1 (c) An Assignment of Leases and Rents from Borrower, dated May 18,
2 1993, and recorded under Recording No. 9305270089, records of Skagit County,
3 Washington ("Assignment of Rents").

4 1.5 Lender is the holder of and is in possession of the Note. Lender is also
5 the beneficiary and secured party under the Deed of Trust, the Security Agreement, and
6 the Assignment of Rents. The Assignment of Rents, on page 1, provides for an
7 assignment by Borrower to Lender of all of Borrower's right, title, and interest in, to
8 and under all leases or rental agreements affecting the Real Property identified below.
9 Section 3 of the Deed of Trust provides for an assignment by Borrower to Lender of all
10 rents, royalties, issues, and profits arising from the Real Property identified below.
11

12 1.6 Under the Deed of Trust, Lender has a valid and perfected lien on and
13 security interest in the Real Property, and in the Rents.

14 1.7 Under the Security Agreement, Lender has a valid and perfected lien on
15 the Fixtures and Equipment relating to the Real Property and the grocery/convenience
16 store operations at the Real Property.
17

18 ***Grounds for Appointment of Receiver Pursuant to RCW 7.60.025***

19 1.8 Borrower is in default of the Secured Obligations, including the
20 following:

21 1.8.1 Failure to make the complete monthly payments, maturity
22 payment and charges due under the Note. As of December 5, 2012, the past due
23 amounts of missed monthly payments and late fees was \$24,128.68. As of December 5,
24 2012, the total amount due and owing under the Note was \$136,425.37 consisting of
25

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1 \$128,425.37 in principal, \$7,768.85 in accrued interest, and \$395.56 in late fees, plus
2 attorneys fees and costs. Interest continues to accrue on the Note at the note rate of
3 5.75% per annum.

4 1.9 Borrower has failed to pay real property taxes since 2012.

5 1.10 The appointment of the Receiver is authorized section 3 of the Deed of
6 Trust, which provides:
7

8 Upon default in any of the covenants of this instrument or
9 the note or loan agreement secured hereby, the Beneficiary
10 or his assigns may without notice and without regard to
11 the adequacy of security for the indebtedness secured,
12 either personally or by attorney or agent without bringing
13 any action or proceeding, **or by a receiver to be**
14 **appointed by the court, enter upon and take possession**
15 **of said property or any part thereof,** and do any acts
16 which Beneficiary deems proper to protect the security
17 hereof, and either with or without taking possession of
18 said property, collect and receive the rents, royalties,
19 issues, and profits thereof, including rents accrued and
20 unpaid, and apply the same, less costs of operation and
21 collection, upon the indebtedness secured by this Deed of
22 Trust, said rents, royalties, issues, and profits, being
hereby assigned to the Beneficiary as further security for
the payment of such indebtedness. Exercise of rights under
this paragraph shall not cure or waive any default or notice
of default hereunder or invalidate any act done pursuant to
such notice but shall be cumulative to any right and
remedy to declare a default and to cause notice of default
to be recorded as hereinafter provided, and cumulative to
any other right and/or remedy, or provided by law, and
may be exercised concurrently or independently.
Expenses incurred by Beneficiary hereunder including
reasonable attorney's fees shall be secured hereby.

23 (emphasis added).

24 1.11 The appointment of a receiver is authorized by the Security Agreement,
25 which provides on page 4 that:

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1 **Appoint Receiver.** To the extent permitted by applicable
2 law, Lender shall have the following rights and remedies
3 regarding the appointment of a receiver: (a) Lender may
4 have a receiver appointed as a matter of right, (b) the
5 receiver may be an employee of Lender and may serve
6 without bond, and (c) all fees of the receiver and his or
her attorney shall become part of the Indebtedness
secured by this Agreement and shall be payable on
demand, with interest at the Note rate from date of
expenditure until repaid.

7 1.12 Grounds exist under RCW 7.60.025(1)(a) for the appointment of a
8 receiver because Lender has an interest in the Receivership Property and Borrowers
9 have abandoned the Receivership Property.

10 1.13 Grounds exist for the appointment of a receiver under RCW
11 7.60.025(1)(a) and (b)(i) because the Receivership Property or its revenue-producing
12 potential is in danger of being lost or materially injured or impaired because (i)
13 Borrowers are not paying their debts as they come due or is in imminent danger of
14 insolvency; (ii) Borrowers have abandoned the Receivership Property; and (iii)
15 Borrowers have failed to make payments due on the Note and failed to pay real property
16 taxes in 2012.

17
18 1.14 Grounds exist for the appointment of a receiver under RCW
19 7.60.025(1)(b)(ii) because appointment of a receiver is reasonably necessary to
20 effectuate or enforce the Assignment of Rents and other remedies set forth in the Deed
21 of Trust and Security Agreement.

22
23 1.15 Grounds exist for the appointment of a Receiver under RCW
24 7.60.025(1)(nn) and a Receiver is necessary to secure ample justice to the parties
25

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because Borrowers have failed to pay the amounts due under the Note and failed to pay property taxes for 2012.

1.16 The appointment of a Receiver for the Receivership Property is reasonably necessary, and other available remedies are inadequate. There is some indication that the Real Property was historically operated as a gas station. The status of the underground storage tanks used for the possible historic gas station operations is unknown. The environmental condition of the Real Property is likewise unknown. Lender does not want to assume or appear on title for the Real Property as this may subject Lender to possible environmental liability arising from the historic operations, as may occur under other remedies. Liquidation through a custodial receiver with the power of sale will avoid this result. A custodial receiver is also necessary to safeguard and maintain the Real Property and to ensure that the property remains in compliance with all regulatory and environmental requirements at all times.

1.17 Good cause exists for the expansion, modification, or limitation of the proposed receiver's various powers and duties under RCW 7.60.060(i)(j) and RCW 7.60.060(3), as is more fully provided below.

Venue and Jurisdiction

1.18 Jurisdiction is proper under RCW 2.08.010 because this action concerns the title or possession of real property.

1.19 Venue is proper in this Court under RCW 4.12.010 because this action concerns real property located in Skagit County, Washington.

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Receiver

1.20 McCallen & Sons, Inc. ("Receiver") is not interested in this action, and is eligible and qualified to act as a receiver of the Property under RCW 7.60.035.

Notice

1.21 Borrower was provided with good and sufficient notice of Lender's application for this Order and such notice afforded Borrower a reasonable opportunity to object or be heard with respect to the matters that are the subject of this Order, and no other notice is required.

II. ORDER

For good cause shown, the Court concludes that a custodial receiver should be appointed pursuant to Chapter 7.60, RCW. Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. Appointment of Receiver

1.1 McCallen & Sons, Inc. ("Receiver") is appointed as Custodial Receiver, as defined in RCW 7.60.015, and shall take exclusive charge, possession and control of the Receivership Property, to operate and manage the Receivership Property and with the power, authority and duty to preserve and protect the Receivership Property preceding any potential foreclosure or sale.

1.2 Pursuant to RCW 7.60.060(1)(j) and RCW 7.60.060(3), the Court confers upon the Receiver the authority to sell the Receivership Property free and clear of liens and interests pursuant to RCW 7.60.260 upon further order of this court.

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1 1.3 The Receiver's custodial authority includes possession and control of the
2 collateral identified in the Deed of Trust and the Fixtures and Equipment identified in
3 the Security Agreement (collectively, the "Receivership Property").

4 1.4 Within seven (7) calendar days following entry of this Order, Receiver
5 shall execute and file with the Court either cash or a bond in the amount of Ten
6 Thousand Dollars (\$10,000.00) with a surety authorized by the Washington
7 Commissioner of Insurance to engage in the business of suretyship in the state of
8 Washington, in favor of the Clerk of Skagit County Superior Court, on the condition
9 that Receiver will faithfully discharge the duties of Receiver in this action and obey the
10 orders of the Court herein. Receiver is authorized to pay any premium or other fee of
11 the surety providing such bond from the assets, as an expense of Receiver.
12

13 1.5 The Receiver may at any time, before or after a sale or foreclosure, file a
14 motion requesting that it be exonerated, discharged, and released from its appointment
15 as Receiver. The hearing may be held five business days following filing and serving of
16 the Receiver's motion. Regardless of the posture of the Receiver's motion, it shall have
17 no continuing obligation to perform the duties of the receiver 15 days after the date the
18 motion is filed ("Suspension Date"); provided, however, that the Receiver shall provide
19 such accountings or additional services as the Court may direct relating to the
20 Receiver's duties or performance prior to the Suspension Date.
21

22 **2. Rights and Responsibilities of Receiver**

23 2.1 The Receiver shall have all of the rights, powers, duties, and authority
24 vested in a Custodial Receiver under RCW 7.60, including but not limited to immediate
25

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1 authority and control over all of the Real Property and Assets over which the Receiver
2 has been appointed.

3 2.2 Upon entry of this Order, the Receiver shall have all powers set forth
4 under RCW 7.60 available to a custodial receiver. Without limiting the generality of
5 the foregoing, the Receiver shall have the authority to do the following subject to the
6 specific limitations set forth in this Order:

7
8 (a) To hire and fire employees as the Receiver deems necessary, except as
9 otherwise expressly provided in this Order;

10 (b) To decide from and in what amounts necessary goods and supplies for
11 the Receivership Property shall be purchased;

12 (c) To make all payments for rent, utilities, insurance, salaries, wages and
13 advertisements, to make any and all other payments for costs and expenses necessary
14 for the operation and management of the Receivership Property.

15 (d) To take all action authorized under RCW 7.60.060(1)(b).

16 (e) To enter, modify or terminate leases and subleases affecting all or any
17 portion of the Receivership Property without prior court approval.

18 (f) To enter contracts affecting any part or all of the Receivership Property,
19 and modify, continue in effect or terminate in the Receiver's business judgment any
20 contracts presently existing relating to the Receivership Property.

21 (g) To make any individual repair to the Receivership Property that the
22 Receiver, in its discretion, deems necessary or appropriate, and to both complete any
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1 improvements and/or make any such repairs to the Receivership Property required
2 under any existing lease.

3 (h) To advance funds to keep current or discharge any liens encumbering the
4 Receivership Property including those that may be senior to the liens and interests of
5 Plaintiff.

6 (i) To apply for, obtain, and pay any reasonable fees for any lawful license,
7 permit, or other governmental approval relating to the Receivership Property or the
8 operation thereof; to confirm the existence of and, to the extent permitted by law,
9 exercise the privileges of any existing license or permit or the operation thereof; and to
10 do all things necessary to protect and maintain such licenses, permits, and approvals
11 including communicating with all applicable municipal and governmental authorities,
12 consistent with this Order.
13

14 2.3 The Receiver's powers are not intended to be limited by the specific list
15 mentioned above. The Receiver's authority extends to all areas of operation and
16 management of the Receivership Property, and the Receiver has the power to use its
17 best discretion in the operation and management thereof, all subject to the specific
18 limitations set forth in the Order.
19

20 2.4 Notwithstanding the provisions of RCW 7.60.260(1) as may be applied
21 to the power of sale of real property vested in a custodial receiver, the Receiver is
22 granted, under RCW 7.60.060(1)(j) and RCW 7.60.060(3), the authority to market and
23 sell the Receivership Property free and clear of any and all liens, encumbrances or other
24 interests; however, any sale of the Receivership Real Property is subject to Court
25

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1 approval under RCW 7.60.260(1) and (2), with notice for any such sale to be shortened
2 to fifteen (15) days inclusive of mailing. The Receiver may enter into a listing
3 agreement, in the form attached as **Exhibit B** to this Order, under which McCallen &
4 Sons, Inc. shall also act as the listing agent for the sale of the Property.

5 2.5 Within sixty (60) days of the entry and recording of this Order, the
6 Receiver shall deliver to Plaintiff a proposed budget of the anticipated income and
7 expenses of the Receivership for a period of not less than six (6) months (the "Budget")
8 and a proposed schedule of reserves and payments to Plaintiff (after payment of
9 Receivership Expenses).

10 2.6 On or before the last day of the month which follows the date of entry of
11 this Order, and continuing every month thereafter (on or before the last day of that
12 month), the Receiver shall provide to Plaintiff a detailed report required by
13 RCW 7.60.100.
14

15 2.7 Nothing in the Order shall limit Plaintiff's ability to move the Court to
16 convert this custodial receivership into a general receivership, as provided in RCW
17 7.60.015.
18

19 2.8 The Receiver shall not be subject to the control of any of the parties to
20 this matter, but shall be subject only to the Court's direction in the fulfillment of the
21 Receiver's duties.

22 2.9 The Receiver is not responsible for filing or paying any Federal, State, or
23 local tax returns for any of the Borrowers with respect to the Real Property at any time.

24 2.10 The Receiver shall not be liable for or subject to suit by reason of the
25



1 condition of or conditions of occurrences on or of the Receivership Property or
2 elsewhere not caused by the Receiver's acts or omissions as receiver. Any loss, cost,
3 damage, or expense suffered or incurred by the Receiver as a result of any claim, suit,
4 action or other demand or proceeding brought against Receiver or any of its employees
5 in connection with its performance as Receiver will be solely an expense of the
6 receivership and not of the Receiver.
7

8 2.11 The Receiver or Lender at any time may apply to the Court for further or
9 other instructions, modifications of this Order, for further powers necessary to enable
10 the Receiver to properly perform his duties, for termination of the Receiver's
11 appointment as receiver for the Receivership Property, or for other relief.

12 2.12 The Receiver shall have no authority to sell the Receivership Property
13 subject to its custody, without motion and further order of this Court.

14 2.13 The Receiver shall relinquish possession and control of the Receivership
15 Property and all materials related thereto in the Receiver's possession, to the then owner
16 of the Receivership Property upon the occurrence of the first to occur of any of the
17 following: (i) execution and delivery of documents by Lender and the Grantors under
18 the Deed of Trust reinstating the loans which are secured by the Receivership Property,
19 (ii) the completion of a valid foreclosure sale of the Receivership Property by Lender or
20 any assignee of Lender, (iii) the acquisition of the Receivership Property by Lender or
21 any assignee by deed in lieu of foreclosure, or (iv) completion of a sale of the
22 Receivership Property by the Receiver, approved by order of this court.
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2.14 Upon relinquishing possession and control of all the Receivership Property as contemplated above, the Receiver, if the assets, or substantially all of the assets, of the Receivership have then been liquidated, the Receiver shall file a final report and accounting with the Court and shall disburse all funds held by the Receiver as follows: first to payment of authorized receivership expenses, second to any outstanding operation expenses of the Receivership Property due in the ordinary course, third to the secured indebtedness owed to Lender, and any lienholder senior to Lender, and fourth pursuant to further order of the Court. The receivership shall thereupon be terminated and the Receiver shall be discharged from all further duties, liabilities or responsibilities relating to the Receivership Property.

3. Receiver's Compensation and Payment of Receiver's Professionals' Fees and Costs

3.1 The Receiver shall be entitled to receive reasonable fees for work performed by the Receiver and his attorneys pursuant to this Order, together with payment of reasonable expenses for any other professionals retained by the Receiver under RCW 7.60.180.

3.2 The Receiver's fees shall be based upon an hourly rate of \$210.00 per hour for Mr. Fallon and \$85.00 per hour for any assistant time plus reasonable costs and expenses. The law firm of Karr Tuttle Campbell is hereby appointed as counsel for the receiver pursuant to RCW 7.60.180 to act as attorneys for the Receiver and shall be paid for all such services at their regular hourly rates of any attorneys and paralegals of the firm subject to the provisions of this Order. Attorney Daniel Bugbee, whose current hourly rate for this matter is \$260, shall be the primary attorney for this matter.



1 3.3 The Receiver is authorized to seek payment for his fees and costs and for
2 the fees and costs of his professionals on a periodic basis, but in any event not more
3 frequently than monthly.

4 3.4 The Receiver shall cause to be filed a notice of compensation of
5 professionals and reimbursement of expenses. The Receiver shall serve such notice by
6 mail, together with a reasonably detailed description of the time periods, services and
7 amount requested on: (i) Plaintiff, (ii) Counsel for the Plaintiff (by email), (iii)
8 Defendants, (iv) those parties who have requested notice, and (v) those parties who
9 have asserted liens against the Receivership Property. If no party in interest objects to
10 such payments or portions of such payments within ten (10) calendar days following the
11 date of notice, then the fees and costs shall be deemed approved as being fully and
12 finally earned and may be paid without further order or leave of the Court.
13

14 3.5 The approved fees and costs of the Receiver and his professionals shall
15 be paid from the gross receipts derived from the Receivership Property and shall be a
16 first priority lien on the Receivership Property, with priority over all other liens,
17 including, without limitation, statutory liens. If any party wishes to object to such
18 payments or portions thereof, such party shall notify the Receiver and the above-
19 referenced parties of the nature of the objection within the objection period set forth
20 above. If the Receiver or affected professionals cannot consensually resolve the dispute
21 or if the dispute is not resolved within ten (10) days of the date of such objection, then
22 the objecting party must file a motion with the Court to resolve the objection.
23
24
25



1 3.6 The Receiver may segregate the funds from the Receivership Property
2 necessary to pay the fees and costs of the receivership, including the fees and costs of
3 any professionals retained by the Receiver, on an ongoing basis, and, pending the
4 expiration of the objection period and the resolution of any hearing, if necessary.

5 3.7 To the extent that the receivership estate has insufficient funds to pay the
6 Receiver's allowed fees and costs, and the allowed fees and costs of professionals
7 appointed by the Court for the Receiver, then Lender, without further order of the Court
8 shall advance funds to Receiver to cover such shortfalls. In the event Lender makes any
9 payments under this order related to the Receiver's fees and costs, third parties' fees, and
10 costs, or expenses for repairs and/or improvements to the Receivership Property, Lender
11 shall retain the right to seek reimbursement for such fees, costs and expenses from any
12 senior lienholder(s) to the extent a common benefit is conferred on Lender and the
13 senior lienholder as a result of this receivership. Lender knows of no senior lienholders
14 at this time. Lender, in its sole discretion, may choose to cease making such payments
15 and its obligation to make those payments shall stop upon ten (10) days written notice
16 to Receiver, in which case Receiver shall be permitted to resign as Receiver upon
17 fourteen (14) days' notice to the parties in interest.

18 3.8 All funds paid or advanced by Lender under this Order, plus interest
19 thereon, shall also be deemed expenses of litigation and/or protective advances, and
20 thus secured by and under its existing Deed of Trust, insofar as such payments or
21 advances are authorized or permitted by the Deed of Trust or other Loan Documents.
22 The Receiver may execute and issue in favor of Lender instruments and other
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24
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documentation evidencing the indebtedness with respect to all such sums paid or advanced by Lender. All sums paid or advanced by Lender to or for the benefit of the Receiver pursuant to this Order, together with interest thereon at a reasonable rate, shall be secured by Lender's existing lien and security interest in the Receivership Property, provided, however, that Lender shall retain the right to seek reimbursement for all payments or advances pursuant to paragraph 3.7 and/or a super priority lien for said payments and advances.

3.9 Nothing in this Order shall in any way affect the validity, enforceability, or priority of the Promissory Note, Deeds of Trust, Security Agreement, Assignment of Rents or other related documents (collectively, the "Loan Documents"), except as set forth herein.

3.10 Any notice, demand, request, approval, consent or other communication (collectively "Notice") concerning this Order, the Receivership Property, the Loan Documents or any matter arising in connection with this Order, the Receivership Property or the Loan Documents must be in writing and addressed as follows:

If to Plaintiff:

Whidbey Island Bank
Attn: Kai Nagamatsu
14807 Highway 99
Lynnwood, WA 98087

With a copy to:

Ryan S. Neale
16504 9th Ave. SE, Suite 203
Mill Creek, WA 98012

If to Defendants:

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1 Alan Choi and Soon Ja Choi
2 2231 Bedal Lane
3 Everett, WA 98208

4 If to Receiver:

5 Daniel Fallon
6 McCallen & Sons, Inc.
7 9133 112th Ave. NE
8 Kirkland, WA 98033

9 With a copy to:

10 Daniel J. Bugbee
11 Karr Tuttle Campbell
12 1201 3rd Ave., Suite 2900
13 Seattle, WA 98101

14 Any Notice will be given by either (i) personal delivery in which event it will be
15 deemed given on the date of delivery, or (ii) certified mail return receipt requested in
16 which event it will be deemed given three business days after the date deposited in the
17 U.S. Mail, or (iii) next or second business day delivery by nationally recognized
18 overnight courier, in which event it shall be deemed given on the next or second
19 (whichever is applicable) business day immediately following receipt by the courier.

20 **4. Liability of the Receiver.**

21 4.1 Any liability of the Receiver shall be limited as set forth in RCW
22 7.60.170, and shall not in any way be broader than as provided in RCW 7.60.170.

23 **5. Duties of Persons over whose Property the Receiver is Appointed.**

24 5.1 Each of the Defendants, and their tenants, officers, directors, managers,
25 members, partners, agents, or other individuals asserting, exercising or having the
power to exercise control over the Receivership Property affairs shall fully comply with
RCW 7.60.080, assisting and cooperating fully with the Receiver in the exercise of its

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1 duties; including but not limited to, turning over forthwith all Receivership Property,
2 supplying the Receiver with the information in each individual's possession, custody or
3 control concerning the Receivership Property.

4 5.2 The Defendants, their tenants, shareholders, directors, officers, agents,
5 employees, representatives, trustees, beneficiaries, attorneys, and employees are hereby
6 prohibited from the following:

7
8 (a) Interfering with the Receiver, directly or indirectly, in the management
9 and operation of the Receivership Property or the performance of any of Receiver's
10 other duties hereunder.

11 (b) Expending, disbursing, transferring, assigning, selling, conveying,
12 moving, leasing, devising, pledging, mortgaging, creating a security interest in, or
13 otherwise disposing of the Receivership Property or any income derived, directly or
14 indirectly, therefrom.

15 (c) Doing any act or refraining from taking any act that will, or which will
16 tend to, directly or indirectly, impair, defeat, prevent, or prejudice the preservation of
17 the Receivership Property or in any way negatively impact the Receiver's ability to
18 discharge his duties under the terms of this Order and RCW Chapter 7.60.

19
20 **6. Injunction of Actions against Receivership Property.**

21 6.1 Except as to any proceeding initiated by or action taken by Plaintiff,
22 upon entry of this order, as provided and elaborated in RCW 7.60.110, commencement
23 or continuation of any proceeding against the Receivership Property is stayed, as is
24 enforcement of any judgment, any act to assess or recover any pre-receivership claim,
25

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and any act to obtain possession of or exercise control over the Receivership Property or to create, perfect or enforce any lien against the Receivership Property, except as expressly provided herein.

6.2. Further, each utility that provides service to the Real Property, to include without limitation Puget Sound Energy, Cascade Natural Gas and Skagit County Public Utility District, shall comply with its obligations set forth in RCW 7.60.120.

21.1.3
ENTERED this _____ day of January, 2013.


JUDGE/COURT COMMISSIONER

Presented by:

MARSH MUNDORF PRATT SULLIVAN
+ MCKENZIE, P.S.C.

By 

Ryan S. Neale, WSBA #35845
Karl F. Hausmann, WSBA #21006
Attorneys for Plaintiff

Copy Received, Approved for Entry and
Notice of Presentation Waived:

Attorney for Defendant

Appointment as custodial is hereby accepted:

McCALLEN & SONS, INC.

By 

Daniel J. Fallon, Its PRESIDENT

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EXHIBIT A



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**EXHIBIT A
LEGAL DESCRIPTION**

That portion of the Northwest quarter of the Southwest quarter of Section 23, Township 34 North, Range 3 East of the Willamette Meridian, described as follows:

Beginning at a point 25 feet South of and 20 feet East of the Northwest corner of the said Northwest quarter of the Southwest quarter;

Thence South 110 feet;

Thence East 90 feet;

Thence North 110 feet;

Thence West 90 feet to the point of beginning;

EXCEPT road and ditch rights of way.

Situated in Skagit County, Washington.

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OK

EXHIBIT B



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EXCLUSIVE SALE AND LISTING AGREEMENT ©



The undersigned Seller ("Seller") hereby grants to McCallen & Sons, Inc. ("Agent") from date hereof until midnight of June 30 2013 the sole and exclusive right to submit offers to purchase, and to receipt for deposits in connection therewith, commonly known as Evergreen Food Mart located at 16016 McLean Road in the city of Mount Vernon State of Washington. This listing includes real estate? ☒ Yes ☐ No

1. Personal Property and Inventory. The sale price shall include all owned and leased furniture, fixtures, equipment and other property ("the personal property") used in or in connection with the Business. The sale price does not include the salable goods, and merchandise of the Business ("the inventory"). The inventory and supplies shall be listed at Sellers cost, and paid for by the Buyer.

2. Real Property. The real property on which the Business is located is: ☐ Leased by Seller. ☐ Seller will assign the lease to Buyer at closing. ☐ Owned by Seller and will be leased to Buyer. ☐ Owned by Seller, and sale of the Business is conditioned on the Buyer also purchasing real property. The price of the real property is included in the sale price? ☒ Yes ☐ No.

3. Search and Closing Costs. Seller warrants that he/she has the right to sell the Business and /or property on the terms herein, and agrees to furnish and pay for a purchaser's policy of title insurance showing Seller's right, as appropriate, to assign the existing lease or lease the property directly to the Buyer, free and clear of any encumbrances. In addition, Seller warrants that he/she has the right to sell personal property and inventory on terms herein, and agrees to furnish and pay for Uniform Commercial Code search showing marketable title to the same. Seller agrees to pay real estate excise and sales tax, if any: permit or license transfer fees, if any: and one-half of the escrow fee. Rent, taxes, utilities, interest, and reserves on assumed encumbrances are to be prorated between Seller and Buyer as of the date of closing.

4. Commission. If (1) Agent procures a Buyer on the terms of this Agreement or on other terms acceptable to Seller: or (2) Seller, during the term hereof, sells, conveys, assigns and/or transfers in lieu of sale, the Business and/or property or any interest therein: the Seller will pay Agent a commission of 6 % (with a \$20,000 minimum) of the full consideration for the business and/or property, excluding the inventory (the "Commission"). In the event a third party exercises a previously existing right of first refusal or any other purchase option during the term of this agreement, Broker shall be entitled to all commissions set forth in this agreement. If the Buyer is represented by another agent or broker, the Commission shall be shared by Agent and the Buyer's agent or broker equally, and neither Agent nor the Buyer's agent or broker shall be owed any other commission or compensation. The phrases "this Agreement" and "during the term hereof" include any written extension hereof. The word "sell" also includes a contract to sell: an exchange or contract to exchange: an option to purchase: and/or a lease with option to purchase.

5. Attorney's Fees. Seller and Broker agree that, should litigation arise from this transaction before or after closing that the prevailing party shall collect their costs and attorney's fees.

6. Copy of Agreement. Seller acknowledges that if he/she does not receive a copy of this contract at time of signing, he/she will receive one via fax or mail as soon as it is practical.

7. Other Agreement Receivership Provisions - attached

Listing Price \$ TBD ☒ Do not publish in CBA if box is checked

Do you have any knowledge of hazardous waste on the property? ☐ Yes ☒ No

Date Are the undersigned the sole owner(s) ☒ Yes ☐ No

Listing Office McCallen & Sons, Inc. Phone 425.822.9752

Agent (print) Daniel J. Fallon Seller

Agent (signed) Seller

No part of this form may be reproduced without the consent of McCallen & Sons, Inc.



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**ADDENDUM TO LISTING AGREEMENT
(Receivership Provisions)**

DATE: January 4, 2012

LISTING COMPANY:

LISTING AGENT:

RECEIVERSHIP CASE: Alan & Soon Ja Choi

CASE NO: _____

This ADDENDUM amends the attached Listing Agreement. For purposes of this Agreement, all references to "seller", "owner", or "Receiver" refers to McCallen & Sons, Inc., in its capacity as Receiver of the above referenced Receivership Estate.

The property is subject to the jurisdiction and control of the Skagit Superior County Court ("Court").

The acceptance of any offer by the Receiver is subject to the approval of the Court after notice of the proposed sale is given to creditors and parties in interest; therefore, the obligation of the Receiver to perform is subject in all respects to approval of the Court. Once the Receiver accepts an offer, it shall take the necessary steps to have notice given to the creditors and parties in interest.

If a subsequent offer is received before the Court has given its approval, the Receiver has a duty to disclose the existence of the subsequent offer to the Court.

The Receiver does not have any control over the ultimate approval or disapproval of the agreement by the Court.

The Receiver does not have any personal knowledge of the property and/or its condition. Listing Broker and Listing Agent acknowledge such lack of knowledge and shall so inform any potential purchaser or broker that inquires about the property and obtain the appropriate waiver of the disclosure statement, if allowed, as required under RCW 64.06, if possible.

The payment of all commissions requires that an order be entered by the Court authorizing the employment of the Listing Broker and/or the Listing Agent. Therefore, the listing agreement between the parties is expressly conditioned upon court approval. The Listing Broker and/or Listing Agent will be required to file a declaration with the Court to obtain such authorization for the Receiver to employ the Listing Broker and/or Listing Agent. The payment of all commissions is further subject to Court approval, which has the power to change the terms of the original employment.

Any party, including the selling agents and selling brokers, shall be limited to filing a request for compensation with the Court for any damages that they believe that they may have suffered. No action will be brought against the Receiver personally or against any bonds that he may have.

Offers are to be submitted through the listing agent only.

Any interested party who sees a copy of this Addendum is on notice as to its provisions.

Listing Broker

Receiver

PRINT NAME

Daniel J. Fallon, President



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State of Washington, } ss.
County of Skagit

I, Nancy K. Scott, County Clerk of Skagit County and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Skagit, do hereby certify that the foregoing instrument is a true and correct copy of the original, consisting of 24 pages, now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at my office at Mount Vernon this 5 day of Feb, 2013. Nancy K. Scott, County Clerk.

By Vgonzalez
Deputy Clerk



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