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COURT OF APPEALS
DIVISION ONE

SEP 19 2013

NO. 70327-7-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

UNION BANK, N.A., a national banking association,

Appellant,

vs.

KENNETH LYONS, MELANI A. LYONS, individually and the marital community thereof; ELIZABETH Y. VANDERVEEN, A MARK VANDERVEEN, individually and the marital community thereof; TODD ARRAMBIDE, KIM M. ARRAMBIDE, individually and the marital community thereof; HARLEY O'NEIL, JR., MICHELE O'NEIL, individually and the marital community thereof; the TORI LYNN NORDSTROM TRUST, a Washington state trust; and HARLEY O'NEIL, JR., Trustee for the Tori Lynn Nordstrom Trust,

Respondents.

APPELLANT UNION BANK, N.A.'S OPENING BRIEF

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I. INTRODUCTION

This Court should reverse for legal errors the dismissal on summary judgment of Union Bank's complaint against the commercial guarantors of a defaulted commercial loan. The guarantors are liable on their guaranties notwithstanding Union Bank's nonjudicial foreclosure of the deed of trust offered not by the guarantors but by the borrowers. That nonjudicial foreclosure does not prevent this action, contrary to the guarantors' assertions. This Court should reject their legal defense and reverse for further proceedings.

The guarantors rely on a three-part argument to avoid the liability they agreed to assume. If this Court rejects any one of their arguments, it should reverse. The Court should reject each argument for these reasons: 1) the deed of trust does *not* secure the guarantors' obligations under their commercial guaranties, but only secures the obligations of the borrowers/grantors; 2) the Deed of Trust Act does not provide the defense asserted and, instead, provides at RCW 61.24.100(3)(c) a lender's right to a deficiency judgment against guarantors where the proper notice is given, which the guarantors did not put at issue; and 3) the guarantors waived any anti-deficiency defense.

The guarantors seek to avoid their legal obligations by misconstruing the deed of trust, misreading the Deed of Trust Act, and

ignoring their own waivers. As a matter of law, this Court should reverse to permit Union Bank's action.

The Court also should reverse the attorney fee and costs awards because the guarantors' motions claiming fees and costs were untimely under CR 54(d)(2).

II. ASSIGNMENTS OF ERROR

1. The trial court erred as a matter of law when it granted summary judgment dismissing lender Union Bank's complaint against defendant guarantors on the basis that Union Bank's nonjudicial foreclosure of a deed of trust offered by the borrowers prevents this deficiency action against the commercial guarantors, and when it refused to reconsider that ruling.

2. The trial court erred as a matter of law when it granted the guarantors' motions claiming fees and expenses because the motions were untimely under CR 54(d)(2).

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issues Pertaining to Assignment of Error 1

1. Does the guarantors' defense fail as a matter of law because, based on the plain language, context evidence and commercial purposes of the transaction, the deed of trust did not secure the guarantors' obligations under their commercial guaranties but only secured the obligations of the borrowers, the parties who granted the deed of trust?

2. Does the guarantors' defense fail as a matter of law because the Deed of Trust Act permits a deficiency action against the commercial guarantors to recover on the commercial guaranties after the nonjudicial foreclosure even if the deed of trust secured the guarantors' obligations?

3. Does the guarantors' defense fail because these commercial guarantors waived the anti-deficiency defense they now assert?

Issues Pertaining to Assignment of Error 2

1. Does CR 54(d)(2), which requires that claims for attorney fees and expenses be made by motion no later than 10 days after entry of judgment, require reversal of the awards of fees and costs when the guarantors moved more than 10 days after entry of judgment and the court did not extend the deadline?

IV. STATEMENT OF THE CASE

This is an action to enforce personal commercial guaranties of a commercial loan. The relevant facts are undisputed.

The trial court granted summary judgment of dismissal on the basis that Union Bank's nonjudicial foreclosure of the deed of trust offered by the borrowers, which did not fully satisfy the remaining debt and left a deficiency, prevented the action to enforce the personal guaranties. CP 506-08 (Order Granting Summary Judgment Dismissing First Amended Complaint). This Court reviews the propriety of that dismissal.

A. The commercial loan transaction and content of the deed of trust.

Two LLCs known as East Creek and Shoreline borrowed $5.1

million to acquire undeveloped real estate intended for development. CP 303 (*Snider Decl.*, ¶ 4). To make the loan, Union Bank's predecessor in interest Frontier Bank required additional sources of repayment: personal guaranties. CP 303 (*Snider Decl.*, ¶ 6). The guarantors[2] ("Guarantors") executed personal guaranties. CP 55 ¶¶ 6-7 (Answer); CP 65 ¶ 4 (Answer); CP 302 (*Snider Decl.* ¶ 2); CP 307-318 (Exhibits to *Snider Decl.*). The borrowers defaulted on the loans. CP 303, (*Snider Decl.*, ¶ 5); CP 56 ¶¶ 16-17 (Answer); CP 68 ¶ 16-17). After a nonjudicial foreclosure of the deed of trust, Union Bank commenced this action against Guarantors to enforce their personal guaranties and collect the deficiency. CP 1-51.

The guarantors did not sign the note or deed of trust and are not parties to them. CP 302-03 (*Snider Decl.*, ¶ 3). The guarantors did not own the property granted in the deed of trust. *Id.* No guarantor offered security for his or her guaranty. CP 303 at ¶ 6.

The borrowers—the LLCs—granted the deed of trust to secure their obligations pursuant to the note. CP 98 ("For valuable consideration, Grantor conveys to Trustee in trust . . . all of Grantor's right, title and

[2] The guarantors in this appeal are Harley O'Neil, Jr. (with the consent of his spouse Michele O'Neil), the Tori Lynn Nordstrom Trust, and Elizabeth Vanderveen (with the consent of her spouse A. Mark Vanderveen). The other guarantors settled with Union Bank and were dismissed.

interest in and to the following described real property. . . .") (see App. 4).

LLC resolutions before the trial court on summary judment establish that the borrowers had authority only to grant the deeds of trust to secure the LLC's obligations, not obligations of anyone else. These resolutions state that their members are authorized "[t]**o mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber** . . . any property . . . belonging to the Company . . . **as security <u>for the payment of any loans or credit accommodations</u> so obtained, any <u>promissory notes</u> so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), <u>or any other or further indebtedness of the Company</u> to Lender** at any time owing . . . ." CP 113, 115 (App. 2).

Guarantors also ask this Court to ignore the key provision in the deed of trust providing *whose* payment and performance the deed of trust secures. The deed of trust provides that the "payment" and "performance" secured by the deed of trust is that of the borrowers and grantors, as follows:

> **PAYMENT AND PERFORMANCE**. Except as otherwise provided in this Deed of Trust, **Grantor shall pay** to Lender all Indebtedness secured by this Deed of Trust as it becomes due, **and shall strictly and in a timely manner perform all Grantor's obligations** under the Note, this Deed of Trust and the Related Documents.

CP 98 (App. 5). The deed of trust defines the "Grantor" as Shoreline and East Creek. CP 103 (App. 5). The Deed of Trust concerns payment and performance by the "Borrower and Grantor," and nobody else. This section informs the meaning of the document and specifically the payment and performance obligations. Further, the note recites that the borrowers' obligations are secured by the deed of trust, stating,

> COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: a Deed of Trust dated December 10, 2008, to a trustee in favor of Lender on real property located in KING County, State of Washington.

CP 96 (App. 4). The Commercial Guaranties lack a similar provision stating that the guarantors' obligations are secured. *See* CP 108-110.

Each of the guaranties provides as part of "GUARANTOR'S WAIVERS" a waiver of any defense related to anti-deficiency laws or laws that would prevent the Lender from seeking a deficiency after any foreclosure, as follows,

> . . . <u>Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including</u> but not limited to, any rights or defenses arising by reason of (A) any "one action" or "<u>anti-deficiency law</u>" <u>or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor</u>, <u>before or after</u> Lender's commencement or completion of <u>any foreclosure action</u>, either judicially or <u>by exercise of a power of</u>

sale. . . .

CP 108-09 (Commercial Guaranty, pp. 1-2 at "GUARANTOR'S WAIVERS" (emphasis added)) (App. 3). There are additional provisions related to these waivers, including one entitled "GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS" and the guarantors' acknowledgment that he or she read the provisions of the guaranty and agree to its terms. CP 109 (App. 3).

B. The context evidence

To fund the loan Frontier Bank required not only a deed of trust from the LLCs, but commercial guaranties from Guarantors. CP 133, 134 (*O'Neil Decl.*, ¶¶ 4, 6); CP 125, 126 (*Vanderveen Decl.*, ¶ ¶ 4, 6); CP 303-04 (*Snider Decl.*, ¶¶ 6-7). Guarantors agree that they signed the documents as presented, with no requests for special terms or revisions. *Id. See also* CP 191 at 13-17 ("There were no negotiations between Frontier Bank and the defendant guarantors regarding the language of the [sic] any of the Loan Documents. . . . including without limitation the Deed of Trust and Commercial Guaranties."). According to Guarantors, they never bothered to read the guaranties at all. CP 134 (*O'Neil Decl.*, ¶ 7); CP 126 *(Vanderveen Decl.*, ¶ 7). None testify that they lacked the opportunity to review the documents.

Vice President of Union Bank and former Frontier Bank loan

officer Wilma Snider testified that the personal guaranties were essential for the approval of this loan so that Frontier Bank had an additional remedy if the property did not satisfy the debt: it could look to the guarantors. CP 303-04 (*Snider Decl.*, ¶¶ 6-7). Ms. Snider testified that without the guaranties, the loan would not have been approved. *Id.* The transaction was a typically structured real estate purchase loan where the borrowers granted a deed of trust to secure their performance and payment obligations, and the guarantors separately guarantied those obligations. CP 303-04 (*Snider Decl.*, ¶ 7). The guarantors submitted no evidence that the parties intended otherwise.

C. Procedural history and fee awards

Guarantors moved for summary judgment based on their three-part legal argument. CP 189-211 (Motion), CP 219-20 (Joinder). Union Bank opposed the motion. CP 221-45 (Response). The trial court granted the judgment of dismissal on April 10, 2013. CP 506-08. In the dismissal order the trial judge ordered that Guarantors "are entitled to recover their prevailing party attorney's fees and costs, in amounts to be determined by the Court at a subsequent hearing." CP 508.

Union Bank moved for reconsideration, emphasizing (among other arguments) the language in the resolutions that authorized the borrowers' to offer their property to secure **Company** obligations. CP 352-62. The

trial court denied reconsideration. CP 509-10.

Guarantors both moved for awards of fees and expenses more than ten days after the April 10, 2013 judgment of dismissal. CP 376 (4/26/13 "Motion for Attorneys' Fees and Costs and for Entry of Judgment" of O'Neils and Tori Lynn Nordstrom Trust); CP 434-39 (5/13/03 "Defendants Vanderveens' Application for Award of Attorney's Fees"). Over Union Bank's objections that the motions for fees and expenses were untimely pursuant to CR 54(d)(2), (CP 397-403; CP 515-20), the trial court awarded fees and expenses and entered judgment. CP 544-47 (Order and Judgment for O'Neils and Tori Lynn Nordstrom Trust); CP 539-41 (order for Vanderveens), CP 549-551 (judgment for Vanderveens).

Union Bank timely appealed. CP 504-511 (Notice of Appeal); CP 553-96 (Amended Notice of Appeal).

V. STANDARDS OF REVIEW

This appeal presents purely legal issues reviewed *de novo*. Appellate courts review summary judgment orders *de novo*. *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 908, 154 P.3d 882 (2007). Interpretation of a contract ordinarily is a question of law. *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Tanner Elec. Coop v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 574, 911 P.2d 1301 (1996). Statutory interpretation similarly is a

legal issue reviewed *de novo*. *Udall*, 159 Wn.2d at 908.

"Application of a court rule to a particular set of facts is a question of law reviewed de novo." *Corey v. Pierce County*, 154 Wn. App. 752, 225 P.3d 367 (2010).

Application of these standards should result in reversal.

VI. ARGUMENT

This Court should reverse the summary judgment dismissing Union Bank's complaint for errors of law. The Court should construe the deed of trust to secure only the borrowers' obligations based on the language, context evidence and commercial purpose. Alternatively, whether or not the deed of trust secures Guarantors' obligations, the Deed of Trust Act, Title 61.24 RCW, affirmatively permits this action at RCW 61.24.100(3)(c). Finally, this Court should enforce Guarantors' waivers the defense they now assert. For any one of these reasons this Court should reverse.

In addition, because Guarantors moved too late for their awards of fees and expenses, this Court should reverse those awards.

A. This Court should reverse the summary judgment of dismissal based on a proper construction of the deed of trust, a proper interpretation of the Deed of Trust Act, or enforcement of Guarantors' waivers

This Court reviews three legal rulings of the trial court essential to its judgment dismissing Union Bank's complaint. Based on the authorities

and undisputed evidence, this Court on *de novo* review should reject the construction of the deed of trust, the interpretation of the Deed of Trust Act, and/or the detemination that Guarantors' waivers of anti-deficiency protections are unenforceable.

1. The deed of trust, properly construed, does not secure the guarantors' obligations.

Guarantors' premise their argument that the Deed of Trust Act bars this action on an incorrect construction of the deed of trust: that it secures their obligations in addition to the borrowers' obligations. This Court properly should construe the deed of trust as securing only the borrowers' obligations. This construction supports reversal without the need to construe the statute.

Under the objective manifestation theory of contracts applied in Washington, courts "determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties." *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Tanner Elec. Coop v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996). Courts are to "impute an intention corresponding to the reasonable meaning of the words used." *Id.* at 503-04. To implement the context rule, the court focuses on the intent of the parties demonstrated by the written

agreement and the context within which the agreement was executed. *Chatterton v. Business Valuation Research, Inc.*, 90 Wn. App. 150, 155, 951 P.2d 353 (1998).

The deed of trust did not secure Guarantors' obligations under the guaranties based on its plain language, the context evidence and the commercial purposes of the transaction. Looking first at the plain language of the deed of trust, Guarantors argue that the deed of trust secures their obligations by its "payment" and "performance" section, coupled with the "Related Documents" provision. CP 192-94 (Motion). This is wrong because it ignores *whose* obligations the parties intended to secure. The deeds of trust state that the obligations of "payment" and "performance" that are secured are those of the borrower LLCs, i.e. "Grantor," not those of Guarantors. Guarantors do not read far enough.

Guarantors' focus on the following deed of trust section stating that the borrower granted the deeds of trust to secure "payment" and "performance":

> THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) ***PAYMENT*** OF THE INDEBTEDNESS AND (B) ***PERFORMANCE*** OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. ***THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS***:

CP 98 (emphasis added) (App. 5). From there, Guarantors look to the defined term "Related Documents," which includes, among its generic list of items, the word "guaranties." CP 192-94 (Motion). Guarantors then argue that these words show that the borrowers intended to secure their obligations under the guaranties.

Guarantors misconstrue this "payment" and "performance" section. The deed of trust is "given and accepted" to secure payment and performance only "**on the following terms**." Those "terms," which appear in the very next section of the deeds of trust, define whose "payment" and "performance" is secured—and it is not Guarantors'. That section is entitled "PAYMENT AND PERFORMANCE" and it states as follows:

> **PAYMENT AND PERFORMANCE**. Except as otherwise provided in this Deed of Trust, **Grantor shall pay** to Lender all amounts secured by this Deed of Trust as they become due, **and shall strictly and in a timely manner perform all Grantor's obligations** under the Note, this Deed of Trust and the Related Documents.

CP 98 (emphasis added) (App. 5). The deed of trust defines "Grantor" as East Creek and Shoreline. CP 103. Thus, the deed of trust secures only the "payment" and "performance" of Grantors' obligations on the loan and pursuant to "Related Documents," not those of "Guarantors."

That the deeds of trust secure only borrowers' obligations, and not Guarantors', is further evidenced in the "FULL PERFORMANCE"

section, which states that reconveyance shall occur when "Grantor" pays or otherwise performs, as follows:

> **FULL PERFORMANCE**. If ***Grantor pays*** all the Indebtedness when due, and ***otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance*** and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and Personal Property. . . .

CP 100 (emphasis added) (App. 5). This makes no mention of Guarantors' paying or performing. The deeds of trust are discharged only when "Grantor"— East Creek and Shoreline—"pays" and "performs." Additionally, the warranty provision applies only until "the ***Grantor's*** Indebtedness shall be paid in full." CP 100 (emphasis added) (App. 5). The deed of trust read as a whole does not support a conclusion that it was intended to secure the obligations of Guarantors. It was not.[3]

Based on the plain language of the deed of trust, this Court should

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[3] The Court also should note that the parties did not include Guarantors' specific guaranty in the definition of "Related Documents." "Related Documents" are defined as "all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness. . . ." CP 103 (App. 5). While the list includes the word "guaranties," it does not include the word "Guaranty," which is a specifically defined term that applies exclusively to Guarantors's guaranty. *Id.* Thus, not only does the deed of trust secure only performance by borrowers, but Guarantors' specific guaranty is not expressly included in "Related Documents."

conclude that it secured only the borrowers' obligations under any "Related Documents," not Guarantors' separate obligations to pay and perform on the guaranties.

The other documents, moreover, strongly support Union's Bank construction. Guarantors and Union Bank agree that the multiple documents in this commercial loan transaction must be read together and construed with reference to each other. *See* CP 197 (Guarantors' Motion for Summary Judgment), *citing Kenney v. Read*, 100 Wn. App. 467, 474, 997 P.2d 455 (2000).

The LLC resolutions (CP 113-16, App. 2) leave no doubt that (1) the borrowers had no authority to offer their property to secure any obligations other than those of the Companies, and (2) borrowers did not intend to secure anyone's obligations but their own. The resolutions plainly express this.[4] Further, the note recites that the borrowers' obligations are secured by the deed of trust, stating,

> COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the

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[4] The resolutions authorize the LLC members "[t]**o mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber** . . . any property . . . belonging to the Company . . . **as security <u>for the payment of any loans or credit accommodations</u> so obtained, any <u>promissory notes</u> so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), <u>or any other or further indebtedness of the Company</u> to Lender** at any time owing. . . ."

> security instrument listed herein: a Deed of Trust dated December 10, 2008, to a trustee in favor of Lender on real property located in KING County, State of Washington.

CP 96 (App. 4). The Commercial Guaranties **lack** a similar provision stating that the guarantors' obligations are secured. This contrast supports Union Bank's construction, together with the parties' expressions throughout these documents.

Guarantors' construction also suffers because it fails to account for context evidence. Our Supreme Court in *Berg v. Hudesman* approved the tenet that "meaning can almost never be plain except in a context." *Berg v. Hudesman*, 115 Wn.2d 657, 668 P.2d 222 (1990) (disapproving plain meaning rule and adopting context rule for contract interpretation). The contract should be viewed as a whole, including (1) the subject matter and objective of the contract; (2) all circumstances surrounding its formation; (3) the subsequent acts and conduct of the parties; (4) the reasonableness of the respective interpretations advocated by the parties; (5) statements made by the parties in the preliminary negotiations; and (6) usage of trade and course of dealings. *Tjart v. Smith Barney, Inc.*, 107 Wash. App. 885, 895 (2001), *rev. denied*, 145 Wn.2d 1027 (2002), *cert. denied* 537 U.S. 954 (2002).. When such evidence is considered, the Court should reject Guarantors' construction of the deed of trust.

The subject matter and objective of the contracts and the circumstances surrounding their formation illustrate the parties' objective to provide the Bank with two sources of recovery: the deeded property and the guaranties. No utility arises by having the deed of trust also secure the guaranties. Such a structure offers no advantage to a bank, where the borrowers' full debt already is secured by the Deed of Trust. A guarantor's liability mirrors the borrowers' liability. A bank, thus, could obtain every cent owed it through foreclosing on the property simply by having the property secure the borrowers' obligations.

The history of the preliminary negotiations supports Union Bank's construction. The witnesses agree that before it would authorize the loan, Frontier Bank unequivocally required two things: 1) the deed of trust offering the real property and 2) the personal commercial guaranties. CP 133, 134 (*O'Neil Decl.*, ¶¶ 4, 6); CP 125, 126 (*Vanderveen Decl.*, ¶¶ 4, 6); CP 303 (*Snider Decl.*, ¶ 6). According to the guarantors, they made no statements or comments regarding the documents received from the Bank. *Id.* They made no demand or request that the Deed of Trust also secure their personal obligations. *Id.*; CP 191, 198 (*Motion* at 3, 10). Absent a request for a special structure by the guarantors, the Bank would be expected to prepare its customary documents securing only the borrowers' performance by the Deed of Trust. CP 303-04 (*Snider Decl.*, ¶¶ 7-8). No

context evidence suggests the parties had a different intent.

Guarantors' construction of the deed of trust is simply unreasonable given the entire context of the parties' transaction. This Court must reach a commercially reasonably interpretation of the documents. *Wilson Court Ltd. P'ship v. Tony Maroni's*, 134 Wn.2d 692, 705, 952 P.2d 590 (1998) (court must recognize "the commercial context" and "a commercially reasonable construction").

The trial court should have denied the motion for summary judgment based on construction of the deed of trust. It abused its discretion not to reconsider its ruling, which is inconsistent with this undisputed evidence and contrary to law. This Court should hold that Shoreline and East Creek's deed of trust did not secure Guarantors' obligations and reverse the dismissal of Union Bank's action.

2. The Deed of Trust Act authorizes this action for a deficiency judgment against the commercial guarantors even if the foreclosed deed of trust granted by the borrowers secures the guarantors' obligations

Even if this Court were to conclude that Guarantors' obligations under the guaranties were secured by the LLCs' deed of trust, Guarantors' legal arguments still fail because the Deed of Trust Act affirmatively permits Union Bank to seek deficiency judgments against them. The Act does not mean what Guarantors assert. The plain language does not bar

this action. Guarantors rely on RCW 61.24.100(10)—a permissive not prohibitory provision—to bar what the Act overall seeks to facilitate: nonjudicial foreclosure followed by the ability to seek a deficiency from a commercial guarantor. The Legislature amended the Act in 1998 to clarify that, for commercial loans, lenders ***can*** bring actions for deficiency judgments against guarantors after a nonjudicial foreclosure. Guarantors urge an interpretation contrary to the language and policies of the Act. This Court should reject it.

"A court's objective in construing a statute is to determine the legislature's intent." *Id.*, at 909, citing *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007). "'[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.'" *Id.* "Plain meaning is 'discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.'" *Id.* "If the statutory language remains susceptible to more than one reasonable interpretation, the statute is considered ambiguous, and the court may then employ statutory construction tools, including legislative history, for assistance in discerning legislative intent." *Id.* Here, both the plain meaning of the Deed of Trust Act and its legislative history support reversal to permit Union Bank's action.

a. The Deed of Trust Act expressly authorizes Union Bank's deficiency action against Guarantors

The Deed of Trust Act affirmatively authorizes this action. The relevant part of the Act begins with a blanket prohibition on actions for a deficiency judgment against any borrower, grantor, or guarantor except "as permitted" in RCW 61.24.100 with respect to "commercial loans." The Act then authorizes limited deficiency actions against commercial borrowers and grantors, but only to recover for waste and wrongful retention of rents. RCW 61.24.100(3)(a)(i). Critically, the Act contains no similar limitations on deficiency actions against commercial guarantors, which are permitted without limitation if timely notice is given, as follows:

> This chapter does not preclude…, [s]ubject to this section [RCW 61.24.100], an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

RCW 61.24.100(3)(c). Subsection 3(c) permits a deficiency action against a guarantor of a commercial loan provided notice under RCW 61.24.042 is proper, which Guarantors did not challenge. The action must be brought within a year. RCW 61.24.100(4). The guarantor can request judicial determination of the property's "fair value." RCW 61.24.100(5).

This right to pursue a deficiency action under Subsection 3(c) against a commercial guarantor only is circumscribed if a guarantor grants

his or her own deed of trust to secure its guaranty. In that case, RCW 61.24.100(6) provides that the lender still may seek a deficiency judgment, but that deficiency judgment is limited to waste and/or wrongful retention of rents, just as it would against a borrower or grantor. Because Guarantors did not grant any deed of trust over their own property, subsection (6) does not apply. There is no limitation provision similar to subsection (6) that applies when the borrower's deed of trust secures both the borrower's and the guarantor's separate obligations.

The plain meaning of RCW 61.24.100(6) conflicts with Guarantors' interpretation of RCW 61.24.100(10). By its clear terms, subsection (6) ***permits*** a limited deficiency judgment against a guarantor when the guaranty is secured by a foreclosed deed of trust. Yet, at the same time, Guarantors prevailed on the theory that subsection (10) ***precludes*** deficiency actions against guarantors that are secured by a foreclosed deed of trust. Guarantors' theory places subsections (6) and (10) in direct conflict. For this reason, the Court should reject it.

The Court can avoid the conflict by giving RCW 61.24.100(10) its plain and reasonable meaning. Subsection (10) affirmatively protects lenders by preserving their rights to enforce obligations owed to the same lender from different transactions, as follows:

A trustee's sale under a deed of trust securing a commercial

> loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

RCW 61.24.100(10). On its face, this subsection has nothing to do with a lender's right to seek a "deficiency judgment" against borrowers and guarantors, a situation addressed in RCW 61.24.100(3) and (6). Where the legislature intended the Act to refer to actions for a "deficiency judgment," it used that precise term. RCW 61.24.100(3)(a)(i) ("an action for a deficiency judgment"); RCW 61.24.100(3)(c) (same); RCW 61.24.100(6) ("shall be subject to a deficiency judgment"). Subsection (10) by its plain language does not prohibit "deficiency judgments."

The legislature's use of the phrase "an action to collect or enforce any obligation" in subsection (10)—a phrase that appears nowhere else in RCW 61.24.100—reflects a different meaning. Its reference to "an action to collect or enforce any obligation … not secured by the deed of trust" is directed to the situation where a borrower or guarantor has obligations to the lender separate from the commercial loan subject to foreclosure. Borrowers and guarantors can have multiple transactions or loans with the same lender. The section makes clear foreclosure of a deed of trust securing one commercial loan does not affect a lender's ability to enforce unrelated debts or obligations against the same borrower or guarantor.

Subsection (10) **protects** lenders from arguments that all other debts or obligations are discharged if the lender forecloses on one deed of trust. In short, subsection (10) is permissive and clarifies that nothing in the Deed of Trust Act prevents a lender from enforcing unrelated debts.

This Court should reject Guarantors' argument that twists subsection (10) from a provision that was intended to ***permit*** lenders to pursue separate debts into one that is construed to ***prohibit*** lenders from bringing an action for a deficiency judgment. Courts "do not infer a prohibition absent specific language to that effect, unless the statute as a whole directs that conclusion." *Glasebrook v. Mut. of Omaha Ins. Co.*, 100 Wn. App. 538, 545, 997 P.2d 981 (2000). Guarantors' construction is contrary to the plain language of RCW 61.24.100(3)(c) and RCW 61.24.100(6). It thwarts a primary purpose of the Deed of Trust Act because, in situations like this one, lenders would have to file lawsuits on the guaranty prior to nonjudicial foreclosure or initiate judicial foreclosure actions in lieu of a nonjudicial foreclosure altogether whenever it appears that the value of the foreclosed property is insufficient to cover the debt; otherwise, the guaranty is worthless. *See Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985) (three purposes of Deed of Trust Act are to keep the nonjudicial foreclosure process efficient and inexpensive, provide an adequate opportunity for interested parties to prevent wrongful

foreclosure, and promote stability of land titles).

The trial court expressed during oral argument that it struggled with the statutory interpretation. 3/22/13 VR 5:8-25, 23:4 to 24:8. The trial court questioned whether Guarantors' interpretation was sensible. 3/22/13 VR 22:1-7. It is not. The trial court also expressed that it found Union Bank's construction the most coherent given the section in its entirety, but felt constrained to construe the section in favor "of the borrower." 3/22/13 VR 53:17-25. No case holds that the Deed of Trust Act should be construed in favor of *commercial guarantors*.

b. Legislative history supports Union Bank's interpretation of the Deed of Trust Act

If the Court were to find subsection (10) subject to more than one reasonable construction, the Act's legislative history confirms Union Bank's interpretation. Prior to 1998, the Act did not address whether a deficiency judgment could be sought from a guarantor after a deed of trust was foreclosed. *See* RCW 61.24.100 (1990) (CP 267). Washington courts also declined to decide the Act's effect on guarantor liability. *E.g.*, *Glenham v. Palzer*, 58 Wn. App. 294, 298 n.4, 792 P.2d 551 (1990); *Thompson v. Smith*, 58 Wn. App. 361, 367 n.4, 793 P.2d 449 (1990). This silence left an unsettling uncertainty. Nonjudicial foreclosure under the Act was recognized as an "efficient and inexpensive" remedy vital to lending. *Donovick v. Seattle–First Nat'l Bank*, 111 Wn.2d 413, 417, 757

P.2d 1378 (1988) (citation omitted). But with the right to pursue guarantors after a nonjudicial foreclosure unclear, creditors might opt for the longer, more expensive process of judicial foreclosure. Thus came a push for clarification of the Act to expressly allow lenders to seek deficiency judgments from guarantors after nonjudicial foreclosure.

That clarification became law through the 1998 amendments. A committee of the Washington State Bar Association drafted Engrossed Substitutive Senate Bill ("ESSB") 6191, enacted as Chapter 295 of the 1988 Session Laws and codified in RCW 61.24. The House Bill Report for ESSB 6191 summarized three conditions a lender had to meet in order to seek a deficiency judgment against a guarantor of a commercial loan:

> The beneficiary may seek a deficiency judgment against a guarantor of the commercial loan if certain conditions are met, including the following: (1) the action must be commenced within one year; (2) the guarantor must have been given notice of the trustee's sale that contains the guarantor's rights and defenses, and an opportunity to cure the default; and (3) the guarantor may ask the court to determine the fair value of the property, and the amount of the deficiency is the amount owed by the guarantor to the beneficiary less the greater of either the fair value of the property or the price paid at the sale.

H.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998). These conditions are now reflected in RCW 61.24.100(3)(c), (4) and (5). Noticeably absent from the legislative analysis is any suggestion that subsection (10) provides a further condition

on bringing a deficiency action against a guarantor or, more specifically, that such actions are prohibited if the deed of trust secures both the borrower's and guarantor's obligations.[5]

Guarantors' reading of the amended statute would undo the effort and intent of the legislature, because, as noted above, it would force lenders to opt for judicial foreclosure. Indeed, the Supreme Court has refused to construe the Act in a manner that "would ignore the intent of the statutory scheme and give an unjustified, unwarranted windfall to the debtor—a windfall completely without merit in logic or equity in principle." *Donovick*, 111 Wn.2d at 416. This Court similarly should reject Guarantors' arguments, which are based on a statutory interpretation that ignores the intent of the statutory scheme and would give commercial guarantors—who agreed to guaranty a borrower's debt "absolutely" and "unconditionally"—an unwarranted windfall. This Court can and should reverse on this basis as well.

Guarantors have not participated in the *quid pro quo* upon which the Act justifies barring a deficiency judgment. Courts have described the Deed of Trust Act as permitting the speedy remedy of a nonjudicial

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[5] The Senate Final Bill Report for ESSB 6191 noted the drafters' intent "to avoid time consuming and expensive judicial foreclosure proceedings and to save time and money for both the borrower and the lender." S.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998).

foreclosure to lender who gives up the right to a deficiency judgment in exchange for the borrower giving up the right to a one year post-sale redemption period, as well as the right to a judicially-imposed upset price. *Thompson v. Smith*, *supra* (referring to "quid pro quo between borrowers and lenders."); *Donovick*, *supra*, 111 Wn.2d at 416 (same). But the guarantors are *not* borrowers. And they did not offer the property as security. They are not participants in the *quid pro quo*. These guarantors "gave up" nothing as a counterbalance to extinguishing the Bank's right to a deficiency.

3. Guarantors expressly and unambiguously waived any anti-deficiency defenses they may have had

This Court also should reverse based on Guarantors' enforceable waivers. Even if Guarantors had an anti-deficiency defense, they voluntarily waived it. The trial court agreed with Guarantors' argument that the waivers were "void as contrary to the provisions of the statute and its underlying public policy." CP 508 ¶ 5. This was error. The waivers are not void as a matter of law. To the contrary, they are enforceable.

In the guaranties, each guarantor agreed to waive anti-deficiency defenses, stating,

> …[Guarantor] waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A)… any 'anti-deficiency' law or any other law which may prevent Lender from bringing any action, including a claim

> for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale ....

CP 108-09 (App. 3). The guaranties contain a separate provision, "GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS," which further demonstrates the clarity, conspicuousness and completeness of the waiver. CP 130 (App. 3). Guarantors signed an acknowledgement, which appears immediately above the signature line, that they read and agreed to all the provisions of the guaranty. CP 131 (App. 3). Guarantors do not claim that they did not have an opportunity to read or understand the plain import of this waiver; they instead candidly admit they never bothered to read the guaranties. CP 134 ¶ 7; CP 126 ¶ 7.

Whether Guarantors read the guaranties has no relevance to their arguments. The guarantors are "conclusively presumed" to assent to the contents of the guaranties by having executed them. *See Tjart v. Smith Barney, Inc.*, *supra*, 107 Wash. App. at 897. "A voluntary signor to a contract cannot resist application of its terms simply by stating ignorance of its contents." *Lyall v. Deyoung*, 42 Wn. App. 252, 256, 711 P.2d 356 (1985). The waivers in this case were clear and conspicuous. This Court cannot permit the guarantors to reject certain terms when it suits them, when they were perfectly willing to sign these guaranties to induce a loan of over $5 million.

Common law provides that a guarantor's surety and statutory defenses "may be explicitly waived in a guaranty agreement and such waiver provisions are enforceable." 38A C.J.S., *Guaranty* § 125 (2008); *also* 38 Am.Jur.2d, *Guaranty* § 67 ("the guaranty may provide, by its terms, that the guarantor remains liable despite the release of the principal debtor"). This rule is well recognized by Washington courts. *Fruehauf Trailer Co. of Can. v. Chandler*, 67 Wn.2d 704, 409 P.2d 651 (1966) (upholding guarantor's waiver of defense of discharge); *Seattle First Nat'l Bank v. West Coast Rubber, Inc.*, 41 Wn. App. 604, 609, 705 P.2d 800 (1985) (upholding guarantor "waivers of virtually all of surety defenses").

The Deed of Trust Act did not disturb this black letter law. When the legislature intends to deny contracting parties the freedom to bargain away statutory rights, it says so expressly. *See* RCW 19.118.130 (waiver of rights under lemon law void); RCW 19.100.220(2) (same under franchise act); RCW 21.20.430(5) (securities act); RCW 50.40.010 (unemployment compensation); RCW 51.04.060 (workers-compensation). Indeed, in the analogous context of UCC Article 9, the legislature prohibited waivers of a debtor's rights upon default, but preserved the common law rule permitting waiver of guarantor defenses. RCW 62A.9A-602 & cmt. ("Washington variations of this section … preserve the ability of a guarantor to waive suretyship defenses"). Had the legislature intended

to preclude parties from waiving guaranty defenses under the Deed of Trust Act, it would have said so. *See Save Columbia CU Comm. v. Columbia Cmty. Credit Union*, 134 Wn. App. 175, 191, 139 P.3d 386 (2006) (legislature's use of language in only one of two similar situations suggests a different legislative intent). This Court should find the legislature's refusal to do so here conclusive on this issue.

The waiver is not void as against "public policy" embodied in the statute. "An agreement that has a tendency to be against the public good, or to be injurious to the public violates public policy." *Scott v. Cingular Wireless*, 160 Wn.2d 843, 851, 161 P.3d 1000 (2007) (citation and internal quotation marks omitted). Enforcing a guarantor's express waiver of anti-deficiency defenses in the context of a commercial loan does not injure the public good or frustrate the policies underlying the Deed of Trust Act. As discussed above, the legislature did not give commercial guarantors the same anti-deficiency rights as borrowers and, thus, the default rule is that a lender ***can*** seek a deficiency judgment against guarantors. RCW 61.24.100(3)(c). If subsection (10) creates a limited exception to that default rule, allowing sophisticated parties to agree to permit a deficiency action in conformity with subsection (3)(c) instead does not offend the public policies underlying the Act.

The Washington Supreme Court's decisions in *Bain v.*

Metropolitan Mortgage Group, Inc., 175 Wn.2d 83, 107-08, 285 P.3d 34 (2012); and *Schroeder v. Excelsior Mgmt. Group LLC*, 177 Wn.2d 94, 297 P.3d 677 (2013), do not require a different outcome. Neither case addresses RCW 61.24.100(10), deficiency judgments, commercial loans, guaranties or the enforceability of express waivers by commercially sophisticated parties like Guarantors. Nor do these opinions disturb prior cases such as *Fruehauf Trailer* or *Seattle First Nat'l Bank*. Rather, in both cases the Court held that parties cannot contractually waive "statutory requirements" to hold a non-judicial foreclosure sale. *Bain*, 175 Wn.2d at 107-08; *Schroeder*, 177 Wn.2d at 107. As the Court noted, the rule that a person can ordinarily waive "rights or privileges" does not apply to procedural requisites because they "are not, properly speaking, rights held by the debtor; instead, they are limits on the trustee's power to foreclose without judicial supervision." *Schroeder* at 107. These requirements antecedent to foreclosure must be followed to protect other interested parties (like junior lienholders) and prevent future title disputes—two key purposes of the Deed of Trust Act. *Cox v. Helenius*, 103 Wn.2d at 387. Here, the guaranties do not seek to alter the mechanics of a non-judicial foreclosure sale. Commercial guarantors instead have waived a purported personal right. The Supreme Court's concern for protecting homeowners has no applicability in a commercial transaction between sophisticated

parties.

If it reaches this issue, this Court should enforce the waivers and reverse.

B. This Court should reverse the awards of attorney fees and expenses for untimeliness under Civil Rule 54(d)(2)

This Court on *de novo* review should reverse the awards of attorney fees and expenses because Guarantors made their motions too late under Civil Rule 54(d)(2). The trial court erred in ruling the motions timely.

CR 54(d) provides that a cost bill or motion for attorney fees and expenses must be filed no later than 10 days after entry of judgment. The 10-day deadline that runs from the date of entry of judgment for **both** cost bills and claims for fees and expenses, as follows:

> (1) *Costs and Disbursements*. Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute. If the party to whom costs are awarded does not file a cost bill or an affidavit detailing disbursements within 10 days after the entry of the judgment, the clerk shall tax costs and disbursements pursuant to CR 78(e).
>
> (2) *Attorneys' Fees and Expenses*. Claims for attorneys' fees and expenses, other than costs and disbursements, shall be made by motion unless the substantive law governing the action provides for the recovery of such fees and expenses as an element of damages to be proved at trial. Unless otherwise provided by statute or order of the court, the motion must be filed no later than 10 days after entry of judgment.

CR 54(d). The rule establishes an outer time limit on parties' motions to resolve the post-judgment business of awards of costs, fees and expenses.

In response to Union Bank's objection, Guarantors argued, and the trial court held, that the ten-day time limit of CR 54(d)(2) did not apply to their motions establishing the fees and expenses claimed by Guarantors because the court already had ruled that Guarantors had the right to fees and expenses. *See* CP 541 ¶ 3 (Order). Although the rule does not state this, the trial court held that CR 54(d)(2) did not apply to "submission of detailed billing records and other information to the Court for consideration and quantifying the amount of the award." CP 541 ¶ 3. The trial court disregarded the plain language of the rule and reasoned that where it already had granted Guarantors' request for fees and costs in the April 10, 2013 summary judgment order (*see* CP 508:13-15), CR 54(d)(2) had no applicability. This Court on *de novo* review should disagree.

The plain language of CR 54(d)(2) required denial of the motions absent an extension, which the trial court never ordered. It is undisputed that Guarantors made their motions claiming amounts of fees and costs beyond the ten-day limit.[6] No court order extended that time. No

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[6] Guarantors cannot dispute that the April 10, 2103 summary judgment order was the final judgment. *See Carrara v. Ron & E Enterprises, Inc.*, 137 Wn. App. 822, 155 P.3d 161 (2007) (summary judgment order is final judgment, notwithstanding pending determination

excusable neglect was established or found. CP 539-41; CP 556-59. *See Corey v. Pierce County, supra*, 154 Wn. App. at 774 (unless excusable neglect is shown, court should deny tardy motion for fees and expenses).[7]

Reversal is consistent with the application of CR 54(d)(2) to motions for fees and costs by this Court in *Corey v. Pierce County,* where the plaintiff filed her motion for fees more than 10 days after entry of judgment. *Id.* This Court in *Corey* affirmed the trial court's denial of the motion for fees for untimeliness under CR 54(d). In this case, *Corey* supports reversal as a matter of law.

Guarantors likely will attempt to distinguish *Corey* because in *Corey* there had been no prior ruling establishing the plaintiff's right to fees and expenses. These facts do not require a different outcome. First, the attempted distinction fails because at the time she moved for fees and expenses, plaintiff Corey also had a right to them; where Corey had prevailed on her claim under RCW 49.48.030, the statute entitled her to a fee award. *Id.* at 774 ("Under RCW 49.48.030, attorney fees are assessed

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of an award of fees and expenses).

[7] Before the trial court, Guarantors addressed at length the unrelated issue of the note date for their fee motions. CP 428:1-3, 429:9-10, 432. This is irrelevant for many reasons, including that the court issued no orders concerning the timing of the fee motions and that CR 54(d)(2) concerns the date of *filing*, not noting, of the motions. Guarantors also raised Union Bank's motion for reconsideration (CP 429, 435, 436), which motion also is irrelevant to application of CR 54(d)(2).

against the employer in any action resulting in successful recovery of a judgment for wages or salary owed. Because Corey received an award of damages for her promissory estoppel claim, she is entitled to her attorney fees."). Guarantors are similarly situated to plaintiff Corey: both were entitled to fee awards based on the judgments entered in their favor.

Second, the plain language of the rule does not support Guarantors' argument that if the Court previously ruled they were entitled to fees and expenses, they can assert their claim to them whenever they wish. CR 54(d)(2) promotes finality of the trial court proceedings. If this Court accepts the argument of the Guarantors like the trial court did, no time limit would exist. This would extend trial court proceedings indefinitely. This Court should reject that reading, which is inconsistent with the language of the rule and the policy of the rule to promote timely termination of the proceedings.[8]

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[8] Federal courts demand compliance with time deadlines to bring a motion for attorney fees based on the policy to avoid protracted litigation. In *Schake v. Colt Indus. Operating Corp. Severance Plan*, the Third Circuit reversed a district court's award of fees where the plaintiff failed to complay with the time limit of the local rule. 960 F.2d 1187, 1191-1193 (3d Cir. 1992). Noting that the prior order granting summary judgment "constituted a final and appealable judgment," the Third Circuit held that a fee application filed three months later was untimely under the local rule, which stated, "Any motion for the award of attorney's fees which is not required to be filed prior to the entry of final judgment *shall be filed within 10 days of entry of the final judgment* by the district court whether or not an appeal has been or is subsequently filed." *Id.* at 1192 (emphasis added).

By reversing, this Court will not restrict the ability of judges in the future pursuant to CR 54(d)(2) to extend the time for making motions for fees and expenses. Extension is not at issue. Rather, the Court will enforce correct application of the rule, which as a matter of law requires denial of untimely motions.

This Court should reverse the awards because Guarantors failed to claim fees and expenses by motion within the allowed time.

VII. REQUEST FOR ATTORNEY FEES AND COSTS

If Union Bank prevails on appeal, this Court should award Union Bank its fees and costs. Each commercial guaranty contains a fee provision obligating the guarantors to pay "attorneys' fees" and "legal expenses" "incurred in connection with the enforcement of this Guaranty." CP 109. Indeed, Guarantors' awards of fees and costs that Union Bank appeals are premised on this fee provision. An award of fees and expenses pursuant to a contractual right is absolute, not discretionary. *Singleton v.*

Because plaintiff's motion was untimely and plaintiff "did not make a timely motion or seek to suspend [the deadline] for cause, the district court erred in granting the appellees prejudgment interest, costs and attorney's fees." The Third Circuit explained that its holding was consistent with judicial policy, stating, "A fundamental principle of justice is that a case must come to an end; it should not be protracted interminably. . . ." *Id.* at 1194. *See also Quick v. Peoples Bank of Cullman County*, 993 F.2d 793, 798-99 (11th Cir. 1993) (attorney overlooked time limit and motion for fees was denied); *Sol Salins, Inc. v. W.M. Ercanbrack Co.*, 155 F.R.D. 4, 4-5 (D.D.C. 1994) (motion for fees and costs was untimely under Rule 54(d)(2)(B), even though award was mandatory under statute).

Frost, 108 Wn.2d 723, 727, 742 P.2d 1224 (1987). The fee provision specifically includes attorney fees and expenses incurred for appeals. CP 109. Pursuant to RAP 18.1(b), this Court should award fees and costs to Union Bank if this Court reverses any trial court orders.

VIII. CONCLUSION

The trial court's dismissal on summary judgment of Union Bank's complaint was legal error. Each of Guarantors' three arguments against this deficiency action fails as a matter of law. To induce the loan, Guarantors absolutely and unconditionally agreed—separate and apart from the note—to repay the loan. Consistent with their LLC resolutions, the borrowers had no authority or intent to secure the Guarantors' promises with their property. The deed of trust repeatedly expresses that it secures the borrower/grantor's obligations. The Deed of Trust Act permits enforcement of commercial guaranties after nonjudicial foreclosure of a borrower's deed of trust. Even if the Act does not, Guarantors waived any anti-deficiency defense. This Court should enforce the guaranties for which the parties bargained in this $5.1 million commercial transaction.

This Court also should enforce CR 54(d)(2) by reversing the attorney fee and expense awards that are contrary to law.

This Court should reverse and remand.

Respectfully submitted on this 19th day of September, 2013.

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APPENDIX - 1

Hon. Jean Rietschel
Hearing Date: March 22, 2013
Hearing Time: 9:00 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

UNION BANK, N.A., a national banking association, Plaintiff, vs. KENNETH LYONS, MELANI A. LYONS, individually and the marital community thereof; ELIZABETH Y. VANDERVEEN, A MARK VANDERVEEN, individually and the marital community thereof; TODD ARRAMBIDE, KIM M. ARRAMBIDE, individually and the marital community thereof; HARLEY O'NEIL, JR., MICHELE O'NEIL, individually and the marital community thereof; the TORI LYNN NORDSTROM TRUST, a Washington state trust; and HARLEY O'NEIL, JR., Trustee for the Tori Lynn Nordstrom Trust, Defendants.	NO. 12-2-14844-9 SEA **ORDER GRANTING DEFENDANTS SUMMARY JUDGMENT DISMISSING PLAINTIFF'S FIRST AMENDED COMPLAINT** [~~Defendant's Revised Proposed~~]

This matter came before the Court upon Defendants' Motion for Summary Judgment Dismissing Plaintiff's First Amended Complaint. In addition to Defendants' Motion, the Court also considered the following pleadings and papers:

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ATTORNEYS AT LAW
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Telephone 206 624-1230
Fax 206 340-2563

1. Declaration of Kenneth Lyons in Support of Defendants' Motion for Summary Judgment of Dismissal

2. Declaration of Elizabeth Vanderveen in Support of Defendants' Motion for Summary Judgment of Dismissal

3. Declaration of Harley D. O'Neil, Jr. in Support of Defendants' Motion for Summary Judgment of Dismissal

4. Declaration of Todd Arrambide in Support of Defendants' Motion for Summary Judgment of Dismissal

5. Declaration of Dean A. Messmer re: Deed of Trust Issues

6. Union Bank's Response Opposing Defendants' Motion for Summary Judgment

7. Declaration of Wilma Snider in Support of Union Bank's Response Opposing Defendants' Motion for Summary Judgment

8. Declaration of Averil Rothrock in Support of Union Bank's Response Opposing Defendants' Motion for Summary Judgment

9. Defendants' Reply Brief in Support of Motion for Summary Judgment

10. Defendants' Citation of Additional Authority, Response and Reply On

The Court having heard the arguments of counsel at a hearing held on March 22, 2013, and being fully advised in the premises, and it appearing to the Court that there are no genuine issues of material fact, NOW, THEREFORE, THE COURT DETERMINES AS A MATTER OF LAW THAT:

1. The obligations secured by the December 10, 2008 Deed of Trust granted by West Creek Village, LLC, d/b/a East Creek Village, LLC and Shoreline Business and Professional Center, LLC (the "Deed of Trust") expressly included obligations owed under the "Related Documents" as defined therein.

2. Those "Related Documents" included the Commercial Guaranties dated December 10, 2008 executed by remaining defendants Elizabeth Vanderveen, Harley D. O'Neil, Jr. and the Tori Lynn Nordstrom Trust (the "Commercial Guaranties").

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3. Plaintiff non-judicially foreclosed the Deed of Trust through a trustee's sale held on July 15, 2011.

4. Because the Deed of Trust secured the remaining defendants' obligations under their respective Commercial Guaranties, plaintiff's non-judicial foreclosure of the Deed of Trust precludes it from obtaining a deficiency judgment against those defendants under RCW 61.24.100(10).

5. Any waivers of the protections of RCW 61.24.100 contained in the defendants' Commercial Guaranties are void as contrary to the provisions of the statute and its underlying public policy.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT plaintiff the Motion for Summary Judgment by defendants Vanderveen, O'Neil and the Tori Lynn Nordstrom Trust is granted. Plaintiff's First Amended Complaint is hereby dismissed with prejudice, and defendants Vanderveen, O'Neil and the Tori Lynn Nordstrom Trust are entitled to recover their prevailing party attorney's fees and costs, in amounts to be determined by the Court at a subsequent hearing.

ENTERED this 10 day of March, 2013.

HON. JEAN RIETSCHEL
SUPERIOR COURT JUDGE

PRESENTED BY:

LASHER HOLZAPFEL
SPERRY & EBBERSON P.L.L.C.

Dean A Messmer
WSBA No. 5738
Attorneys for Defendants Vanderveen

LASHER HOLZAPFEL SPERRY & EBBERSON
ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-1000
TELEPHONE 206.624.1230
FAX 206.340.2563

APPENDIX - 2

LIMITED LIABILITY COMPANY RESOLUTION TO BORROW / GRANT COLLATERAL

[redacted]

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "[redacted]" has been omitted due to text length limitations.

Borrower: EAST CREEK VILLAGE LLC
SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC
17533 47TH AVE NE
LAKE FOREST PARK, WA 98155

Lender: Frontier Bank
Real Estate Commercial Mortgage Division
832 SW Everett Mall Way
Everett, WA 98204

Company: EAST CREEK VILLAGE LLC
17533 47TH AVE NE
LAKE FOREST PARK, WA 98155

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE COMPANY'S EXISTENCE. The complete and correct name of the Company is EAST CREEK VILLAGE LLC ("Company"). The Company is a limited liability company which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Washington. The Company is duly authorized to transact business in all other states in which the Company is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which the Company is doing business. Specifically, the Company is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. The Company has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. The Company maintains an office at 17533 47TH AVE NE, LAKE FOREST PARK, WA 98155. Unless the Company has designated otherwise in writing, the principal office is the office at which the Company keeps its books and records. The Company will notify Lender prior to any change in the location of the Company's state of organization or any change in the Company's name. The Company shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to the Company and the Company's business activities.

RESOLUTIONS ADOPTED. At a meeting of the members of the Company, duly called and held on December 1, 2008, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Resolution were adopted.

MEMBERS. The following named persons are members of EAST CREEK VILLAGE LLC:

NAMES	TITLES	AUTHORIZED	ACTUAL SIGNATURES
KEN LYONS	Member	Y	X _____
TODD ARRAMBIDE	Member	Y	X _____

EXHIBIT E

ACTIONS AUTHORIZED. All of the authorized persons listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Company. Specifically, but without limitation, all of such authorized persons are authorized, empowered, and directed to do the following for and on behalf of the Company:

Borrow Money. To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Company and Lender, such sum or sums of money as in their judgment should be borrowed, without limitation.

Execute Notes. To execute and deliver to Lender the promissory note or notes, or other evidence of the Company's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Company's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

Grant Security. To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Company or in which the Company now or hereafter may have an interest, including without limitation all of the Company's real property and all of the Company's personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Company to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

Execute Security Documents. To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances. Notwithstanding the foregoing, any one of the above authorized persons may execute, deliver, or record financing statements.

Negotiate Items. To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Company or in which the Company may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Company's account with Lender, or to cause such other disposition of the proceeds derived therefrom as they may deem advisable.

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as the members may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

ASSUMED BUSINESS NAMES. The Company has filed or recorded all documents or filings required by law relating to all assumed business names used by the Company. Excluding the name of the Company, the following is a complete list of all assumed business names under which the Company does business: None.

MULTIPLE BORROWERS. The Company may enter into transactions in which there are multiple borrowers or obligations to Lender and the Company understands and agrees that, with or without notice to the Company, Lender may discharge or release any party or collateral securing an obligation, grant any extension of time for payment, delay enforcing any rights granted to Lender, or take any other action or inaction, without the loss to Lender of any of it rights against the Company; and that Lender may modify transactions without the consent of or notice to anyone other than the party with whom the modification is made.

NOTICES TO LENDER. The Company will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Company's name; (B) change in the Company's assumed business name(s); (C) change in the management or in the Members of the Company; (D) change in the authorized signer(s); (E) change in the Company's principal office address; (F) change in the Company's state of organization; (G) conversion of the Company to a new or different type of business entity; or (H) change in any other aspect of the Company that directly or indirectly relates to any agreements between the Company and Lender. No change in the Company's name or state of organization will take effect until after Lender has received notice.

CERTIFICATION CONCERNING MEMBERS AND RESOLUTIONS. The members named above are duly elected, appointed, or employed by or for the Company, as the case may be, and occupy the positions set opposite their respective names. This Resolution now stands of record on the books of the Company, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

CONTINUING VALIDITY. Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Company's agreements or commitments in effect at the time notice is given.

IN TESTIMONY WHEREOF, we have hereunto set our hand and attest that the signatures set opposite the names listed above are their genuine signatures.

We each have read all the provisions of this Resolution, and we each personally and on behalf of the Company certify that all statements and representations made in this Resolution are true and correct. This Limited Liability Company Resolution to Borrow / Grant Collateral is dated December 10, 2008.

CERTIFIED TO AND ATTESTED BY:

X
KEN LYONS, Member of EAST CREEK VILLAGE LLC

X
TODD ARRAMBIDE, Member of EAST CREEK VILLAGE LLC

NOTE: If the members signing this Resolution are designated by the foregoing document as one of the members authorized to act on the Company's behalf, it is advisable to have this Resolution signed by at least one non-authorized member of the Company.

[illegible]

LIMITED LIABILITY COMPANY RESOLUTION TO BORROW / GRANT COLLATERAL

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Borrower: EAST CREEK VILLAGE LLC
SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC
17532 47TH AVE NE
LAKE FOREST PARK, WA 98155

Lender: Frontier Bank
Real Estate Commercial Mortgage Division
332 SW Everett Mall Way
Everett, WA 98204

Company: SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC
1408 NW RICHMOND BEACH RD
SHORELINE, WA 98177

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE COMPANY'S EXISTENCE. The complete and correct name of the Company is SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC ("Company"). The Company is a limited liability company which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Washington. The Company is duly authorized to transact business in all other states in which the Company is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which the Company is doing business. Specifically, the Company is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. The Company has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. The Company maintains an office at 1408 NW RICHMOND BEACH RD, SHORELINE, WA 98177. Unless the Company has designated otherwise in writing, the principal office is the office at which the Company keeps its books and records. The Company will notify Lender prior to any change in the location of the Company's state of organization or any change in the Company's name. The Company shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to the Company and the Company's business activities.

RESOLUTIONS ADOPTED. At a meeting of the members of the Company, duly called and held on December 1, 2008, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Resolution were adopted.

MEMBERS AND MANAGERS. The following named persons and entities are members and managers of SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC:

NAMES	TITLES	AUTHORIZED	ACTUAL SIGNATURES
HARLEY D. O'NEIL JR.	Manager	Y	X_____
TORI LYNN NORDSTROM TRUST	Member	N	
ELIZABETH Y. VANDERVEEN		N	

ACTIONS AUTHORIZED. The authorized person listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Company. Specifically, but without limitation, the authorized person is authorized, empowered, and directed to do the following for and on behalf of the Company:

Borrow Money. To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Company and Lender, such sum or sums of money as in his or her judgment should be borrowed, without limitation.

Execute Notes. To execute and deliver to Lender the promissory note or notes, or other evidence of the Company's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Company's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

Grant Security. To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Company or in which the Company now or hereafter may have an interest, including without limitation all of the Company's real property and all of the Company's personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Company to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

Execute Security Documents. To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances.

Negotiate Items. To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Company or in which the Company may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Company's account with Lender, or to cause such other disposition of the proceeds derived therefrom as he or she may deem advisable.

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as the manager may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

ASSUMED BUSINESS NAMES. The Company has filed or recorded all documents or filings required by law relating to all assumed business names used by the Company. Excluding the name of the Company, the following is a complete list of all assumed business names under which the Company does business: None.

MULTIPLE BORROWERS. The Company may enter into transactions in which there are multiple borrowers on obligations to Lender and the Company understands and agrees that, with or without notice to the Company, Lender may discharge or release any party or collateral securing an obligation, grant any extension of time for payment, delay enforcing any rights granted to Lender, or take any other action or inaction, without the loss to Lender of any of it rights against the Company; and that Lender may modify transactions without the consent of or notice to anyone other than the party with whom the modification is made.

NOTICES TO LENDER. The Company will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Company's name; (B) change in the Company's assumed business name(s); (C) change in the management or in the Members and Managers of the Company; (D) change in the authorized signer(s); (E) change in the Company's principal office address; (F) change in the Company's state of organization; (G) conversion of the Company to a new or different type of business entity; or (H) change in any other aspect of the Company that directly or indirectly relates to any agreements between the Company and Lender. No change in the Company's name or state of organization will take effect until after Lender has received notice.

CERTIFICATION CONCERNING MANAGERS AND RESOLUTIONS. The manager named above is duly elected, appointed, or employed by or for the Company, as the case may be, and occupies the position set opposite his or her respective name. This Resolution now stands of record on the books of the Company, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

CONTINUING VALIDITY. Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Company's agreements or commitments in effect at the time notice is given.

LIMITED LIABILITY COMPANY RESOLUTION TO BORROW / GRANT COLLATERAL
(Continued)

IN TESTIMONY WHEREOF, I have hereunto set my hand and attest that the signature set opposite the name listed above is his or her genuine signature.

I have read all the provisions of this Resolution, and I personally and on behalf of the Company certify that all statements and representations made in this Resolution are true and correct. This Limited Liability Company Resolution to Borrow / Grant Collateral is dated December 10, 2008.

CERTIFIED TO AND ATTESTED BY:

X _____
HARLEY D. O'NEIL JR., Manager of SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

NOTE: If the manager signing this Resolution is designated by the foregoing document as one of the members or managers authorized to act on the Company's behalf, it is advisable to have this Resolution signed by at least one non-authorized member or manager of the Company.

[illegible]

APPENDIX - 3

COMMERCIAL GUARANTY

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Borrower: EAST CREEK VILLAGE LLC
SHORELINE BUSINESS AND PROFESSIONAL
CENTER LLC
17833 47TH AVE NE
LAKE FOREST PARK, WA 98155

Lender: Frontier Bank
Real Estate Commercial Mortgage Division
332 SW Everett Mall Way
Everett, WA 98204

Guarantor: KEN LYONS
17833 47TH AVE NE
LAKE FOREST PARK, WA 98155

CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the indebtedness of Borrower, or any one or more of them, to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated in pay the indebtedness or against any collateral securing the indebtedness, this Guaranty or any other guaranty of the indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are continuing.

INDEBTEDNESS. The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees, arising from any and all debts, liabilities and obligations of every nature or form, now existing or hereafter arising or acquired, that Borrower individually or collectively or interchangeably with others, owes or will owe Lender. "Indebtedness" includes, without limitation, loans, advances, debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, or any one or more of them, and any present or future judgments against Borrower, or any one or more of them, future advances, loans or transactions that renew, extend, modify, refinance, consolidate or substitute these debts, liabilities and obligations whether: voluntarily or involuntarily incurred; due or to become due by their terms or acceleration; absolute or contingent; liquidated or unliquidated; determined or undetermined; direct or indirect; primary or secondary in nature or arising from a guaranty or surety; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; originated by Lender or another or others; barred or unenforceable against Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated then reduced or extinguished and then afterwards increased or reinstated.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other unterminated guaranties.

CONTINUING GUARANTY. THIS IS A "CONTINUING GUARANTY" UNDER WHICH GUARANTOR AGREES TO GUARANTEE THE FULL AND PUNCTUAL PAYMENT, PERFORMANCE AND SATISFACTION OF THE INDEBTEDNESS OF BORROWER, OR ANY ONE OR MORE OF THEM, TO LENDER, NOW EXISTING OR HEREAFTER ARISING OR ACQUIRED, ON AN OPEN AND CONTINUING BASIS. ACCORDINGLY, ANY PAYMENTS MADE ON THE INDEBTEDNESS WILL NOT DISCHARGE OR DIMINISH GUARANTOR'S OBLIGATIONS AND LIABILITY UNDER THIS GUARANTY FOR ANY REMAINING AND SUCCEEDING INDEBTEDNESS EVEN WHEN ALL OR PART OF THE OUTSTANDING INDEBTEDNESS MAY BE A ZERO BALANCE FROM TIME TO TIME.

EXHIBIT C1

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to new indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new indebtedness" does not include the indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. For this purpose and without limitation, "new indebtedness" does not include all or part of the indebtedness that is: incurred by Borrower prior to revocation; incurred under a commitment that became binding before revocation; any renewals, extensions, substitutions, and modifications of the indebtedness. This Guaranty shall bind Guarantor's estate as to the indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guarantor or termination of any other guaranty of the indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated that fluctuations may occur in the aggregate amount of the indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of the indebtedness, even to zero dollars ($0.00), shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the indebtedness remains unpaid and even though the indebtedness may from time to time be zero dollars ($0.00).

OBLIGATIONS OF MARRIED PERSONS. Any married person who signs this Guaranty hereby expressly agrees that recourse under this Guaranty may be had against both his or her separate property and community property.

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the indebtedness or any part of the indebtedness, including increases and decreases of the rate of interest on the indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the indebtedness or of any nonpayment related to any collateral, or notice of any action or inaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust

any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to pursue any other remedy within Lender's power; or (F) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the Indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the Indebtedness; (D) any right to claim discharge of the Indebtedness on the basis of unjustified impairment of any collateral for the Indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding Indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the Indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the Indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the Indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the Indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions.

Choice of Venue. If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of Snohomish County, State of Washington.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means EAST CREEK VILLAGE LLC and SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation KEN LYONS, and in each case, any signer's successors and assigns.

Guaranty. The word "Guaranty" means this guaranty from Guarantor to Lender.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means Frontier Bank, its successors and assigns.

Note. The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for promissory notes or credit agreements.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

]*

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED DECEMBER 10, 2008.

GUARANTOR:

X _____
KEN LYONS

[illegible]

APPENDIX - 4

EXHIBIT A1

PROMISSORY NOTE

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Borrower: EAST CREEK VILLAGE LLC
SHORELINE BUSINESS AND PROFESSIONAL
CENTER LLC
17633 47TH AVE NE
LAKE FOREST PARK, WA 98155

Lender: Frontier Bank
Real Estate Commercial Mortgage Division
332 SW Everett Mall Way
Everett, WA 98204

Principal Amount: $5,100,000.00 **Interest Rate: 6.000%** **Date of Note: December 10, 2008**

PROMISE TO PAY. EAST CREEK VILLAGE LLC and SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC ("Borrower") jointly and severally promise to pay to Frontier Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million One Hundred Thousand & 00/100 Dollars ($5,100,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance, calculated as described in the "INTEREST CALCULATION METHOD" paragraph using an interest rate of 6.000% per annum. Interest shall be calculated from the date of each advance until repayment of each advance. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on December 5, 2010. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning January 5, 2009, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; and then to any late charges. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the interest rate over the number of days in a year (366 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

PREPAYMENT; MINIMUM INTEREST CHARGE. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of $5.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Frontier Bank, Real Estate Commercial Mortgage Division, 332 SW Everett Mall Way Everett, WA 98204.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or $10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by 5.000 percentage points. If judgment is entered in connection with this Note, interest will continue to accrue after the date of judgment at the rate in effect at the time judgment is entered. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Washington.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Snohomish County, State of Washington.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of $25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: a Deed of Trust dated December 10, 2008, to a trustee in favor of Lender on real property located in KING County, State of Washington.

LINE OF CREDIT. This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. Advances under this Note, as well as directions for payment from Borrower's accounts, may be requested orally or in writing by Borrower or by an authorized person. Lender may, but need not, require that all oral requests be confirmed in writing. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; or (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Frontier Bank 332 SW Everett Mall Way Everett, WA 98204.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Each Borrower understands and agrees that, with or without notice to Borrower, Lender may with respect to any other Borrower (a) make one or more additional secured or unsecured loans or otherwise extend additional credit; (b) alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of any indebtedness, including increases and decreases of the rate of interest on the indebtedness; (c) exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any security, with or without the substitution of new collateral; (d) apply such security and direct the order or manner of sale thereof, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreements, as Lender in its discretion may determine; (e) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; and (f) determine how, when and what application of payments and credits shall be made on any other indebtedness owing by such other Borrower. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, EACH BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. EACH BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

EAST CREEK VILLAGE LLC

By: _____
KEN LYONS, Member of EAST CREEK VILLAGE LLC

By: _____
TODD ARRAMBIDE, Member of EAST CREEK VILLAGE LLC

SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

By: _____
HARLEY D. O'NEIL JR., Manager of SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

APPENDIX - 5

RETURN ADDRESS:
Frontier Bank
Real Estate Commercial
Mortgage Division
332 SW Everett Mall Way
Everett, WA 98204

DEED OF TRUST

DATE: December 10, 2008

Reference # (if applicable): REAL - XX9004 Additional on page ____

Grantor(s):
1. EAST CREEK VILLAGE LLC
2. SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

Grantee(s)
1. Frontier Bank
2. CHICAGO TITLE INSURANCE COMPANY, Trustee

Legal Description: PORTIONS OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH RANGE 4 EAST

Additional on page 2

Assessor's Tax Parcel ID#: 0126049018 / 0126049102 / 0126049149 / 0126049023 / 0126049113 / 0126049038 / 0126049132 / 0126049124 / 0126049133 / 012049135

EXHIBIT B1

THIS DEED OF TRUST is dated December 10, 2008, among EAST CREEK VILLAGE LLC, a Washington Limited Liability Company and SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC; a Washington Limited Liability Company ("Grantor"); Frontier Bank, whose mailing address is Real Estate Commercial Mortgage Division, 332 SW Everett Mall Way, Everett, WA 98204 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys to Trustee in trust with power of sale, right of entry and possession and for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in KING County, State of Washington:

See SEE SCHEDULE A (2 pages) WHICH IS ATTACHED TO THIS DEED OF TRUST AND MAKE A PART OF THIS DEED OF TRUST AS IF FULLY SET FORTH HEREIN., which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 19542 80TH AVE NE (includes 19611 83rd Ave NE/19614 83rd Ave NE/ 19617 83rd Ave NE), KENMORE, WA 98028. The Real Property tax identification number is 0126049018 / 0126049102 / 0126049149 / 0126049023 / 0126049113 / 0126049038 / 0126049132 / 0126049124 / 0126049133 / 012049135.

Grantor hereby assigns as security to Lender, all of Grantor's right, title, and interest in and to all leases, Rents, and profits of the Property. This assignment is recorded in accordance with RCW 65.08.070; the lien created by this assignment is intended to be specific, perfected and choate upon the recording of this Deed of Trust. Lender grants to Grantor a license to collect the Rents and profits, which license may be revoked at Lender's option and shall be automatically revoked upon acceleration of all or part of the indebtedness.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property (this privilege is a license from Lender to Grantor automatically revoked upon default). The following provisions relate to the use of the Property or to other limitations on the Property. The Real Property is not used principally for agricultural purposes.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply, and shall promptly cause compliance by all agents, tenants or other persons or entities of every nature whatsoever who rent, lease or otherwise use or occupy the Property in any manner, with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, (A) declare immediately due and payable all sums secured by this Deed of Trust or (B) increase the interest rate provided for in the Note or other document evidencing the indebtedness and impose such other conditions as Lender deems appropriate, upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Washington law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid without interest to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this

Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice all at Grantor's expense, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee shall be paid by Grantor, if permitted by applicable law. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto", and the recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness of any such matters or facts.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to exercise its power of sale and to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding or pending foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of

the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee (pursuant to Lender's instructions) are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless required by applicable law, or unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of KING County, State of Washington. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page or the Auditor's File Number where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Washington.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Snohomish County, State of Washington.

Joint and Several Liability. All obligations of Grantor under this Deed of Trust shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each Grantor signing below is responsible for all obligations in this Deed of Trust. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to inquire into the powers of any of the officers, directors, partners, members, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Deed of Trust.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such

waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Washington as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Frontier Bank, and its successors and assigns.

Borrower. The word "Borrower" means EAST CREEK VILLAGE LLC and SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means EAST CREEK VILLAGE LLC and SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Frontier Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated December 10, 2008, in the original principal amount of $5,100,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all issues and profits thereon and proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness; provided, that the environmental indemnity agreements are not "Related Documents" and are not secured by this Deed of Trust.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND EACH GRANTOR AGREES TO ITS TERMS.

GRANTOR:

EAST CREEK VILLAGE LLC

By:
KEN LYONS, Member of EAST CREEK VILLAGE LLC

By:
TODD ARRAMBIDE, Member of EAST CREEK VILLAGE LLC

SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

By:
HARLEY D. O'NEIL JR., Manager of SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20 _____ before me, the undersigned Notary Public, personally appeared KEN LYONS, Member of EAST CREEK VILLAGE LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a member or designated agent of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By_____ Residing at _____

Notary Public in and for the State of _____ My commission expires _____

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20 _____, before me, the undersigned Notary Public, personally appeared TODD ARRAMBIDE, Member of EAST CREEK VILLAGE LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a member or designated agent of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By_____ Residing at _____

Notary Public in and for the State of _____ My commission expires _____

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20 _____, before me, the undersigned Notary Public, personally appeared HARLEY D. O'NEIL JR., Manager of SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a member or designated agent of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By _____ Residing at _____

Notary Public in and for the State of _____ My commission expires _____

REQUEST FOR FULL RECONVEYANCE

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. You are hereby requested, upon payment of all sums owing to you, to reconvey without warranty, to the persons entitled thereto, the right, title and interest now held by you under the Deed of Trust.

Date: _____ Beneficiary: _____

By: _____

Its: _____

LASER PRO Lending, Ver. 5.42.00.004 Copr. Harland Financial Solutions, Inc. 1997, 2008. All Rights Reserved. - WA
C:\CFNLPL\G01.FC TR-55249 PR-COMRETM

SCHEDULE A

LEGAL DESCRIPTION EXHIBIT

PARCEL A:

THE EAST 430.80 FEET OF THE WEST 580.80 FEET OF THE SOUTH 150 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; AND

THE NORTH 30 FEET OF THE SOUTH 150 FEET OF THE WEST 150 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; EXCEPT THE WEST 30 FEET THEREOF AS CONVEYED TO KING COUNTY FOR 80TH AVENUE NORTHEAST ROAD RIGHT OF WAY BY DEED RECORDED UNDER RECORDING NUMBER 2954822.

PARCEL B:

THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NUMBER 2954822.

PARCEL C:

THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NUMBER 2954822.

PARCEL D:

THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THE EAST 396 FEET; AND

EXCEPT THE SOUTH 165 FEET;

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER THE WEST 30 FEET OF THE EAST 396 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION; EXCEPT THE SOUTH 30 FEET FOR ROAD.

PARCEL E:

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
EXCEPT THE SOUTH 180 FEET OF THE WEST 132 FEET THEREOF;
AND EXCEPT THE EAST 396 FEET THEREOF;
AND EXCEPT THE SOUTH 30 FEET THEREOF FOR ROAD;
AND THE SOUTH 7.5 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
EXCEPT THE EAST 396 FEET THEREOF.

SCHEDULE A
(Continued)

PARCEL F:

THE EAST 396 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
EXCEPT A STRIP 30 FEET WIDE ALONG THE EAST SIDE RESERVED FOR ROAD PURPOSES.

PARCEL G:

THE EAST 396 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
EXCEPT THE EAST 30 FEET FOR ROAD;
EXCEPT THE SOUTH 30 FEET FOR ROAD;
EXCEPT THE WEST 30 FEET FOR ROAD;
AND EXCEPT THE WEST 132 FEET OF THE NORTH 30 FEET FOR ROAD;

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER THE WEST 30 FEET AND THE WEST 132 FEET OF THE NORTH 30 FEET OF THE ABOVE DESCRIBED PROPERTY;

AND TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER THE SOUTH 30 FEET

OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1;

EXCEPT THE EASTERLY 296 FEET THEREOF;

AND EXCEPT THE WEST 30 FEET THEREOF FOR 80TH AVENUE NORTHEAST.

PARCEL H:

THE NORTH 157.50 FEET OF THE SOUTH 165 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THE EAST 396 FEET THEREOF.

PARCEL I:

THE NORTH HALF OF THE FOLLOWING DESCRIBED PROPERTY:

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
EXCEPT THE WEST 30 FEET THEREOF AS CONVEYED TO KING COUNTY FOR 80TH AVENUE NORTHEAST ROAD RIGHT OF WAY BY DEED RECORDED UNDER RECORDING NUMBER 2954822;
AND EXCEPT THE SOUTH 30 FEET THEREOF.

CLTACMA1/RDA/[illegible]

APPENDIX - 6

NOTICE OF FINAL AGREEMENT

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Borrower: EAST CREEK VILLAGE LLC
SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC
17633 47TH AVE NE
LAKE FOREST PARK, WA 98155

Lender: Frontier Bank
Real Estate Commercial Mortgage Division
332 SW Everett Mall Way
Everett, WA 98204

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

By signing this document each Party acknowledges receipt of the above notice. In addition (and not as a limitation on the legal effect of the notice), by signing this document each Party represents and agrees that: (a) The written Loan Agreement represents the final agreement between the Parties, (b) There are no unwritten oral agreements between the Parties, and (c) The written Loan Agreement may not be contradicted by evidence of any prior, contemporaneous, or subsequent oral agreements or understandings of the Parties.

As used in this Notice, the following terms have the following meanings:

Loan. The term "Loan" means the following described loan: a Fixed Rate (6.000%) Nondisclosable Draw Down Line of Credit Loan to two Limited Liability Companies for $5,100,000.00 due on December 6, 2010.

Loan Agreement. The term "Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, relating to the Loan, including without limitation the following:

LOAN DOCUMENTS

LLC Resolution: EAST CREEK VILLAGE LLC
Promissory Note
WA Commercial Guaranty: TODD ARRAMBIDE
WA Commercial Guaranty: HARLEY D. O'NEIL JR.
WA Commercial Guaranty: ELIZABETH Y. VANDERVEEN
WA Hazardous Substances Agreement
Disbursement Request and Authorization
Notice of Final Agreement
W-9 Request for Taxpayer ID Number and Certification: SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

LLC Resolution: SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC
WA Commercial Guaranty: KEN LYONS
WA Commercial Guaranty: TORI LYNN NORDSTROM TRUST
WA Deed of Trust for Real Property located at 19542 80TH AVE NE (includes 19611 83rd Ave NE/19614 83rd Ave NE/ 19617 83rd Ave NE), KENMORE, WA 98028
W-9 Request for Taxpayer ID Number and Certification: EAST CREEK VILLAGE LLC

Parties. The term "Parties" means Frontier Bank and any and all entities or individuals who are obligated to repay the loan or have pledged property as security for the Loan, including without limitation the following:

Borrower:	EAST CREEK VILLAGE LLC and SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC
Grantor(s):	EAST CREEK VILLAGE LLC and SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC
Guarantor 1:	TODD ARRAMBIDE
Guarantor 2:	KEN LYONS
Guarantor 3:	HARLEY D. O'NEIL JR.
Guarantor 4:	TORI LYNN NORDSTROM TRUST
Guarantor 5:	ELIZABETH Y. VANDERVEEN

EXHIBIT D

Each Party who signs below, other than Frontier Bank, acknowledges, represents, and warrants to Frontier Bank that it has received, read and understood this Notice of Final Agreement. This Notice is dated December 10, 2008.

BORROWER:

EAST CREEK VILLAGE LLC

By: _____
KEN LYONS, Member of EAST CREEK VILLAGE LLC

By: _____
TODD ARRAMBIDE, Member of EAST CREEK VILLAGE LLC

SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

By: _____
HARLEY D. O'NEIL JR., Manager of SHORELINE BUSINESS AND PROFESSIONAL CENTER LLC

GUARANTOR:

X _____
TODD ARRAMBIDE, Individually

GUARANTOR:

X _____
KEN LYONS, Individually

GUARANTOR:

X _____
HARLEY D. O'NEIL JR., Individually

APPENDIX - 7

FILED
KING COUNTY, WASHINGTON

MAY 13 2013

SUPERIOR COURT CLERK
DAVID WHITEN
DEPUTY

Hon. Jean Rietschel
Hearing date: May 13, 2013
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

UNION BANK, N.A., a national banking association, Plaintiff, vs. KENNETH LYONS, MELANI A. LYONS, individually and the marital community thereof; ELIZABETH Y. VANDERVEEN, A MARK VANDERVEEN, individually and the marital community thereof; TODD ARRAMBIDE, KIM M. ARRAMBIDE, individually and the marital community thereof; HARLEY O'NEIL, JR., MICHELE O'NEIL, individually and the marital community thereof; the TORI LYNN NORDSTROM TRUST, a Washington state trust; and HARLEY O'NEIL, JR., Trustee for the Tori Lynn Nordstrom Trust, Defendants.	NO. 12-2-14844-9 SEA **FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: ATTORNEY'S FEE AWARD** ~~[DEFENDANTS' AMENDED PROPOSED]~~ 9n

This matter came before the Court upon Defendants Vanderveens' Application for Award of Attorney's Fees. In addition to that Application, the Court considered the following pleadings and evidence in making an award:

1. Declaration of Dean A. Messmer in Support of Award of Attorney's Fees
2. Plaintiff's Response in Opposition to Defendants Vanderveens' Application for Award of Attorney's Fees

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HOLZAPFEL
SPERRY &
EBBERSON

ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 624-1230
Fax 206 340-2563

3. Supplemental Declaration of Dean A. Messmer in Support of Attorney's Fee Award

4. Defendants Vanderveens Reply Brief in Support of Application for Award of Attorney's Fees

Based thereon, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff Union Bank sought to recover a deficiency judgment against defendants Vanderveen following a July 15, 2011 non-judicial foreclosure sale. The bank's claims were based on a Commercial Guaranty signed by defendants Vanderveen, containing a provision for recovery of attorney's fees by plaintiff bank.

2. On April 10, 2013, after considering the motion for summary judgment filed by defendants, the Court entered its Order Granting Defendants Summary Judgment Dismissing Plaintiff's Complaint. The Order included the Court's determination that defendants were entitled to recover prevailing party attorney's fees, in amounts to be subsequently determined by the Court after the submission of supporting information.

3. Plaintiff Union Bank moved for reconsideration of that Order, which was denied by the Court by Order entered on May 7, 2013.

4. Defendants Vanderveen submitted the Messmer Declaration and attached detailed billing records for the Court's consideration on May 3, 2013, along with a Supplemental Declaration on May 10, 2013.

5. Defendants Vanderveen reasonably and necessarily incurred attorney's fees in defending against claims by plaintiff Union Bank that they were liable for a deficiency exceeding $4,440,000 under the terms of the Commercial Guaranty.

6. The billing rates of $390-410 per hour charged by attorney Dean A. Messmer to and paid by defendants Vanderveen are reasonable in light of his commercial litigation

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Fax 206 340-2563

experience, the complexity of this case, the novelty of the issues, the magnitude of the amounts in dispute and the results achieved.

7. The hours expended by attorney Messmer in defending the Vanderveens against potential liability to plaintiff Union Bank were reasonable, with no significant redundancy, waste or unnecessary services.

8. $ 54257 is a reasonable amount of attorney's fees to award to defendants Vanderveen in this action as prevailing parties.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Defendants Vanderveen are prevailing parties in this action.

2. Defendants Vanderveen are entitled to an award of prevailing party attorney's fees under the terms of their Commercial Guaranty and the provisions of RCW 4.84.330.

3. The 10-day time period set forth in Civil Rule 54(d)(2) does not apply to the Vanderveens' submission of detailed billing records and other information to the Court for consideration and quantifying the amount of the award, because the Court has already ruled on defendants' entitlement to attorney's fees as part of its April 10, 2013 Summary Judgment Order.

4. Judgment should be entered in favor of defendants Vanderveen against plaintiff Union Bank for attorney's fees in the amount of $ 54,257.

ENTERED THIS 13 DAY OF MAY, 2013.

Hon. Jean Rietschel

LASHER
HOLZAPFEL
SPERRY &
EBBERSON

ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
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FAX 206 340-2563

APPENDIX - 8

Hon. Jean Rietschel
Hearing Date: May 6, 2013
Without Oral Argument

RECEIVED
MAY 15 2013
SCHWABE WILLIAMSON & WYATT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

UNION BANK, N.A., a national banking association,

Plaintiff,

v.

EAST CREEK VILLAGE, LLC, a Washington limited liability company, SHORELINE BUSINESS AND PROFESSIONAL CENTER, LLC, a Washington limited liability company, KENNETH LYONS, MELANI A. LYONS, individually and the marital community thereof; ELIZABETH Y. VANDERVEEN, A. MARK VANDERVEEN, individually and the martial community thereof; TODD ARRAMBIDE, KIM M. ARRAMBIDE, individually and the martial community thereof; HARLEY O'NEIL, JR., MICHELE O'NEIL, individually and the martial community thereof; the TORI LYNN NORDSTROM TRUST, a Washington state trust; and HARLEY O'NEIL, JR., Trustee for the Tori Lynn Nordstrom Trust,

Defendants.

Case No. 12-2-14844-9 SEA

ORDER GRANTING DEFENDANTS HARLEY O'NEIL, JR., MICHELE O'NEIL, TORI LYNN NORDSTROM TRUST AND HARLEY O'NEIL, JR., AS TRUSTEE FOR THE TORI LYNN NORDSTROM TRUST'S MOTION FOR ATTORNEYS' FEES AND COSTS AND FOR ENTRY OF JUDGMENT, FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT SUMMARY

~~(Proposed)~~

//

//

//

COPY

ROMERO PARK P.S.
135-108th Avenue N.E., Suite 202
Bellevue, WA 98004-5901
Tel: (425) 450-5000 Fax: (425) 450-0728

JUDGMENT SUMMARY

Defendants/Judgment Creditors:	Harley O'Neil, Jr. and Michele O'Neil Tori Lynn Nordstrom Trust Harley O'Neil, Jr., as Trustee for the Tori Lynn Nordstrom Trust
Plaintiff/Judgment Debtor:	Union Bank, N.A.
Attorneys' Fees:	$ 28,248.00
Costs:	$ 63.72
TOTAL:	**$ 28,311.72**
Post-judgment Interest Rate:	12% from May 6th, 2013 until satisfied in full.
Attorneys for Judgment Creditors:	H. Troy Romero Craig Simmons Romero Park P.S. 155-108th Avenue NE, Suite 202 Bellevue, WA 98004
Attorneys for Judgment Debtor:	Averil Rothrock Matthew Turetsky Milton A. Reimers Schwabe, Williamson & Wyatt, P.C. 1420 5th Avenue, Suite 3400 Seattle, WA 98101

ORDER AND JUDGMENT

THIS MATTER coming on regularly on the Defendants Harley O'Neil, Michele O'Neil and Tori Lynn Nordstrom Trust and Harley O'Neil, Jr., as Trustee for the Tori Lynn Nordstrom Trust's Motion for Attorneys' Fees and Costs and for Entry of Judgment, and the Court having reviewed the following pleadings:

1. Defendants Harley O'Neil, Michele O'Neil and Tori Lynn Nordstrom Trust and Harley O'Neil, Jr., as Trustee for the Tori Lynn Nordstrom Trust's Motion for Attorneys' Fees and Costs and for Entry of Judgment;
2. Declaration of H. Troy Romero In Support of Defendants Harley O'Neil, Michele O'Neil and Tori Lynn Nordstrom Trust and Harley O'Neil, Jr., as

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155-108th Avenue N.E., Suite 202
Bellevue, WA 98004-5901
Tel: (425) 450-5000 □ Fax: (425) 450-0728

Trustee for the Tori Lynn Nordstrom Trust's Motion for Attorneys' Fees and Costs and for Entry of Judgment;

3. Plaintiff's Response (if any);

4. Moving Defendants' Reply (if any); and

5. All pleadings and files on record with the Court in this matter, the Court being fully advised in the premises makes the following Findings of Fact and Conclusions of Law and Orders as following:

1. On or about April 23, 2012, Plaintiff/Judgment Debtor brought this suit against the Defendants/Judgment Creditors based on alleged breaches of obligations contained in commercial loan documents (the "Contract").

2. The lawsuit and the causes of action therein are on the Contract.

3. The Contract contains an attorney fee provision.

4. Under RCW 4.84.330, the prevailing party in an action on a contract, including litigants not party to the underlying contract, are entitled to an award of reasonable attorney fees they incurred during the litigation.

5. Plaintiff/Judgment Debtor failed to obtain a judgment against the Defendants/Judgment Creditors of any kind in this litigation. Defendants/Judgment Creditors are the prevailing party against Plaintiff/Judgment Debtor in that they have successfully defended against all claims Plaintiff/Judgment Debtor brought against them in this case.

6. As the prevailing party, Defendants/Judgment Creditors are entitled to an award of attorney fees pursuant to RCW 4.84.330 and in conjunction with the Contract.

7. The Court has reviewed the partially redacted slips listing the fees incurred by Defendants/Judgment Creditors in this case, stating the time spent and the specific activities billed for by the attorneys and staff of Romero Park.

8. Defendants/Judgments Creditors' attorneys at Romero Park expended at least 91.70 hours defending them from Plaintiff/Judgment Debtor's claims and allegations, for which Defendants/Judgment Creditors were billed.

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Bellevue, WA 98004-5901
Tel: (425) 450-5000 □ Fax: (425) 450-0728

9. Because the case involved complex factual and legal issues and entailed multiple parties, discovery, and ultimately dispositive motions practice, the Court has determined that the 91.70 hours spent in defense of Defendants/Judgment Creditors was reasonable under the circumstances and necessary in order to achieve the favorable result eventually obtained.

10. Using the lodestar method of calculating fees to be awarded, the hourly rates charged by Romero Park for the time spent by its multiple contributors to the case, specifically including but not limited to Mr. Romero and Mr. Simmons, are reasonable and competitive in the region for attorneys of similar experience and skill.

11. Defendants/Judgment Creditors are therefore entitled to their reasonable attorneys' fees in the amount of ~~$28,248~~ 28036 gr. The Court has arrived at this determination on the basis of the records and pleadings filed herein, including the Declaration of H. Troy Romero in Support of Defendants/Judgment Creditors' Motion for Attorneys' Fees and Costs and Entry of Judgment as the prevailing party, including the calculations of fees incurred contained therein and reviewed by the Court.

12. The Court also awards costs to Defendant in the amount of $63.72.

Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendants/Judgment Creditors are granted the foregoing judgment against Plaintiff Union Bank, N.A. in the total amount of ~~$28,311~~ 28099 gr.72.

DONE IN OPEN COURT this 6 day of May, 2013.

THE HONORABLE JEAN RIETSCHEL

Presented By:
ROMERO PARK P.S.

/s/H. Troy Romero
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APPENDIX - 9

Rev. Code Wash. (RCW) § 61.24.100

§ 61.24.100. Deficiency judgments -- Foreclosure -- Trustee's sale -- Application of chapter

(1) Except to the extent permitted in this section for deeds of trust securing <u>commercial loans</u>, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2) (a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a <u>commercial loan</u> executed after June 11, 1998:

(a) (i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater, plus interest on the amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor <u>granting</u> a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the

bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to June 11, 1998, shall be determined in accordance with the laws existing prior to June 11, 1998.

HISTORY: 1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, I caused to be served *via E-mail (per the Stipulated Agreement)* the foregoing APPELLANT UNION BANK, N.A.'S OPENING BRIEF on the following parties at the following addresses:

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