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DIVISION II

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STATE OF WASHINGTON

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NO. 44925-1-II

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

FIRGROVE COMMONS 3, LLC,
Appellant,

v.

VIKING BANK,
Respondent,

APPELLANT'S OPENING BRIEF
AND
CERTIFICATE OF MAILING

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I. ASSIGNMENTS OF ERROR

1. The Court erred in entering paragraph 6 of the Court's decision to the extent that the Court found that no evidence was presented as to the exact scope of the duties of the property manager. The text of that paragraph is contained in the Court's decision attached as Appendix A.

2. The Court erred in entering paragraph 12 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

3. The Court erred in entering paragraph 14 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

4. The Court erred in entering paragraph 15 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

5. The Court erred in entering paragraph 16 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

6. The Court erred in entering paragraph 17 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

7. The Court erred in entering paragraph 18 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

8. The Court erred in entering paragraph 21 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

9. The Court erred in entering paragraph 23 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

10. The Court erred in entering paragraph 24 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

11. The Court erred in entering paragraph 25 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

12. The Court erred in entering paragraph 26 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

13. The Court erred in entering paragraph 28 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

14. The Court erred in entering paragraph 29 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

15. The Court erred in entering paragraph 30 of its decision. The text of that paragraph is contained in the Court's decision attached hereto as Appendix A.

16. The Court erred in failing to find that the 5% management fee paid by Firgrove to the property manager is a reasonable management fee for the work performed by the property manager.

17. The Court erred in finding that the property manager performed negligible property management services related to the property leased by Viking Bank.

II. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Does a lease that requires the tenant to pay all costs, insurance premiums, taxes, utilities and expenses of every kind and nature incurred for, against, or in connection with a lease of property require the tenant to pay a reasonable management fee incurred by the Landlord in connection with the property?

2. Does a lease stating that the rent payments to the landlord are triple-net that also contains a provision that states:

It is the intent of the parties. . . that the base annual rent . . . shall be absolutely net to landlord.

require the Landlord to pay from the base rent received, the fee for management of the leased property, or do those provisions require the tenant to pay the management fee?

3. Did the Court commit legal error when it applied a definition of triple-net lease different than the definition provided in the lease signed between Firgrove and Viking Bank?

4. Did the Court err when it found that Firgrove's interpretation of paragraph 3.5 of the Lease in this case would render Paragraphs 3.2, 3.3 and 3.4 superfluous when all four paragraphs are consistent and there is no ambiguity in any of them?

5. Did the Court err when it found that there was no evidence of the property manager's exact duties record at trial when the property manager testified regarding fifteen tasks that it performed regularly for the leased property?

6. Did the Court err when it ruled that it could not determine the amount of a reasonable management fee to be paid under the Lease?

III. STATEMENT OF THE CASE

This is a case about contract interpretation. The contract being interpreted is a Ground Lease (hereinafter the "Lease") of real property from Firgrove Commons 3, a Washington Limited Liability Company (hereinafter "Firgrove") to Viking Bank. (Trial Exhibit 1, Appendix B). At issue in the case is responsibility for management fees incurred by Firgrove related to the property leased to the Bank.

Firgrove owns one unit of a four unit business condominium development at the corner of 136th and Meridian St. in Puyallup. (Exhibit B to Exhibit 1). In 2008 Firgrove leased that unit, Unit 3, to Viking Bank. Viking Bank built its building on the leased property. The leased property is part of four business

condominium parcels of property in a one center (hereinafter the "Center"). (See Exhibit B to Exhibit 1). Firgrove hired an independent property manager to manage the property for it as owner. The property manager billed the management fee to the Bank and the Bank refused to pay the fee and brought this action. (Court Decision, Paragraphs 9, 10, CP 56).

The property leased by Viking Bank does not have direct street access. (CP 76). Instead, to access that property one must enter one of three entrances to the Center and pass over common area driveways within the Center that lead to the Viking Bank property. (RP 76). Paragraph 1.4 of the Lease (Exhibit 1, Appendix B) expressly allows the Bank to pass over the common areas and the other condominium parcels to access the bank property. The property manager manages the common areas and performs maintenance on the common areas through its employees or hires independent contractors to do maintenance. (CP 76). Viking Bank has no responsibility to maintain the common areas or other parcels within the Center under the Lease. (Exhibit 1, RP 89). Viking Bank has no responsibility to maintain the storm drain system that serves the entire Center under the Lease. (Exhibit 1, RP 89). Viking Bank has no responsibility to remove snow from, pickup garbage from, maintain lighting to or hire 3rd parties to perform those functions related to the common areas, or apportion

those expenses among the owners of the condominium units under the Lease and pay the independent contractors when the tenants of the properties pay their portions of the bills. (Exhibit 1, RP 89).

Firgrove hired a property manager to manage its unit 3 of the Center and was charged and paid a management fee equal to 5% of the rent paid by Viking Bank under the Lease which was \$20,970 up to the time of trial. (RP 88, 105). Viking Bank brought this action as a declaratory judgment action asking the court to determine that it did not have to pay the management fee incurred by Firgrove as part of the expenses it is obligated to pay under the Lease. (CP 1)

Paragraph 3.5 of the Lease contains three clauses in two sentences that control the result of this case. Those three clauses are:

All Base Annual Rent payable hereunder shall be paid as "triple net" rent without deduction or offset.

It is the intent of the parties, except as otherwise provided in this lease, that the Base Annual Rent provided to the Landlord shall be absolutely net to Landlord . . .

Tenant shall pay all costs, charges, insurance premiums, taxes, utilities, expenses and prorated share of maintenance for common area CAM expenses and assessments of very kind and nature incurred for, against or in connection with the Ground Leased Premises and Property.

Both parties agree and the Court found in paragraph 5 of its written decision that the Lease at issue in this case is a fully integrated

lease. (CP 56). Neither party presented extrinsic evidence to help interpret the words used in the Lease. The court ruled in paragraph 27 of its' written decision that the Lease is plain on its face and that it would not resort to extrinsic evidence to interpret it but would instead enforce the agreement as written. (CP 56).

From the beginning of the tenancy of Viking Bank, the property management company performed management services for the owner of Firgrove and the Bank. It is not disputed that the property manager has performed the following functions related to the Viking Bank property:

1. It sent a bill for the rent to Viking Bank every month. (RP 80-81) (Paragraph 23 of Trial Court Decision).
2. It received and posted the rent payment from Viking Bank to the rent ledger and disbursed sums to the owner. (RP 80-81) (Paragraph 23 of Trial Court Decision).
3. It billed Viking Bank for the property taxes two times per year. (RP 81-82) (Paragraph 23 of Trial Court Decision).
4. It received payment from Viking Bank for property taxes two times per year and paid the County the property taxes on the parcel. (RP 82) (Paragraph 23 of Trial Court Decision).
5. It received the bills from Pierce County for sewer charges to the leased property and, billed those sewer charges to Viking Bank monthly. (RP 82) (Paragraph 23 of Trial Court Decision).

6. It received payment from Viking Bank for the sewer charges, posted the payment and paid Pierce County for the sewer bills every month. (RP 82) (Paragraph 23 of Trial Court Decision).
7. It provided garbage service to the Viking Bank premises and paid the bill for garbage service to the garbage provider. (RP 82)
8. It sent an employee of the management company to the property more often than 1 time per week to inspect the driveways and common areas to make sure there were no obstructions blocking the driveways, no garbage in the area and no need for towing of abandoned vehicles from the premises, etc. That employee picked up garbage and debris in the common areas and reported maintenance issues he could not resolve on-site to the property manager to have 3rd parties hired by the property manager to maintain the common area. (RP 76-79).
9. It regularly inspected the stormwater system that serves all of the properties in Firgrove and provided necessary maintenance. (RP 77-78).
10. It had employees replace burned out lights in the entrances to the center if the work could be done by the employee during routine inspections or where lights were at such a height that a lift was required to replace a burned out light, it arranged to have proper equipment rented, to replace the light. (RP 79-80).
11. It annually negotiated and entered into a contract with a snow removal company so that the common area driveways could immediately cleared in the event of a snow event. (RP 83-84).

12. In the event of a snow event it sent an employee to the site to determine if snow clearing or deicing of the common areas was necessary. (RP 84-85).
13. When common area maintenance needed to be done it hired the third parties to do the common area maintenance, and supervised the work to see that it was done. (RP 89-90, 83-84).
14. When bills were generated from 3rd parties or maintenance of the common areas, snow removal from the common areas or maintenance of the stormwater system, the property manager bills each of the 3 existing tenants and the owner of the unimproved lots within the development the percentage share each is to pay and receive the payment and pays the expenses to the provider of the service. (RP 90).

The property manager did not bill for any of those items separately. They were included in the management fee. (RP 79).

Paragraph 3.2.1 of the Lease actually requires the tenant to pay the property taxes directly to Pierce County and paragraph 3.2.2 requires the tenant, at its expense, to retain an independent tax service to notify landlord whether the taxes have been paid 5 days before the taxes become due. Instead of hiring and paying for a tax service as the Lease requires, Viking Bank chose to have the property manager bill it for the property taxes and pay the property taxes to the county upon receipt of the funds to pay the taxes from the bank. (RP 81, Court Decision, Paragraph 2.3, CP 56). Paragraph 3.3 of the Lease requires the tenant to either pay or

cause to be paid the utilities to the premises including sewer and trash disposal. Viking Bank elected to take the 2nd option under the Lease, have the property manager receive the bills, bill the bank, collect from the bank, and pay those utilities to the utility providers. (RP 82). Even Viking Bank's only witness admitted paying the utility expenses is a management function. (RP 41-42). Even Viking Bank's witness admitted that billing, receiving payment for and paying the property taxes for the Viking Bank property is a management function. (RP 42). Even Viking Bank's witness admitted receiving and posting rent is a management function. (RP 42).

It is not contested that a 5% management fee for a property manager of a ground lease is the standard fee in the industry. (RP 75). It is not contested that Firgrove actually paid the property manager 5% of the rent totaling \$20,970.00 in management fees actually incurred related solely to the Viking Bank property up to the time of trial. (RP 88, 105). The only issue before the Court is whether the tenant is responsible for those management fees under the Lease.

The trial judge announced its oral decision ruling that the management fees incurred by Firgrove were, under the terms of the Lease, were to be paid by Viking Bank. (RP 127-133). Later, the judge changed her mind and issued her own written ruling

determining that Viking Bank is not required to pay the management fees under the terms of the Lease. This appealed followed.

IV. STANDARD OF REVIEW

INTERPRETATION OF AN UNAMBIGUOUS CONTRACT IS A QUESTION OF LAW SUBJECT TO DE NOVO REVIEW

Both parties to this case agree that the contract at issue was unambiguous. No parole evidence was admitted to explain the contract terms and in paragraph 27 of the decision the judge found the Lease to be unambiguous. Appellate courts in Washington interpret unambiguous contracts as a matter of law. *Paradiso v. Drake*, 135 Wn.App. 329, 143 P.3d 859 (2006). Since the interpretation is a matter of law this Court reviews a contract de novo. *Stranberg v. Lasc*, 115 Wn.App. 396, 63 P.3d 809 (2003); *Mattingly v. Palmer Ridge Homes, LLC*, 157 Wn.App. 376, 238 P.3d 505 (2010). The review by this Court of the Trial Court's decision below is de novo based upon the language of the Lease. The Trial Court's written decision, in paragraphs 12, 14, 15, 16, 17, 18, 21, 28, 29 and 30, provided its interpretation of the Lease. Almost all of the statements in those paragraphs are conclusions of law interpreting the Lease rather than findings based upon testimonial evidence presented at trial. As such those conclusions of law are reviewed by this court de novo *Dumas v. Gagner*, 137 Wash.2d 268, 280, 971 P.2d 17 (1999). Although the Court did not

denominate any of the paragraphs of its decision as Findings of Fact, out of an abundance of caution, Firgrove has assigned error to each of those paragraphs, except as to Paragraph 6 which states that no evidence was presented to the Court as to the exact scope of duties of the property manager and Paragraph 16 that states that the Lease leaves only negligible duties to the landlord. The Court made no Finding of Fact in the paragraphs to which Firgrove assigns error. The remaining paragraphs of the decision to which Firgrove assigns error in the Court's 30 paragraph decision do not contain findings of fact but instead constitute conclusions of law and the Trial Courts' interpretation of case law. As such, all of the paragraphs of the decision to which error is assigned except those small portions of paragraphs 6 and 16 are to be reviewed de novo.

UNAMBIGUOUS CONTRACT REQUIRES VIKING BANK
TO PAY THE MANAGEMENT FEES

Washington law sets forth clear rules of construction of contracts. They are:

1. The intent of the parties controls;
2. The Court determines intent from reading the contract as a whole;
3. The Court does not read ambiguity into a contract;
4. Words in the contract are given their ordinary meaning;

5. If the meaning of a word is uncertain or capable of more than one meaning they are ambiguous;
6. Words and provisions are not ambiguous simply because a party suggests an opposing meaning.

Davis vs. State of Washington Department of Transportation, 138 Wn.App 811, 159 P.3d 427 (2007).

In paragraphs 15, 16, 17, 18, 28, 29, and 30 of its decision, the Trial Court ruled that no language in the Lease requires the tenant to pay the management fee incurred by for Firgrove as property owner. Those rulings are legal error. They ignore the plain meaning of the words used by the parties in the Lease that require the tenant to pay all expenses of the landlord related to the property. In the instant case, Plaintiff Viking Bank did not argue, and the Court did not find, that any words used in the Lease are ambiguous. Instead, Viking Bank argued that since the term "management fee" was not used in the Lease that the Lease does not require Viking Bank to pay management fees. Three different provisions of the Lease require Viking Bank to pay the management fees incurred by Firgrove. The first of those provisions states:

Tenant shall pay all costs, charges, insurance premiums, taxes, utilities, expenses and prorated share of maintenance for common area CAM expenses and assessments of very kind and nature incurred for, against or in connection with the Ground Leased Premises and Property.

Pursuant to plain language of that Lease provision, the test to determine whether the management fee incurred by the landlord must be paid by the tenant is whether the fee was a:

"cost or expense. . . incurred in connection with the Ground Leased Premises."

There is no dispute that the management fee at issue in this case was incurred in connection with the landlord's ownership of the Ground Leased Premises. The Trial Court's analysis should have ended with a review of that paragraph. Nothing in the Lease suggests that the Tenant should not be required to pay management fees incurred by the Landlord in connection with management of the property. The interpretation of an unambiguous contract is a question of law. *Mayer v. Pierce County Medical*, 80 Wn.App. 416, 909 P.2d 1323 (1995). The Court should rule that as a matter of law that provision of the Lease requires Viking Bank to pay the management fee.

Two other provisions of the Lease that describe the Lease as "triple-net", and "absolutely net" also clearly require Viking Bank to pay the management fees incurred. Those two provisions state:

All Base Annual Rent payable hereunder shall be paid as "triple net" rent without deduction or offset.

It is the intent of the parties, except as otherwise provided in this lease, that the Base Annual Rent provided to the Landlord shall be absolutely net to Landlord . . .

Those two Lease provision expressly explain the intention of the parties in executing the Lease by providing a definition of what the term "triple net" means in this Lease agreement. They state that as except as otherwise provided in the Lease the rent to be paid to the Landlord is the net amount the Landlord will receive from the property after all expenses related to the property have been paid. Viking Bank does not argue that there is an exception to the absolutely triple-net language of the Lease, that there is a Lease provision that requires the Landlord to pay the management fee, or that a Lease provision that relieves the Tenant from paying the management fee. When read together those two Lease clauses are clear. There is no way to read those two provisions other than to require the Tenant to pay the management fees incurred. This court should rule that as a matter of law the Lease requires Viking Bank to pay the management fee incurred by Firgrove in connection with the property leased by the Bank.

In paragraph 12 of the decision the Trial Court ruled that a triple net lease means the tenant pays the taxes, insurance, costs of repair and costs of maintenance but not all costs incurred in connection with the property. There was no testimony presented at trial to define a triple net lease or interpret any lease provision because the parties agreed, and the court found in paragraph 5 of the decision, that the Lease is a fully integrated lease. Paragraph 12

is the Court's interpretation of the plain meaning of the words "triple net" which is a question of law and subject to de novo review. *Mayer v. Pierce County Medical, supra*. The courts definition of a triple net lease came from its understanding of how other jurisdictions have defined "triple net" rather than the interpretation of the actual words used in the Lease. It was unnecessary for the court look to other decided cases to define a "triple net" lease to decide this case because the Lease has language that expressly defines what it means by "triple net" when it says, in paragraph 3.5:

All Base Annual Rent payable hereunder shall be paid as "triple net" rent without deduction or offset. **It is the intent of the parties, except as otherwise provided in this lease, that the Base Annual Rent provided to the Landlord shall be absolutely net to Landlord and Tenant shall pay all costs, charges, insurance premiums, taxes, utilities, expenses and prorated share of maintenance for common area CAM expenses and assessments of very kind and nature incurred for, against or in connection with the Ground Leased Premises and Property.**

The Court's duty in interpreting the Lease is to decide what the parties intended when they said that the intent of the Lease is that the lease payments of the tenant were to be "absolutely net to the Landlord" with the tenant paying any other costs related to the Leased Property. *Davis vs. State of Washington Department of Transportation, supra*. It is impossible to interpret the plain meaning of those words in any way other than to require the tenant

to pay the management fees because if the landlord is required to pay those fees the rent paid by the tenant is not absolutely net the landlord. This Court should rule that under the plain language of the Lease the tenant is required to pay the management fee.

Even if the Court needed to look to legal authority to determine the meaning of a “triple net lease” like this one that is “absolutely net” to the landlord, the authority is clear that under such a lease the Tenant is required to pay the management fee incurred by the landlord related to the property. The definition of a triple-net lease is stated in *Black's Law Dictionary, 8th Ed.*, where a triple-net lease is defined as follows:

Net-net-net lease. A lease in which the lessee pays all expenses including mortgage interest and amortization leaving the lessor with an amount free of all claims - also termed *triple-net lease*.

That is the most commonly accepted definition of a triple net lease. Even Viking Bank's counsel used that definition in his supplemental trial brief filed with the Court on February 27, 2013. (CP pending). Under that definition the tenant would be required to pay the management fee in this case even if the Lease did not contain the "absolutely net" language in the triple net provision.

The best Washington authority on triple net leases and "absolutely net" leases comes from *Washington Real Property Deskbook 4th Edition, Vol. 2, Chapter 18.1 (2009)* where the author defines both triple net lease and absolutely net leases as follows:

Triple-Net (Net, net, net) or Absolute Net. These terms address the expenses to be paid by the tenant in connection with the lease. A "triple net" lease is one in which the tenant pays all expenses (taxes and insurance), maintenance, and utilities. Certain repairs (as opposed to maintenance) of a structural nature may be the responsibility of the landlord in triple net leases, depending upon the terms negotiated by the tenant and landlord. "Absolute net" leases imply that the landlord is to have no expense associated with the property. Retail and industrial leases generally are net leases, although the landlord will retain some responsibility for structural repairs and building defects.

As the author states, under an absolutely net lease the Landlord is to have no expense associates with the property. The Lease in this case is an "absolutely net lease". As a matter of law that requires the tenant to pay the management fee.

In his Supplemental Trial Brief (CP pending), Plaintiff's counsel attached §28.2 of the 1996 version of the *Washington Real Property Deskbook 3rd Edition* that has been replaced by the 4th Edition hereinabove cited. Although it is the old version, it contains the same definition of an absolutely net lease that requires the tenant to pay all expenses so that the Landlord has no expenses related to the property. The absolutely net language contained in the triple net provision of the lease at issue in this case is clear and unambiguous. The Landlord is to have no expenses related to the property.

Numerous other authorities define triple net leases as requiring the Tenant to pay every expense related to the property

just as *Black's Law Dictionary* states. In *International Trade Administration vs. Rensselaer Polytechnic Institution*, 936 F.2d 744, 751 (2nd Cir. 1991) the court said, at page 751:

To do so would be misleading because of the increasingly common use of "triple net" leases. In a typical triple net lease the rent stated is "net" to the landlord because the tenant takes responsibility for taxes, operating expenses and the like. This arrangement assures the landlord that he will actually receive the lease's stated profits and that they will not be subject to any expenses other than typical income tax.

The definition of a triple net lease was also addressed in *Holladay Towne Center, LLC vs. Brown Family Holdings, LLC*, 198 P.3d (1990), 617 Utah ADV. RAP 14 (2008). There, the Court discussed the triple net lease stating:

The lease was structured as a triple-net lease to insure that the Browns would have no expenses related to the premises over the term of the lease.

In Footnote 1 the court went on to say:

A triple-net lease, or a net-net-net lease is a "lease in which the lessee pays all the expenses, including mortgage interest and amortization, leaving the lessor with an amount free of all claims."

49 Am. Jur. 2d, Landlord and Tenant, §716 is in accord. There the author states:

A "net" type of lease, which may also be denominated a "net-net" or "net-net-net lease," typically requires a lessee to pay a monthly lump sum for rental, in addition to holding the lessee responsible for all other costs and expenses arising from the property, including taxes and insurance.

One Washington case has addressed, in a footnote, the definition of a triple-net lease. In Footnote 1 of *Fisher Properties Co. vs. Arden-Mayfair*, 115 Wn.2d 364, 798 P.2d 799 (1990) that footnote states:

The income approach is one of several methods of valuing property. This method determines the value of an income stream by using a formula to derive net operating income. The total gross income less a vacancy factor allowance less operating expenses equals net operating income. The lease at issue is a triple net lease, which means the tenant bears the operating expenses, hence the operating expenses are not a factor in determining the value of the property in this case.

The net operating income is divided by the capitalization rate resulting in the market value of the property. The capitalization rate is the expected rate of return on total dollars invested on an unfinanced or unleveraged basis.

The definition of a triple net lease in *Fisher Properties, supra* is identical to the other definitions argued by Firgrove. The language of the court in the footnote indicates that in a triple net lease the Tenant has to pay all of the expenses so that the rent to be capitalized to determine value is not to be reduced by anything that Landlord has to pay. The vast majority of cases interpreting leases that contain a "triple net" provision require the tenant to pay every expense associated with the property incurred by the landlord. No published case has been located by either party or the Trial Court that contains an express "absolute net" provision that does not require the tenant to pay any normal and reasonable management

fee incurred by the landlord. The rent paid to Landlord in the Lease is to be absolutely net to the Landlord and the Tenant must pay any expense related to the property that is incurred by the landlord. That includes a management fee to perform the functions that have been performed by the property management company in this case for a 5% fee. The management fee is Viking Bank's to pay under the Lease.

THE TRIAL COURT INAPPROPRIATELY APPLIED
CONTRACT INTERPRETATION RULES

In Paragraph 24 of the Trial Court's decision the judge reasoned that if Firgrove's interpretation of the language of Lease Paragraph 3.5 were correct that there would have been no need in the Lease to have provisions requiring the Tenant to pay taxes as set forth in Lease Section 3.2, utilities as set forth in Lease Section 3.3 and trash services as set forth in Lease Section 3.4. Based on that reasoning, the Court ruled that the plain language of Section 3.5 of the Lease does not require the tenant pay the management fee because that would make Sections 3.2, 3.3 and 3.4 superfluous as the tenant would be required to pay those expenses under paragraph 3.5. The Court erred in that ruling because the application of the principal that contracts should be interpreted to give meaning to each contract provision relied on by the Trial Court applies only when there are contract terms that are

ambiguous or inconsistent. *Mayer v. Pierce County Med. Bureau, Inc., supra*. There, the Court said, at page 423:

As support, he cites two principles of general contract construction: (1) when there is an inconsistency between a general and a specific provision, the specific provision ordinarily qualifies the meaning of the general provision, and (2) courts favor the interpretation of a writing which gives effect to all of its provisions over an interpretation which renders some of the language meaningless or ineffective.

Application of these principals, however, is predicated upon a finding that the terms of the contract are ambiguous or inconsistent. As the contract terms here are unambiguous and consistent, it would be inappropriate for us to apply these interpretative rules. *Citations omitted*.

Since Viking Bank did not argue, and the Court did not find either an inconsistency between general and specific provisions of the Lease or that any Lease terms are ambiguous, the Court's ruling that the operative language of Paragraph 3.5 has to be ignored because it renders Paragraphs 3.2 through 3.4 superfluous is wrong. There is nothing inconsistent between Paragraphs 3.2 through 3.4 and Paragraph 3.5. The law allows, and contract drafters frequently include two consistent provisions in a contract that would each require an obligation to be paid by one party. The Court's refusal to enforce Paragraph 3.5 because it renders Paragraphs 3.2, 3.3 and 3.4 superfluous is legal error and it renders the decision reversible error.

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THE EXTENT OF DUTIES PERFORMED FOR THE
MANAGEMENT FEE WERE SUBSTANTIAL AND
UNDISPUTED

The Trial Court found in paragraph 6 that no evidence was presented at trial regarding the exact scope of duties of the property manager and it further ruled in paragraph 16 that the landlord performed only negligible duties related to the ground leased property. The services performed by the property manager related to this property without charge other than the management fee were testified to in detail and not disputed. They are:

1. It sent a bill for the rent to Viking Bank every month. (RP 80-81) (Paragraph 23 of Trial Court Decision).

2. It received and posted the rent payment from Viking Bank to the rent ledger and disbursed sums to the owner. (RP 80-81) (Paragraph 23 of Trial Court Decision).

3. It billed Viking Bank for the property taxes two times per year. (RP 81-82) (Paragraph 23 of Trial Court Decision).

4. It received payment from Viking Bank for property taxes two times per year and paid the County the property taxes on the parcel. (RP 82). (Paragraph 23 of Trial Court Decision).

5. It received the bills from Pierce County for sewer charges to the leased property and, billed those sewer charges to Viking Bank monthly. (RP 82) (Paragraph 23 of Trial Court Decision).

6. It received payment from Viking Bank for the sewer charges, posted the payment and paid Pierce County for the sewer bills every month. (RP 82) (Paragraph 23 of Trial Court Decision).

7. It provided garbage service to the Viking Bank premises and paid the bill for garbage service to the garbage provider. (RP 82)

8. It sent an employee of the management company to the property approximately more than one time per week to inspect the driveways and common areas to make sure there were no obstructions blocking the driveways, no garbage in the area and no need for towing of abandoned vehicles from the premises, etc. That picked up garbage and debris in the common areas and reported maintenance issues he could resolve on-site to the property manager to have 3rd parties hired by the property manager to maintain the common area. (RP 76-78).

9. It regularly inspected the stormwater system that serves all of the properties in Firgrove and provided necessary maintenance. (RP 77-78).

10. It had employees replace burned out lights in the entrances to the center if the work could be done by the employee during routine inspections or where lights were at such a height that a lift was required to replace a burned out light, it arranged to have proper equipment rented, to replace the light. (RP 79-80).

11. It annually negotiated and entered into a contract with a snow removal company so that the common area driveways could immediately cleared in the event of a snow event. (RP 83-84).

12. In the event of a snow event it sent an employee to the site to determine if snow clearing or deicing of the common areas was necessary. (RP 84-85).

13. When common area maintenance needed to be done, it hired the third parties to do the common area maintenance, and supervised the work to see that it was done. (RP 89-90, 83-84).

14. When bills were generated from 3rd parties for maintenance of the common areas, snow removal from the common areas or maintenance of the stormwater system, the property manager bills each of the 3 existing tenants and the owner of the unimproved lots within the development the percentage share each is to pay and receive the payment and pays the expenses to the provider of the service. (RP 90).

////

///

The evidence in the record very specifically identifies the services performed by the property manager. To the extent the Trial Court found that there is no evidence of the exact services performed by the property manager the Trial Court is court wrong. Viewed under a substantial evidence test, the court should be reversed. *Miles v. Miles*, 128 Wn.App. 64, 114 P.3d, 671 (2005). The record contains substantial evidence of the services performed by the property manager for which no charge other than the property management fee was made. The evidence speaks for itself. Whether those services are "negligible" or not depends upon one's definition of that word. The property manager sending an employee to the property to pick up garbage in and inspect the common areas every three working days is not an accurate definition of "negligible duties". Proper management of a commercial property with a bank and office building requires the common driveways to be inspected and cleared of garbage regularly. Entering an annual contract with a snow removal company to have snow removal services available in a storm event to clear the common areas that provide the only access to the Viking Bank property takes employee time and management ability. Someone has to undertake that function for the benefit of the Viking Bank property. Sending an employee to check the premises for determination whether snow removal or deicing in the

common areas is necessary during a storm event is a management function that takes employee time. Someone has to do that when a storm event happens for the benefit of the Viking Bank property. Receiving bills for utilities serving Viking Bank, billing Viking Bank for those utilities, and paying those utility bills whether 100% owed by the bank as is the case for sewer bills or only a percentage owed by the bank as in the case for garbage bills for garbage is a management function. It takes employee time to perform those services. Inspecting and contracting for maintenance to be performed to the storm sewer system that serves all of the 4 condominium properties in the center of which Viking Bank occupies one takes employee time and is a management function. Billing, receiving payment for property taxes for Viking bank, and paying Pierce County property taxes twice a year takes employee time and is a management function. Even if Viking Bank paid the taxes directly, someone on behalf of the owner has to check and make sure the taxes are paid. If they are not paid the tenant has to be notified. That takes time and is a management function. The court erred in finding that the property manager has negligible duties related to the Viking Bank property.

VIKING BANK DID NOT CONTEST THE
REASONABLENESS OF THE MANAGEMENT FEE

The management fee charged to Firgrove by Spinnaker Management for the services performed Management is 5% of the

rent. Expert testimony presented by Firgrove at trial established that 5% is the standard management fee charged by property managers on ground leased premises not only locally in the Pierce County area, but nationally. (RP 75). The property manager also testified that a 5% management fee is also charged to and paid by the other ground lease tenant in the Firgrove Center. (RP 86). Viking Bank did not contest that 5% is a reasonable management fee for the services performed by Spinnaker Management. The Trial Court did not decide whether or not that was a reasonable fee, because it ruled that the Lease does not require the tenant to pay any management fee. Based upon the undisputed evidence provided by expert testimony the Trial Court should have found that the management fee paid by Firgrove is reasonable. That the fee was reasonable is supported by substantial evidence. *Miles, supra*.

In Paragraph 26 of her decision the Trial Court found that the parties did not agree to a 5% management fee, that 5% of the rent to be paid as a management fee is an essential term of the contract and that the Court cannot insert an essential term into a contract in the absence of a meeting of the minds. That ruling is legal error. Where the parties to a contract agree to a bargain sufficiently defined to be enforceable, without agreeing upon a term necessary to determine the party's rights and obligations, the

court will supply a reasonable term to enforce the parties' agreement. *Restatement of Contract* 2d. §204. That restatement says:

When the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court.

The use of that restatement section is discussed in *25 Washington Practice Contract Law & Practice*, §5.4 where the author states:

However, if there is no indication as to whether the parties considered or agreed upon an omitted issue, a court has the duty to supply a term or provision that is reasonable and in keeping with community standards of fairness and policy rather than analyze the hypothetical model of the bargaining process.

The Court ruled that in paragraph 27 of its decision that the Lease at issue is a valid and enforceable agreement. The Court, therefore, must fill in a reasonable management fee for the work performed. The evidence presented by expert testimony is undisputed that five percent is a reasonable fee for the service performed. The Court should have ruled that five percent is the management fee to be charged under the Lease.

The Court's reasoning that the amount of the management fee is an essential term of the agreement is also inconsistent with the other provisions of the Lease that the Court found to be enforceable. As an example, the Lease requires the tenant to pay the tenant's share of common area maintenance expenses incurred

by the landlord. (Exhibit 1, Paragraph 3.4). There is no established cap on the amount the landlord could spend in common area maintenance expenses to which the tenant must contribute. (Exhibit 1, Paragraph 3.4.1A). Instead, the paragraph on CAM expenses says that the tenant shall pay its share of "reasonable" costs and expenses of maintaining or repairing any entrances and sidewalks within the Firgrove Shopping Center. (Exhibit 1, Paragraph 3.4.1A). The need to adjudicate a reasonable management fee in this case is no different than the necessity of adjudicating reasonable CAM expenses to maintain the access driveways to the Viking Bank property. In the event of a dispute the reasonable amount of CAM expenses that can be charged to Viking Bank under the Lease must be determined by a trier of fact. The management fees sought here are no different. The law requires the Court to determine if the five percent management fee charged to Firgrove was a reasonable one. Based on the undisputed evidence presented at trial, the Court erred in failing to find that five percent is a reasonable management fee and in failing to enter a judgment in favor of Firgrove for the \$20,970.00 owed in management fees.

IV. ATTORNEY'S FEES

Firgrove is entitled to its attorney's fees on appeal. Section 18.8 of the Lease (Exhibit 1, Appendix 2) provides that the

prevailing party is entitled to reasonable attorney's fees. The Court should award Firgrove reasonable attorney's fees for this appeal by post-appeal motion.

V. CONCLUSION

This Court should reverse the Trial Court and rule that the Lease, and more particularly Paragraph 3.5 of the Lease, requires the tenant to pay the management fee incurred by Firgrove in connection with the property leased to Viking Bank. It should award Firgrove a judgment for management fees of \$20,970.00 incurred prior to trial. It should also award Firgrove reasonable attorney's fees incurred on appeal to be determined on motion filed after the decision by this Court.

RESPECTFULLY SUBMITTED this 13 day of November, 2013.



BART L. ADAMS, WSBA 11297
Attorney for Appellant

APPENDIX A



11-2-15629-5 40504307 CTD 05-10-13

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

VIKING BANK,

Plaintiff(s) ,

vs

FIRGROVE COMMONS 3 LLC,

Defendant(s)

Cause No 11-2-15629-5

COURTS DECISION



- 1 This matter came on for trial to the Court on February 27, 2013. Plaintiff Viking Bank appeared through counsel, Mr. Gary Krohn; Defendant Firgrove Commons 3, LLC, appeared through counsel Mr. Bart Adams.
- 2 The Court heard the testimony of Richard A. Mulcahy, Senior Vice-President working for Seattle Bank and former Executive Vice President and COO, later CEO of Viking Bank. The Court also heard the testimony of Gordon Rush, owner of Rush Property Management, formerly Spinnaker Property Management, Inc Mr. Rush is also the managing member of Firgrove Commons 3, LLC.
- 3 The Court admitted Exhibit numbers 1 and 3 through 8
- 4 The Plaintiff is a bank, doing business in Pierce County. After filing the Complaint in this action, Plaintiff Viking Bank merged with American West Bank.
- 5 The Defendant is the owner of a parcel of land located at 136th and Meridian in Puyallup, Washington, and legally described as set forth in a Ground Lease dated July 28, 2008. The Ground Lease is a fully integrated lease. Exhibit 1, Section 18 6.

- 1 6. The Defendant hired Spinnaker Property Management, Inc. to manage the
2 Firgrove Commons Shopping Center. No evidence was presented to the Court
3 on the dates of the engagement, or the exact scope of duties.
- 4 7. The Firgrove Commons Shopping Center consists of four parcels. The parcel of
5 land upon which the Plaintiff built its bank building is the corner pad, Unit 3, of the
6 Firgrove Commons Shopping Center. Exhibit 1. Sonic is on one of the parcels
7 and an office and retail building is on another parcel. One of the parcels is not
8 yet developed. Customers of the Bank travel over common areas in the
9 shopping center for ingress and egress to the Bank.
- 10 8. Plaintiff constructed a stand alone bank building on the Ground Leased Premises
11 and took occupancy. Rent began being paid by the Bank in March of 2010.
- 12 9. In November 2010 a bill was submitted to the Bank for a property management
13 fee (originally billed as "Management Fee—CAM Backchrg"), in the amount of
14 five percent (5%) of the rent.
- 15 10. Plaintiff filed this action seeking a determination of whether or not management
16 fees are owed by the Tenant to the Landlord under the terms of the Ground
17 Lease.
- 18 11. Section 3.5 of the Ground Lease states:
- 19
20
21
22 Triple Net Rent All Base Annual Rent payable hereunder shall be paid as
23 "triple net" rent without deduction or offset. It is the intent of the parties,
24 except as is otherwise provided in this Lease, that Base Annual Rent
25

1 provided to Landlord shall be absolutely net to Landlord, and Tenant shall
2 pay all costs, charges, insurance premiums, taxes, utilities, expenses, and
3 prorated share of maintenance for common area CAM expenses, and
4 assessments of every kind and nature incurred for, against, or in
5 connection with the Ground Leased Premises and Property. All such
6 costs, charges, insurance premiums, taxes, utilities, expenses, and
7 assessments covering the Ground Leased Premises shall be
8 approximately prorated upon the expiration of this Lease.

9
10 12 A triple net lease means the tenant pays the taxes, the insurance, costs of repair,
11 and costs of maintenance. Landlord here argues that the broad language, and
12 common understanding in the industry of a triple net lease means that the Tenant
13 is required to pay all costs of any kind incurred by Landlord in connection with the
14 Leased Premises. The law does not support that broad of an interpretation

15
16 13. The titles or labels themselves have no legal significance and are not decisive of
17 the extent to which the parties intended to shift the expense burdens of various
18 operating, repair and maintenance obligations from landlord to tenant. Rather,
19 the allocation of cost responsibilities is dictated by the substance of the Ground
20 Lease.

21
22 14. A written contract is presumed to include all material terms agreed upon by the
23 parties. The interpretation of a contract is a question of law. The primary
24 objective in construing a contract is to determine and give effect to the intention
25 of the parties at the time they entered into the contract. *Berg v. Hudesman*, 115

1 Wn.2d 657, 801 P.2d 222 (1990). The language used in the contract generally is
2 the best indication of the parties' intent. However, "[a] word is not a crystal,
3 transparent and unchanged[:]; it is the skin of a living thought and may vary
4 greatly in color and content according to the circumstances and the time in which
5 it is used." *Towne v Eisner*, 245 U.S. 418, 38 S.Ct. 158, 159, 62 L.Ed. 372, 276
6 (1918) (opinion by Justice Holmes). The contract must be construed as a whole,
7 taking into account the overall purpose of the contract and the context in which
8 the language is used.

9
10 15. No language in the Ground Lease requires the Tenant to pay a management fee.

11 16. The Ground Lease does not, either expressly or by implication, require Tenant to
12 pay a management fee for the management of the Ground Leased Premises.
13 The Ground Lease shifts the responsibility for basic property management
14 functions to Tenant for the Ground Leased Premises and leaves Landlord with
15 only negligible duties. All costs and expenses to improve, maintain, manage and
16 repair the Ground Leased Premises, the Bank building, and any other
17 improvements, and landscaping upon Unit 3, the ground upon which the Bank
18 built its building, is the sole responsibility of the Tenant. See Sections 5.1, 7.1,
19 12.1, and Recital B.

20
21 17. The Ground Lease does not expressly require Tenant to pay a management fee
22 for the management of the Common Areas on other parcels within the Shopping
23 Center. "CAM Expenses" are defined as "the reasonable costs and expenses of
24 maintaining or repairing any entrances to or sidewalks within Firgrove Shopping
25

1 Center." Section 3.4.1(A). The word "management," or any derivative of that
2 word, does not appear within Section 3.4.

3 18. Nor does the Ground Lease imply an obligation to pay a management fee. The
4 Ground Lease requires the Tenant to pay a pro-rata share of "CAM Expenses"
5 but that language seems to refer to direct out-of-pocket expenses, not uncertain
6 management costs. The Tenant's Share was determined to be 25.50 percent,
7 until construction begins on the undeveloped Unit 4 within the Shopping Center.
8 The Tenant is required to pay the CAM Expenses to the Landlord. The Bank has
9 paid all CAM Expenses for which it was billed.
10

11 19 Section 3.4 Common Area Maintenance Expenses, identifies additional charges
12 for which the Tenant will be responsible, to wit "the reasonable costs and
13 expenses of maintaining or repairing any entrances to or sidewalks within
14 Firgrove Shopping Center." Explicitly excluded from CAM expenses are the
15 costs of snow removal, landscaping or other work done on the Ground Lease
16 Premises, as those are the sole responsibility of the Tenant. Those requirements
17 were reiterated and expanded upon in Article 7—Maintenance, Section 7.1.
18 Maintenance of Ground Leased Premises, of the Ground Lease.
19

20 20. The property management company negotiated a contract with a third-party
21 company to do sweeping and snow and ice removal for the Common Area
22 driveways to be done when necessary. When billed, the Bank paid these
23 charges.
24
25

1 21 According to the Ground Lease, the Bank was required to pay rent, property
2 taxes, and sewer charges directly to the taxing authority. For example, Section
3 3.2 of the Ground Lease states in relevant part:

4 Real and Personal Property [taxes]. . . Unless required otherwise by
5 Landlord pursuant to Section 3.2.4 below, Tenant shall make all such
6 payments directly to the appropriate charging or taxing authority . . .
7

8 22 No provision in the Ground Lease is numbered Section 3.2.4.

9 23. Contrary to Sections 3.1, 3.2 and 3.3 of the Ground Lease, the property manager
10 billed the Bank for rent once a month, for property taxes twice a year, and for
11 sewer charges. The Bank paid the property manager for the rent, the property
12 taxes and the sewer charges. At some time prior to trial, the rent started being
13 paid by ACH (automatic clearing house).
14

15 24. If the Court were to adopt the broad interpretation of "triple net lease" advanced
16 by Landlord, then one would have to wonder why the parties included specific
17 provisions within the Lease for which the parties agreed the Tenant would be
18 responsible. It would be sufficient to simply include the Triple Net Rent provision
19 Other provisions, such as Section 3.2 taxes, 3.3 utilities, and 3.4.3 trash services,
20 would be superfluous. The law requires the Court construe a contract so as to
21 not render any provision superfluous. *Fardig v. Reynolds*, 55 Wn.2d 540, 348
22 P.2d 661 (1960) citing *Hollingsworth v. Robe Lumber Co.*, 182 Wash. 74, 45
23 P.2d 614, 616 (1935) ("In construing the contract, it is, of course, elementary that
24 the intention of the parties thereto is to be gathered from the whole instrument,
25

1 *and each part, if possible, should be construed so that all the parts thereof may*
2 *have some effect”).*

3 25. Moreover, courts across the Country have presided over litigation involving
4 whether a particular charge (such as a management fee) was or was not the
5 responsibility of the Tenant under a triple net lease. In every case that this court
6 reviewed, the decision turned on the language of the lease, not on whether it
7 contained a triple net rent provision. See, e.g., *Wyle Laboratories, Inc v. 128*
8 *Maryland Associates, LLC, 1003 WL 21546112 (unpublished opinion)(Cal.App. 2*
9 *Dist.) (Tenant not required to pay property management fees under triple net*
10 *lease that does not include reference to a management fee); McDonald's*
11 *Corporation v. Goler, 251 Neb 934, 560 N.W.2d 458 (1997)(tenant was required*
12 *to pay pro rata share of management fee as part of CAM charges when plain*
13 *language of lease required tenant to pay a pro rata share of all costs and*
14 *expenses “in operating, maintaining and managing the common area”¹); Tin Tin*
15 *Corporation v. Pacific Rim Park, LLC, 170 Cal.App.4th 1220, 88 Cal.Rptr.3d 816*
16 *(2009) (the title “triple net lease” itself has no legal significance and is not*
17 *decisive of the extent to which the parties intended to shift the expense burdens*
18 *of various operating, repair and maintenance obligations from landlord to tenant.*
19 *Rather, the allocation of cost responsibilities is dictated by the substance of the*
20 *lease.).*

21
22
23
24 ¹ Contrary to the statement in Plaintiff's Second Supplemental Trial Brief, at page 3, the Supreme Court of
25 Nebraska reversed the decision of the District Court and held that the tenant was required to pay “a pro
rata share of the fee related to management of the common area” based on the plain and unambiguous
language of the lease

1 26. Even if the Court were to find that a "management fee" is implicit in every triple
2 net lease, the parties here did not agree to the amount of that fee Five Percent
3 (5%) of the rent is not an insignificant amount and therefore is an essential term
4 of the contract. Clearly the parties have not agreed upon this essential term and
5 the Court will not insert an essential term into a contract in the absence of a
6 meeting of the minds as to that term.

7
8 27 The Ground Lease is a valid and enforceable contract. The Ground Lease is
9 plain on its face. In the absence of any ambiguity, the Court will not resort to
10 extrinsic evidence but will enforce the agreement of the parties as they have
11 memorialized it in the written form.

12 28. The Landlord has alleged that the Tenant is in breach of the Ground Lease, and
13 bears the burden of proving a breach has occurred. The Landlord has failed to
14 meet its burden of proof.

15
16 29. The Ground Lease does not require Tenant to pay to Landlord a management
17 fee.

18
19 30. The Tenant is not in breach of the Ground Lease.

20
21
22 DATED this

9 day of May, 2013


JUDGE STEPHANIE A. AREND

APPENDIX B

**GROUND LEASE
LEASE AGREEMENT
BY AND BETWEEN**

Firgrove Commons 3, LLC

(“Landlord”)

and

Viking Bank

(“Tenant”)

For

The Firgrove Commons Shopping Center

Leased Premises

GROUND LEASE

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GROUND LEASE

THIS GROUND LEASE ("Lease") is made on July 28, 2008 ("Effective Date") by and between Firgrove Commons 3, LLC, a Washington limited liability company, whose address is c/o Rush Development Company, Inc., Park Plaza East, 2727 Hollycroft, Suite 410, Gig Harbor, Washington 98335, Fed Tax I.D. No. 26-3027566 ("Landlord") and Viking Bank and/or Assigns (as defined herein), a Washington bank, P.O. Box 19087, 4 Nickerson Street, Suite 200, Seattle, WA 98109 ("Tenant").

RECITALS

This Lease is entered into upon the basis of the following facts, understandings, and intentions of the parties:

A. Landlord is the fee owner of that certain unimproved real property located in Pierce County in the State of Washington, legally described in Exhibit "A" ("Ground Leased Premises") attached hereto and incorporated herein by this reference.

B. Landlord desires to lease to Tenant the Ground Leased Premises and Tenant desires to lease the Ground Leased Premises from Landlord in order for Tenant to cause thereon the construction, management, and operation of a retail banking facility, consisting of a building containing not more than 3,500 square feet of interior area ("**Facility**") together with parking and three drive-through lanes, approximately 32,665 square feet of land, as more particularly depicted on the site plan as Exhibit "B" ("**Site Plan**") attached hereto and made a part hereof, and as shown on the site plan of that certain shopping center commonly known as ("**Firgrove Commons**," or "**Firgrove Commons Shopping Center**"), together with (a) all rights, easements and appurtenances belonging or appertaining thereto, including utility easements, (b) all right, title and interest of Landlord in and to any and all roads, streets, alleys and ways bounding such property and (c) all buildings and other improvements thereon, if any (collectively, "**the Property**" or "**the Ground Leased Premises**"). The Property shall be subject to a more definitive legal description as shall be obtained by Tenant from an accurate boundary and topographic A.L.T.A. survey acceptable to Tenant, at Tenant's cost. In the event any legal description of the Ground Leased Premises or Property in this Lease shall be deemed insufficient, any party hereto shall have the power to designate an attorney at law licensed to practice in Washington to fill in or to attach legally sufficient descriptions(s), with the same force and effect as if it or they had been included in this instrument when executed. Landlord and Tenant acknowledge that the Property may be converted into a condominium unit by Declaration and Covenants, Conditions, Restrictions and Reservations for Firgrove Commons, a Condominium, intended to be recorded with the Pierce County Auditor's office at some point in the future ("**Condo Documents**"). Tenant hereby acknowledges that the Condo Documents, including any amendments thereto, if and when recorded, shall govern the unit to the extent such Condo Documents are not inconsistent with the terms and conditions of this Ground Lease. If the Condo Documents impose materially different or additional obligations or duties upon the Tenant, then the terms and conditions of this Ground Lease shall control, and the Landlord shall hold the Tenant harmless from any such materially different or additional obligations or duties. Landlord and Tenant hereby agree that this Lease shall be subject to the governance provided in the Condo Documents and that each shall refrain from taking any action that violates the Condo Documents. Landlord shall indemnify Tenant from any fines, assessments, or other charges resulting from Landlord's violation of Condo Documents. Likewise, Tenant shall indemnify Landlord from any fines, assessments, or other charges resulting from Tenant's violation of Condo Documents.

C. The parties desire to establish the terms and conditions of the Lease to fulfill the foregoing objectives.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct and incorporated herein by this reference, and further agree as follows:

ARTICLE 1—DEMISE OF GROUND LEASED PREMISES

Section 1.1. Ground Leased Premises. Landlord, for and in consideration of the rents, covenants, and conditions herein set forth, does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Ground Leased Premises, subject to the terms, conditions, and provisions hereof.

Section 1.2. Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon fulfillment of all Tenant's obligations hereunder, shall lawfully and quietly hold, occupy and enjoy the Ground Leased Premises during the "Term" and any "Extended Term" of this Lease. Notwithstanding the foregoing, Landlord hereby retains the right to enter upon and inspect the Ground Leased Premises, Property, and/or Facility at reasonable times and upon reasonable notice. Landlord further reserves the right to enter upon the Ground Leased Premises, Property, and/or Facility, without prior notice, in the event of an emergency condition or situation, as reasonably determined by Landlord.

Section 1.3. Utility Easements.

Section 1.3.1 Easement and or Declaration and Covenants, Conditions, Restrictions and Reservations Agreements. Tenant shall have the right to enter into agreements with utility companies creating easements and or revisions to the. Condo Documents in favor of such companies as are required in order to service the Facility to be constructed on the Ground Leased Premises; provided, however, that any such easements or Condo Documents shall (i) have been approved in writing by Landlord as to their location and the form of the easement or Condo Documents, in Landlord's reasonable discretion; and (ii) only be granted as non-exclusive easements or amendments to the Condo Documents. Subject to the requirements set forth in subparts (i) and (ii). Landlord agrees to join in the grant of any such utilities easements or amendment of the Condo Documents and to execute any and all documents, agreements, and instruments in order to effectuate the same, all at Tenant's cost and expense. Likewise, Tenant agrees, where requested by Landlord, to join in the grant of such easements and to execute any and all documents, agreements, and instruments and to take all other actions in order to effectuate the same in the event Tenant's joinder is required in connection with any easements or the Condo Documents affecting any portion of the Land. The parties agree to use reasonable efforts to cause any encumbrances on the Ground Leased Premises to be subordinate to such easements or the Condo Documents, as may be required by any utility companies.

Section 1.4. Parking and Access. Landlord hereby reserves a non-exclusive easement in favor of itself and its designee for parking on the "No-Build Zone" referenced below, and for access, ingress, and egress to, from, and across paved portions of the Ground Leased Premises that exist from time to time for such purposes. Such designee includes the Individual Condominium Unit Owners ("Owners") of that certain Firgrove Commons, a Condominium, shopping center ("Shopping Center") adjacent to the Ground Leased Premises and known as "Firgrove Commons Shopping Center". Landlord agrees that one of the contingencies referenced in Section 2.1 below shall be the existence of valid and binding Condo Documents between Landlord and the Owners that provides for direct access between the Ground Leased Premises and the Shopping Center. The access rights for the benefit of the Ground Leased Premises will be in common with all other parties granted access, ingress, and egress over and across the Shopping Center., and shall be subject to the Condo Documents and to Owner's rules and regulations. Except, notwithstanding the above, the Tenant shall have the exclusive right to no less than 18 parking spaces, to be designated by the Tenant, and exclusive rights of ingress to and egress from all bank "drive through" lanes.

Section 1.4.1 No-Build Zone. Tenant acknowledges that it shall only be entitled to construct improvements as contemplated by the Site Plan and otherwise approved in writing by Landlord in accordance with this Lease, which shall not be unreasonably withheld, and in no event shall Tenant be permitted to improve any portion of the Ground Leased Premises identified on the Site Plan as the "No-Build Zone" with other than such parking areas as are approved by Landlord in writing.

Section 1.5. Documentary Stamp Tax and Intangible Tax. Notwithstanding anything in this Lease to the contrary, in the event that at any time this Lease is determined to be a taxable instrument, or represent a taxable transaction by the State of Washington under provisions relating to documentary stamp tax, or intangible tax, then in such event payment of any such tax(es) shall be paid by Tenant.

ARTICLE 2—LEASE TERM

Section 2.1. Lease Commencement. As used herein, the term "Lease Commencement Date" means the earlier of (i) issuance of all building permits by Pierce County for the Facility, or (ii) at the removal of all contingencies, whichever is first. As used in the preceding sentence, the "contingencies" shall be deemed satisfied at such time Tenant has obtained a building permit from Pierce County for construction of the Facility and the Tenant has received all required state and federal bank regulatory approvals for conducting banking operations at the Facility. Tenant shall use its best efforts to cause the contingencies to be satisfied within one hundred eighty (180) days from the Effective Date. If, despite Tenant's best efforts, the contingencies have not been satisfied within the one hundred eighty (180) day period, either the Landlord or the Tenant shall be entitled to terminate this Lease. Tenant shall keep Landlord informed of the status of the contingencies upon Landlord's request and on a regular basis. Landlord agrees that all of the following will be true and correct prior to expiration of the one hundred eighty (180) day period, failing which Tenant shall be entitled to cancel this Lease: (a) the Ground Leased Premises is zoned to allow the Facility; (b) direct access exists between the Ground Leased Premises and the Shopping Center; (c) that portion of the Ground Leased Premises on which the Facility will be constructed is of final grade and elevation (as agreed upon) for construction of the Facility, and (d) water, sewer, electric, and telephone utilities are available for tap-in at a point on the boundary of the Ground Leased Premises.

Section 2.2. Lease Term. The term of this Lease shall be for a period of twenty (20) years commencing on the Rent Commencement Date. As used in this Lease, "Term" shall refer to the initial twenty (20) year term of this Lease. The last day of the initial twenty (20) year Term of this Lease shall be the day immediately preceding the twentieth (20th) anniversary of the Lease Commencement Date of this Lease ("Expiration Date"), unless sooner terminated as herein provided.

Section 2.3. Options to Extend. Tenant may, at its option and subject to the conditions herein stated, extend the original Term of this Lease for four (4) consecutive additional periods of five (5) years each, computed from the "Last Day" of the initial Term as defined above in Section 2.2., subject to all the provisions of this Lease, including provisions for adjustments to the rent. Each additional five (5) year period in effect hereunder shall be referred to as an "Extended Term." The "Expiration Date," as used herein, shall be deemed extended, to the extent applicable, to the last date of each Extended Term of this Lease. Tenant's right to exercise each option is subject to the following conditions precedent:

Section 2.3.1 The Lease shall be in effect at the time notice of exercise is given and on the last day of the Term, or such Extended Term, as may be applicable.

Section 2.3.2 Without limiting Tenant's curing rights hereunder, to the extent applicable, no uncured event of default shall exist under any provision of this Lease at the time notice is given or during the period from exercise of the notice through and including the last day of the then current Term, or as of the first day of each such Extended Term.

Section 2.3.3 Each and every one of Tenant's material representations and warranties, as provided in this Lease, shall be true and correct as of the time notice is given, during the period from exercise of the notice through and including the last day of the then current Term, and as of the first day of each such Extended Term.

Section 2.3.4 Tenant shall give written notice to Landlord irrevocably exercising the option not more than nine (9) months and not less than six (6) months prior to expiration of the Term, and each Extended Term, as may be applicable.

Section 2.4. Reversion. At the Expiration Date or sooner termination of this Lease, whether by Tenant's default, Tenant's eviction, or otherwise as a result of the Tenant's breach of this Lease, the Facility, Ground Leased Premises, and all other improvements upon the Ground Leased Premises shall, without compensation to Tenant or any other party, then become the sole property of Landlord or Landlord's designee, free and clear of all claims to or against them by Tenant or any third person, and all liens, security interests, and encumbrances, and Tenant shall defend and indemnify Landlord against all liability and loss, including but not limited to attorneys' fees and costs through litigation and all appeals, arising from such claims, liens, security interests, and encumbrances, and from Landlord's exercise of the rights conferred by this section. All alterations, improvements, additions, and utility installations (whether or not such utility installation constitutes trade fixtures of Tenant) that may be made on the Ground Leased Premises, shall be the property of Landlord and shall remain upon and be surrendered with the Ground Leased Premises at the Expiration Date or sooner termination of this Lease. Notwithstanding the provisions of this paragraph, the machinery and equipment of Tenant or any tenant of the Facility, other than that which is affixed to the Ground Leased Premises so that it cannot be removed without damage to the Ground Leased Premises, shall remain the property of Tenant or such tenant, as may be applicable, and may be removed; provided, however, that Tenant removes or causes its removal by the Expiration Date.

ARTICLE 3—RENT, TAXES, AND UTILITIES

Section 3.1. Regular Monthly Rent. "**Rent Commencement Date**" shall be the date agreed upon by the Tenant and Landlord as to the actual date rent payments are required from the Tenant to the Landlord as set forth herein. The mutually agreed upon Rent Commencement Date shall be set no later than the date of issuance of the Building Permit. The Rent Commence Date shall be either (1) a date not more than Thirty (30) days after the issuance of a final Certificate of Occupancy for the Facility or (2) a date not greater than One Hundred and Eighty (180) days beyond the issuance of the Building Permit, which ever comes first. Except, if the Tenant uses **Rush Commercial Construction, Inc.** as its General Contractor for construction of the Facility, then the Rent Commencement Date shall be the date 30 days after issuance of a final Certificate of Occupancy. Tenant agrees to pay Landlord, without notice, demand, abatement, deduction, or offset, for the use and occupancy of the Ground Leased Premises, Base Annual Rent in the amount of One Hundred Fifteen Thousand Dollars (\$115,000.00), payable in monthly installments in advance on the first day of each and every month during the Term, in the sum of Nine Thousand Five Hundred Eighty Three and 33/100 Dollars (\$9,583.33). The first month's rent shall be paid upon lease execution and be credited on the Rent Commencement Date. In the event that the Rent Commencement Date falls on a day other than the first day of a calendar month, the rent for the first and last months of the Lease shall be prorated. The Base Annual Rent shall be subject to the following escalation schedule:

Initial Lease Term:

- Years 1 – 5; Initial Base Annual Rent,
- Years 6 – 10; Base Annual Rent increased to One Hundred Ten Percent (110%), of the previous years Base Annual Rent
- Years 11 – 15; Base Annual Rent increased to One Hundred Ten Percent (110%), of the previous years Base Annual Rent,
- Years 16 – 20; Base Annual Rent increased to One Hundred Ten Percent (110%), of the previous years Base Annual Rent

Options to Extend: (four (4) periods of five (5) years each)

Option Period One

On the anniversary of the Lease Term commencing with the first day of the First Extended Term a rent adjustment shall be made to the Base Annual Rent to the then Fair Market Rental Rate ("FMRR") as established by a general assessment of the market rent value for similar property with in the area as determined herein. In no event shall the Base Annual Rent decrease over the previous final year of the previous rent rate period.

Option Periods Two, Three, and Four

Base Annual Rent shall be increased to a rate of One Hundred Ten Percent (110%) of the Base Annual Rent for the immediately preceding Lease year of the previous rent rate period.

Simultaneously with and in addition to payment of all rent hereunder including Base Annual Rent, Tenant agrees to pay all applicable taxes. The term "rent," as used herein, shall mean Base Annual Rent, and any additional rent due and payable hereunder.

For purposes hereof, the term "**Fair Market Rental Rate**" (or "FMRR") shall mean the rent, as of the date in question, which a landlord, willing but not obligated to lease, would accept for the Land (excluding any and all improvements paid for by the Tenant), and which a tenant, willing but not obligated to rent, would pay therefor in an arms-length transaction for property comparable to the Land in the

Puyallup South Hill submarket, at the commencement of such Extension Term, for property of equivalent quality, size, utility and location, with the length of the Extension Term, concessions, allowances, brokers' fees and the credit standing of Tenant to be taken into account. Landlord shall deliver written notice (the "**Landlord Notice**") to Tenant within fifteen (15) days after the Extension Date which sets forth the FMRR as determined by Landlord to be payable during the applicable Extension after consideration of the factors set forth above. Tenant shall have the right, within fifteen (15) days following the date of the Landlord Notice, to deliver written notice that it accepts Landlord's determination of the FMRR, or that it disagrees with Landlord's determination of the FMRR. Thereafter, if the parties are unable to agree as to the FMRR by the date that is forty-five (45) days following the Extension Date, either party may give written notice that it is designating an appraiser (the "**First Appraiser**") to determine the FMRR. Within fifteen (15) days after the service of such notice, the other party shall give written notice to the party giving the first notice, which notice shall designate the second appraiser (the "**Second Appraiser**"). If the Second Appraiser is not so designated by the time above specified, then the party designating the First Appraiser may request appointment of the Second Appraiser by the president of the local chapter of the American Institute of Real Estate Appraisers (the "**Appraisal President**"). The First and Second Appraisers so designated or appointed shall meet within ten (10) days after the Second Appraiser is appointed; and if within fifteen (15) days after the Second Appraiser is appointed, the First and Second Appraisers do not agree upon the FMRR, they shall then (i) each report to Landlord and Tenant their respective determinations of the FMRR, and (ii) appoint a Third Appraiser (the "**Third Appraiser**"). If the First Appraiser and Second Appraiser are unable to agree upon the Third Appraiser within ten (10) days, the parties shall request that such appointment be made by the Appraisal President. In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as herein before provided for the appointment of such appraiser so failing, refusing or being unable to act. Within fifteen (15) days after his appointment, the Third Appraiser shall select either the determination of the First Appraiser or the determination of the Second Appraiser as the FMRR, and such determination shall be final and binding upon the parties. Each party shall pay the fees and expenses of the appraiser appointed by such party, and the fees and expenses of the Third Appraiser, and all other expenses, if any, shall be borne by the party whose determination of FMRR was not selected by the Third Appraiser. Any appraiser designated to serve as above provided shall be disinterested, shall be a member of the Appraisal Institute, and shall be familiar with values of properties similar to the Land in the Puyallup South Hill, Washington area.

Section 3.2. Taxes.

Section 3.2.1 Real and Personal Property. From and after the Rent Commencement Date, Tenant shall pay or cause to be paid, without notice, demand, abatement, deduction, or offset, all real and personal property taxes, general and special assessments, and all other charges, assessments, and taxes of every description, levied on or assessed against (a) the Ground Leased Premises, the Facility, and other improvements located on the Ground Leased Premises; (b) personal property located on or in the Ground Leased Premises, the Facility, or improvements; and (c) the leasehold estate, or any subleasehold estate, to the full extent of installments assessed during the Term and any Extended Term. Unless required otherwise by Landlord pursuant to Section 3.2.4 below, Tenant shall make all such payments directly to the appropriate charging or taxing authority at least fifteen (15) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Tenant may, at Tenant's election, utilize the permitted installment method, but shall pay each installment with any interest at least fifteen (15) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. All payments of taxes and assessments, including any installment payments, shall be prorated for the initial Lease year and for the year in which the Lease terminates.

Section 3.2.2 Proof of Compliance. Tenant shall furnish to Landlord, within five (5) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Tenant shall, at its expense, retain a tax service to notify Landlord whether the taxes have been paid, and notice from the tax service shall satisfy this provision.

Section 3.2.3 Contesting Taxes. To the degree permitted by applicable law, Tenant shall have the right to contest, any assessed valuation, real estate tax, or assessment; provided that, unless Tenant has paid such tax or assessment under protest, Tenant shall furnish to Landlord (i) proof reasonably satisfactory to Landlord that such protest or contest may be maintained without payment under protest, and (ii) a surety bond or other security reasonably satisfactory to Landlord securing the payment of such contested item or items and all interest, penalty, and cost in connection therewith upon the final determination of such contest or review. Landlord shall, if it determines it is reasonable to do so, and if so requested by Tenant, join in any proceeding for contest or review of such taxes or assessments, but the entire cost of such joinder in the proceedings (including all costs, expenses, and attorneys' fees reasonably sustained by Landlord in connection therewith) shall be borne by Tenant. Any amount already paid by Tenant and subsequently recovered as the result of such contest or review shall be for the account of Tenant.

Section 3.3. Utilities. From and after the Rent Commencement Date, Tenant shall pay or cause to be paid all charges for water, heat, gas electricity, cable, trash disposal, sewers, and any and all other utilities used upon the Ground Leased Premises throughout the Term and any Extended Term.

Section 3.4. Common Area Maintenance Expenses.

Section 3.4.1. Definitions. For all purposes of this Lease, the following terms shall have the meanings ascribed to them herein.

(A) "CAM Expenses" shall mean the reasonable costs and expenses of maintaining or repairing any entrances to or sidewalks within Firgrove Shopping Center. CAM Expenses shall not include the cost or expense of snow removal, landscaping, or other work done on or around the Facility or Ground Leased Premises, which the Tenant shall be responsible for.

(B) "Tenant's Share" shall mean that certain portion of the CAM Expenses that Tenant is obligated to pay to Landlord, which shall be calculated by multiplying annual CAM Expenses, as defined above, by a fraction, the numerator of which shall be the total square footage of the Property, and the denominator of which shall be the total developed square footage of the property in Firgrove Commons Shopping Center, (see Exhibit B of the Firgrove Commons Condominium Declaration), which fraction Landlord and Tenant acknowledge and agree is equal to 25.50% (to be revised at such time as the Construction starts on improvements to Unit 4 of the Condominium).. However, if any CAM Expenses are included as part of any HOA dues, or vice-versa, then the Tenant shall be obligated to pay one or the other, but not both.

Section 3.4.2 Payment of CAM Expenses. In addition to the payment of base rent, Tenant shall pay Tenant's Share to Landlord during the Term. Landlord shall provide a good faith estimate of the CAM Expenses, as defined above, for the current calendar year and an estimate of Tenant's Share, if any (the "Estimate Statement"). Tenant shall remit monthly one-twelfth (1/12th) of Tenant's Share (the "Estimated Payment") as additional rent together with its payments of base rent. On or before March 31st of each calendar year, Landlord shall send a statement to Tenant detailing all CAM Expenses for the prior year and setting forth the amount representing the Tenant's Share, as reconciled for the actual CAM Expenses of the prior year (the "CAM Expense Statement"). If the CAM Expense Statement indicates that the estimated CAM Expenses paid by Tenant during the preceding year exceeded Tenant's Share, then Tenant shall be given a credit in the amount of the difference between the Estimated Payments made in the preceding year and the Tenant's Share against its next due installments of CAM Expenses. If the CAM Expense Statement indicates that Tenant's Share exceeded the Estimated Payments, then Tenant shall remit the difference to Landlord as additional rent.

Section 3.4.3. Trash Services. Tenant shall be solely responsible for and shall promptly pay for all trash and debris removal charges relating to the Property; under no circumstances shall charges and costs related to removal of trash and debris for Firgrove Commons Shopping Center be included in CAM Expenses.

Section 3.4.5. Tenant's Right to Audit CAM Expenses. If Tenant disputes the amount set forth in the CAM Expense Statement, Tenant shall have the right, at Tenant's sole expense, not later than ninety (90) days following receipt of such CAM Expense Statement, to cause Landlord's books and records with respect to the calendar year which is the subject of the CAM Expense Statement to be audited by a certified public accountant or a qualified auditor of Tenant mutually acceptable to Landlord and Tenant,. The audit shall take place at the offices of Landlord where its books and records are located at a mutually convenient time during Landlord's regular business hours. Tenant's Share of CAM Expenses shall be appropriately adjusted based upon the results of such audit, and the results of such audit shall be final and binding upon Landlord and Tenant. If Tenant's audit indicates that Landlord has overstated the CAM Expenses by more than eight per cent (8%), Landlord shall reimburse Tenant for the cost of the audit.

Section 3.5. Triple Net Rent. All Base Annual Rent payable hereunder shall be paid as "triple net" rent without deduction or offset. It is the intent of the parties, except as is otherwise provided in this Lease, that Base Annual Rent provided to Landlord shall be absolutely net to Landlord, and Tenant shall pay all costs, charges, insurance premiums, taxes, utilities, expenses, and prorated share of maintenance for common area CAM expenses, and assessments of every kind and nature incurred for, against, or in connection with the Ground Leased Premises and Property. All such costs, charges, insurance premiums, taxes, utilities, expenses, and assessments covering the Ground Leased Premises shall be approximately prorated upon the expiration of this Lease.

ARTICLE 4—USE OF PREMISES

Section 4.1. Primary Use. Tenant shall use or cause the use of the Ground Leased Premises for the operation of a retail banking facility and for no other uses. Tenant agrees that such retail banking facility shall be continuously operated during the same hours of business as are customary in the banking industry for similar facilities and consistent with Tenant's other branch retail banking facilities located in Washington. If in the event of a required change in the use by the Tenant, Landlord shall approve of any change prior to the enactment of the change of use, and shall not unreasonably withhold approval.

Section 4.2. Hazardous Materials.

Section 4.2.1. Landlord's Representations and Warranties. Landlord represents and warrants the following:

- (a) To Landlord's actual knowledge, the Property does not presently contain and is free from all Hazardous Substances (as defined herein below).
- (b) To Landlord's actual knowledge, the Property has not in the past been used for storage, manufacture or sale of Hazardous Substances or for any activity involving Hazardous Substances.
- (c) To Landlord's actual knowledge, no Hazardous Substances are located in the vicinity of the Property.
- (d) Landlord has not transported, or caused to be transported, any Hazardous Substances to or from the Property.

Section 4.2.2. No Notices, Litigation, or Liens. Landlord has not received and is not aware of any written notification from any federal, state, county or city agency or authority relating to Hazardous Substances, in or near the Property. Landlord has not received written notice of any litigation or liens. Landlord has not received any request for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim from or by any public or private agency or entity concerning any release or discharge of any Hazardous Materials on, under, about, or off of the Property or any alleged violation of any Hazardous Materials Laws involving the Property. No litigation is pending or, to the best of Landlord's knowledge, threatened with respect to the Property concerning any Hazardous Materials or any Hazardous Materials Laws. No lien has been imposed or, to the best knowledge of Landlord, threatened to be imposed against the Property by any governmental agency or entity in connection with the presence of Hazardous Materials or violation of any Hazardous Materials Laws on or off the Property.

Section 4.2.3. Use of Property By Tenant, Remediation of Contamination Caused By Tenant.

Section 4.2.3.1. Use. Tenant hereby agrees that Tenant and Tenant's officers, directors, members, partners, employees, representatives, agents, contractors, subcontractors, successors, assigns, lessees, sublessees, concessionaires, invitees, and any other occupants of the Property (for purpose of this Section, referred to collectively herein as ("**Tenant Representatives**")) shall not use, generate, manufacture, refine, produce, process, store, or dispose of, on, under, or about the Property or transport to or from the Property in the future for the purpose of generating, manufacturing, refining, producing, storing, handling, transferring, processing, or transporting Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws. Furthermore, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant's Representatives of Hazardous Materials on the Property, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Property.

Section 4.2.3.2. Remediation. If at any time during the Initial Term or any Extension any contamination of the Property by Hazardous Materials shall occur where such contamination is caused by an act or omission of Tenant ("**Tenant Contamination**"), then Tenant, at its sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the Property, including any affected adjacent property, if any, or the groundwater underlying the Property to the extent reasonably possible in accordance with the requirements of the applicable Hazardous Materials Laws and industry standards then prevailing in the Hazardous Materials management and remediation industry in the State of Washington. However, Tenant shall not take any required remedial action in response to any Tenant's Contamination in or about the Property or enter into any settlement agreement, consent, decree, or other compromise in respect to any claims relating to any Tenant's Contamination without first notifying Landlord of Tenant's intention to do so in writing and affording Landlord the opportunity to appear, intervene, or otherwise appropriately assert and protect Landlord's interest with respect thereto. In addition to all other rights and remedies of the Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within the time frame

prescribed by the applicable governmental authority overseeing such remediation work after Landlord has approved Tenant's remediation plan (such approval not to be unreasonably withheld) and all necessary approvals and consents have been obtained and thereafter continue to prosecute the remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause the remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement of all amounts reasonably paid by Landlord (together with interest on such amounts at the highest lawful rate until paid), when the demand is accompanied by proof of payment by Landlord of the amounts demanded. Tenant shall promptly deliver to Landlord copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Property as part of Tenant's remediation of any Tenant's Contamination.

Section 4.2.3.3. Disposition of Hazardous Materials. Except as discharged into the sanitary sewer or otherwise removed from the Property in strict accordance and conformity with all applicable Hazardous Materials Laws, Tenant shall cause any and all Hazardous Materials removed from the Property as part of the required remediation of Tenant's Contamination to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes.

Section 4.2.4. Notice of Hazardous Materials Matters. Each party hereto (for purposes of this Section, "Notifying Party") shall immediately notify the other party ("Notice Recipient") in writing of: (a) any enforcement, clean-up, removal, or other governmental or regulatory action instituted, contemplated, or threatened concerning the Property pursuant to any Hazardous Materials Laws; (b) any claim made or threatened by any person against the Notifying Party or the Property relating to damage contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Materials on or about the Property; and (c) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Property including any complaints, notices, warnings, or asserted violations in connection therewith, all upon receipt by the Notifying Party of actual knowledge of any of the foregoing matters. Notifying Party shall also supply to Notice Recipient as promptly as possible, and in any event within five (5) business days after Notifying Party first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Property or Tenant's use thereof.

Section 4.2.5. Landlord Indemnity. Landlord shall indemnify, defend, protect, and hold Tenant and each of Tenant's employees, agents, officers, partners, shareholders, attorneys, successors, and assigns free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, or expenses (including, without limitation, attorneys' fees and costs through litigation and all appeals) or death or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by a breach of any covenant, warranty, or representation of Landlord set forth above in this section; and this indemnity of Landlord shall survive the expiration or sooner termination of this Lease. Landlord reserves the right in the event of any such breach to elect, at its sole option, (i) to repair, clean-up, decontaminate, or otherwise remedy the condition at Landlord's sole cost and expense, or (ii) if the cost to repair, clean-up, decontaminate, or otherwise remedy the condition exceeds an amount equal to one (1) year's rent at the then applicable rental amount, and if Tenant is unwilling to bear any excess remedial expenses, and if there are fewer than two (2) Lease Years remaining in the Term, and if Landlord agrees to reimburse Tenant for Tenant's unamortized costs in constructing the improvements on the Property, then terminate this Lease. If all of the conditions set forth in part (ii) of the foregoing sentence are not met, then Landlord shall not have any right to terminate the Lease, and Landlord shall repair, clean-up, decontaminate, or otherwise remedy the condition at Landlord's sole cost and expense. The foregoing indemnification by Landlord shall not extend or be construed to extend to any Tenant Contamination. If Landlord has the option to terminate this Lease pursuant to this Section 4.2.5 and exercises the option to terminate this Lease, then Tenant shall have no future liability for the disposal and/or containment of such materials and neither party shall have further liability under this Lease from and after the termination date. If Landlord has the option to terminate this Lease pursuant to this Section 4.2.5 and Landlord elects to terminate this Lease, but Tenant desires to remedy the situation at its sole expense, using such procedures and other methods as may be approved by Landlord and all regulatory authorities with jurisdiction over the remedial work, then further provided that no Default exists, this Lease will not terminate and Tenant may proceed to commence and prosecute to completion of the work; and in such event, Landlord will contribute to the cost of the remedial expenses an amount equal to the lesser of the actual cost thereof or one year's rent as in effect at the time of the contribution, as evidenced by invoices reasonably approved by Landlord. In the event of such election by Tenant, Tenant shall notify Landlord in writing within fifteen (15) days after delivery of Landlord's notice of its election to terminate this Lease. Tenant shall thereafter commence and prosecute to completion all work within the time frame prescribed by the applicable governmental authority overseeing such remediation work. Tenant's failure to timely commence or diligently prosecute the remedial work to completion, if it has elected to do so, shall constitute a Default under this Lease.

Section 4.2.6. Indemnification by Tenant. Indemnification by Tenant, Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect, and hold Landlord, and each of Landlord's partners (if applicable), employees, agents, attorneys, shareholders, officers, directors, trustees, successors, and assigns (collectively, Landlord together with all of such persons and

entities are hereinafter referred to as the "**Indemnified Parties**"), free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses, or expenses (including, without limitation, attorneys' fees and costs through litigation and all appeals) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (a) any Tenant's Contamination, (b) Tenant's failure to comply with any Hazardous Materials Laws with respect to the Property, or (c) a breach of any covenant, warranty, or representation of Tenant under this Section. Tenant's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean-up, or detoxification or decontamination of the Property, and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. For purposes of the indemnity provisions hereof, any acts or omissions of Tenant, or by employees, agents, assignees, lessees, sublessees, contractors, or subcontractors of Tenant or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to Tenant. The foregoing indemnity shall survive the expiration or sooner termination of this Lease, but under no circumstances shall it extend to any conditions that do not constitute Tenant Contamination.

Section 4.2.7. Survival of Lease. Unless expressly set forth otherwise, the representations, warranties and indemnities in this Section 4.2 shall survive the termination of the Lease.

Section 4.2.8. Material Disruption of Tenant's Business. If, after the Commencement Date, the Property becomes contaminated with Hazardous Substances and such contamination is not the fault of Tenant or anyone acting by, through or under Tenant, then Tenant shall have the right to terminate this Lease if such contamination causes or would cause any material disruption in the business then being conducted on the Property. A "material disruption" shall mean anything which causes or would cause the cessation of business for more than thirty (30) consecutive days. However, Tenant shall not have the foregoing right to terminate if Landlord agrees in writing that (i) all rent and any additional charges shall abate during any period of material disruption caused by such contamination; and (ii) the Landlord's indemnity contained in Section 4.2.5 above shall also apply to such contamination.

Section 4.2.9. Definitions "Hazardous Materials" shall mean any material, substance, or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, or corrosive, including, without limitation, petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and those materials, substances, and/or wastes, including infectious waste, medical waste, and potentially infectious biomedical waste, which are or later become regulated by any local governmental authority, the State of Washington or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, *et seq.*; all corresponding and related State of Washington and local Statutes, ordinances, and regulations, including without limitation any dealing with underground storage tanks; and in any other environmental law, regulation, or ordinance now existing or hereinafter enacted (collectively, "**Hazardous Materials Laws**")

Section 4.2.10. Tenant Covenants. Tenant shall not cause or permit its agents, employees and/or contractors to cause: (a) any violation of any Environmental Law on the Property, or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on or under the Property, except to the extent reasonably necessary for the conduct of Tenant's business, and then Tenant shall comply with all applicable Environmental Laws with respect to these Hazardous Substances. Tenant's indemnity contained in Section 4.2.6 above shall also apply to such contamination.

Section 4.2.11. Tenant Compliance Responsibilities. Tenant shall, at Tenant's sole expense, comply with all applicable Environmental Laws with respect to Tenant's use of the Property and shall, at Tenant's cost, make all submissions to, provide all information required by and otherwise fully comply with all requirements of any governmental authority arising under Environmental Laws with respect to Tenant's use of the Property. If any governmental authority requires any investigation or remediation because of any violation of Environmental Laws by Tenant or any Hazardous Substances Discharge, then Tenant shall, at Tenant's own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans, and Tenant shall promptly provide Landlord with all information reasonably requested by Landlord regarding Tenant's use, generation, storage, transportation or disposal of Hazardous Substances in or at the Property.

Section 4.2.12. Landlord's Representations and Warranties. Landlord represents, covenants and warrants, in addition to any other representations, covenants and warranties contained in this Lease, that (a) Landlord is seized in full fee simple title to the Property and Landlord has the due power and authority to enter into this Lease without the consent or intervention of any other parties; (b) execution of this Lease by Landlord and construction and operation of a Viking Bank retail banking facility on the Property will not violate

the terms of any agreements that Landlord may have with any other parties, including leases, restrictive covenants, exclusives, mortgages, stand still agreements, and cease and desist orders and any bylaws of Landlord; (c) Landlord is not aware of any actions, suits or proceedings pending against, by or affecting Landlord which relate to title to the Property or which question the validity or enforceability of this Lease or of any action taken by Landlord under this Lease, in any court or before any governmental authority, domestic or foreign; and (d) there are no leases, including without limitation, billboard leases, or other agreements for use, occupancy or possession presently in force with respect to all or any portion of the Property.

ARTICLE 5—IMPROVEMENTS

Section 5.1. Construction of Improvements. At Tenant's sole cost and expense, Tenant shall cause the Facility (including drive thru) to be constructed on the Ground Leased Premises in accordance with the Site Plan, together with all required landscaping and parking, conforming in all respects with local building code requirements, zoning requirements, this Lease, and the Work Letter Agreement attached hereto as Exhibit "C."

Section 5.2. Signage. Tenant shall be permitted to use its corporate standard signage on the Facility, and to erect pylon, monument, and directional signage on the Ground Leased Premises exclusive of the No-Build Zone. However, the location, type, size, and construction of all signage shall at all times be subject to the approval of Landlord, any regulations or restrictions set forth in the Condo Documents, sign criteria for the Shopping Center, and must comply with all applicable governmental requirements. Landlord approvals shall not be unreasonably withheld. The Landlord will construct a Shopping Center monument sign between Units 2 and 3 of the Master Condominium. Landlord provided monument sign will consist of a general Shopping Center identification, two major Tenant panels for Units 2 and 3, and individual smaller identification strips for tenants of Unit 1. Tenant will be responsible for the design, installation, and payment for their on panel section of the monument sign.

Section 5.3. Proof of Compliance. Tenant shall deliver to Landlord, at Tenant's expense, evidence of compliance with all applicable requirements for permits and codes, ordinances, and approvals, including but not restricted to, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction. Once the work is commenced, Tenant shall with reasonable diligence cause the prosecution to completion of the Facility including related landscaping and parking.

ARTICLE 6—ENCUMBRANCE OF LEASEHOLD AND FEE ESTATE

Section 6.1. Tenant's Right to Encumber. Tenant may, at any time, encumber all or any portion of its interest in this Lease and the leasehold estate by deed of trust, mortgage, or other security instrument upon obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, and shall be further conditioned upon the agreement of the leasehold mortgagee to simultaneously deliver default notices to Landlord and Tenant. Each such mortgage, deed of trust, or other security instrument acquired by the holder of any leasehold mortgage shall be subject and subordinate to all rights and interests of Landlord herein and shall be a lien only on Tenant's interests in and to this Lease and the Leasehold Estate and shall not be a lien on Landlord's fee interest in the Ground Leased Premises or reversionary interest in the improvements. Each leasehold mortgage shall be subject to the terms and provisions of this Lease; and the holder of any leasehold mortgage, or anyone claiming by, through, or under the same, shall not, by virtue thereof, acquire any greater rights hereunder than Tenant has under this Lease. Tenant shall deliver to Landlord copies of all documents recorded to evidence any and all leasehold mortgages and all notices of default received by Tenant from the holder of any leasehold mortgage; and as stated above, the holder of any such leasehold mortgage shall be required, as a condition to Landlord's consent to the leasehold mortgage, to deliver copies of default notices to Landlord, simultaneously upon mailing to Tenant.

Section 6.2. Tenant's Obligations. Tenant covenants and agrees to pay the indebtedness secured by any leasehold mortgage entered into in compliance with the provisions hereof when the same shall become due and payable and to perform, when such performance is required, all obligations of the mortgagor thereunder. Tenant further agrees not to suffer or permit any default to occur and continue under any leasehold mortgage. Tenant shall cause a true, complete, and correct copy of the original of each leasehold mortgage, together with written notice containing the name and post office address of the holder thereunder, to be delivered to Landlord. Tenant shall, from time to time, when and as requested by Landlord, deliver to Landlord a certificate from the holders of the leasehold mortgages certifying as to the amount of the unpaid principal balance under the leasehold mortgage held by such person, together with accrued interest thereon, and as to the existence or absence of defaults thereunder.

Section 6.3. Rights of Leasehold Mortgagee. A leasehold mortgagee approved hereunder may enforce its rights under its mortgage and acquire title to the Tenant's leasehold estate in any lawful way, and upon foreclosure of such leasehold mortgage and issuance of a certificate of title, take possession of the Ground Leased Premises; subject, however, to the Lease, including, without limitation, the "Use" provisions hereof, all other terms, provisions, and conditions of the Lease, and any leasehold mortgage that is senior in lien to the leasehold mortgage in question. During such time as the leasehold mortgagee or any successor in interest is the owner and holder of the leasehold estate and Tenant's interest hereunder, whether by foreclosure or otherwise, such interests acquired hereunder shall be subject to all of the terms, conditions, and provisions of this Lease.

ARTICLE 7—MAINTENANCE

Section 7.1. Maintenance of Ground Leased Premises. Tenant agrees that it will, at its own cost and expense, maintain or cause to be maintained the Ground Leased Premises, Facility, and any other improvements, landscaping, and paved areas thereon and appurtenances thereto and every part thereof, in good order, condition, and repair and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental authorities. Such maintenance shall also be in accordance with reasonable rules and regulations imposed by Landlord as are needed in its reasonable discretion to ensure that the Facility is aesthetically harmonious with the improvements located on the Center Property. In the event any repairs or maintenance required to be made under the provisions of this Lease are not made within thirty (30) days after written notice from Landlord to do so, then Landlord may, at its option, enter upon the Ground Leased Premises and repair or maintain the same, and the cost and expense of such repairs, with interest at the maximum rate then allowed by law, shall be due and paid by Tenant as additional rent to Landlord upon demand.

Section 7.2. Emergency Repairs. Notwithstanding the provisions of the preceding Section, in the event of an emergency, Landlord, at its option, may without notice enter on the Ground Leased Premises to effect repairs needed as a result of the emergency. The cost and expense of such repairs shall be due and paid by Tenant to Landlord on demand as additional rent due hereunder.

Section 7.3. Compliance with Laws. Tenant will promptly comply with all applicable laws, guidelines, rules, regulations, and requirements, whether of federal, state, or local origin, applicable to the Ground Leased Premises, the Facility, and all other improvements located thereon, including the Americans with Disabilities Act of 1990, as amended, ("ADA") and those for the correction, prevention, and abatement of nuisance, unsafe conditions, or other grievances arising from or pertaining to the use or occupancy of the Ground Leased Premises.

ARTICLE 8—MECHANICS' LIENS

Section 8.1. Prohibition of Liens on Fee or Leasehold Interest. Unless removed as set forth in this Section, Tenant shall not suffer, create, or permit any mechanics' liens or other liens to be filed against the fee of the Ground Leased Premises nor against Tenant's leasehold interest in the land, nor any buildings or improvements on the Ground Leased Premises, by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding the Ground Leased Premises or any part thereof through or under Tenant.

Section 8.2. Removal of Liens by Tenant. If any such mechanics' or laborer's liens or materialman's lien shall be recorded against fee of the Ground Leased Premises or against Tenant's leasehold interest in the land, or any improvements thereof, within sixty (60) days after notice of the filing thereof, or fifteen (15) days after Tenant is served with a complaint to foreclose the lien or Landlord advises Tenant in writing that Landlord has been served with such a complaint, whichever is earlier, Tenant shall cause such lien to be removed, as same may be amended from time to time. If Tenant in good faith desires to contest the lien, Tenant shall be privileged to do so, but in such case Tenant hereby agrees to indemnify and save Landlord harmless from all liability for damages, including attorneys' fees and costs, occasioned thereby and shall, in the event of a judgment of foreclosure upon any mechanic's lien, cause the same to be discharged and removed prior to the execution of such judgment. Landlord may, in its sole discretion, require that the lien be transferred to bond as a condition precedent to Tenant's privilege to contest any lien.

ARTICLE 9—CONDEMNATION

Section 9.1. Interests of Parties on Condemnation. If the Ground Leased Premises or any part thereof shall be taken for public purpose by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Landlord and Tenant in the award or consideration for such transfer, and the allocation of the award and the other effect of the taking or transfer upon this Lease, shall be as provided by this Section.

Section 9.2. Total Taking—Termination. If the entire Ground Leased Premises is taken or so transferred, this Lease and all of the right, title, and interest there under shall cease on the date title to such land so taken or transferred vests in the condemning authority.

Section 9.3. Partial Taking—Termination. In the event of the taking or transfer of only a part of the Ground Leased Premises, leaving the remainder of the Ground Leased Premises in such location, or in such form, shape or reduced size as to be not effectively and practicably usable in the good faith opinion of Tenant for the operation thereon of Tenant's business, taking into consideration the effect, if any, of such taking on the availability of parking, and if Landlord consents to Tenant's determination, which consent will not be unreasonably withheld, this Lease and all right, title, and interest there under may be terminated by Tenant giving, within sixty (60) days of the occurrence of such event, thirty (30) days' notice to Landlord of Tenant's intention to terminate.

Section 9.4. Partial Taking—Continuation. In the event of such taking or transfer of only a part of the Ground Leased Premises leaving the remainder thereof in such location and in such form, shape or size as to be used effectively and practicably in the good faith opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease shall terminate as to the portion of the Ground Leased Premises so taken or transferred as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Ground Leased Premises not so taken or transferred.

Section 9.5. Partial Taking—Award. If title and possession of a portion of the Ground Leased Premises is taken under the power of eminent domain, and the Lease continues as to the portion remaining, all compensation and damages ("Compensation") payable to Tenant by reason of any improvements so taken shall be available to be used, to the extent reasonably needed, by Tenant in replacing any improvements so taken with improvements of the same type of the remaining portion of the Ground Leased Premises. All plans and specifications for such replacement and improvements shall be subject to Landlord's reasonable prior approval and all such repairs shall be in compliance with all then existing codes, zoning ordinances, rules, and regulations governing the Ground Leased Premises.

Section 9.6. Allocation of Award. Any compensation awarded or payable because of the taking of all or any portion of the Ground Leased Premises by eminent domain shall be awarded in accordance with the values of their respective interests in the Ground Leased Premises and all improvements thereon immediately prior to the taking. The value of Landlord's interest in the Ground Leased Premises and all improvements thereon immediately prior to a taking shall include the then value of its interest in the Ground Leased Premises and improvements prior to the Expiration Date of this Lease, together with the value of its reversionary interest in the Facility after the Expiration Date (including all Extended Terms, whether or not Tenant has exercised its right to such Extended Terms). The value of Tenant's interest in the Ground Leased Premises and improvements immediately prior to a taking shall include the then value of its interest in the Ground Leased Premises and improvements for the remainder of the Term of this Lease (including all Extended Terms, whether or not Tenant shall have exercised its right to such Extended Terms). Such values shall be those determined in the proceeding relating to such taking or, if no separate determination of the values is made in such proceeding, those determined by agreement between Landlord and Tenant. If such agreement cannot be reached, each party shall select an MAI appraiser, and if such appraisers cannot reach such agreement, they shall select a third MAI appraiser whose decision regarding such determination shall be final. Any Compensation awarded or payable because only a portion of the Ground Leased Premises is so taken shall be the sole and separate property of Landlord. The time of taking shall mean 12:01 a.m. of, whichever shall first occur; the date of title or the date physical possession of the portion of the Ground Leased Premises on which the improvements are located is taken by the taking agency or entity. In the event of separate awards, then Landlord and Tenant may retain such separate awards made to each and any of them.

Section 9.7. Voluntary Conveyance. A voluntary conveyance by Landlord to a public utility, agency, or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Section.

ARTICLE 10—ASSIGNMENT AND SUBLEASE

Tenant shall not voluntarily, involuntarily, or by operation of law assign, transfer, mortgage, or otherwise encumber this Lease or any interest of Tenant herein, in whole or in part, nor sublet the whole or any part of the Ground Leased Premises or permit the Ground Leased Premises or any part thereof to be used or occupied by others, without first obtaining in each and every instance the prior written consent of Landlord, which consent shall not be unreasonably withheld. Landlord may refuse to grant such consent or consider any request for such consent during any period when Tenant is in default under this Lease. Any request for Landlord's consent shall be in writing, shall contain such information concerning the proposed assignee or sublessee as Landlord may require. In addition, Tenant shall pay any attorneys' fees and costs incurred by Landlord in connection with any assignment or sublease, including the preparation or review of any documents in connection therewith, regardless of whether the assignment or sublease is approved. Landlord may condition its consent to any assignment or sublease upon the assignee or sublessee supplying personal guaranties satisfactory to Landlord as to the Tenant's obligations hereunder. It is acknowledged Landlord will not be required to consent to any assignment or sublease of the Ground Leased Premises unless the proposed assignee or sublessee provides evidence satisfactory to Landlord, in Landlord's sole but reasonable discretion, that such assignee or sublessee has sufficient business experience and financial capability so that it will be able to satisfy the obligations of the Tenant hereunder and to successfully operate a retail banking facility within the Ground Leased Premises in the manner required hereunder. If Landlord improperly fails or refuses to approve any proposed assignment or sublease, Tenant's sole remedy in connection therewith shall be to bring an action against Landlord for specific performance seeking to require Landlord to consent to such assignment or sublease, and in no event shall Tenant be entitled to any monetary damages against Landlord due to Landlord's failure or refusal to consent to any proposed assignment or sublease.

Any consent by Landlord shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Lease or any interest therein be assigned or if the Ground Leased Premises or any part thereof be sublet or occupied by anyone other than Tenant without Landlord's prior written consent having been obtained thereto, Landlord may nevertheless collect rent from the assignee, sublessee, or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy, or collection shall be deemed a waiver of the covenant herein against assignment and subletting or the acceptance of the assignee, subtenant, or occupant as Tenant hereunder, or constitute a release of Tenant from the further performance by Tenant of the terms and provisions of this Lease. If this Lease or any interest of Tenant therein be assigned or if the whole or any part of the Ground Leased Premises be sublet, after having obtained Landlord's prior written consent thereto, Tenant shall nevertheless remain fully liable for the full performance of all obligations under this Lease to be performed by Tenant, and Tenant and any guarantors shall not be released there from in any manner. For purposes of this paragraph, if Tenant or any guarantor is a corporation, unincorporated association, or partnership, any transfer, assignment, or hypothecation of any stock or interest in such corporation, association, or partnership so as to result in a change in the control thereof by the person, persons, or entities owning a majority interest therein as of the date of this Lease shall be deemed an assignment, provided, however, that this sentence shall not apply to Tenant or any guarantor the outstanding voting stock of which is held by more than one hundred (100) persons. Notwithstanding anything to the contrary contained herein, provided Tenant gives Landlord sixty (60) days prior written notice, Landlord shall consent to an assignment of this Lease or sublet of the Ground Leased Premises or any part thereof to (i) any entity ("Affiliate") that is controlled by, is under common control with, or controls Tenant, or (ii) any entity ("Acquirer") that acquires all or substantially all of the ownership in or assets of Tenant. In connection with any such assignment, Tenant shall cause the Affiliate or Acquirer to execute and deliver to Landlord an agreement whereby the Affiliate or Acquirer agrees to be bound by all of the covenants and agreements in this Lease that Tenant has agreed to keep, serve, or perform, and whereby the Affiliate or Acquirer agrees that the provisions of this Paragraph shall be binding upon it as if it were the original tenant hereunder. Landlord shall not unreasonably delay its consent to a transfer to an Affiliate provided that Tenant supplies Landlord with notice of the proposed transfer and supporting documentation confirming that the transferee is, in fact, an Affiliate. Notwithstanding the foregoing, Landlord shall not be required to consent to an assignment of this Lease or sublet of the Ground Leased Premises to an Affiliate or Acquirer, unless such Affiliate or Acquirer possesses the same or greater net worth as Tenant as of the date of this Lease.

ARTICLE 11—INSURANCE AND INDEMNIFICATION

Section 11.1. Comprehensive Liability Insurance. Tenant shall, at its cost and expense, at all times during the Term, maintain in force, for the joint benefit of Landlord and Tenant, and any holder of a mortgage on the Ground Leased Premises, a broad form comprehensive coverage policy of public liability insurance issued by a carrier satisfactory to Landlord and licensed to do business the State where the Ground Leased Premises is located with an A.M. Best's Insurance Guide Rating of A+, by the terms of which Landlord and Tenant, and at Landlord's request any holder of a mortgage on Landlord's interest in the Ground Leased Premises, are named as insureds and are indemnified against liability for damage or injury to the property or person (including death) of any Tenant, its invitee or any other

person entering upon or using the Ground Leased Premises, or any structure thereon or any part thereof. Such insurance policy or policies shall be maintained on the minimum basis of \$2,000,000.00 for damage to property and for bodily injury or death as to any person, and \$2,000,000.00 as to any one accident, with a deductible not exceeding \$5,000.00. Landlord reserves the right to require reasonable increases in the limits of coverage from time to time during the Term. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance that may be carried by Landlord. A certificate of insurance, together with proof of payment of the premium thereof shall be delivered to Landlord on the Lease Commencement Date, effective from and after the Lease Commencement Date, and renewal certificates and proof of payment of premium therefor shall be delivered to Landlord not less than fifteen (15) days prior to the renewal date of any such insurance policies during the Term and any Extended Term. Such insurance shall be cancelable only after thirty (30) days' prior written notice to Landlord and Tenant, and any holder of a mortgage on the Ground Leased Premises. In the event Tenant fails to timely pay any premium when due, Landlord shall be authorized to do so, and may charge all costs and expenses thereof, including the premium, to Tenant, to be paid by Tenant as additional rent hereunder.

Section 11.2. Fire and Extended Coverage Property Insurance. Tenant shall, at its cost and expense and at all times during the Term, maintain in force, for the joint benefit of Landlord and Tenant, and any holder of a mortgage on the Ground Leased Premises, a policy of insurance against loss or damage by fire and lightning, and such other perils as are covered under the broadest form of the "extended coverage" or "all risk" endorsements available in the state where the Ground Leased Premises is located, including, but not limited to, damage by wind storm, hurricane, explosion, smoke, sprinkler leakage, vandalism, malicious mischief, and such other risks as are normally covered by such endorsements. Landlord shall be named as an additional insured on such policy of insurance, and the leasehold mortgagee shall be named as required by its loan documents; however, any insurance proceeds shall be applied in the manner as set forth in this Lease. The insurance shall be carried and maintained to the extent of full (actual) replacement cost of the improvements, in such amounts as may be reasonably acceptable to Landlord from time to time during the Term of this Lease; provided however, that during the period of construction, Tenant shall provide or cause to be provided in lieu thereof builders' risk or similar type of insurance to the full replacement costs thereof. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance that may be carried by Landlord. In addition, the deductible for such insurance shall not exceed \$5,000.00. A certificate of insurance, together with proof of payment of the premium thereof, shall be delivered to Landlord on the Lease Commencement Date, to be effective from and after the Lease Commencement Date. Any renewal certificates and proof of payment of premium therefor shall be delivered to Landlord not less than fifteen (15) days prior to the renewal date of any such insurance policies during the Term. Such insurance shall be cancelable only after thirty (30) days' prior written notice to Landlord, Tenant, and at Landlord's request any holder of a mortgage on Landlord's interest in the Ground Leased Premises. In the event Tenant fails to timely pay any premium when due, Landlord shall be authorized to do so, and may charge all costs and expenses thereof, including the premium, to Tenant, to be paid by Tenant as additional rent hereunder.

Section 11.3. Waiver of Subrogation. Landlord and Tenant and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by the casualty and liability insurance to be carried on the Facility and the Ground Leased Premises or in connection with any improvements on or activities conducted on the Ground Leased Premises and Facility, and waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof, and evidence such waiver by endorsement to the required insurance policies, provided that such release shall not operate in any case where the effect is to invalidate or increase the cost of such insurance coverage (provided that in the case of increased cost, the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereby keeping such release and waiver in full force and effect).

Section 11.4. Indemnification. Tenant hereby agrees to indemnify, protect, defend, and save the Indemnified Parties harmless from and against any and all losses, damages, actions, fines, penalties, demands, damages, liability, and expense, including attorneys' fees and costs through litigation and all appeals, in connection with the loss of life, personal injury, and damage to property arising from or out of (i) any occurrence in, upon, at or about the Ground Leased Premises; (ii) the occupancy, use, construction upon, and maintenance of the Ground Leased Premises; (iii) the operation of the business of the Tenant thereon; and (iv) any act or failure to act, occasioned wholly or in part by Tenant, and its agents, contractors, employees, invitees or any other person. Nothing contained herein shall be construed to make Tenant liable for any injury or loss caused by the gross negligence or willful misconduct of Landlord or any agent or employee of Landlord.

ARTICLE 12—DAMAGE AND DESTRUCTION

Section 12.1. Tenant's Duty to Restore Premises. At any time during the Term or Extended Term(s) of this Lease, and so long as no Event of Default has occurred, if any buildings or improvements now or hereafter on the Ground Leased Premises are damaged and/or destroyed in whole or in part by fire, theft, the elements, or any other cause, this Lease shall continue in full force and effect, and Tenant, at its sole cost and expense, shall repair and restore the damaged or destroyed Facility building, buildings, improvement, or improvements according to the original plan hereof or according to such modified plans as shall be reasonably approved in writing by Landlord, whether or not there are sufficient insurance proceeds to cover the repair and restoration expenses. The work of repair and restoration shall be commenced by Tenant as soon as possible but in no event later ninety (90) days after the damage or destruction occurs and shall be completed with due diligence not longer than six months after the work is commenced, unless otherwise agreed to in writing by Landlord. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Ground Leased Premises set forth above.

Section 12.2. Option to Terminate Lease for Destruction. Notwithstanding the preceding Section, in the event that during the last nine (9) months of the Term or any Extended Term the Facility located on the Ground Leased Premises is damaged or destroyed by fire, theft, or any other casualty, through no fault of Tenant, so that it cannot be repaired and restored as required by the preceding Section at a cost not more than thirty-five percent (35%) of the cost of replacing the Facility, then Tenant or Landlord shall each have the option of terminating this Lease on the last calendar day of any month during the last year of the Lease Term or any Extended Term by giving to Landlord or Tenant, as the case may be, at least sixty (60) days' prior written notice of Tenant's or Landlord's intent to do so; and if Tenant elects to terminate this Lease, then Tenant shall also be required to remove, at Tenant's own cost and expense, all debris and remains of the damaged improvements from the Ground Leased Premises. In the event, however, that (i) Tenant has duly exercised a renewal option in accordance with the conditions of this Lease, (ii) Tenant has commenced to repair and restore in a timely manner the Facility and any other damaged improvements in accordance with the terms of this Lease, (iii) Tenant has demonstrated to the reasonable satisfaction of Landlord sufficient funds and insurance proceeds to complete the work, and (iv) no Event of Default has occurred that remains uncured, Landlord agrees not to terminate this Lease. Any failure by Tenant to timely and properly repair and restore the Facility and Ground Leased Premises, once Tenant has elected to do so, shall constitute an Event of Default hereunder.

Section 12.3. Application of Insurance Proceeds. Any and all fire or other insurance proceeds that become payable at any time during the Term because of damage to or destruction of any buildings or improvements on the Ground Leased Premises shall be paid jointly to Tenant and Landlord, and applied toward the cost of repairing and restoring the damaged or destroyed buildings or improvements in the manner required this Article; provided, however, that should Tenant or Landlord exercise its option granted by this Lease to terminate this Lease because of damage to or destruction of buildings or improvements on the Ground Leased Premises, then, in that event, any and all fire or other insurance proceeds that become payable because of such damage or destruction shall be allocated between Landlord and Tenant in accordance with the values of their respective interest in the Ground Leased Premises and all improvements thereon immediately prior to the damage or destruction. The value of Landlord's interest in the Ground Leased Premises and all improvements thereon immediately prior to the damage or destruction shall include the then value of its interest in the Ground Leased Premises and improvements prior to the Expiration Date of this Lease and the value of its reversionary interest in the Facility after the Expiration Date (including all Extended Terms, whether or not Tenant has exercised its right to such Extended Terms). The value of Tenant's interest in the Ground Leased Premises and improvements immediately prior to the damage or destruction shall include the then value of its interest in the Ground Leased Premises and improvements for the remainder of the Term of this Lease (including all Extended Terms, whether or not Tenant shall have exercised its right to such Extended Terms). Such values shall be those determined by agreement between Landlord and Tenant. If such agreement cannot be reached, such values shall be determined as provided above with respect to condemnation and eminent domain.

ARTICLE 13—SUBORDINATION

Section 13.1. Subordination. Landlord has the unrestricted right to convey, mortgage, and refinance the Ground Leased Premises, or any part thereof. Tenant agrees, within seven (7) days after notice, to execute and deliver to Landlord or its mortgagee or designee such instruments as Landlord or its mortgagee may require, certifying the amount of the Security Deposit and whether this Lease is in full force and effect, and listing any modifications. This estoppel certificate is intended to be for the benefit of Landlord, any purchaser or mortgagee of Landlord, or any purchaser or assignee of Landlord's mortgage. The estoppel certificate will also contain such other information as Landlord or its designee may request. This Lease is and at all times will be subject and subordinate to all present and future mortgages or ground leases that may affect the Ground Leased Premises, and to all recastings, renewals, modifications, consolidations, replacements, and extensions of any such mortgage(s), and to all increases and voluntary and involuntary advances made thereunder. The foregoing will be self-operative and no further instrument of subordination will be required. In the event that the holder ("Lender") of any encumbrance ("Mortgage") on Landlord's fee interest in the Ground Leased Premises or any other person acquires title to the Ground Leased Premises pursuant to the exercise of any remedy provided for in the Mortgage or by reason of the acceptance of a deed in lieu of foreclosure (the Lender, any other such person, and their participants, successors, and assigns being referred to herein as the "Purchaser"), Tenant covenants and agrees to attorn to and recognize and be bound to Purchaser as its new Landlord, and except as provided below, this Lease shall continue in full force and effect as a direct Lease between Tenant and Purchaser, except that, notwithstanding anything to the contrary herein or in the Lease, the provisions of the Mortgage will govern with respect to the disposition of proceeds of insurance policies or condemnation or eminent domain awards. So long as this Lease is in full force and effect and Tenant is not in default under any provision of this Lease, and no event has occurred that has continued to exist for a period of time (after notice, if any, required by this Lease) as would entitle Landlord to terminate this Lease or would cause without further action by Landlord, the termination of this Lease or would entitle Landlord to dispossess the Tenant thereunder:

13.1.1 The right of possession of Tenant to the Ground Leased Premises shall not be terminated or disturbed by any steps or proceedings taken by Lender in the exercise of any of its rights under the Mortgage or the indebtedness secured thereby;

13.1.2 This Lease shall not be terminated or affected by the exercise of any remedy provided for in the Mortgage, and any sale by Lender of the Ground Leased Premises pursuant to the exercise of any rights and remedies under the Mortgage or otherwise, shall be made subject to this Lease and the rights of Tenant hereunder.

13.1.3 In no event shall Lender or any other Purchaser be:

13.1.3.1 liable for any act or omission of Landlord or any prior landlord;

13.1.3.2 liable for the return of any security deposit;

13.1.3.3 subject to any offsets or defenses that the Tenant might have against Landlord or any prior landlord;

13.1.3.4 Bound by any payment or rent or additional rent that Tenant might have paid to Landlord or any prior landlord for more than the current month; or

13.1.3.5 Bound by any amendment or modifications of the Lease made without Lender's or such other Purchaser's prior written consent.

13.1.4 Provided that Landlord has previously notified Tenant of Lender's address for notice, Tenant agrees to give prompt written notice to Lender of any default by Landlord that would entitle Tenant to cancel this Lease, and agrees that notwithstanding any provision of this Lease, no notice of cancellation thereof given on behalf of Tenant shall be effective unless Lender has received the notice and has failed within thirty (30) days of the date of receipt thereof to cure Landlord's default, or if the default cannot be cured within thirty (30) days, has failed to commence and to diligently pursue the cure of Landlord's default that gave rise to such right of cancellation. Tenant further agrees to give such notices to any successor of Lender, provided that such successor shall have given written notice of Tenant of its acquisition of Lender's interest in the Mortgage and designated the address to which such notices are to be sent.

13.1.5 Tenant acknowledges that Landlord may execute and deliver to Lender an Assignment of Leases and Rents conveying the rentals under this Lease as additional security for the loan secured by the Mortgage, and Tenant hereby expressly consents to such Assignment.

13.1.6 Tenant agrees that it will not, without the prior written consent of Lender, do any of the following and any such purported action without such consent shall be void as against Lender:

- 13.1.6.1 modify this Lease or any extensions or renewals thereof in such a way as to reduce the Rent, accelerate Rent payments, shorten the original term, or change any renewal option;
- 13.1.6.2 Terminate this Lease except as provided by its terms; or
- 13.1.6.3 Tender or accept a surrender of this Lease or make prepayment in excess of one periodic payment of rent hereunder.

13.1.7 Tenant agrees to certify in writing to Lender, upon request, whether or not any default on the part of Landlord exists and the nature of any such default.

13.1.8 The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of Lender or Tenant. However, Tenant agrees to execute and deliver to Lender or to any person to whom Tenant herein agrees to attorn such other instruments as either shall request in order to effectuate the provisions.

ARTICLE 14—DEFAULTS AND REMEDIES

Section 14.1. Defaults. Each of the following events shall be a default by Tenant and a breach of this Lease and constitute an "Event of Default":

Section 14.1.1 Abandonment. Abandonment of the Ground Leased Premises, or the improvements now or hereafter constructed thereon, where such abandonment continues for a period of thirty (30) days after notice thereof by Landlord to Tenant.

Section 14.1.2 Attachment or Other Levy. The subjection of any right or interest of Tenant in the Ground Leased Premises to attachment, execution, or other levy, or to seizure under legal process, if not released within thirty (30) days.

Section 14.1.3 Appointment of Receiver. The appointment of a receiver to take possession of the Ground Leased Premises or improvements thereof, or of Tenant's interest in the leasehold estate or of Tenant's operations on the Ground Leased Premises, for any reason, including but not limited to assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (a) pursuant to administration of the estate of any deceased or incompetent individual member of any Tenant, or (b) pursuant to any mortgage permitted by the provision of this Lease relating to the purchase or construction of improvements, or (c) instituted by Landlord, the event of default being not the appointment of a receiver at Landlord's instance, but the event justifying the receivership, if any.

Section 14.1.4 Insolvency: Bankruptcy. An assignment by Tenant for the benefit of creditors, or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment, or satisfaction of Tenant's liabilities; or reorganization, dissolution, or arrangement on account of, or to prevent bankruptcy or insolvency; unless, in case of such that are involuntary on Tenant's part, the assignment, proceedings, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or terminated within thirty (30) days after the assignment, filing, or other initial event.

Section 14.1.5 Default in Mortgage Payment. Any default under any mortgage encumbering the leasehold estate of this Lease, or under any loan agreement or promissory note secured by any such mortgage that is not cured by Tenant within the applicable cure period, if any, or not otherwise waived in writing by any leasehold mortgagee.

Section 14.1.6 Default in Payment or Performance Under this Lease. Failure of Tenant to pay any installment of Base Annual Rent, rent, additional rent, or any impositions or other monetary obligations of any nature whatsoever required to be paid by Tenant under this Lease when due and payable; or failure of Tenant to observe or perform any of its other covenants, conditions, or agreements under this Lease or under the terms of any mortgage documents that encumber the leasehold interest in the Ground Leased Premises, the Facility, or any part thereof or interest therein; or the breach of any warranties or representations of Tenant under this Lease. For purposes of this Article, all monetary payments required to be made under this Lease shall include, but not limited to, taxes, insurance premiums, utility payments, and association assessments, together with all other sums Tenant is obligated to pay under this Lease.

Section 14.1.7 Notice and Right to Cure. If the alleged default is monetary in nature such as (but not limited to) nonpayment of rent, taxes, or any other sums required to be paid by Tenant, Landlord shall have no obligation to deliver written notice to Tenant of the default; however, Tenant will have ten (10) days after the date the payment is due to cure the default. As to any non-monetary defaults, Tenant shall have ten (10) days after written notice is given by Landlord specifying the nature of the default to cure the default; provided, however, that if after exercise of due diligence and its best efforts to cure such non-monetary default Tenant is unable to do so within the ten (10) day period, then the curing period shall be extended for such reasonable time as may be approved by Landlord for curing such default, so long as Tenant continues to diligently prosecute to completion the curing of the default, which in no event shall exceed thirty (30) days unless specifically agreed to in writing by Landlord. As used herein, non-monetary default shall include, without limitation, a breach of any covenant of Tenant hereunder, Tenant's failure to perform as required hereunder, and a breach of any warranty, representation, or other agreement of Tenant under this Lease.

Section 14.2. Remedies. If any default by Tenant shall continue uncured upon expiration of the applicable curing period, Landlord may exercise any one or all of the following remedies in addition to all other rights and remedies provided by law or equity, from time to time, to which Landlord may resort cumulatively or in the alternative:

Section 14.2.1 Termination. Landlord may, at Landlord's election, and without notice, terminate this Lease, subject to any redemption rights the Tenant may have as provided by law. All Tenant's rights in the Ground Leased Premises, the Facility, and in all improvements shall terminate upon termination of this Lease. Promptly after any such termination, Tenant shall surrender and vacate the Ground Leased Premises, the Facility, and any other improvements in broom- clean condition, and Landlord may re-enter and take possession of the Ground Leased Premises, the Facility, and all other improvements. In the event of such termination, all rent for the balance of the Term (including any then existing Extended Term) will, at the election of Landlord, be accelerated and the present worth of same using an interest factor of seven percent (7%) for the balance of the Lease Term, net of amounts actually collected by Landlord, shall become immediately due thereupon and be paid, together with all expenses of every nature that Landlord may incur such as (by way of illustration and not limitation) those for attorneys' fees and costs, brokerage, advertising, and refurbishing the Ground Leased Premises in good order or preparing them for re-rental. If Landlord exercises the acceleration remedy described in this paragraph, and provided that Tenant has paid Landlord the accelerated rent as required by this paragraph, Landlord shall remit to Tenant on a monthly basis until the Expiration Date any amounts actually collected by Landlord as a result of a reletting remaining after subtracting therefrom all reasonable costs paid by Landlord to secure a replacement tenant including reasonable marketing/leasing costs, fees and commissions, and costs of preparing improvements and refurbishments to the Premises for the replacement tenant. In no event shall the total amount paid to Tenant pursuant to the preceding sentence exceed the accelerated Rent paid by Tenant to Landlord.

Section 14.2.2 Re-entry Without Termination. Landlord may, at Landlord's election, re-enter the Ground Leased Premises, the Facility, and improvements thereon, and without terminating this Lease, at any time, relet the Ground Leased Premises and improvements, or any part(s) of them, for the account, and in the name of Tenant or otherwise, all upon commercial reasonable rates and terms determined by Landlord, without hereby obligating Landlord to relet the Ground Leased Premises and the Facility or make an effort to relet either or both of them in whole or in part, at any time. Any reletting may be for the remainder of the Term, the Extended Term(s) or for any longer or shorter period. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and Landlord shall be entitled to all rents from the use, operation, or occupancy of the Ground Leased Premises or improvements, or both. Landlord shall have the further right, at Landlord's option, to make such reasonable and necessary alterations, repairs, replacements, and/or restorations, which shall not operate or be construed to release Tenant from liability hereunder. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses. No act by or on behalf of Landlord under this provision shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination.

Section 14.2.3 Tenant's Personal Property. Landlord may, at Landlord's election, use Tenant's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of Tenant. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item, or for the same item at a later time.

Section 14.2.4 Appointment of Receiver. Landlord may, if Landlord elects to file suit to enforce this Lease and/or protect its rights hereunder, in addition to the other remedies provided in this Lease and by law, have the appointment of a receiver of the Ground Leased Premises and the improvements thereon.

Section 14.3. Remedies Cumulative. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the term of this Lease would have expired nor limit or preclude recovery by Landlord against Tenant of any sums or damages which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant. All the remedies hereinbefore given to Landlord and all rights and remedies given to it at law and in equity shall be cumulative and concurrent.

Section 14.4. Tenant's Liability After Default. If Tenant shall default in the performance of any of its obligations under this Lease, Landlord, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of Tenant, without notice in a case of emergency, and in any other case only if such default continues after the expiration of any applicable grace period(s) set forth herein. Any reasonable expenses incurred by Landlord in connection with any such performance, and all costs, expenses, and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees including appellate, bankruptcy, and post-judgment proceedings involved in collecting or endeavoring to collect the rent or any Additional Rent or any part thereof or enforcing or endeavoring to enforce any rights against Tenant or Tenant's obligations hereunder, shall be due and payable upon Landlord's submission of an invoice therefor. All sums advanced by Landlord on account of Tenant under this section, or pursuant to any other provision of this Lease, and all rent, if delinquent or not paid by Tenant and received by Landlord when due hereunder, shall bear interest at the maximum rate permitted by law, from the due date thereof until paid and the same shall be and constitute additional rent and be due and payable upon Landlord's demand therefor.

Section 14.5. Holdover. If Tenant remains in possession of the Ground Leased Premises or any part thereof after the expiration or sooner termination of the Term or any extension thereof, Tenant shall become a tenant on a month-to-month basis and shall pay the Landlord a rent at one hundred and twenty-five percent (125%) of the then existing rent, which shall be payable on a per diem basis. Either party may thereafter terminate the Lease upon no less than thirty (30) days' prior written notice one to the other. Notwithstanding that Landlord may allow Tenant to continue in possession after the expiration or sooner termination of this Lease, neither that nor the provisions of this section shall constitute a waiver of any of Landlord's rights under this section or this Lease. Further, notwithstanding the payment of rent by Tenant and acceptance thereof by Landlord as provided in this section, Tenant shall be in continuing breach of this Lease at any time or during any period in which Tenant is a holdover tenant.

ARTICLE 15—SURRENDER AND REMOVAL

Section 15.1. Surrender of Possession. Upon the expiration of the Term, the Extended Term(s) or any earlier termination thereof, Tenant shall surrender to Landlord possession of the Ground Leased Premises and all improvements constructed and installed thereon. If Tenant is not then in default under any of the covenants and conditions hereof, Tenant may remove, or cause to be removed, all personal property and equipment of Tenant, other than permanent fixtures, from the Ground Leased Premises within thirty (30) days after the date of any termination of this Lease; thereafter all such personal property and equipment not removed shall belong to Landlord without the payment of any consideration.

Section 15.2. Tenant's Quitclaim. Upon the expiration of the Term, or any sooner termination of this Lease, Tenant agrees to execute, acknowledge, and deliver to Landlord a proper instrument in writing, releasing, and quitclaiming to Landlord all right, title, and interest of Tenant in and to the Ground Leased Premises and all improvements thereon.

ARTICLE 16—FIRST OPPORTUNITY TO PURCHASE

Section 16.1. First Opportunity To Purchase. During the Term or any Extension Term, if Landlord or Landlords' successors or assigns decides to sell the Property, then prior to offering it for sale, Landlord shall notify Tenant in writing (the "**FOTP Notice**") of the purchase price, the deposit, the allocation of closing costs, the closing date, the inspection period, and all other material terms on which Landlord plans to offer the Property for sale (the "**Offering Terms**"). Tenant shall have Thirty (30) days from receipt of the FOTP Notice to agree to purchase the Property on the Offering Terms, by delivering notice of intent to do so to Landlord during such period. If Tenant does not timely deliver such notice, or gives notice that it is declining to purchase at the Offer Terms, then Landlord may offer the Property for sale to anyone else at the original Offering Terms or at any amount in excess of the Offer Terms. Landlord may at any time thereafter accept any offer to purchase the Property which is at least Ninety Five Percent (95%) of the original Offering Terms without further notice to the Tenant. In the event Landlord thereafter is willing to accept an offer upon terms which is less than Ninety Five Percent (95%) of the original Offering Terms, ("**Reduced Offer Terms**"), Landlord must give Tenant Fifteen (15) days notice in writing of such Reduced Offer

Terms of which Tenant shall then have the first opportunity to purchase the Property at the Reduced Offer Terms by giving written notice to Landlord of its intentions to purchase within said Fifteen (15) day period at the Reduced Offer Terms. If Tenant does not give timely notice of its intentions to purchase at the Reduced Offer Terms, or otherwise declines to purchase at the Reduced Offer Terms, Landlord at any time thereafter can accept any offer to purchase the Property which is at least Ninety Five Percent (95%) of the Reduced Offer Terms without further notice to the Tenant. A transfer of the Property to an immediate family member or members of Landlord's principals, or to an entity controlled by Landlord (where control shall mean that at least fifty-one (51%) of the voting rights are possessed by Landlord), shall not constitute a "sale" for purposes of triggering a FOTP Notice requirement, nor shall it extinguish Tenant's rights hereunder. This Lease and all of its terms and conditions, except for the terms and conditions set forth in this Article 16, shall nevertheless remain in full force and effect and Landlord and any purchaser of purchasers of the Property shall be bound by the terms of the Lease, except for this Article 16. The rights granted to Tenant pursuant to this Article will be set forth in the Memorandum of Lease recorded pursuant to Article 18 of this Lease.

ARTICLE 17—RIGHT OF FIRST REFUSAL TO PURCHASE

Section 17.1. Right of First Refusal To Purchase. If Landlord receives an acceptable, bona fide, arms-length offer (the "Offer") to purchase the Property from a third party, and if Landlord desires to accept the Offer or make a counteroffer, then, as a condition thereto, Landlord shall give written notice to Tenant (the "Notice of Offer") of Landlord's intention to accept the Offer or make the counteroffer (the Offer and/or the proposed counteroffer, hereinafter, the "Offer"), together with a copy of the Offer. Tenant shall have Fifteen (15) days from receipt of the Notice of Offer to accept the Offer by delivering written notice to the Landlord. If Tenant fails to so exercise such right, then it shall be deemed waived as to the Offer, and Landlord may proceed to consummate the transaction in accordance with the terms of the Offer. However, if (i) the terms of the offer are modified in any material way, or (ii) the transaction contemplated by the Offer does not close within one hundred eighty (180) days after Tenant's receipt of the Notice of Offer, then Tenant's right hereunder shall be reinstated as to any modified Offer, any Offer continuing beyond said one hundred eighty (180) day period, or any subsequent Offer. If Tenant elects to accept the Offer, then the transaction shall be consummated in accordance with the terms of the Offer. An offer to purchase the Property from in immediate family member or members of Landlord's principals, or from an entity controlled by Landlord (where control shall mean that at least fifty - one (51%) of the voting rights are possessed by Landlord, shall not constitute an "offer" for the purposes of triggering a Notice of Offer requirement, nor shall it extinguish Tenant's rights hereunder. The rights granted to Tenant pursuant to this Article 16 will be set forth in the Memorandum of Lease recorded pursuant to Article 18 of this Lease.

ARTICLE 18—GENERAL PROVISIONS

Section 18.1. Conditions and Covenants. All of the provisions of this Lease shall be deemed as running with the land, and constructed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

Section 18.2. Survival of Indemnities. All representations, warranties, and indemnities of Tenant under this Lease shall survive the expiration or sooner termination of this Lease.

Section 18.3. No Waiver of Breach. No failure by either Landlord or Tenant to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

Section 18.4. Notices. Unless otherwise specifically provided in this Lease or by law, any and all notices or other communications required or permitted by this Lease or by law to be served on, given to, or delivered to any party to this Lease shall be writing and shall be deemed duly served, given, delivered, and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or in lieu of such personal delivery, when three (3) business days have elapsed following deposit thereof in the United States mail, first-class postage prepaid, certified, return receipt requested, addressed to:

LANDLORD: Firgrove Commons 3, LLC
c/o Gordon Rush
Rush Development Company, Inc.
Park Plaza East
2727 Hollycroft, Suite 410
Gig Harbor, WA 98335

TENANT: Viking Bank
4 Nickerson Street, Suite 200
Seattle, WA 98109

WITH A COPY TO: Mr. Gary Krohn
Northgate Executive Center II
9725 3rd Avenue N.E., Suite 600
Seattle WA 98115-2060

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in its paragraph.

Section 18.5. Captions. Captions in this Lease are inserted for convenience of reference only and do not define, describe, or limit the scope or the intent of this Ground Lease or any of the terms hereof.

Section 18.6. Entire Agreement. This Lease contains the entire agreement between the parties regarding the subject matter hereof. Any oral or written representations, agreements, understandings, and/or statements shall be of no force and effect.

Section 18.7. Waiver; Amendment. No modification, waiver, amendment, discharge, or change of this Lease shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought. Failure on the part of either party to complain of any actions or non-action on the part of the other, no matter how long the same may continue, shall not be deemed to be a waiver by that party of any of its rights hereunder. No waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

Section 18.8. Attorney's Fees. If either party retains an attorney to enforce or interpret this Lease, the prevailing party shall be entitled to recover, in addition to all other items of recovery permitted by law, reasonable attorneys' fees and costs incurred through litigation, bankruptcy proceedings, and all appeals.

Section 18.9. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State where the Ground Leased Premises is located.

Section 18.10. Binding Effect. Subject to any provision of this Lease that may prohibit or curtail assignment of any rights hereunder, this Lease shall bind and inure to the benefit of the respective heirs, assigns, personal representatives, and successors of the parties hereto.

Section 18.11. Execution of Other Instruments. Each party agrees that it shall, upon the other's request, take any and all steps, and execute, acknowledge, and deliver to the other party and all further instruments necessary or expedient to effectuate the purpose of this Lease.

Section 18.12. Severability. If any term, provision, covenant, or condition of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Section 18.13. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and when taken together will constitute one instrument.

Section 18.14. Estoppel Certificate. Either party shall execute, acknowledge, and deliver to the other party, within twenty (20) days after requested by the other party, a statement in writing certifying, if such is the case, that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified); the date of commencement of this Lease; the dates for which the rent and other charges have been paid; any alleged defaults and claims against the other party and providing such other information as shall be reasonably requested.

Section 18.15. Good Standing. Tenant represents and warrants that it is in good standing as of the Effective Date of this Lease with full power and authority to conduct business on the Ground Leased Premises as a retail banking facility, and covenants that it will so at all times during the Term and any Extended Term of this Lease. Tenant's breach of this representation or covenant shall constitute an Event of Default hereunder.

Section 18.16. Limitation of Liability. Notwithstanding any contrary provision of this Lease: (i) Tenant will look solely (to the extent its insurance coverage is not applicable or available) to the interest of Landlord (or its successor as Landlord hereunder) in the Ground Leased Premises for the satisfaction of any judgment or other judicial process requiring the payment of money as a result of any negligence or breach of this Lease by Landlord or its successor or of Landlord's managing agent (including any beneficial owners, partners, corporations, and/or others affiliated or in any way related to Landlord or such successor or managing agent) and Landlord has no personal liability hereunder of any kind, and (ii) Tenant's sole right and remedy in any action or proceeding concerning Landlord's reasonableness (where the same is required under this Lease) will be an action for declaratory judgment and/or specific performance.

Section 18.17. Waiver of Trial By Jury Duty. Landlord and Tenant mutually, expressly, irrevocably, and unconditionally waive trial by jury for any proceedings arising out of or in connection with this lease, or any conduct or course of dealing of the parties, statements (whether oral or written) or actions of any persons. This waiver is a material inducement to landlord to accept delivery of this lease.

Section 18.18. Relationship of Parties. Landlord and Tenant are not and shall not be considered joint venturers nor partners and neither shall have power to bind or obligate the other except as set forth in the Lease.

Section 18.19. Offset. When ever Tenant may deduct costs from the rent pursuant to any Section of the Lease, such costs may be deducted from the next accruing rental payment(s) due and tenant shall provide Landlord with a written accounting of such applied deduction no later than the date of the next accruing rental payment(s) due.

Section 18.20. Force Majeure. If Tenant or Landlord is delayed or prevented from performing any of their respective obligations under this Lease by reason of Strike, lockouts, labor troubles, failure of power, riots, insurrection, war, severe weather, acts of God or any other cause beyond such party's control, the period of such delay or such prevention shall be deemed added to the time period herein provided for the performance of any such obligation by the party so delayed, provided that this subsection will not excuse or delay the payment of money by either party.

Section 18.21. Calculation of Time Periods. IN the event any time period provided for in the Lease expires on a weekend or legal holiday (being defined as any holiday recognized by the United States Postal Service), this time period shall be automatically extended to the next business day.

Section 18.22. Short Form Lease. A short form of this Lease shall be executed by the parties hereto simultaneously with the execution of the Lease and shall be recorded in the official records of the county where the Premises is located. Said short form lease shall set forth the terms of the Tenant's First Opportunity to Purchase the Premises, Tenant's Right of First Refusal to Purchase the Premises granted to Tenant by this Lease.

Section 18.23. Brokerage. Each party hereby covenants that there are no real estate brokers involved in this transaction other than: (i) Bill Frame of GVA Kidder Mathews, representing and to be paid by Landlord, and (ii) Ron Waldbaum of Leibsohn & Company, representing Tenant and to be paid by Landlord as follows: (A) Five percent (5%) of the Total Gross Rental Income for years 1 – 5 of the initial lease term, (B) Two and one half percent (2 ½%) of the Total Gross Rental Income for years 6 – 10 of the initial lease term, and (C) One and one quarter (1 ¼%) of the Total Gross Rental Income for years 10 – 20 of the initial lease term. (D) no commissions shall be paid by Landlord for any Extensions beyond the initial term of this Lease. All the foregoing commission fees will be split equally (50/50) between the brokers identified herein. Each party hereby agrees to indemnify, defend and hold the other harmless from any and all claims, costs or damages incurred by the other party resulting from any breach of the foregoing.

Section 18.24. Rule Against Perpetuities. In the event the Term of the Lease shall not have commenced within five (5) years after the Effective Date, the Lease shall terminate and the parties shall be released from further liability.

Section 18.25. Landlord's Consent. For any provision where Landlord's consent is required, if it is determined that Landlord has withheld, conditioned, or delayed any consent requested herein unreasonably; then Tenant's sole remedy shall be to obtain a

determination to such effect. Upon obtaining such determination, Landlord's consent shall be deemed granted. Tenant shall have no right to recover damages of any kind from Landlord and Landlord is hereby released, indemnified, and held harmless from any such liability.

Section 18.26 Memorandum of Lease. Concurrently with the execution of this Lease Landlord and Tenant shall execute, acknowledge and deliver to each other a memorandum of this Lease in the form attached hereto as Exhibit E. Tenant shall be responsible for recording the Memorandum in the office of the Pierce County Auditor.

Section 18.26 Exhibits. The Lease contains the following Exhibit(s) which are attached hereto and made a part of the Lease:

- a. Exhibit A; Legal Description of Ground Leased Premises
- b. Exhibit B; Preliminary Site Plan
- c. Exhibit C; Work Letter
- d. Exhibit D; Temporary Branch Lease.
- e. Exhibit E; Memorandum of Lease

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES OF THE PARTIES FOLLOW]

Signature Page:

IN WITNESS WHEREOF, this Lease has been executed on the respective dates set forth below.

WITNESSES:

LANDLORD: FIREROVE COMMONS 3, LLC

By: [Signature]

Date: 7/28/08

Name: GORDON RUSH

Title: MEMBER MANAGER

(As to LANDLORD)

TENANT: [Signature] Viking Bank

By: [Signature]

Date: 7/28/08

Name: Richard A Mulcahy

Title: EVP

(As to TENANT)

STATE OF WASHINGTON)
)
County of PIERCE) ss.

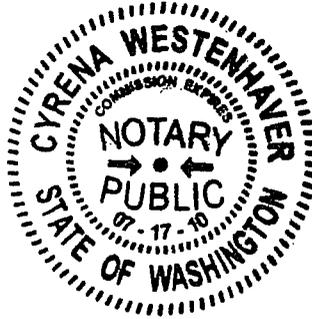
On this 28 of July, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared GORDON RUSH, to me known to be MEMBER MANAGER of FIRGROVE COMMONS-3, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said limited liability company.

Witness my hand and official seal hereto affixed the day and year first above written.

For recording in the state of Washington, the Notarial Seal must be fully legible and cannot intrude into document margins. Please affix seal in the space provided.

Cyrena Westenhaver
CYRENA WESTENHAVER
[Print Name]
NOTARY PUBLIC in and for the State of Washington, residing at
C/O HARBOR
My Commission expires: 7/17/2010

[]
[]
[]
[]
[]
[]



STATE OF WASHINGTON)
)
County of) ss.

On this 28 day of July, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared RICHARD MULLINAHU, to me known to be EXECUTIVE VICE PRESIDENT of VIKING BANK, a Washington Bank, the Washington bank that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

For recording in the state of Washington, the Notarial Seal must be fully legible and cannot intrude into document margins. Please affix seal in the space provided.

Cyrena Westenhaver
CYRENA WESTENHAVER
[Print Name]
NOTARY PUBLIC in and for the State of Washington, residing at BIG HARBOR
My Commission expires: 7/17/2010

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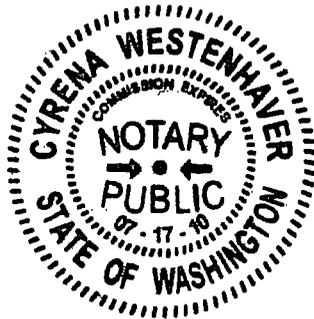


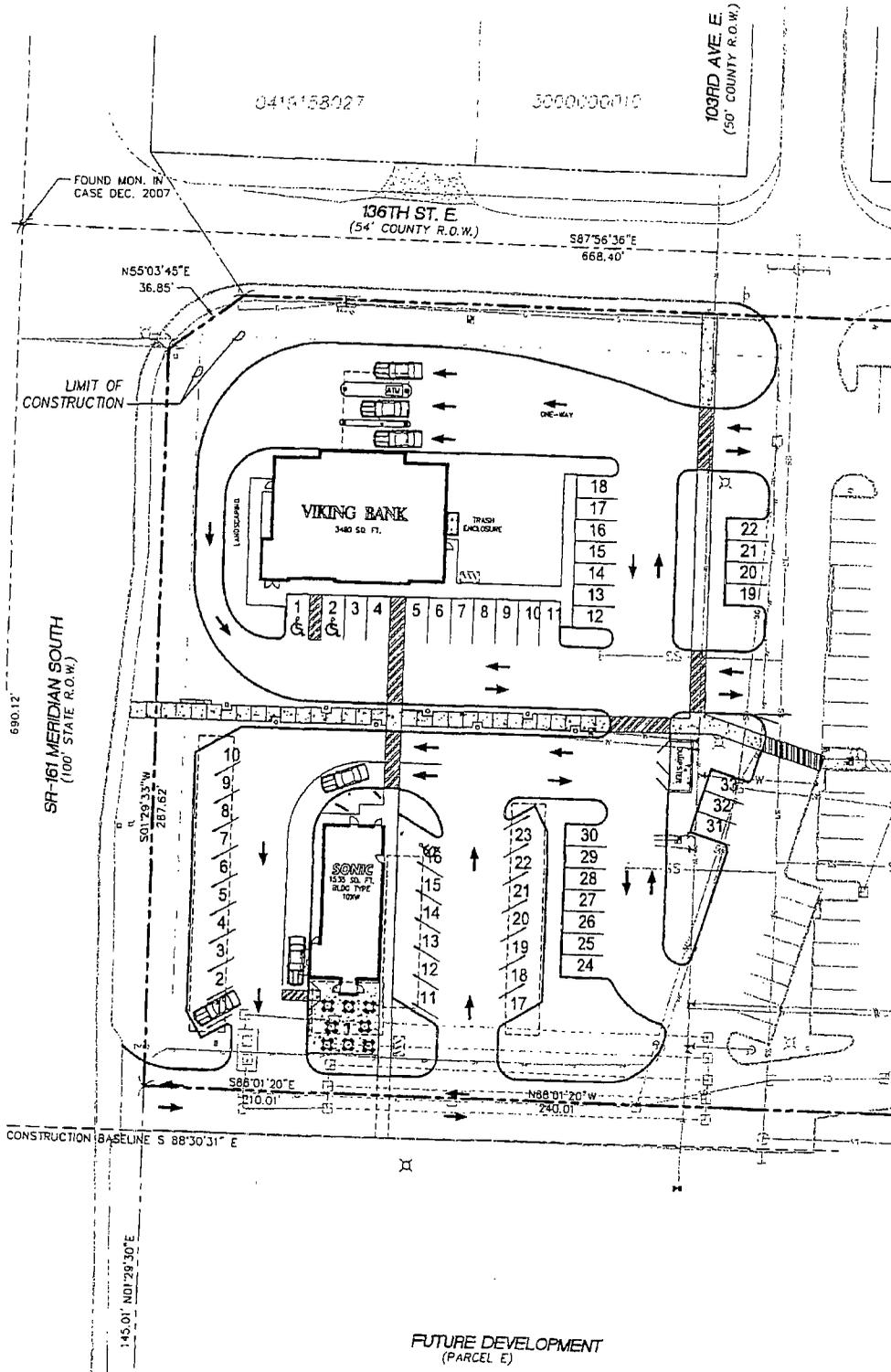
EXHIBIT A

LEGAL DESCRIPTION OF GROUND LEASED PREMISES

Unit 3, of Firgrove Commons, pursuant to Declaration for Firgrove Commons, a Master Condominium, dated July 22, 2008 and recorded on such date under Pierce County Auditor's Fee No. 200807220376, and survey map and plans dated July 22, 2008 and recorded on such date under Pierce County Auditor's Fee No. 200807225001

EXHIBIT B

PRELIMINARY SITE PLAN



FUTURE DEVELOPMENT
(PARCEL E)

Unit 3 of Firgrove Commons, A Master Condominium

FIRGROVE COMMONS, A MASTER CONDOMINIUM

LOCATED IN THE NW 1/4 OF THE SW 1/4 OF SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M. PIERCE COUNTY, WASHINGTON

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNER OF THE SAID UNIT, HEREBY DEDICATES THE SAID UNIT AND ALL RIGHTS AND INTERESTS THEREIN TO THE COMMONS RESTRICTED BY THE TERMS OF THE DECLARATION FOR FIRGROVE COMMONS, A MASTER CONDOMINIUM, DATED 1-22-2008 AND RECORDED UNDER REC'D COUNTY AUDITOR'S REC NO. 008813275311 AND SAID UNIT AND PLANS HEREBY REFERRED TO UNDER REC'D COUNTY AUDITOR'S REC NO. 008813275311. THIS DEDICATION IS NOT FOR ANY FUTURE PURPOSE BUT SOLELY TO SET THE RECORDS OF THE DECLARATION FOR FIRGROVE COMMONS, A MASTER CONDOMINIUM, AS THE DECLARATION FOR A SAID UNIT AND PLANS TO BE SUBJECT TO THE SAID DECLARATION FOR FIRGROVE COMMONS, A MASTER CONDOMINIUM.

BY: [Signature]
OWNER OF SAID UNIT AND PLANS

ACKNOWLEDGEMENT

I, Gregory Paul Moore, of the County of Pierce, State of Washington, do hereby acknowledge that I am the owner of the above described unit and that I have executed the foregoing instrument for the purposes and consideration therein expressed. My execution of this instrument is voluntary and that I am not under any legal disability.



OVERALL LEGAL DESCRIPTION

PARCEL A (TAX PARCEL NO. 0418132001) THE EAST 1/2 OF THE EAST 1/2 OF THE NORTH 1/2 OF THE NORTH 1/4 OF THE NORTHWEST QUARTER OF THE SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M. PIERCE COUNTY, WASHINGTON. EXCEPT THE NORTH 25 FEET OF THE SAID EAST 1/2 OF THE SAID NORTH 1/2 OF THE SAID NORTHWEST QUARTER OF THE SAID SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M. PIERCE COUNTY, WASHINGTON. ALSO EXCEPT THE NORTH 25 FEET OF THE SAID EAST 1/2 OF THE SAID NORTH 1/2 OF THE SAID NORTHWEST QUARTER OF THE SAID SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M. PIERCE COUNTY, WASHINGTON. ALSO EXCEPT THE NORTH 25 FEET OF THE SAID EAST 1/2 OF THE SAID NORTH 1/2 OF THE SAID NORTHWEST QUARTER OF THE SAID SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M. PIERCE COUNTY, WASHINGTON. ALSO EXCEPT THE NORTH 25 FEET OF THE SAID EAST 1/2 OF THE SAID NORTH 1/2 OF THE SAID NORTHWEST QUARTER OF THE SAID SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M. PIERCE COUNTY, WASHINGTON. ALSO EXCEPT THE NORTH 25 FEET OF THE SAID EAST 1/2 OF THE SAID NORTH 1/2 OF THE SAID NORTHWEST QUARTER OF THE SAID SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M. PIERCE COUNTY, WASHINGTON. ALSO EXCEPT THE NORTH 25 FEET OF THE SAID EAST 1/2 OF THE SAID NORTH 1/2 OF THE SAID NORTHWEST QUARTER OF THE SAID SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M. PIERCE COUNTY, WASHINGTON.

ASSESSOR - TREASURER

I HEREBY CERTIFY THAT ALL STATE AND COUNTY TAXES ARE PAID ON BEHALF OF THE SAID UNIT AND PLANS, ACCORDING TO THE BOOKS AND RECORDS OF MY OFFICE. THIS CERTIFICATE IS VALID FOR THE YEAR ENDING ON THE DATE HEREON.

DATE: 7-22-08
BY: [Signature]
ASSESSOR - TREASURER

AUDITOR'S CERTIFICATE

THE DECLARATION FOR FIRGROVE COMMONS, A MASTER CONDOMINIUM, WAS RECEIVED BY ME ON 01/22/08. THE SAID DECLARATION WAS RECORDED UNDER REC'D COUNTY AUDITOR'S REC NO. 008813275311.

DATE: 7-22-08
BY: [Signature]
COUNTY AUDITOR

SURVEYOR'S VERIFICATION

RICHARD R. LARSON, REGISTERED PROFESSIONAL SURVEYOR, STATE OF WASHINGTON, HAS REVIEWED THE RECORDS OF THE COUNTY OF PIERCE, WASHINGTON, AND HAS VERIFIED THAT THE SAID DECLARATION FOR FIRGROVE COMMONS, A MASTER CONDOMINIUM, WAS RECORDED UNDER REC'D COUNTY AUDITOR'S REC NO. 008813275311.

DATE: 7-22-08
BY: [Signature]
REGISTERED PROFESSIONAL SURVEYOR

SURVEYOR'S CERTIFICATE

I, RICHARD R. LARSON, REGISTERED PROFESSIONAL SURVEYOR, STATE OF WASHINGTON, HAVE SURVEYED THE SAID UNIT AND PLANS FOR FIRGROVE COMMONS, A MASTER CONDOMINIUM, AND HAVE FOUND THAT THE SAID UNIT AND PLANS COMPLY WITH THE DECLARATION FOR FIRGROVE COMMONS, A MASTER CONDOMINIUM, AND THAT ALL NECESSARY RECORDS OF THE COUNTY OF PIERCE, WASHINGTON, HAVE BEEN REVIEWED AND FOUND TO BE CORRECT.

DATE: 7-22-08
BY: [Signature]
REGISTERED PROFESSIONAL SURVEYOR



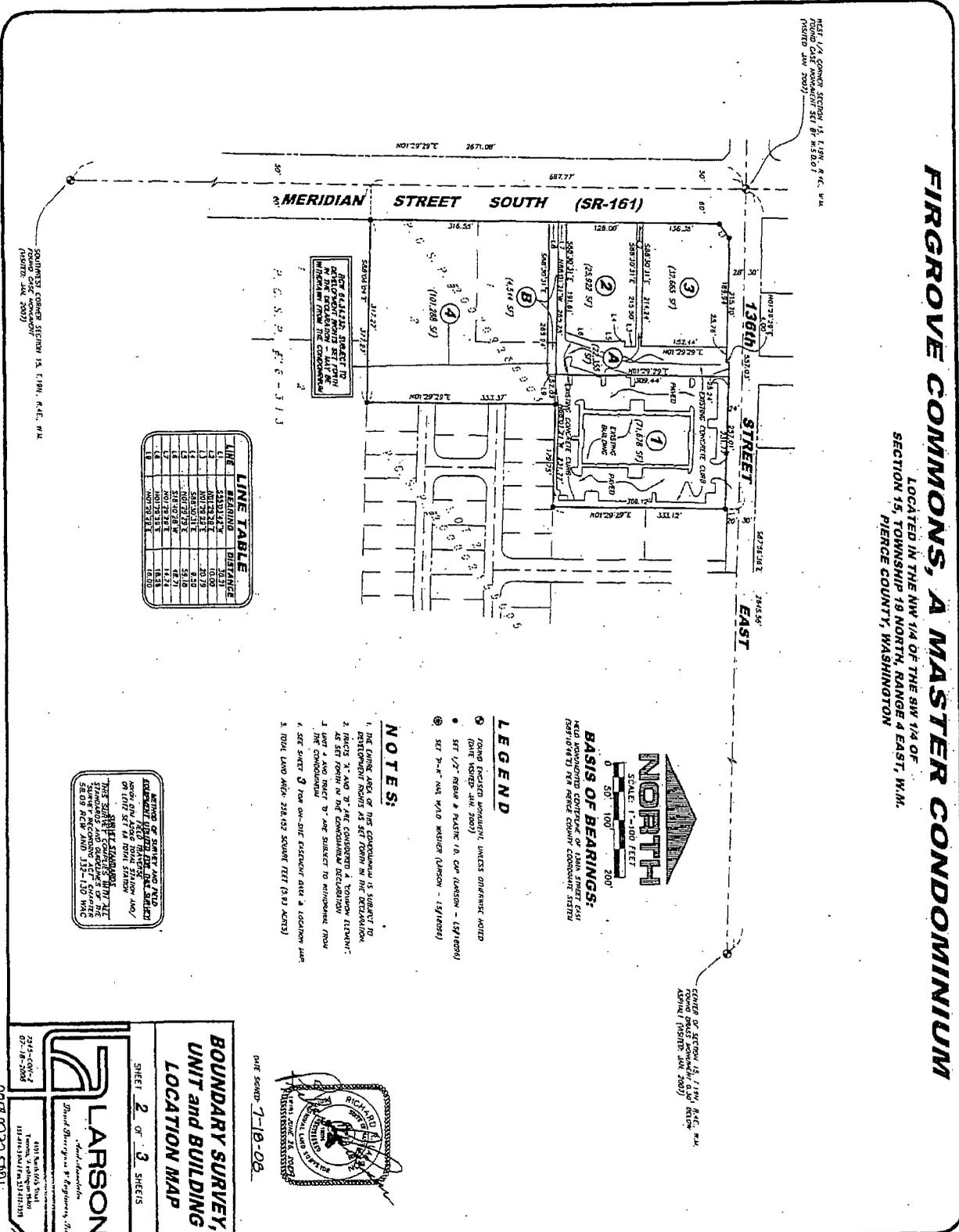
SHEET 1 OF 3 SHEETS

LARSON

1401 Douglas Road
Spokane, WA 99201
509-325-1100

FIRGROVE COMMONS, A MASTER CONDOMINIUM

LOCATED IN THE NW 1/4 OF THE SW 1/4 OF
SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M.,
PIERCE COUNTY, WASHINGTON



SEE 1/4 CORNER SECTION 15, T19N, R4E, W14.
ROUND CORNER MONUMENT SET BY W.S. 2007
(POSTED JAN 2007)

SOUTHWEST CORNER SECTION 15, T19N, R4E, W14.
ROUND CORNER MONUMENT
(POSTED JAN 2007)

LINE	BEARING	DISTANCE
1	S85.514°E	100.00
2	N01.722°E	20.75
3	S89.501°E	5.18
4	S11.422°W	48.71
5	N01.722°E	14.72
6	N01.722°E	14.72
7	N01.722°E	14.72
8	N01.722°E	14.72
9	N01.722°E	14.72
10	N01.722°E	14.72
11	N01.722°E	14.72
12	N01.722°E	14.72
13	N01.722°E	14.72
14	N01.722°E	14.72



BASIS OF BEARINGS:
FIELD MAGNETIC CONTROL OF 136th STREET END
(2007) (1987) PER PIERCE COUNTY CONDOMINIUM SETTING

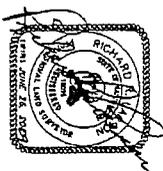
LEGEND

- ROUND CORNER MONUMENT, UNLESS OTHERWISE NOTED (DATE POSTED JAN. 2007)
- SET 1/2" IRON & PLASTER 18 COP (LAWSON - 12/19/2006)
- SET 3/4" NAT. WAL. W/10 WELDER (LAWSON - 12/19/2006)

NOTES:

1. THE ENGINEER HAS REVIEWED THE CONDOMINIUM PLANS SUBJECT TO THIS SURVEY AND HAS SET DOWN IN THE DECLARATION.
2. THE 1/2" AND 3/4" IRON & PLASTER 18 COP (LAWSON - 12/19/2006) AS SET DOWN IN THE CONDOMINIUM DECLARATION.
3. UNIT 1 AND TOWER 2 ARE SUBJECT TO EASEMENTS FROM THE CONDOMINIUM.
4. SEE SHEET 3 FOR ON-SITE EXISTENT DATA & LOCATION MAP.
5. TOTAL LAND AREA: 288,452 SQUARE FEET (6.61 ACRES)

NOTED BY SURVEY AND FIELD
CORNER MONUMENT SETTING
ON 1/14/08 BY RICHARD A. LARSON
AND JAMES W. BIRD, JUNIOR, M.S.
THIS SURVEY CORNER IS THE
SAME AS THE SURVEY CORNER
SET BY RICHARD A. LARSON
ON 1/14/08 AND 1/14/08.



DATE SIGNED: 7-18-08

**BOUNDARY SURVEY,
UNIT AND BUILDING
LOCATION MAP**

SHEET 2 OF 3 SHEETS

LARSON
Engineering

Richard A. Larson
David M. Bergquist, P.E. Engineers, Inc.

1001 Broadway, Suite
1000, Tacoma, WA 98402
253-250-2500 / Fax 253-250-2501

253-250-2500
07-18-08-2500

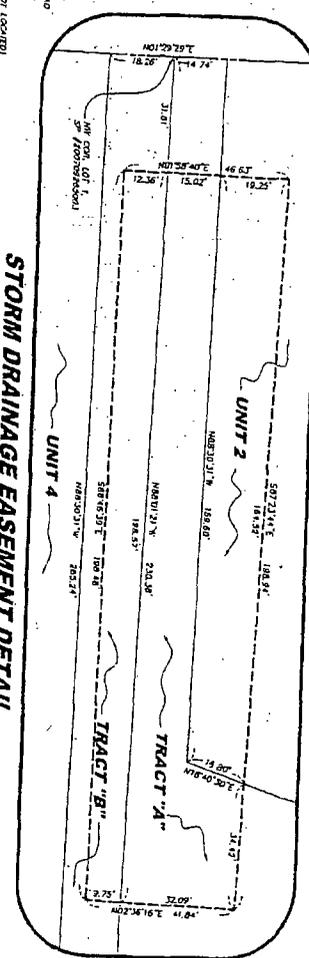
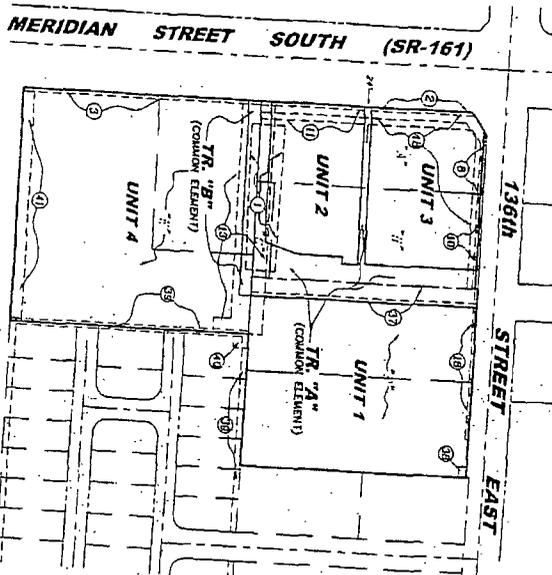
AUDITOR'S FEE NO. 20080722-500

FIRGROVE COMMONS, A MASTER CONDOMINIUM

LOCATED IN THE NW 1/4 OF THE SW 1/4 OF
SECTION 15, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M.
PIERCE COUNTY, WASHINGTON

ON-SITE EASEMENT DATA:

1. STORM DRAINAGE EASEMENT OVER RECEIVING OF THE DETAIL (SEE PLAN AT 100)
2. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
3. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
4. ANY/PROVIDE EASEMENT FOR COMMUNICATION LINES, WIRE, CABLE, TELEPHONE, CABLE, COAXIAL, AND OTHER UTILITIES, ARTS PARCELS A, B, C, D
5. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
6. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
7. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
8. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
9. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
10. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
11. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
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13. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
14. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
15. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
16. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
17. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
18. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
19. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
20. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
21. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
22. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
23. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
24. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
25. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
26. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
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28. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
29. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
30. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
31. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
32. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
33. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
34. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
35. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
36. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
37. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
38. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
39. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
40. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
41. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
42. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
43. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
44. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D
45. ANY/PROVIDE 5' WIDTHWAY EASEMENT, ARTS PARCELS A, B, C, D



**STORM DRAINAGE EASEMENT DETAIL
(LIMITED COMMON ELEMENT)**
SCALE: 1" = 20'



UNIT SCALE: 1" = 10' - 00"

**ON-SITE EASEMENT
DATA and
LOCATION MAP**

SHEET 3 OF 3 SHEETS

LARSON
Surveying & Engineering, Inc.
1001 North Main Street
Spokane, Washington 99201
509-325-1111

EXHIBIT C

WORK LETTER

DESIGN AND CONSTRUCTION OF GROUND LEASED PREMISES.

1.1. General Requirements

- 1.1.1 "As-is" Condition. Tenant acknowledges that Landlord has neither any obligation to construct any improvements on the Ground Leased Premises nor to contribute to the cost of same, except as may be expressly provided for below.
- 1.1.2 Tenant's Work. The "Tenant's work" consists of all improvements, changes, alterations, additions, equipment, fixtures, and decorations required to put the Ground Leased Premises in condition to permit Tenant to open and conduct its business therein for the use permitted hereunder. All Tenant's work shall be done at Tenant's expense. Tenant's work shall be performed in strict accordance with the provisions of this Lease and, in particular, this paragraph.
- 1.1.3 Landlord's Work. The "Landlord's work" consists of all required "off site" improvements, right of way work (i.e. sidewalks, landscaping, street improvements, etc.), utility prep and extension to 5 foot inside of Premises site boundary, common area improvements within the Shopping Center required for access, ingress, and egress of Premises site, and storm detention / retention facility for the Shopping Center site, and required work out side of Premises boundary required to put the Ground Leased Premises in condition to permit Tenant to open and conduct its business therein for the use permitted hereunder All Landlord's work shall be done at Landlord's expense. Landlord's work shall be performed in strict accordance with the provisions of this Lease and, in particular, this paragraph.
- 1.1.4 Costs incurred by Landlord, if any, as a result of Tenant's failure or delay in providing the information as required in this Lease shall be the sole responsibility of Tenant and Tenant shall pay such costs, if any, promptly upon Landlord's demand.

1.2. Facility Site and Building Design

- 1.2.1 Tenant's Work. Shall provide all required design and construction documentation required for the permitting, construction, and completion of the Premises for all work within the boundary of the Ground Lease Premises. Tenant's architectural design and color scheme of the Facility and Site Improvements shall be consistent with the Tenant's standard design and specifications of similar and recent projects on Bainbridge Island and West Seattle
- 1.2.2 Tenant's Signage. Tenant's signage shall be based on Tenant's standard sign package, including standard colors, and in accordance with the Shopping Center Condo Documents, approved by the Landlord, and approved by the appropriate governmental agencies.
- 1.2.3 Landlord's Approval. Landlord reserves the right to review and approve Tenant's site plan and building elevations, of which approval shall not be unreasonably withheld. Tenant shall at Tenant's expense, prepare and deliver to Landlord for its approval, two sets of complete plans and specifications, which shall be in such detail as Landlord may reasonably require and shall include all improvements to be made or installed by Tenant, including, as applicable, structural, HVAC, plumbing, electrical, fire protection, storefront, signs, interior finishes, and colors, lighting, fixtures, equipment, decorations, furnishings, display cases, and materials. The plans and specifications shall be prepared in full compliance with this Lease, and certified by a licensed and registered architect and, if applicable, a licensed and registered professional engineer. Landlord shall approve or disapprove of the plans and specifications within ten (10) days of the delivery thereof by Tenant and Landlord shall be deemed to have approved the plans and specifications upon Landlord's failure to disapprove of the same within the ten (10) day period. Landlord's approval shall not be unreasonably withheld.
 - 1.2.3.1 Landlord's Written Approval shall be obtained by Tenant prior to the undertaking of any construction work that deviates from or modifies in any way Tenant's approved plans and specifications or any other work not explicitly shown on the plans and specifications

- 1.2.3.2 Landlord's Approval of Tenant's plans and specifications or any changes or additions thereto shall not constitute the assumption of any liability, responsibility, or obligation on the part of Landlord, and shall not relieve Tenant of its obligation to comply with applicable governmental requirements or any other provision of this Lease.

1.3. Permits and Approvals

- 1.3.1 Mutual Cooperation for Site Plan Approval Landlord and Tenant shall mutually agree to fully cooperate in the securing of preliminary and final approval of Tenant's required site plan with all governmental agencies
- 1.3.2 Lease Contingency The Lease shall be contingent on the Tenant's ability to obtain all governmental agency development approvals within a period of six (6) months after the execution of the Lease.
- 1.3.3 Criteria, Jurisdiction, and Codes All design and construction work shall comply with all applicable statutes, ordinances, rules, regulations, codes, or governmental body supplying utilities or services, and any other governmental or quasi-governmental authority having jurisdiction over the Ground Leased Premises
- 1.3.4 Prior to commencement Prior to commencement of construction by Tenant, Tenant shall obtain, at Tenant's expense, all necessary permits and approvals for Tenant's work (including Tenant's signage) and post same upon the Ground Leased Premises as required thereby
- 1.3.5 Certificate of Occupancy Tenant shall be required to obtain a certificate of occupancy (CO) prior to opening the Ground Leased Premises for business.

1.4. Ground Leased Premises Construction

- 1.4.1 General Construction Contract with General Contractor
- 1.4.1.1 Tenant's Independent Construction Manager. Tenant has hired the firm of BrandPartners to act as the Tenant's agent to represent Tenant in the review, negotiation, approval, execution, and construction administration of the construction of the Ground Lease Premises.
- 1.4.1.2 Tenant's General Construction Contractor. Tenant desires to negotiate and execute a General Construction Contract with Rush Commercial Construction, Inc. for the completion of the Ground Lease Premises building structure shell and core, site improvements, and tenant improvements. Said negotiations are to be completed prior to the completion of the Tenant's Contingency period. Negotiated terms of the General Construction Contract, subject to this provision, are to include agreement on terms for the General Contractor's project overhead markup and project profit markup. The final General Construction Contract price determination shall be as a Cost of the Work Plus the agreed upon Fees. If Tenant, Tenant's representative, and Rush Commercial Construction can not achieve a negotiated agreement on the General Construction Contract Fees in a timely manner prior to the execution of this Ground Lease, Tenant may proceed with the execution of this Ground Lease and either (1) continue negotiations with Rush Commercial Construction or (2) proceed with another General Contractor.
- 1.4.1.3 Tenant's Customer to act as Sub-Contractors. Tenant desires to offer their banking customers the first opportunity to bid and negotiate Sub-Contracts with the selected General Construction Contractor. Tenant will provide the General Contractor with a list of qualified customer Sub-Contractors. A qualified customer Sub-Contractor will only be dismissed after the Tenant's representative and General Contractor have reviewed and discussed with the Sub-Contractor the reasons for non-selection.
- 1.4.2 Ground Lease Premises Construction
- 1.4.2.1 Criteria, Jurisdiction, and Codes All design and construction work shall comply with all applicable statutes, ordinances, rules, regulations, codes, or governmental body supplying utilities or services, and any other governmental or quasi-governmental authority having jurisdiction over the Ground Leased Premises
- 1.4.2.2 Tenant's Work The "Tenant's work" consists of all improvements, changes, alterations, additions, equipment, fixtures, and decorations required to put the Ground Leased Premises in condition to permit Tenant to open and conduct its business therein for the use permitted hereunder. All Tenant work shall be done at Tenant's expense. Tenant work shall be performed in strict accordance with the provisions of this Lease and, in particular, this paragraph.
- 1.4.2.2.1 Utilities

- (a) Water Service: Landlord to provide a One and One Half-inch (1 1/2") diameter water service from the existing water meter box location at the south east corner of the Ground Lease Premises. Tenant to provide remaining connections and extensions to Premises. The water pressure shall be as provided by the Water District at this location. In the event that the building is required to be fire sprinklered by code, the Tenant shall have the incoming water service sized accordingly and pay all costs and fees.
- (b) Sanitary Service: Landlord shall provide a four-inch (4") diameter (verify existing) sanitary sewer line stub to a point of five (5) feet within the south east corner of the Ground Lease Premises line. The depth of the sanitary sewer line shall be at a level sufficient to permit the Tenant's connection of building structures. All utility connection fees, capacity charges, and fees are the responsibility of the Tenant.
- (c) Storm Service: Landlord shall provide six-inch (6") diameter storm sewer lines from the utility connection to a point five (5) feet onto the Ground Lease Premises in the locations as directed by the Landlord. The Landlord shall provide all "off site" storm drainage systems, detention facilities, devices and grading to meet all applicable requirements of any and all governmental authorities having jurisdiction. "Off-site" refers to the area out side of the boundary of subject Premises of this Lease. Tenant to provide all connections and extensions beyond Landlord provided work.
- (d) Electrical Service: Tenant shall provide electrical service to the Premises from the power line located along the north edge of the Ground Lease Premises. Tenant to provide all primary and secondary conduits and cabling as required for Tenant's electrical requirements. All utility connection fees, capacity charges, and fees are the responsibility of the Tenant.
- (e) Telephone, Internet, and Cable Services: Tenant shall provide Telephone, Internet, and Cable services to the Premises from the north edge of the Ground Lease Premises. Tenant to provide all primary and secondary conduits and cabling as required for Tenant's Telephone, Internet, and Cable requirements. All utility connection fees, capacity charges, and fees are the responsibility of the Tenant.
- (f) Natural Gas: Tenant shall provide any required Natural Gas services to the Premises from the north edge of the Ground Lease Premises. All utility connection fees, capacity charges, and fees are the responsibility of the Tenant.

1.4.2.2.2 Site Improvements

- (a) Rough Grading Landlord is to provide the Tenant with a reasonably level and flat graded pad, graded to +/- one (1) foot of finish building pad elevation. Tenant to complete remaining required rough and finish grading'
- (b) Roadways, Parking, and Related Site Improvements Tenant to complete all Tenant required paving prep, paving, sidewalks, and other associated site improvement for the completion of the Ground Lease Premises as designed and permitted by the Tenant.
- (c) Signage: Shall be the responsibility of the Tenant. There is no shopping center pylon sign and the Firgrove Commons monument sign (if any) only indicates Firgrove Commons in general with no specific Tenant information.
- (d) Landscaping: Tenant to provide all landscaping required for the completion of the Ground Lease Premises as designed and permitted by the Tenant. Tenant to also complete all perimeter landscaping requirements beyond the Ground Lease Premises adjacent to the street right of ways on the north and west sides of the Ground Lease Premises.
- (e) Site Lighting: Tenant to provide required site lighting for the Ground Lease Premises. Landlord provided lighting is as existing. Tenant provided site lighting fixtures are to match Shopping Center standard.

1.4.2.3 Landlord's Work Landlord shall provide the following work (the "**Landlord's Work**") for Firgrove Commons Shopping Center and/or the Premises, as applicable, which is to be completed at Landlord's sole cost and expense. The engineering and construction of the Landlord's Work shall be to Tenant's specifications and comply with Tenant's approved plans with respect to the Premises, and shall otherwise meet with all applicable requirements of any and all governmental authorities having jurisdiction.

It is understood and agreed upon by the Landlord and Tenant that Section 1 of the Landlord's Work set forth on this "Exhibit C" will be completed by Landlord at least ten (10) days prior to the issuance of Tenant's building permit, and Section 2 will be undertaken by the Landlord and completed at least fifteen (15) days prior to the Rent Commencement Date. Landlord will obtain any and all permits and pay any and all fees (including hook-up fees) for Landlord's Work and will have all necessary building code inspections completed (and shall provide copies of such inspection reports to Tenant), prior to the deadlines set forth in Sections 1 and 2 of this Exhibit E.

1.4.2.3.1 Section 1. At least ten (10) days prior to the issuance of Tenant's building permit, Landlord shall complete the following Landlord's Work items:

- (a) Rough Grading: Landlord is to provide the Tenant with a reasonably level and flat graded pad, graded to +/- one (1) foot of finish building pad elevation. Tenant to complete remaining required rough and finish grading.
- (b) Water Service: One and One Half-inch (1 1/2") diameter water service from the existing water meter box location at the south east corner of the Ground Lease Premises. The water pressure shall be as provided by the Water District at this location. In the event that the building is required to be fire sprinklered by code, the Tenant shall have the incoming water service sized accordingly and pay all costs and fees.
- (c) Sanitary Service: Landlord shall provide a four-inch (4") diameter sanitary sewer line stub to a point of five (5) feet within the south east corner of the Ground Lease Premises line. The depth of the sanitary sewer line shall be at a level sufficient to permit the Tenant's connection of building structures. All utility connection fees, capacity charges, and fees are the responsibility of the Tenant.
- (d) Storm Service: Landlord shall provide six-inch (6") diameter storm sewer lines from the utility connection to a point five (5) feet onto the Ground Lease Premises in the locations as directed by the Landlord. The Landlord shall provide all "off site" storm drainage systems, detention facilities, devices and grading to meet all applicable requirements of any and all governmental authorities having jurisdiction. "Off-site" refers to the area out side of the boundary of subject Premises of this Lease.
- (e) Electrical Service: Provided by Tenant.
- (f) Telephone, Internet, and Cable Services: Provided by Tenant.
- (g) Natural Gas: Provided by Tenant.

1.4.2.3.2 Section 2. At least fifteen (15) days prior to the Commencement Date, Landlord shall complete the following Landlord's Work items:

- (a) Roadways and Related Improvements: The construction of all access and egress roadways, together with all related sidewalks, curbing, striping, landscaping, concrete work, curb gutters, drainage and lighting, for the Firgrove Commons Shopping Center up to the subject Ground Lease Premises or boundary line. All work on the Ground Lease Premises is the responsibility of the Tenant.
- (b) Signage: Shall be the responsibility of the Tenant. There is no shopping center pylon sign and the Firgrove Commons monument sign (if any) only indicates Firgrove Commons in general with no specific Tenant information.
- (c) Landscaping: Perimeter landscaping up to the subject Ground Lease Premises line or boundary. All landscaping within the subject Ground Lease Premises line or boundary will be the responsibility of the Tenant.
- (d) Site Lighting: Tenant to provide required site lighting for the Ground Lease Premises. Landlord provided lighting is as existing. Tenant provided site lighting fixtures are to match Shopping Center standard.

1.5. General Provisions

- 1.5.1 Protection At all times during the construction of Tenant's work, it shall be Tenant's responsibility to cause each of Tenant's contractors and subcontractors to maintain continuous protection of the Ground Leased Premises in such a manner as to prevent any damage to Tenant's work, or to adjacent property and improvements by reason of the performance of Tenant's work. Tenant's contractor and subcontractors shall properly secure the Ground Leased Premises, including the furnishing of temporary guard rails and barricades.
- 1.5.2 Construction Timing Within ten (10) days after Landlord approves Tenant's plans and specifications pursuant to the procedure described below, Tenant will file same with Pierce County and make application for a building permit for construction of Tenant's work. Tenant will start construction of Tenant's work immediately upon issuance of a building permit for same, and in any event, substantially complete Tenant's work in a workmanlike manner and in accordance with the Plans and substantially complete construction of the Ground Leased Premises improvements within one hundred eighty (180) days from satisfaction of the contingencies referenced in the Lease or as mutually agreed up on, between the Tenant and Landlord at the time of receipt of the Building permit. Commencement of construction is defined as beginning of site work on the site and proceeding with Tenant's work diligently and continuously thereafter. As used in this Lease, the term "substantial completion" or "substantially complete" shall mean, notwithstanding Tenant's possession of the Ground Leased Premises, that (a) Tenant's work has been completed with the exception of minor items that can be fully completed prior to opening of the Ground Leased Premises for business and (b) a Certificate of Occupancy has been unconditionally issued for Tenant's work.
- 1.5.3. Certificates of Builders Risk & Worker's Compensation Insurance. Certificates of Builders Risk and Worker's Compensation, and all other insurance required by the Lease. Tenant shall not permit its contractor(s) to commence any work unless and until such contractors have delivered to Landlord Certificates of Builder Risk, Worker's Compensation and liability insurance in an amount of not less than One Million Dollars, and Landlord has approved same
- 1.5.4. Settlement of Disputes—Any disagreement or dispute that may arise between Landlord and Tenant with respect to Tenant's work shall be resolved by the decision of an independent Architect.
- 1.5.5. Utility Meters and Connection Fees— Tenant shall apply and pay for all utility meters and connection fees as required
- 1.5.6. Removal of Trash— Tenant, at its expense, shall accumulate and remove trash caused by construction.
- 1.5.7. Lien Waivers— Upon completion of Tenant's work, Tenant shall obtain lien waivers from all contractors, subcontractors, and suppliers, and at the request of Landlord, Tenant shall provide Landlord with copies of such lien waivers and with any other evidence reasonably required by and satisfactory to Landlord in order to evidence that Tenant's work has been paid for.
- 1.5.7 Disclaimer. Landlord's or Landlord's Architect's approval of Tenant's plans and specifications or to any changes, modifications, or additions thereto, and any inspections made by Landlord or Landlord's Architect, and the issuance of an Architect's Certificate of Acceptance by Landlord's Architect, shall be solely for the purpose of meeting Landlord's development standards, and shall not be deemed to release Tenant from any obligations pursuant to this Lease.

EXHIBIT D

TEMPORARY BRANCH LEASE

As part of this Ground Lease the Tenant shall execute a separate lease (to be attached) for approximately 1,000 to 1,500 square foot of rentable space in the existing office building within the Firgrove Commons Shopping Center for a temporary bank branch. This lease shall be a month to month lease commencing on the effective date of this lease and terminating on the Rent Commencement Date of this Ground Lease. The Tenant shall pay on a monthly basis an amount equal to and annual rate of Twenty -Two dollars (\$22.00) per square foot of rentable space, plus associated CAM charges (triple nets). The terms of the required building improvements are to be as mutually agreed upon within the full month to month lease.

Actual Executed Lease Attached - Dated 28 July, 2008

EXHIBIT E

After Recording Return To:

Mr. Gary Krohn
Northgate Executive Center II
9725 3rd Avenue N.E., Suite 600
Seattle WA 98115-2060

MEMORANDUM OF GROUND LEASE

Complete Legal Description on Page: _____

Abbreviated Legal Description: _____

Tax Parcel No.: _____

KNOW ALL PERSONS BY THESE PRESENTS, Firgrove Commons-3,-LLC, a Washington limited liability company, as Landlord, has leased and demised, and by this Memorandum of Ground Lease ("Memorandum") does evidence such lease and demise, unto and Viking Bank and/or Assigns, a Washington bank, as Tenant, pursuant to the terms of that certain Ground Lease dated the 28th day of July, 2008 (the "Ground Lease"), those certain premises described in Exhibit A attached hereto (the "Premises"). The Premises constitute the entirety of Unit 3 of Firgrove Condominium, the condominium referenced in Exhibit A (the "Condominium").

The Initial Term of the Ground Lease is twenty (20) years, commencing on the Rent Commencement Date. The Ground Lease grants Tenant options to extend the Initial Term for four (4) consecutive additional periods of five (5) years each.

The Ground Lease also grants Tenant the right and easement to use the property described in Exhibit A attached hereto, which abuts the Premises, for pedestrian and vehicular ingress to and egress from the Premises and for the installation, operation and maintenance of utilities serving the Premises, together with the right to tie into and use utility systems serving other units of the Condominium.

The Ground Lease also provides that Landlord's estate shall not be subject to any construction liens and that any person furnishing labor or materials to or for the benefit of the Premises on account of Tenant shall look only to the Tenant's estate for the satisfaction of any construction lien.

The Ground Lease also grants Tenant a First Opportunity to Purchase in the event the Landlord desires to sell the Premises and a Right of First Refusal to Purchase in the event the Landlord desires to accept a bona-fide third party offer to purchase the Premises, provided, however, certain transfers and/or sales, as specified in the Ground Lease, are exempt from the First Opportunity to Purchase.

The Ground Lease is incorporated by reference herein as though written length herein, and the Ground Lease and this Memorandum shall be deemed to constitute but a single document, and in the event of conflict between this Memorandum and the Ground Lease, the terms of the Ground Lease shall control. All capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Ground Lease.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 28 day of July, 2008.

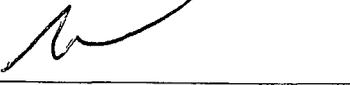
LANDLORD:

TENANT:

FIRGROVE COMMONS 3, LLC,
a Washington limited liability company

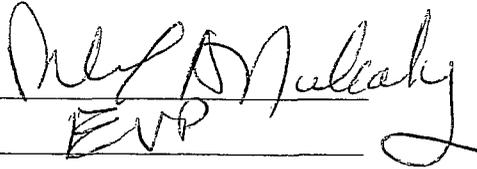
VIKING BANK and/or assigns
a Washington bank

By: _____



Its MEMBER MANAGER

By: _____



Its EVP

STATE OF WASHINGTON)
)
County of) ss.

On this 28 day of July, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared RICHARD MULCAHY, to me known to be EXECUTIVE VICE PRESIDENT of VIKING BANK, a Washington Bank, the Washington bank that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

For recording in the state of Washington, the Notarial Seal must be fully legible and cannot intrude into document margins. Please affix seal in the space provided.

Cyrena Westenhaver
CYRENA WESTENHAVER
[Print Name]
NOTARY PUBLIC in and for the State of Washington, residing at GIG HARBOR
My Commission expires: 7/17/2010

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