

After Recording, Return To:

Charles V. Carroll, Attorney  
421 W. Riverside, Suite 960  
Spokane, WA 99201



201512020012

Skagit County Auditor

12/2/2015 Page

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## DEED OF TRUST

THIS DEED OF TRUST ("Deed of Trust"), made as of the 1st day of December, 2015, by LANDMARK PROPERTY <sup>MANAGEMENT</sup> SERVICES AND DESIGN SERVICES, LLC, a Washington limited liability company, ("Trustor"), whose address is 2265 N. 56<sup>th</sup> St., Seattle, WA 98103 in favor of CHARLES V. CARROLL, Attorney at Law, ("Trustee"), whose address is 421 W. Riverside, Suite 960, Spokane, Washington 99201, and MICHAEL L. WITMER, TRUSTEE, WITMER LIVING TRUST DATED 7/15/02, ("Beneficiary"), whose address is 2505 Anthem Village Dr., E-361, Henderson, NV 89052.

Trustor irrevocably grants, conveys, transfers and assigns to Trustee, in trust, with power of sale and right of entry and possession, all of Trustor's right, title and interest in and to that certain real property (the "Subject Property") situate in the County of Skagit, State of Washington, more particularly described as follows:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 1 EAST OF W.M., LYING NORTHERLY OF THE COUNTY ROAD COMMONLY KNOWN AS COUGAR GAP ROAD, AS IT EXISTED ON MAY 5, 1955;

EXCEPT THE NORTH 40 FEET OF THE EAST 300 FEET OF THE WEST 680 FEET;

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON

APN/ Parcel ID: P19584 / 340122-1-003-0008

(Commonly known as: 15163 Rosario Road, Anacortes, WA)

together with all easements and other rights now or hereafter located thereon or appurtenant thereto, all buildings situated on the Subject Property together with all appurtenances and all other existing or subsequently erected improvements in, under or upon such Property, all fixtures, all additions and accretions thereto and any greater estate in the Subject Property or any part thereof now owned or hereafter acquired by Trustor. Trustor makes the foregoing grant to Trustee to hold the Subject Property in trust for the benefit of Beneficiary, and for the purpose and upon the terms and conditions hereinafter set forth.

Trustor hereby assigns as security to Beneficiary, all of Trustor's right, title and interest in and to all leases, rents, issues, deposits and profits of the Subject Property. The lien created by said assignment is intended to be specific, perfected and choate upon the recording of this Deed of Trust. Beneficiary grants to Trustor a license to collect the rents and profits which license may be revoked at Beneficiary's option and shall be automatically revoked upon acceleration of all or part of the indebtedness secured hereby. The foregoing assignment shall not impose upon Beneficiary any duty to produce rents from the Subject Property, and said assignment shall not cause Beneficiary to be a "mortgagee in possession" for any purpose.

#### **OBLIGATIONS SECURED:**

Trustor makes the foregoing grant and assignment for the purpose of securing the following obligations which Trustor covenants to pay and perform promptly in accordance with their terms:

1. Payment to Beneficiary of all indebtedness evidenced by and arising under that certain promissory note (herein "Note"), dated as of the date hereof, payable to Beneficiary or its order, in the principal amount of Forty Thousand Dollars (\$40,000.00) together with interest thereon, and any modifications, extensions or renewals thereof (including, but without limitation, (i) modifications of the required principal and/or interest payment dates, deferring or accelerating said payment dates in whole or in part, and/or (ii) modifications, extensions or renewals at a different rate of interest), whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes;

2. Payment to the Beneficiary of all indebtedness of such further sums and/or performance of such further obligations as Trustor or the then record owner of the Subject Property may undertake to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, its successors or assigns, when said borrowing and/or obligations is evidenced by a writing or writings reciting that it or they are so secured;

3. Performance of each agreement of Trustor herein contained or contained in the Note and/or any and all documents and instruments executed by Trustor concurrently herewith for purposes of evidencing or securing the repayment of the Note which are incorporated herein by this reference, and the payment of each fee, cost and expense by Trustor as herein set forth.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST THE PARTIES AGREE AS FOLLOWS:**

**A. RIGHTS AND DUTIES OF THE PARTIES:**

**1. Warranties by Trustor.** Trustor warrants that, except as otherwise disclosed to Beneficiary in writing, Trustor is the lawful owner of the Subject Property without limitation on its right to encumber.

**2. Taxes and Assessments.** Trustor shall pay or cause to be paid when due, all real property taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property, any part thereof or interest therein. Trustor shall also pay when due, all real property taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in the Subject Property created hereby; provided, however, that Trustor shall have no obligation to pay or discharge taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.

**3. Insurance.** Trustor shall fully insure the Subject Property and any and all improvements located thereon against loss or damage by fire or other casualty with companies satisfactory to Beneficiary. Such insurance shall be carried in amounts not less than the amount of the unpaid obligation secured hereby and not less than amounts determined by Trustor or Beneficiary to prevent the application of co-insurance or similar clauses. All such policies or certificates of insurance shall name Beneficiary as the primary loss payee, and they shall also provide that they cannot be terminated as to Beneficiary except upon thirty (30) days' prior written notice to Beneficiary, or such lesser period of notice as may be reasonably acceptable to Beneficiary and in accordance with industry practice. Trustor shall deliver to Beneficiary the original of all such policies or at Beneficiary's option, certificates, together with receipts satisfactory to Beneficiary, evidencing payment of the premiums therefor.

**4. Liens and Encumbrances.** Trustor shall pay or cause to be paid at or prior to maturity, all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber the Subject Property or any part thereof, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, improvement of or construction upon the Subject Property. Beneficiary hereby expressly reserves the right to advance any and all funds necessary to cure any and all such obligations, and/or claims.

**5. Disposition of Insurance and Condemnation Proceeds.** Trustor hereby assigns to Beneficiary (i) all awards for damages suffered or compensation paid by reason of a taking for public use of, or an action in eminent domain affecting all or any part of the Subject Property, and any and all improvements located thereon or any interest therein, and (ii) all proceeds of any insurance policies paid by reason of loss sustained to the Subject Property or any part

thereof. Beneficiary may apply any such sum to any indebtedness or obligation secured hereby and in such order as Beneficiary may, at its sole option, determine. Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided hereunder. However, Beneficiary may, at the absolute discretion of Beneficiary and regardless of any impairment of security or lack of impairment of security, release to Trustor all or any part of the entire amount so collected upon any conditions Beneficiary chooses. In the event of an insured casualty to the Subject Property, Beneficiary may, at its sole discretion, release the insurance proceeds for reconstruction of the Subject Property. Application of all or any portion of said funds, or the release thereof, shall not cure or waive any default or notice.

**6. Maintenance and Preservation of the Subject Property.** Trustor covenants: (i) to keep the Subject Property in good condition and repair; (ii) not to remove or demolish the Subject Property or any part thereof; (iii) to complete or restore promptly and in good and workmanlike manner the Subject Property or any part thereof which may be damaged or destroyed; (iv) to comply with and not suffer violations of (a) all laws, ordinances, regulations, standards, and (b) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character, and (c) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Subject Property. Trustor shall take no action in violation of environmental or health laws or regulations in the use of the Subject Property. Trustor further agrees to indemnify Beneficiary for any and all depreciation of value to the Subject Property or loss, costs or expenses incurred by Beneficiary related to or arising from any violation of any environmental or health law or regulation.

**7. Defense and Notice of Actions.** Trustor shall, without liability, cost or expense to Beneficiary or Trustee, protect, preserve and defend Trustor's ownership interest in and to the Subject Property, the security hereof or the rights or powers of Beneficiary or Trustee hereunder. Said protection, preservation and defense shall include protection, preservation and defense against all adverse claimants to Trustor's interest in the Subject Property whether or not such claimants or encumbrances assert title paramount to that of Trustor or claim their interest, on the basis of events or conditions arising subsequent to the date hereof, but shall not include claims arising through or based on allegations of failure to perform the terms of the Real Estate Contract, hereinafter described, which is wrapped by this Deed of Trust. Trustor shall give Beneficiary and Trustee prompt notice in writing of the filing of any such action or proceeding.

**8. Right of Inspection.** Beneficiary, its agents or employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Trustor's compliance with the terms hereof.

**9. Acceptance of Trust, Notice of Indemnification.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, becomes a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust

or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless Trustee brings such action. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of such act is requested in writing and Trustee is reasonably indemnified against loss, cost, liability and expense.

**10. Powers of Trustee.** From time to time upon written request of Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of the obligation secured hereby, Trustee may, without liability therefor and without notice: reconvey all or any part of the Subject Property; consent to the making of any map or plat thereof; join in granting any easement thereon; join in any declaration of covenants and restrictions; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

**11. Substitution of Trustees.** From time to time, by a writing signed and acknowledged by Beneficiary and recorded in the Office of the Skagit County Auditor, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall refer to this Deed of Trust and set forth the date, book and page of its recordation. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this paragraph shall be conclusive proof of the proper substitution of such new trustee.

**12. Acceleration Upon Sale and Encumbrance.** Upon sale, transfer, hypothecation, assignment or encumbrance, whether voluntary, involuntary or by operation of law, of all or any part of the Subject Property or any interest therein, or in the event that there shall occur a default hereunder, Beneficiary may at its sole option declare all sums secured hereby to be immediately due and payable. Alternatively, Beneficiary may approve such transfer or other event upon such conditions as it shall deem fit including, but not limited to receipt of satisfactory credit information on a proposed transferee and/or an adjustment in the interest rate or other terms of the Note and/or this Deed of Trust. The provisions hereof shall prevail notwithstanding any contrary provisions in the Note or any other instrument which evidences the obligations hereby secured. Trustor shall notify Beneficiary promptly in writing of any transaction or event which may give rise to a right of acceleration hereunder. Trustor shall pay to Beneficiary all damages Beneficiary sustains by reason of the breach of the covenant of notice set forth herein.

**13. Reconveyance.** Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust and any note, instrument, or instruments, setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder.

## **B. DEFAULT PROVISIONS:**

**1. Events of Default.** Events of Default hereunder shall include: (a) Failure of Trustor to make any payment required under this Deed of Trust or the Note; and (b) Failure of Trustor to properly perform its obligations when due hereunder, or a breach by Trustor of any of its covenants, representations or warranties contained herein.

**2. Rights and Remedies.** At any time after the occurrence of an Event of Default hereunder, Beneficiary and/or Trustee shall have the following rights and remedies, which are in addition to any rights and remedies available to Beneficiary under the Deed of Trust Act of the State of Washington:

(a) With or without notice, to declare all obligations secured hereby immediately due and payable;

(b) Foreclose this Deed of Trust as a mortgage; and/or

(c) Initiate suit to enforce payment of any amounts in default or to enforce performance of any other covenant or condition herein or in the Note.

**3. Receiver.** In addition to the foregoing rights and remedies, Beneficiary shall upon the occurrence of default, be entitled to the appointment of a receiver as a matter of right without regard to whether the apparent value of the Subject Property exceeds the amount of the secured indebtedness, and any receiver appointed may serve without bond.

**4. Payment of Costs, Expenses and Attorneys' Fees.** All costs and expenses incurred by Trustee and Beneficiary (including but without limitation, court costs and attorneys' fees, whether incurred in litigation or not) shall bear interest at a rate per annum equal to twelve percent from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at the Trustee's Sale of the Subject Property upon foreclosure of this Deed of Trust, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

**5. Remedies Cumulative.** All rights and remedies of Beneficiary and Trustee hereunder are cumulative and in addition to all rights and remedies provided by law.

**6. Releases, Extensions, Modification and Additional Security.** Without affecting the liability of any person for payment of any indebtedness secured hereby, Beneficiary may make any agreement or take any action extending the maturity or otherwise altering the terms or increasing the amount of any indebtedness secured hereby, and accept additional security or release all or a portion of the Subject Property and/or other security held to secure the indebtedness secured hereby.

**C. MISCELLANEOUS PROVISIONS:**

1. **Non-Waiver.** By accepting payment of any sum secured hereby after its due date or late performance of any obligation secured hereby, Beneficiary shall not waive its right against any person obligated directly or indirectly hereunder or on any obligation hereby secured or to declare default for failure to make such prompt payment. No exercise of any right or remedy by Beneficiary or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law.

2. **Execution of Documents.** Trustor agrees, upon demand by Beneficiary or Trustee, to execute any and all documents and instruments required to effectuate the provisions hereof.

3. **Statements of Conditions.** From time to time as requested by Trustor, Beneficiary shall furnish to Trustor statements concerning the status of the obligations wrapped by this Deed of Trust.

4. **Obligations of Trustor, Joint and Several.** If more than one person has executed this Deed of Trust as Trustor, the obligations of all such persons hereunder shall be joint and several.

5. **Beneficiary Defined.** The word "Beneficiary" hereunder means the beneficiary named herein or any future owner or holder, including pledgee, of any note, notes or instrument secured hereby.

6. **Rules of Construction.** When the identity of the parties hereto or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. Specific enumeration of rights, powers and remedies of Trustee and Beneficiary and of acts which they may do and of acts Trustor must do and acts Trustor must not do shall not exclude or limit the general. The headings of each paragraph are for information and convenience and do not limit or construe the contents of any provision hereof.

7. **Severability.** If any term of this Deed of Trust, or the application thereof to any person circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

8. **Successors in Interest.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

9. **Modification and Extensions.** References to the Note in this document shall be deemed to include all modifications, extensions and renewals thereof.

10. **Interpretation.** The provisions of this Deed of Trust shall be governed by and construed in accordance with the laws of the State of Washington.

11. **Agricultural Use.** The Subject Property is not used principally or primarily for agricultural or farming purposes.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

LANDMARK PROPERTY MANAGEMENT  
AND DESIGN SERVICES, LLC

BY

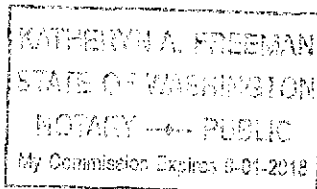
CARL H. NYBERG, Member/Manager

STATE OF WASHINGTON )

) : ss.

County of Skagit )

On this 1<sup>st</sup> day of December, 2015, before me, personally appeared CARL H. NYBERG, to me known, or proven upon satisfactory evidence, to be the individual who executed the foregoing instrument as the Member/Manager of Landmark Property Management and Design Services, LLC, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.



*Kathryn A. Freeman*  
NOTARY PUBLIC in and for the State  
of Washington, residing at Snohomish Co.  
My Commission Expires: 9-01-2018