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STATE OF WASHINGTON
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**Supreme Court No. 1036361
Court of Appeals No. 854356 – Division I**

**THE SUPREME COURT
OF THE STATE OF WASHINGTON**

VS DEVELOPING, LLC,

Petitioner,

v.

BRMK PRIEST POINT, LLC, ET AL.,

Respondents.

**RESPONDENTS' ANSWER TO
PETITIONER'S PETITION FOR REVIEW**

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II. INTRODUCTION & IDENTITY OF RESPONDENTS

Petitioner, **VS Developing, LLC** (“Petitioner”), is a Washington limited liability company whose principals, Valentin and Viktoriya Stelmakh, were engaged in commercial real estate development. Petitioner has unsuccessfully pursued its arguments in the trial court and Division One levels. Division One awarded Respondents their attorneys’ fees payable jointly and severally by Petitioner and its counsel after finding that Petitioner’s arguments had “no basis in law.”

With its Petition for Review, Petitioner seeks to overturn decades of well-established case law governing Washington’s nonjudicial foreclosure process. Accepting Petitioner’s unsupported arguments would undermine the statutory framework that empowers foreclosing trustees in Washington to operate efficiently and avoid the burdens of judicial foreclosure, such as clogging court dockets and incurring excessive litigation costs.

Respondent **BRMK Priest Point, LLC**, a Washington

limited liability company, is a subsidiary of Broadmark Realty Capital, Petitioner's primary commercial construction lender. Respondent **Hacker & Willig, Inc., P.S.** ("Hacker & Willig"), a Washington professional service corporation, is a Successor Trustee duly appointed to conduct a commercial foreclosure and trustee's sale under Washington law. Hacker & Willig has been a foreclosing trustee in Washington for over fifteen years, consistently operating within the bounds of statutory authority.

This case arises from a straightforward loan default. VS Investment Assoc., LLC ("VS Investment"), a related entity of Petitioner, obtained a loan from Broadmark to finance a townhome development in Seattle, Washington. After VS Investment defaulted on the loan, the pledged collateral – consisting of the development property and additional property owned by Petitioner – was foreclosed upon and sold in a nonjudicial foreclosure process.

During the foreclosure, Petitioner filed two bankruptcy cases, both of which were dismissed. Despite attending the

foreclosure sale with its attorney, Petitioner failed to raise any objections to the process or the sale itself. Instead, Petitioner waited nine months after the sale to file its complaint and recorded a *lis pendens* on the property, obstructing Respondent's sale to a third party.

The record in this case is clear, well supported by Washington law, and consistent with long standing precedent. Division One's ruling in favor of Respondents aligns with settled legal principals and does not present any conflict in case law, constitutional issues, or matters of significant public interest warranting review.

For these reasons, Respondents respectfully request that the Court deny the Petition for Review.

III. CITATION TO APPELLATE DECISION

On September 30, 2024, a panel of the Court of Appeals, Division One, issued its Unpublished Opinion in this matter, unanimously affirming the dismissal of Petitioner's complaint and all claims related thereto in the trial court (the "Opinion").

On December 19, 2024, Division One entered its Ruling Awarding Attorney Fees and Sanctions to Respondents on appeal. *See, **Appendix A***. The Court of Appeals found that Petitioner and its counsel “are jointly and severally liable for this award and shall pay this amount.” *See, **Appendix A***, pg. 5.

For the Court’s convenience, a copy of Respondents’ Brief filed with the Court of Appeals is attached hereto as **Appendix B**.

IV. ISSUES PRESENTED FOR REVIEW

Petitioner raises five (5) issues presented for review. Petition, pg. 3. But, Petitioner’s “Argument for Granting Review” sections do not follow its “Issues Presented” framework. Respondents will show herein that none of these issues offers a sufficient legal or factual basis on which to reverse the Court of Appeals or the trial court. On this record, the Court is respectfully requested to deny the Petition for Review as follows:

1. There was no evidence offered by Petitioner that

the successor trustee acted impartially or with any bias toward Petitioner. Further, despite Petitioner's statements on appeal to the contrary, the nonjudicial foreclosure process was uncontested, despite the Stelmakhs and their counsel being present at the trustee's sale.

2. Petitioner has not offered any other evidence that the trustee's sale was void, and Petitioner admits that it did not timely act to restrain the sale by statute. Thus, all arguments raised by Petitioner on appeal are waived.

3. Following a review of the entire record *de novo* by the Court of Appeals, that Court unanimously affirmed the dismissal of the claims brought by Petitioner, which were considered on a summary judgment standard, with a full opportunity for Petitioner and its principals, the Stelmakhs, to present all their arguments, facts, and legal authority for a fair consideration and hearing by the trial court. Both the Court of Appeals and the trial court dismissed Petitioner's claims.

4. The trial court ordered the removal of Petitioner's

wrongfully filed and recorded *lis pendens* after fully considering Petitioner's position and filings, and after a hearing on the merits of Petitioner's case, there was no violation of RCW 4.28.320, nor did Petitioner argue this before the Court of Appeals.

5. As ordered by the trial court and the Court of Appeals, Petitioner was not substantially justified in filing and/or recording the *lis pendens*. Considering the record in its entirety, the Opinion of the Court of Appeals, and all applicable case law, attorneys fees and costs are properly awarded to Respondents as the prevailing parties in this matter. This action by serial litigants against Respondent lender must be concluded at this time.

Petitioner admits to the loan documents, admits that the Loan went into default, and did not challenge the trustee sale as required by statute, thereby waiving its right to do so. None of Petitioner's arguments have any merit, and thus the findings, conclusions, orders, and decisions of the trial court and the

Court of Appeals, Division One, should be upheld.

V. STATEMENT OF THE CASE

Petitioner's Statement of the Case is "taken from the First Verified Amended Complaint[.]" Petition, pg. 4. That Complaint, along with Petitioner's *lis pendens* and all of their claims and causes of action, have been rejected by the trial court, and Division One, and dismissed with prejudice, with judgment entered in favor of BRMK for attorneys' fees, costs, and sanctions against Petitioner. CP 1-3.

The record contains no evidence to support the claims that BRMK "sold" the College Street Property to the Stelmakhs for development, misrepresented the condition or readiness of the project, limited the additional security lien to \$200,000, or drove the borrower, VS Investment, into bankruptcy. There are no documents or facts in the record whatsoever to substantiate these allegations, and Petitioner is respectfully urged to refrain from advancing such unsupported arguments in the future. Instead, this Court is respectfully requested to rely on the

established facts in the record below when evaluating this matter.

A. Petitioner Pledged its Real Property to Secure the BRMK Loan in April 2016.

The facts of this simple collection matter and the applicable loan are brief:

On April 18, 2016, VS Investment, an affiliate entity of Petitioner, received a secured commercial loan from PBRELF I, LLC (now BRMK Lending, LLC) in the original principal amount of \$1,880,000.00 (the “Loan”). CP 443. At VS Investment’s request, the Loan was amended and extended on several occasions to increase the balance and to extend the maturity date to November 1, 2018. *Id.* The Loan was personally guaranteed by the Stelmakhs, who are the principals of Petitioner. *Id.* Mr. and Ms. Stelmakh, and their marital community, received the benefit of the Loan and the loan proceeds as principals of the borrower, VS Investment.

VS Investment’s Loan was secured by two Deeds of Trust

in favor of BRMK: one, a townhome development project located in Seattle, King County, Washington; and the second, granted by Petitioner, for real property it owned in Snohomish County, Washington, located at 4415 Priest Point Drive NW, Tulalip, Washington (the “Property” or, the “Priest Point Property”). CP 146. The Priest Point Property was never owned by the Stelmakhs (the principals of Petitioner): the Property was transferred from a relative (not a party to this case), Vita Stelmakh, directly to Petitioner. *See*, Respondents’ Brief, Appendix A, Quit Claim Deed. Petitioner claimed that this transfer was a gift and as such was exempt from excise tax when the Property was transferred in 2016. *Id.*

VS Investment and the Stelmakhs defaulted on the Loan by failing to pay the balance by the maturity date: November 1, 2018. CP 443. By November 25, 2019, BRMK was owed approximately \$3,722,105.46 on the Loan, including certain interest and construction costs and expenses advanced by BRMK, but excluding accruing late charges, interest, expenses, attorneys’

fees, and costs. *Id.*

B. Collection Against Petitioner and Related Obligors Proceeded in Multiple Courts.

To begin the recovery process on the Loan, BRMK filed a general receivership in King County Superior Court against VS Investment in January 2020 to administer the assets of VS Investment following the obligors' default on the BRMK Loan. CP 462.

When liquidation of the townhome development property did not repay BRMK in full, on February 28, 2022, BRMK began the foreclosure process of its Deed of Trust on the Priest Point Property. CP 446. Respondent Hacker & Willig was appointed as the Successor Trustee to conduct the Trustee's Sale. *Id.* The statutory notices scheduled the Trustee's Sale for June 3, 2022, and were sent to all parties, including VS Developing, its counsel, and the Guarantors. *Id.*

On June 2, 2022, VS Developing, through counsel, filed the first of its two successive failed bankruptcy cases prior to the

Trustee's Sale. CP 446. In light of the first bankruptcy filing, the Trustee's Sale was postponed to July 1, 2022. *Id.* The Bankruptcy Court dismissed Petitioner's first bankruptcy case on June 17, 2022. *Id.*

Petitioner, through counsel, then filed a second bankruptcy case on June 27, 2022. CP 446. The Trustee's Sale was postponed again, to July 29, 2022, and BRMK filed a motion for relief from stay. *Id.* On August 2, 2022, the Bankruptcy Court agreed with BRMK, granting relief from stay to move forward with the foreclosure, and the Trustee's Sale was rescheduled to August 19, 2022. *Id.*

At no point prior to the sale did Petitioner seek to enjoin the Trustee's sale by statute. CP 446. As such, the Trustee's Sale was conducted on August 19, 2022, on the front steps of the Snohomish County Courthouse. *Id.* Petitioner, the Guarantors, and their counsel, received all of the statutory notices of the Trustee Sale pursuant to RCW 61.24.040(d)(ix) and raised no objections or concerns regarding the notices or the sale process.

CP 447. In fact, Petitioner's representative, Ms. Stelmakh, and its attorney, personally attended and witnessed the Trustee's Sale and raised no objection. *Id.* Again, at no time prior to the Trustee's Sale did Petitioner seek to enjoin the sale. *Id.* There were no outside bidders at the sale; as such, BRMK, through its wholly owned subsidiary, BRMK Priest Point, LLC, took the property back via credit bid at the sale, receiving a Trustee's Deed to the Priest Point Property and thereby becoming the fee owner. *Id.*

C. Unlawful Detainer Proceedings Were Required.

By statute, twenty days following the Trustee Sale, BRMK was entitled to possession of the property. RCW 61.24.060. However, the occupants (Petitioner's principals) refused to vacate. CP 463. BRMK Priest Point agreed to allow the occupants an additional 60-day period during which to vacate the property, but the Stelmakhs still did not leave. *Id.*

The Stelmakhs remained on the property, and an unlawful detainer was carried out. By the time BRMK took possession, Petitioner and the Stelmakhs had laid waste to the Priest Point

Property. CP 463. On May 8, 2023, after spending approximately \$300,000 to clean-up, restore and repair the Priest Point Property, BRMK listed it for sale. *Id.* On May 16, 2023, BRMK Priest Point accepted an arm's length purchase offer for the property. *Id.* The closing of the sale was scheduled for June 15, 2023. *Id.*

D. Petitioner's Late-Filed Complaint.

On May 18, 2023, nine months after the Trustee's Sale and the day the property went "pending" on the MLS, Petitioner filed its Complaint alleging violations of the Deed of Trust Act and the Consumer Protection Act, and seeking quiet title to the Priest Point Property. CP 477. Petitioner also recorded a *lis pendens* against the Priest Point Property. CP 447. The claims in Petitioner's Complaint are centered on the allegation that, "Because Hacker & Willig served as Broadmark's legal counsel, H&W could not, by definition, fulfill its role of a neutral judicial substitute and violated the DTA and Washington Consumer Protection Act every time it performed any act as trustee in this case." CP 482; Complaint, ¶ 5.2. There are no other alleged

violations of Washington's Deed of Trust Act ("DTA") identified in the Complaint or any allegation that H&W, as Trustee, failed to act in good faith in conducting the Trustee's Sale. Despite being represented by counsel at all times since 2020, attending the trustee's sale with counsel, and receiving all the required statutory notices, at no point did any party-in-interest, including Petitioner, raise any objection of issue prior to the Trustee's Sale or seek to enjoin it. CP 447.

BRMK filed a Motion to Remove the *Lis Pendens*, dismiss the claim for Quiet Title and reserve its rights to seek damages and sanctions. CP 459. The trial court granted BRMK's Motion. CP 223.

Persuaded that Petitioner's arguments were without any substance, the trial court called for further briefing by both sides to consider and resolve the remainder of Petitioner's claims. CP 224. The trial court then entered its Order Dismissing All Claims and stated that BRMK was "authorized to bring a motion for sanctions within thirty (30) days of entry of this Order." CP 168.

The trial court granted BRMK's motion for sanctions on July 20, 2023. *See*, Order, CP 1-3. To date, Petitioner has failed and refused to pay the sanctions amount to BRMK. CP 511-515.

E. The Deed of Trust is Fully Enforceable.

Petitioner has not articulated a single legally or factually supported basis that would prevent enforcement of the Deed of Trust on the Priest Point Property. Pursuant to the admitted Deed of Trust, BRMK took all necessary and proper action under the written documents in the record in order to foreclose and take possession of the Priest Point Property. CP 447. BRMK has all the enumerated rights and remedies under the Deed of Trust, including nonjudicial foreclosure. *See*, Respondents' Brief, Appendix B, Deed of Trust. BRMK is entitled to all of its attorneys' fees and costs herein to enforce the terms of the Loan Documents and seek repayment. CP 148-149.

In the end, following obligors' undisputed loan default, BRMK exercised its rights against its collateral by contract and

by statute, and the result here is supported by well-settled law in Washington. On this record, the Stelmakhs are borne out as vexatious litigants. The rule of law in this State holds that an attorney for a lender may serve as successor trustee and foreclosing trustee. Petitioner has not offered any legitimate basis upon which the decisions and judgments of the trial court and of the Court of Appeals should be disrupted. Further, Petitioner has not set forth any basis upon which this Court should accept review here.

Accordingly, this Court is respectfully requested to deny the Petition for Review.

VI. LEGAL AUTHORITY & ARGUMENT

It is Petitioner's substantial burden under Rule of Appellate Procedure ("RAP") 13.4(b) to show the following:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the

petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b) (West 2024 ed.).

For the reasons set forth herein, Petitioner has not met its burden here.

Petitioner's lead argument begins with its citation to *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 774, 295 P.3d 1179, 1181 (2013), the facts of which case are glaringly dissimilar from the instant case. In *Klem*, the borrower (an individual) had passed away, and the foreclosing trustee was aware of a signed purchase and sale agreement between the estate and a qualified buyer that would have paid nearly three times the debt owed to the foreclosing lender. *Id.* Instead, the foreclosing trustee refused to continue the sale and sold the property for a *de minimis* amount to a third-party bidder for one dollar more than the borrower owed to the lender. *Id.*

In *Klem*, the beneficiary's guardian's efforts to contact the lender and the trustee were ignored, the jury found that the

successor trustee was negligent in the conduct of the nonjudicial foreclosure, and the real property at issue had significant equity available to the beneficiary. *Klem*, 176 Wn.2d at 775.

Here, the commercial loan context is vastly dissimilar from a consumer loan transaction. In fact, the Deed of Trust Act clarifies its application to commercial loans throughout the statutes. *E.g.*, RCW 61.24.005(4). The Priest Point Property was not VS Developing's residence, but rather it was where the LLC's principal persons resided rent free from the entity. Also, here, the grantor and its principals were sophisticated real estate developers with multiple commercial development projects active with multiple commercial lenders in the Puget Sound region.

Perhaps the most distinguishing factor is the actual conduct of the trustee's sale here as opposed to the foreclosure in *Klem*: there, the Notice of Sale appeared to be back-dated and the trustee admitted to following the lender's instructions without exercising its own independent judgment. *Klem*, 176 Wn.2d at 774. Here, there were no defects in the sale process and none were ever raised

by Petitioner. Respondent trustee continued the sale multiple times during the course of Petitioner's successive bankruptcy filings (and dismissals). The receivership proceedings involving related entity VS Investment began in January 2020, and the Trustee's Sale here occurred in August 2022, over two and a half years later. After their unsuccessful bankruptcy filings, Petitioner had years to consider voluntarily selling the property to repay BRMK, and they chose not to do so.

Petitioner also claims that the Opinion violates Article I, Section 3 of the Washington State Constitution, regarding personal rights, such that "[n]o person shall be deprived of life, liberty, or property, without due process of law." CONSTITUTION OF THE STATE OF WASHINGTON, Article 1, Section 3, West 2024 ed. However, Petitioner does not state with any specificity how exactly the Opinion violates the Washington Constitution. As in the Court of Appeals, Petitioner does not offer any legal authority here to support its argument sounding in Washington constitutional law.

As the Opinion states, "[P]arties raising constitutional issues

must present considered arguments to this court.” *City of Tacoma v. Price*, 137 Wn. App. 187, 200, 152 P.3d 357 (2007). “[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.” *Id.* (alteration in original) (quoting, *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992)).

Additionally, Petitioner states that the Opinion conflicts with *Cox v. Helenius*, 103 Wn.2d 383, 693 P.2d 683 (1985). In fact, Petitioner cites to *Cox* over a dozen times in its Petition for Review. Yet, as this Court is aware, the primary point in *Cox* argued by Petitioner has been superseded by statute. Prior to June 12, 2008, this Court had held that:

[A] trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them. The trustee is bound by [their] office to present the sale under every possible advantage to the debtor as well as to the creditor. [They are] bound to use not only good faith but also every requisite degree of diligence in conducting the sale and to attend equally to the interest of the debtor and creditor alike.

Cox, 103 Wn.2d at 389 (internal citations omitted).

However, the Washington State Legislature amended the Deed of Trust Act in 2008. Now, a trustee “shall have no fiduciary duty or fiduciary obligation to . . . persons having an interest in the property” but shall have “a duty of good faith to the borrower, beneficiary, and grantor.” Wash. Rev. Code § 61.24.010.

This subsection [RCW 61.24.010(3)] became effective on June 12, 2008, and was intended to address the very ambiguities that Petitioner is attempting to amplify here. *See*, Wn. Senate Bill Report, 2008 Reg. Sess. S.B. 5378 (Feb. 9, 2008); Wn. House Rep. Bill Report, 2008 Reg. Sess. S.B. 5378 (March 6, 2008).

Naturally, the Opinion cited compelling and current legal authority, which included the portions of *Cox* that have not been expressly overruled or later superseded by statute.

For the reasons set forth herein, and under the legal authority cited, Petitioner has not met its burden to show that the Opinion is in conflict with other legal authority of the Courts of this State; that a significant, unsettled constitutional question is presented here; or that issues of substantial public interest weigh in Petitioner’s favor.

Quite the contrary, there is a continuing and compelling need in Washington, throughout the banking industry, to further the general intent of the Deed of Trust Act: that nonjudicial foreclosures be efficient and inexpensive. The Petition for Review should be denied at this time.

A. Counsel for Beneficiary May Serve as Trustee.

Petitioner has continually and blindly argued that counsel for a secured creditor may not act as a successor trustee, and the trial court and Court of Appeals have rejected all such arguments. While Petitioner may be hoping for a significant change in the long-standing law of this State for their own personal benefit, Petitioner attempts to offer these arguments as reasonable extensions of existing case law, which they are not. The Opinion accepted Respondents' citation to, and cited further analogous legal authority regarding, the history and changes made to the Deed of Trust Act over the years. *See*, Opinion, pgs. 12-15.

Respondents' Brief also contained a citation to *Cascade Manor Assocs. v. Witherspoon*, 69 Wn.App. 923, 934 (1993),

which was also referenced at length by the Court of Appeals. *See*, **Appendix B**, pgs. 22-27.

Petitioner has failed in the trial court and in the Court of Appeals to offer any evidence that there was an actual conflict of interest present as to the Trustee's Sale here. *See*, Opinion, pg. 14. Rather, Petitioner and its principal, along with their attorney, were present at the Trustee's Sale and raised not a single objection. In fact, Petitioner was represented by multiple attorneys during the course of its insolvency proceedings and on the sale date.

Respondent Trustee acted in good faith in conducting the Trustee's Sale and no lawsuit challenging its services was filed prior to the sale.

Petitioner offers extensive extraneous authority regarding the lawyer/client relationship. *See*, Petition for Review, pgs. 18-21. But, Petitioner does not couple those citations to the present case by way of any applicable authority from this Court in the nonjudicial foreclosure/Deed of Trust Act context. Nor does Petitioner show that an actual conflict of interest was present here.

The applicable legal authority cited that upholds a creditor's attorney serving as successor trustee is well settled, well-reasoned, and has been relied upon by every party in countless trustee's sales over the decades since the Deed of Trust Act was passed and amended. It should remain the law of our State.

B. Petitioner Has Waived its Claims Here.

Petitioner's arguments should have been brought and considered within the statutory parameters for filing a complaint for restraint of the trustee's sale. RCW 61.24.130(2). Here, Petitioner's complaint was filed long after the trustee's sale was completed, the property went back to BRMK as credit bidder at the sale, the Stelmakhs had been removed from the property by the Snohomish County Sheriff's Office, and Broadmark had spent months and hundreds of thousands of dollars to refurbish and restore the property.

The operative statute, RCW 61.24.130(2) provides:

No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice

to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

RCW 61.24.130(2) (West 2024 ed.).

Here, Petitioner and its principals have been represented by counsel throughout this matter since 2020, through today, and on the Trustee's Sale date in August 2022.

This was a commercial loan secured by property owned by Petitioner, an LLC and an affiliate entity of the borrower, VS Investment. CP 443. Petitioner was the grantor on the deed of trust that was foreclosed. *Id.* Petitioner attempts to blur these lines by falsely stating that “the Stelmakhs did not bring a motion for a temporary restraining order [because] they ultimately lacked adequate opportunity to seek presale remedies to prevent the foreclosure of their home[.]” Petition, pg. 25. Petitioner, VS

Developing, had every opportunity to negotiate and liquidate the property in repayment of Respondent BRMK prior to the trustee's sale.

Petitioner leads with *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn.2d 560, 563, 276 P.3d 1277, 1279 (2012). In *Albice*, the foreclosing trustee continued the sale date beyond the maximum postponement date, and the lender was accepting late payments monthly from the defaulted borrower throughout the foreclosure process leading up to the sale. *Id.* at 564. These are serious procedural irregularities with the trustee's sale process, and would indeed divest the trustee of its statutory authority to sell the property. *Albice*, 174 Wn.2d at 567; *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 911, 154 P.3d 882, 887 (2007).

Here, no such procedural irregularities existed with respect to the nonjudicial foreclosure process, nor has Petitioner argued or offered any evidence as to same.

The remainder of Respondents' arguments and authority regarding waiver are set forth in Respondents' Brief [*see*,

Appendix B, pgs. 27-36] and in the Opinion [*see*, Opinion, pgs. 9-11].

Petitioner has not cited any controlling authority to the contrary that is on point to the facts of this case.

C. Respondents Availed Themselves of the Full Benefits and Protections of the *Lis Pendens* Statutes.

In light of the clarity in the lower courts' orders and findings here, all of which were entered with a full opportunity afforded to Petitioner to put forth any and all documentary evidence in the court record, Petitioner's claims in the trial court were "discontinued or abated" at the time the *lis pendens* was removed.

Petitioner cites to *Guest v. Lange* out of Division Two, which again is factually distinguishable from the present case. In *Guest*, the property owners had appealed, filed their supersedeas bond under RAP 8.1(b) and (c), and stayed enforcement of the judgment, and only then was the *lis pendens* removed. *Guest v. Lange*, 195 Wn. App. 330, 331, 381 P.3d 130, 132 (2016). Here, Petitioner took no such action to stay the matter pending appeal,

and no supersedeas bond was filed. Therefore, the trial court was convinced, and properly so, that the *lis pendens* was filed by Petitioner without any substantial justification. CP 223.

Petitioner also rehashes its argument below that attorneys' fees should somehow be denied to Respondents, the prevailing party, under RCW 4.28.328(3). This statute provides: "Unless the claimant establishes a substantial justification for filing the *lis pendens*," the party filing the *lis pendens* "is liable to an aggrieved party . . . for actual damages . . . and in the court's discretion, reasonable attorneys' fees and costs incurred in defending the action." *Id.* That standard is met here.

Petitioner can no longer argue that it "has established the requisite substantial justification for filing of the *Lis Pendens*" when the trial court and the Court of Appeals has found to the contrary, that these arguments by Petitioner are "baseless." In light of the trial court's finding that "there was no legal basis, justification, or substantial justification per RCW 4.28.328(3) for the filing of the *lis pendens*[,] removal of the *lis pendens* and

award of attorneys' fees and costs thereon was the correct result.

VII. CONCLUSION

Petitioner's unyielding and single-minded theory of the case appears to be an argument for sweeping and broad changes to existing law in order to prohibit, prospectively, lenders' attorneys from serving as successor trustees in overseeing nonjudicial foreclosures in this State. Petitioner's perspective is a minority and self-serving view, and it simply is not the law in Washington, nor should it be.

Originally, the Deed of Trust Act was enacted to modernize and streamline the mortgage foreclosure process in Washington in a way that is consistent "with the needs of modern real estate financing." John A. Gose, THE TRUST DEED ACT IN WASHINGTON, 41 Wash. L. Rev. 94 (1966). Petitioner has also cited to this article, which, though it relates to a prior version of the Deed of Trust Act, remains instructive. In order to avail itself of the statute, the secured party gives up certain important rights in avoiding "the time-consuming judicial

foreclosure procedure . . . which results in a substantial savings of time.” *Id.*

In the end, Petitioner’s arguments do not find support in the Washington Constitution, this Court’s prior opinions, or in the arena of public interest. Petitioner has not met its burden to show that the long-standing law of this State should be disrupted as Petitioner suggests, now would there be any substantial public interest in doing so. Petitioner has not shown that there were any irregularities with the foreclosure sale, or that there was any conflict of interest in the trustee’s sale process here.

Wherefore, the Petition for Review should be denied. It is hereby certified that this Answer of Respondent to Petition for Review contains 4,998 words pursuant to RAP 18.17(c)(10).

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DATED this 20th day of December, 2024.

Respectfully submitted,

HACKER & WILLIG, INC., P.S.

/s/ Arnold M. Willig

Arnold M. Willig, WSBA #20104

Elizabeth H. Shea, WSBA #27189

Charles L. Butler, III, WSBA #36893

Attorneys for Respondents

DECLARATION OF SERVICE

On December 20, 2024, I caused to be electronically served via the Appellate Court E-Filing Application, and via e-mail pursuant to the parties' e-service agreement in this case, a true and accurate copy of Respondents' Answer to Petition for Review in the above-captioned case to the following parties:

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I declare under penalty of perjury according to the laws of the State of Washington that the foregoing is true and correct.

DATED this 20th day of December, 2024.

HACKER & WILLIG, INC., P.S.

/s/ Ms. Thao L. Nguyen
Paralegal

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

VS DEVELOPING, LLC,

Appellant,

v.

BRMK PRIEST POINT, LLC;
HACKER & WILLIG, INC., P.S.;
and JOHN & JANE DOES 1-10,

Respondents.

No. 85435-6-I

COMMISSIONER'S
CORRECTED RULING
AWARDING ATTORNEY FEES
AND SANCTIONS

On September 30, 2024, this Court issued an unpublished opinion affirming the trial court's summary judgment dismissal of appellant VS Developing, LLC's claims. This Court awarded attorney fees on appeal to respondents BRMK Priest Point, LLC and Hacker & Willig, Inc., P.S. (collectively BRMK) as authorized by a deed of trust, RCW 4.84.330, and RAP 18.1. BRMK filed an affidavit of counsel and an application for an award of attorney fees and costs and for sanctions. BRMK requests an award of fees in the amount of \$34,255 and costs in the amount of \$435, totaling \$34,690, and asks this Court to impose sanctions against VS Developing's counsel for filing a frivolous appeal under RAP 18.9. VS Developing filed an objection, and BRMK filed a reply. As explained below, a reduced amount of fees (\$30,080) is awarded to BRMK, and, in consultation with the panel who decided this appeal, the fees are awarded against VS Developing and its counsel jointly and severally.

In opposing BRMK's fee and cost application, VS Developing argues this Court did not award BRMK attorney fees or costs on appeal. That is incorrect. This Court expressly awarded attorney fees and costs on appeal. Opinion at 20.

VS Developing argues BRMK's fees (\$34,255) should be reduced as excessive and unnecessary. Reasonable attorney fees are based on the number of hours reasonably spent, multiplied by a reasonable hourly rate. Berryman v. Metcalf, 177 Wn. App. 644, 660, 312 P.3d 745 (2013). This calculation does not turn solely on what the prevailing party's firm can bill. Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). "Courts must take an *active* role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel." Berryman, 177 Wn. App. at 657 (quoting Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632 (1998)). "The court must limit the lodestar to hours reasonably expended, and should discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time." Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 597, 675 P.2d 193 (1983). As a fee applicant, BRMK has the burden of showing the reasonableness of its fees. Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993).

VS Developing argues BRMK improperly includes hours spent on matters unrelated to the appeal. BRMK includes hours spent on matters such as eviction bonds, supplemental proceedings, and BRMK's renewal with the Secretary of State. These are not appellate matters and may not be included for attorney

fees on appeal. See Hepler v. CBS, Inc., 39 Wn. App. 838, 848 n.3, 696 P.2d 596 (1985) (disallowing fees incurred on post-judgment matters such as drafting a writ of execution to enforce judgment). To the extent BRMK includes hours spent on these matters in the same billing entries with hours spent on appeal, I discount the entire fees in the entries for BRMK's failure to segregate. Thus, attorney fees totaling \$4,175 are disallowed as not incurred on appeal.

VS Developing argues BRMK engaged in block billing, so it was uncertain how much time BRMK spent per each task. But, aside from the block billing mixing matters unrelated to this appeal with work on appeal addressed above, BRMK's billing entries are sufficient to evaluate the reasonableness of the time spent on appeal. I reject VS Developing's contrary argument.

Except for the fees for matters unrelated to this appeal (\$4,175) addressed above, the amount of the fees requested (\$34,255 – \$4,175 = \$30,080) is reasonable and supported by counsel's affidavit and descriptions of the work performed on appeal. The amount of fees is reasonable when BRMK had to respond to VS Developing's 69-page opening brief and prepare for and present oral argument, with the appeal resulting in a 20-page opinion. Accordingly, attorney fees on appeal totaling \$30,080 are awarded to BRMK.

As to costs, VS Developing argues each of the costs identified by BRMK pertains to supplemental proceedings in the trial court, not this appeal. VS Developing appears correct, and BRMK does not contend otherwise in its reply. These costs are not allowed under RAP 14.3(a). Although the deed of trust provides for attorney fees and costs, this Court only awarded fees and costs

“incurred on appeal.” Thus, I disallow the costs requested by BRMK (\$435).

BRMK requests sanctions against VS Developing’s counsel for filing a frivolous appeal under RAP 18.9(a). BRMK argues this appeal was frivolous and was brought for the improper purpose of harassing BRMK and needlessly increasing the cost of litigation. BRMK argues this appeal was an abuse of the judicial process aimed solely at delaying a resolution, thwarting a lawful sale of property, and imposing additional burdens on BRMK. BRMK argues that because VS Developing is an empty shell company, there is no effective deterrent for it to cease vexatious and frivolous litigation against BRMK. VS Developing acknowledges that it has “no assets.”

In awarding attorney fees to BRMK under the lis pendens statute, the trial court found no legal basis, justification, or substantial justification for VS Developing’s filing of a lis pendens. In affirming the trial court’s attorney fee award, this Court noted that “VS Developing recites the same argument to which it has clung throughout the proceedings in the trial court and now on appeal,” which this Court concluded was “baseless.” Opinion at 19. BRMK notes that, as an empty shell with no assets, VS Developing has no ability to satisfy the \$35,000 sanctions imposed by the trial court.

In consultation with the panel of judges who decided this appeal, the attorney fees on appeal (\$30,080) should be awarded to BRMK against both VS Developing and its counsel jointly and severally. Therefore, it is

ORDERED that attorney fees in the amount of \$30,080 are awarded to respondents BRMK Priest Point, LLC and Hacker & Willig, Inc., P.S. Appellant

No. 85435-6-1/5

VS Developing, LLC, attorney Boris Davidovskiy, and law firm Boris Davidovskiy, P.C are jointly and severally liable for this award and shall pay this amount.

Mareko Hanzawa, Commissioner

APPENDIX B

Case No. 854356

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

VS DEVELOPING, LLC,

Appellant,

v.

BRMK PRIEST POINT, LLC, ET AL.,

Respondents.

BRIEF OF RESPONDENTS

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II. INTRODUCTION

Respondents are a construction lender's subsidiary, **BRMK Priest Point, LLC**, and a Successor Trustee duly appointed to conduct a commercial foreclosure under Washington law, **Hacker & Willig, Inc., P.S.**

As this Court has previously found on June 14, 2023, when denying Appellant's Emergency Motion Objecting [*sic.*] Supersedeas Decision, the trial court correctly determined that "there was 'no legal basis' for VS Development to record a lis pendens against the property." Appeal Dkt. #6. This is the beginning and the end of Appellant's case. This Court declined in June 2023 to grant the essential relief sought by Appellant, concluding that a stay of the arm's length sale of the real property "is not warranted." Here, Appellant has never filed a supersedeas bond under Rule of Appellate Procedure ("RAP") 8.1 and 8.3, which in part formed a basis for this Court's prior ruling dated June 14, 2023, and so the property was sold.

The trial court employed the same reasoning when it

similarly concluded that there was no merit to any of Appellant's theories of the case, deciding same in summary fashion after hearing and considering all of Appellant's arguments in the record. CP 1-3, 168-169, and 223-225.

Appellant has been sanctioned by the trial court after several hearings on the merits, with a final judgment entered against Appellant for reimbursement of Respondents' attorneys' fees and costs. CP 511-515.

Predictably, to date, Appellant has willfully refused to make any payment on the judgment, pleading insolvency and its legally inactive corporate status, while simultaneously availing itself of this Court's jurisdiction. Appellant had to be reminded by the trial court to remit costs for preparation of its Designation of Clerk's Papers. CP __ [Trial Court Index #62]. Appellant by all accounts is "judgment proof" to the point that it may ignore the lower court's judgment for sanctions and the consequences of its underlying actions. It has very little risk in pursuing its meritless claims in this forum.

The history between these parties extends back to April 2016, when the initial loan documents were executed. Following the obligors' defaults on the loan, the borrower, Appellant's related entity, VS Investment Assoc, LLC, filed a Chapter 11 bankruptcy case resulting in lengthy proceedings. CP 146. When the loan obligation to Respondent BRMK was not fully satisfied, and foreclosure proceedings were instituted as to the property owned by Appellant, Appellant filed multiple successive bankruptcy proceedings in 2022, all of which were summarily dismissed. CP 443. As Appellant agrees [Appellant's Brief, pg. 2], VS Investment is not a party to this case, and Appellant's statements that BRMK somehow "tricked" VS Investment and/or Appellant into accepting a commercial construction loan from BRMK are not properly before the Court.

Ultimately, the Trustee's sale occurred on the front steps of the Snohomish County Courthouse on August 19, 2022. CP 147. The principal of the borrower and Appellant were present

at the sale with their attorney. CP 446. No objections were made to the sale and no complaint to restrain the sale was filed pursuant to RCW 61.24.040. Thereafter, by statute and with the active assistance of the Snohomish County Sheriff's Office, Appellant's principals were removed from the property when they refused to vacate pursuant to unlawful detainer proceedings. CP 462-463. Appellant appealed the eviction, but then quickly voluntarily dismissed that proceeding. *See*, Division I Case No. 84704-0.

Thereafter, Respondent BRMK spent months and hundreds of thousands of dollars restoring the property to a saleable condition and thereafter listed the property for sale. CP 443. Appellant lied in wait, only filing its complaint in order to derail the sale on the date the property was under contract and went "pending". CP 447, 443.

On the present record, Appellant, an administratively dissolved entity, is ignoring the sanctions order and judgment against it, and would have this Court disregard the years of

prior litigation between the parties that resulted in the valid Trustee's sale of the property. Appellant and the other obligors have made these same arguments in multiple fora, and the arguments have been denied at every turn.

On this record, Appellant has waived its legal standing to bring the instant claims by failing to obtain an injunction prior to the Trustee's sale. The property has long been sold and the matter resolved by trial and bankruptcy courts.

This Court is respectfully requested to affirm the orders and judgments of the trial court in this case.

III. ASSIGNMENTS OF ERROR

The trial court did not commit any reversible error in these proceedings. The Orders and Judgment of the trial court should stand and be affirmed herein.

IV. STATEMENT OF THE CASE

A. Appellant Pledged its Real Property to Secure the BRMK Loan in April 2016.

This is a simple collection matter, and the facts

underpinning the applicable loan are brief:

On April 18, 2016, VS Investment Assoc., LLC (“VS Investment”), an affiliate entity of Appellant, received a loan from PBRELF I, LLC (now BRMK Lending, LLC) in the original principal amount of \$1,880,000.00 (the “Loan”). CP 443. At VS Investment’s request, the Loan was amended and extended on several occasions to increase the balance and to extend the maturity date to November 1, 2018. *Id.* The Loan was personally guaranteed by Valentin Stelmakh and Viktoriya Stelmakh (the “Guarantors”), who are the principals of Appellant. *Id.* Mr. and Ms. Stelmakh, and their marital community, received the benefit of the Loan and the loan proceeds as principals of the borrower, VS Investment.

VS Investment’s Loan was secured by two Deeds of Trust in favor of BRMK: one, a townhome development project located in Seattle, King County, Washington, and the second, granted by Appellant for real property it owned in Snohomish County, Washington, located at 4415 Priest Point Drive NW, Tulalip,

Washington (the “Property” or, the “Priest Point Property”). CP 146. The Priest Point Property was never owned by the Stelmakhs (the principals of Appellant): the Property was transferred from a relative (not a party to this case), Vita Stelmakh, directly to Appellant. *See, Appendix A*, Quit Claim Deed. Appellant claimed that this transfer was a gift and as such was exempt from excise tax when the Property was transferred in 2016. *Id.*

VS Investment and the Guarantors defaulted on the Loan by failing to pay the balance by the maturity date: November 1, 2018. CP 443. By November 25, 2019, BRMK was owed approximately \$3,722,105.46 on the Loan, excluding accruing late charges, interest, expenses, attorneys’ fees, and costs advanced by BRMK. *Id.* All obligor parties defaulted on the BRMK Loan, and the Loan was required to be repaid.

B. Collection Against Appellant and Related Obligors Proceeded in Multiple Courts.

To begin the recovery process on the Loan, BRMK filed a general receivership in King County Superior Court against VS

Investment to administer its assets following the obligors' default on the BRMK Loan. CP 462.

When liquidation of the townhome development property did not nearly repay BRMK in full, on February 28, 2022, BRMK began the foreclosure process for its Deed of Trust on the Priest Point Property. CP 446. Respondent Hacker & Willig was appointed as the Successor Trustee to conduct the Trustee's Sale. *Id.* The statutory notices scheduled the Trustee's Sale for June 3, 2022, and were sent to all parties, including VS Developing, its counsel, and the Guarantors. *Id.*

On June 2, 2022, VS Developing, through counsel, filed the first of its two successive failed bankruptcy cases prior to the Trustee's Sale. CP 446. In light of the first bankruptcy filing, the Trustee's Sale was postponed to July 1, 2022. *Id.* The Bankruptcy Court dismissed Appellant's first bankruptcy case on June 17, 2022. *Id.*

Appellant, through counsel, then filed a second bankruptcy case on June 27, 2022. CP 446. The Trustee's Sale was

postponed again, to July 29, 2022, and BRMK filed a motion for relief from stay. *Id.* On August 2, 2022, the Bankruptcy Court agreed with BRMK, granting relief from stay to move forward with the foreclosure, and the Trustee's Sale was rescheduled to August 19, 2022. *Id.*

At no point prior to the sale did Appellant seek to enjoin the Trustee's sale by statute. CP 446. As such, the Trustee's Sale was conducted on August 19, 2022, on the front steps of the Snohomish County Courthouse. *Id.* Appellant, the Guarantors, and their counsel, received all of the statutory notices of the Trustee Sale pursuant to RCW 61.24.040(d)(ix) and raised no objections or concerns regarding the notices or the sale process. CP 447. In fact, Appellant's representative, Ms. Stelmakh, and its attorney personally attended and witnessed the Trustee's Sale and raised no objection. *Id.* Again, at no time prior to the Trustee's Sale did Appellant seek to enjoin the sale. *Id.* There were no outside bidders at the sale; as such, BRMK, through its wholly owned subsidiary, BRMK Priest Point, LLC, took the property

back via credit bid at the sale, receiving a Trustee's Deed to the Priest Point Property and thereby becoming the fee owner. *Id.*

C. Unlawful Detainer Proceedings Were Required.

By statute, 20 days following the Trustee Sale, BRMK was entitled to possession of the property. RCW 61.24.060. However, the occupants (Appellant's principals) refused to vacate. CP 463. BRMK Priest Point agreed to allow the occupants an additional 60-day period during which to vacate the property, but the Stelmakhs still did not leave. *Id.*

On October 5, 2022, BRMK Priest Point filed a Complaint seeking a writ of restitution in the trial court (Case No. 22-2-05983-31). CP 463. On October 20, 2022, Appellant filed an objection to the writ, claiming that the Trustee's Sale and unlawful detainer action were "void" because it violated the stay in the VS Investment receivership case, and because BRMK Priest Point was not the proper party in interest. CP *Id.* On November 14, 2022, the trial court entered an Order directing the issuance of a writ of restitution to the Snohomish County Sheriff to remove the

occupants. *Id.* On December 14, 2022, the Snohomish County Sheriff was on-site for most of the day and, despite resistance by the Stelmakhs, restored the Priest Point Property to the lawful owner at the time: BRMK Priest Point. *Id.*

The condition of the Priest Point Property was unimaginably appalling and willfully damaged at the time BRMK took possession following the unlawful detainer proceeding. CP 463. On May 8, 2023, after spending approximately \$300,000 to clean-up, restore and repair the Priest Point Property, BRMK listed it for sale. *Id.* On May 16, 2023, BRMK Priest Point accepted an arm's length purchase offer for the property. *Id.* The closing of the sale was scheduled for June 15, 2023. *Id.*

D. Appellant's Meritless Complaint Filing.

On May 18, 2023, nine months after the Trustee's Sale and the day the property went "pending" on the MLS, Appellant filed its Complaint alleging violations of the Deed of Trust Act and the Consumer Protection Act, and seeking quiet title to the Priest Point Property. CP 477. Appellant also recorded a *lis pendens*

against the Priest Point Property. CP 447. The claims in Appellant's Complaint are centered on the allegation that, "Because Hacker & Willig served as Broadmark's legal counsel, H&W could not, by definition, fulfill its role of a neutral judicial substitute and violated the DTA and Washington Consumer Protection Act every time it performed any act as trustee in this case." CP 482; Complaint, ¶ 5.2. There are no other alleged violations of Washington's Deed of Trust Act ("DTA") identified in the Complaint or any allegation that H&W, as Trustee, failed to act in good faith in conducting the Trustee's Sale. Despite being represented by counsel at all times since 2020, and receiving all the required statutory notices, at no point did any party-in-interest, including Appellant, raise any objection of issue prior to the Trustee's Sale or seek to enjoin it. CP 447.

On May 22, 2023, BRMK Priest Point's counsel sent a letter to Appellant's counsel identifying the meritless allegations in the Complaint and demanding that the *lis pendens* be removed and the offending filings be withdrawn. CP 447. Counsel for

Appellant refused to retract the pleadings, and instead responded by letter wherein he ignored the statutory provisions requiring an action on a commercial loan be filed prior to a trustee's sale and the well-settled case law allowing the attorney for the beneficiary to serve as a Trustee. CP 447-448. Counsel for Appellant then filed three successive Notices of Unavailability within a six-month period. CP __ [Trial Court Index Nos. 4, 33, 72].

BRMK was left with no other option but to file a Motion to Remove the Lis Pendens, dismiss the claim for Quiet Title and reserve its rights to seek damages and sanctions. CP 459. The trial court granted BRMK's Motion. CP 223. Appellant's first Notice of Appeal followed that same day. CP 235.

Persuaded that Appellant's arguments were without any substance, the trial court called for further briefing by both sides on BRMK's request that the matter be heard as dispositive in order to timely dismiss all of Appellant's claims. CP 224. The trial court then entered its Order Dismissing All Claims and stated that BRMK was "authorized to bring a motion for sanctions

within thirty (30) days of entry of this Order.” CP 168. Appellant filed an Amended Notice of Appeal thereafter. CP 170.

BRMK briefed the issue of law that an award of sanctions was appropriate against Appellant and its counsel in the trial court. CP 141. After the trial court granted BRMK’s motion for sanctions, on July 20, 2023, Appellant’s counsel e-mailed the trial court Staff and then sent a lengthy letter to the trial court Judge stating its position with respect to the proposed Order Granting Defendants’ [Respondents’] Motion for Award of Sanctions. CP __, __ [Trial Court Index Nos. 45-46]. The trial court acquiesced to Appellant’s requested form of order. *See, Order*, CP 1-3. Appellant had every opportunity to craft the trial court’s ruling to meet its expectations. Yet, Appellant has nonetheless appealed this Order, where the trial court incorporated Appellant’s proposed findings, wording, and content preferences. CP 1.

In Appellant’s July 20, 2023 letter, Appellant stated that it would need “at least thirty (30) days to pay the ordered sum before Defendants may be allowed to bring any motion for entry

of judgment.” CP __ [Trial Court Index #45]. The trial court entered its Order Granting Motion for Sanctions Against Plaintiff, awarding \$35,000.00 in sanctions against Appellant. CP 1-3. To date, Appellant has failed and refused to pay the sanctions amount to BRMK, even after BRMK filed a Motion for Entry of Judgment and was awarded a final Judgment Against Plaintiff. CP 511-515.

Appellant’s arguments as to why the Judgment should not be enforced against it amount to insolvency – no assets, no accounts, and no prospects for same. CP __ [Trial Court Index #76, pgs. 5-7]. While simultaneously refusing to pay sanctions awarded against it in this case, Appellant is seeking to avail itself of the time and jurisdiction of this Court on appeal. If the matter is affirmed and the trial court is upheld, and further attorneys’ fees and costs are awarded to BRMK, it is expected that Appellant similarly will claim to be “judgment proof.”

E. The Deed of Trust is Fully Enforceable.

In this appeal, Appellant seeks to invalidate the Deed of Trust executed by grantor VS Developing in favor of BRMK,

which instrument was properly executed and recorded in all respects. CP 443; **Appendix B**. Further, Appellant has not articulated a single legally or factually supported basis that would prevent enforcement of the Deed of Trust on the Priest Point Property.

Pursuant to the Deed of Trust admittedly executed by Appellant, BRMK took all necessary and proper action under the written documents in the record in order to foreclose and take possession of the Priest Point Property. CP 447. BRMK has all of the enumerated rights and remedies under the Deed of Trust, including nonjudicial foreclosure. *See, **Appendix B***, Deed of Trust. BRMK is entitled to all of its attorneys' fees and costs herein to enforce the terms of the Loan Documents and seek repayment. CP 148-149.

In the trial court, BRMK requested entry of a final Judgment against Appellant for sanctions for bringing the action and improperly filing a *lis pendens*, and the trial court agreed. CP 572, 514, 511.

In the end, following undisputed loan default, BRMK exercised its rights against its collateral. Following the Trustee's Sale of the Priest Point Property, Appellant and its principals were unlawfully detaining the Property, possession was restored to BRMK by the Snohomish County Sheriff, the Property was rehabilitated over nine months and sold via an arm's length purchase and sale transaction in June 2023. These results are supported by the parties' contracts and well-settled law in the State of Washington. The trial court's orders should be affirmed.

V. ISSUES PRESENTED

Appellant raises three (3) Assignments of Error [Appellant's Brief, pg. 4] and fifteen (15) issues in claimed relation thereto [*id.* at pgs. 4-7]. None of these Assignments of Error or issues on appeal offer any sufficient legal or factual basis on which to reverse the trial court. This Court is respectfully requested to find as follows:

1. The trial court did not err in properly granting

Respondents' Motion for Order to Remove Lis Pendens, and/or when it requested further briefing from the parties. CP 223.

2. The trial court did not err in properly entering the Order Dismissing All Claims. CP 168.

3. The trial court did not err in properly awarding Respondents' their attorneys' fees and costs as sanctions against Appellant. CP 1.

4. As such, the Order Regarding Motion for Entry of Judgment Against Appellant, and the final Judgment Against Appellant, were properly entered. CP 514, 511.

None of Appellant's arguments on appeal have any merit, and thus the findings, conclusions, orders, and decisions of the trial court should be upheld. There is no need to conduct a trial in this matter under the facts and legal authority set forth herein. Appellant admits to signing the Deed of Trust, admits that the Loan went into default, and has not raised on appeal (or in the trial court) any factual reason or point of law which would require retrial of those issues that have already been decided by

the trial court. Judgment was entered properly and with a sufficient basis against Appellant for sanctions in bringing this action well after the statutory restraint of sale deadline.

VI. STANDARD OF REVIEW

This Court reviews summary judgment orders *de novo*. *Cornwell v. Microsoft Corp.*, 192 Wn.2d 403, 410, 430 P.3d 229 (2018). The Appellate Court performs the same inquiry as the trial court in its review. *City of Seattle v. Long*, 198 Wn.2d 136, 145, 493 P.3d 94 (2021).

However, this Court “may affirm a trial court’s disposition of a motion for summary judgment . . . on any ground supported by the record.” *Johnson v. Liquor & Cannabis Bd.*, 197 Wn.2d 605, 611, 486 P.3d 125 (2021) (quoting, *Washburn v. City of Federal Way*, 178 Wn.2d 732, 753 n.9, 310 P.3d 1275 (2013)).

Those factual findings that are not challenged on review are treated as verities. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Additionally, any facts the trial court deemed

undisputed at summary judgment became established facts in the contract action at the point the bench trial commenced. CR 56(d). *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 48, 73, 331 P.3d 1147, 1157 (2014).

Therefore, multiple standards of review are appropriate in this case.

VII. LEGAL AUTHORITY & ARGUMENT

A. Any Objection to the Trustee's Sale is Moot.

Appellant's arguments should have been brought and considered within the statutory parameters for filing a complaint for restraint of the trustee's sale. RCW 61.24.130(2). Here, Appellant's complaint was filed long after the trustee's sale was completed, the property went back to BRMK as credit bidder at the sale, the Stelmakhs had been removed from the property by the Snohomish County Sheriff's Office, and Broadmark had spent months and hundreds of thousands of dollars to refurbish and restore the property.

The operative statute, RCW 61.24.130(2) provides:

No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

RCW 61.24.130(2) (West 2023 ed.).

Here, Appellant, along with VS Investment and the Stelmakhs, has been represented by counsel throughout the several prior cases between the parties, from the King County receivership filed in January 2020, to VS Investment's Chapter 11 bankruptcy case filed in May 2020 by attorney Brad Puffpaff, to VS Developing's successive Chapter 11 bankruptcy filings in early June late June 2022, respectively. CP 146. In fact, when all of the bankruptcy cases were dismissed, and Broadmark lawfully proceeded with the trustee's sale, Ms. Stelmakh attended the

trustee's sale with her legal counsel at the time, Benjamin Ellison. CP 447. No objections or comments of any kind were raised by Appellant as the sale took place. *Id.*

Appellant argues mightily that an error occurred below under the summary judgment standard, and the summary judgment continuance standard, of CR 56. But the record here confirms that the trial court allowed Appellant to submit any and all briefing on the issues it was raising before the court [CP 223], which Appellant proceeded to do. CP 217, 215, 180. Importantly, this case was not decided on a CR 12(b)(6) standard under which courts look to “any set of facts which would justify recovery.” *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29, 34 (2014) (quoting, *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998)). Here, the trial court properly decided the case under CR 56. CP 168.

B. Counsel for the Secured Creditor May Lawfully Act as Trustee.

Appellant has blindly argued that counsel for the secured

creditor may not act as foreclosing trustee, and the trial court rejected all such arguments. Appellant is apparently arguing for a significant change in long-standing law, however, the legal authority cited below and herein is well settled, well reasoned, and has been relied upon by every party in countless trustee's sales. It should remain the law of our State.

RCW 61.24.010 specifically provides that any attorney who is an active member of the Washington state bar association, or any professional corporation, all of whose shareholders, members, or partners, respectively, are either licensed attorneys or entities, may be a Trustee. *See*, RCW 61.24.010 (1)(c) and (d). Thus, it is statutorily defined that Trustee's will be attorneys, and it has long been the practice in Washington State that an attorney can represent the beneficiary and act as a Trustee.

This Court, in *Cascade Manor Assocs. v. Witherspoon*, 69 Wn.App. 923, 934 (1993), specifically acknowledged that an attorney may represent a beneficiary and act as a Trustee under the Deed of Trust statute, holding:

Likewise, there is no basis to conclude that Currin breached his fiduciary duties as trustee by acting as both the trustee and Bancorp's attorney. Contrary to Cascade's assertion, *Cox v. Helenius*, 103 Wn.2d 383, 693 P.2d 683 (1985) does not prohibit a trustee from also acting as the attorney for the beneficiary. Instead, *Cox* noted that, although the attorney's dual role could have "precipitated" a breach of fiduciary duties if a conflict of interest arose, such a breach could be prevented if "the person serving as trustee and beneficiary . . . transferr[ed] one role to another person." 103 Wn.2d at 390. While a trustee acting as counsel for one of the involved parties could avoid any risk of conflict when litigation arises by arranging for a substitute trustee, neither *Cox* nor any other authority requires the trustee to do so. Indeed, *Cox* noted that a trustee is not required to ensure that the grantor is protecting his or her own interest. 103 Wn.2d at 389. Consequently, we hold that the trial court erred by concluding that Witherspoon, through Currin, breached its fiduciary duties to Cascade.

Id. at 934-935.

In *Cascade Manor*, the Trustee, Currin, issued a notice of trustee's sale and at the same time represented the lender beneficiary in an action in Franklin County Superior Court seeking appointment of a receiver against the Grantor to manage the Grantor's apartment complex and collect rents. *Cascade Manor*,

69 Wn. App. at 926. The request for a receiver was granted and an order was entered restraining the Grantor from managing the property. *Id.* The Grantor refused to turn over rents and appealed the ruling. *Id.* at 926-927. While the appeal was pending, Currin issued a new notice of Trustee's Sale and ultimately conducted the Trustee's Sale. *Id.* at 927-928. This Court ultimately concluded that "there is no basis to conclude that Currin breached his fiduciary duties as trustee by acting as both the trustee and Bancorp's attorney." *Id.* at 934-935.

H&W's services as Trustee complied with all the statutory requirements and no objection or issues were raised with respect to the sale process. Its services were identical to those provided by Currin, although unlike Currin, H&W waited until each of the legal proceedings Appellant initiated were concluded before conducting the sale. Further, in this case there have been no allegations whatsoever of any irregularities in the sale process. All notices were appropriately prepared and issued to the required parties. Likewise, there is no question that Appellant, which was

represented by counsel through the entire and lengthy process, was aware of its right to file an action to restrain the sale.

Further, in 2008 and 2009 the Deed of Trust statute (RCW 61.24.010) was amended to clarify that the Trustee does not have a fiduciary duty to the grantor of a deed of trust:

(3) The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the deed of trust.

(4) ~~The trustee or successor trustee shall act impartially between the borrower, grantor, and beneficiary.~~ The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor.

RCW 61.24.010 (2024 ed.).

The statute was first amended to provide that the trustee act impartially between the borrower, grantor, and beneficiary in 2008, but later further amended in 2009 to remove that provision and require only a duty of good faith. *See*, amendments to RCW 61.24.010 effective June 12, 2008 and July 26, 2009.

H&W acted in good faith in conducting the Trustee's Sale

and no lawsuit challenging its services was filed prior to the sale. Appellant's claim that H&W is automatically disqualified because it was the attorney for BRMK and therefore all its actions violated the Deed of Trust Act and the Consumer Protection Act, is meritless and was alleged then, as now, for the improper purpose of interfering with the sale of the Priest Point Property.

C. Appellant's Claims Are Now Waived.

This was a commercial loan secured by property owned by Appellant, an LLC and an affiliate entity of the borrower, VS Investment. CP 443. Appellant was the grantor on the deed of trust that was foreclosed. *Id.* As such, the causes of action listed under RCW 61.24.127(1) and alleged in Appellant's Complaint do not apply to this case.

Further, all of Appellant's claims are waived following the Trustee's Sale. In *Koegel v. Prudential Mut. Sav. Bank*, 51 Wn.App. 108 (1988), this Court considered a case in which the Grantor failed to take steps necessary to stop a non-judicial sale of the grantor's property even though the grantor had announced that

there were defects in the sale procedure. Finding that the grantor waived the defects by failing to take action to restrain the sale, this Court held as follows:

Appellant had a spectrum of potential legal remedies available to forestall the sale ranging from declaring bankruptcy, filing suit with a lis pendens, curing the default, seeking an injunction in conjunction with a motion to shorten time, or appearing at the sale and notifying the trustee and any buyers of the defects in the foreclosure process. In fact, appellant's attorney and Mr. McMillan appeared at the sale and said nothing. Appellant was aware of his right to restrain the sale and of his defenses to the sale, yet did not act. Therefore, appellant waived his right to contest the sale.

Koegel, 51 Wn.App. at 116. *See also, Peoples Nat'l Bank v.*

Ostrander, 6 Wn. App. 28, 491 P.2d 1058 (1971).

More recently, this Court upheld and reiterated the rule that failure to take action to restrain a sale operates as a waiver of claim. In a thorough and well-reasoned decision that warrants a lengthy quotation because it touches on all the allegations raised by Appellant, this Court has previously affirmed that a deed of trust grantor's knowing and intentional failure to enjoin the trustee from

selling the encumbered property in foreclosure of the deed of trust under RCW 61.24.130 waives the right to pursue post-sale remedies for wrongful foreclosure. *Patrick v. Wells Fargo Bank*, 196 Wn. App. 398, 405-407 (2016), ruled as follows:

Wells Fargo contends that the Patricks waived most of their claims by failing to use the restraint procedures the DTA requires. We agree.

The DTA “creates a three-party mortgage system allowing lenders, when payment default occurs, to nonjudicially foreclose by trustee’s sale.” The act has three goals: an efficient and inexpensive process, adequate opportunities for parties to prevent wrongful foreclosure, and stability of land titles.

To further these goals, RCW 61.24.130 provides a procedure for stopping a trustee’s sale. The DTA requires borrowers to use this procedure or risk waiving their objections to the sale. This waiver occurs if the party “(1) received notice of the right to enjoin the sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court order enjoining the sale.”

In *Brown v. Household Realty Corp.*, this court held that the plaintiffs waived their tort claims by failing to seek a presale injunction. We reasoned that each of the plaintiffs’ claims related to the underlying obligation, that the plaintiffs had

constructive notice of their claims, and that those claims would have provided them a defense to foreclosure. We concluded that applying waiver in this situation would further the three goals of the DTA.

In response to the *Brown* decision, the legislature adopted RCW 61.24.127[, which] lists four types of claims that a plaintiff “may not” waive by failing to use the DTA procedure for obtaining a presale injunction. These include claims against any party for violating the CPA and against a trustee for violating the DTA. Although the Supreme Court has stated that “[w]here applicable, waiver applies only to actions to vacate the sale and not to damages actions,” it has not yet decided how RCW 61.24.127 affects that rule.

RCW 61.24.127 does not purport to supersede the entire *Brown* decision. If the legislature intended to prohibit waiver for any type of damages claim based on the underlying obligation, it could have stated simply, “The failure of the borrower or grantor to bring a civil action to enjoin a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages.” It did not. The legislature’s decision to limit the statute’s safe harbor to four types of damage claims shows that the legislature did not intend to protect other claims from waiver if the requirements of notice, knowledge of a defense, and failure to enjoin the sale are satisfied.

Patrick, NA, 196 Wn. App. at 405-407 (internal citations omitted).

The *Patrick* case goes on to make clear that acting as an attorney for the beneficiary does not automatically violate the Deed of Trust Act. This Court found that the trustee had not violated RCW 61.24.030 (3) by having a fiduciary duty to the beneficiary or violated its duty of good faith by failing to act impartially, stating as follows:

RCW 61.24.010(3) eliminates the fiduciary duty courts previously imposed on the trustee. Still, “RCW 61.24.010(4) imposes a duty of good faith on the trustee toward the borrower, beneficiary, and grantor.” “This duty requires the trustee to remain impartial and protect the interests of all the parties.” The trustee may not as a practice “defer[] to the lender on whether to postpone a foreclosure sale and thereby fail[] to exercise its independent discretion as an impartial third party.” A breach of these duties supports a claim for damages under the CPA.

Here, the Patricks make no showing that the trustee improperly deferred to the lender and thus breached its duty of good faith. Although a lawyer’s dual representation of a lender and trustee might raise questions about the trustee’s good faith in some circumstances, the Patricks offered no evidence of bad faith here. They have not shown any reason the trustee should not have foreclosed, like, for example, doubts about the identity of the noteholder. They claim only that the requisites to

sale were not satisfied because “there was no default” and they did not receive the documents they were entitled to. As noted above, the Patricks did default. And they offer no evidence the trustee violated the DTA’s document requirements.

Patrick, 196 Wn. App. at 412-413 (citations omitted).

The Deed of Trust Act provides guidance and strict limitations for the four claims or causes of action that are not automatically waived by failure to restrain a trustee’s sale in RCW 61.24.127:

(1) The failure of the borrower or grantor to bring a civil action to enjoin a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages asserting:

- (a) Common law fraud or misrepresentation;
- (b) A violation of Title 19 RCW;
- (c) Failure of the trustee to materially comply with the provisions of this chapter;
- or
- (d) A violation of RCW 61.24.026.

(2) The nonwaived claims listed under subsection (1) of this section are subject to the following limitations:

- (a) The claim must be asserted or brought within two years from the date of the foreclosure sale or within the applicable statute of limitations for such claim, whichever expires earlier;

(b) The claim may not seek any remedy at law or in equity other than monetary damages;

(c) The claim may not affect in any way the validity or finality of the foreclosure sale or a subsequent transfer of the property;

(d) A borrower or grantor who files such a claim is prohibited from recording a lis pendens or any other document purporting to create a similar effect, related to the real property foreclosed upon;

(e) The claim may not operate in any way to encumber or cloud the title to the property that was subject to the foreclosure sale, except to the extent that a judgment on the claim in favor of the borrower or grantor may, consistent with RCW 4.56.190, become a judgment lien on real property then owned by the judgment debtor; and

(f) The relief that may be granted for judgment upon the claim is limited to actual damages. However, if the borrower or grantor brings in the same civil action a claim for violation of chapter 19.86 RCW, arising out of the same alleged facts, relief under chapter 19.86 RCW is limited to actual damages, treble damages as provided for in RCW 19.86.090, and the costs of suit, including a reasonable attorney's fee.

(3) This section applies only to foreclosures of owner-occupied residential real property.

(4) This section does not apply to the foreclosure of a deed of trust used to secure a

commercial loan.

RCW 61.24.127 (2024 ed.) (emphasis added).

The Deed of Trust Act consistently provides more protections for consumer loans and owner-occupied real property, and this statute clearly lays out the very limited exceptions to waiver that are recognized.

This was a commercial loan with a pledge of non-owner-occupied collateral owned by an LLC. Even if this was a consumer loan and secured by owner-occupied real property (neither apply here), Appellant is prohibited from any remedy other than monetary damages. RCW 61.24.127(2)(b). The trial court did not find that Appellant had suffered any damages here.

Appellant may not seek to affect the validity or finality of the foreclosure sale or a subsequent transfer of the property. RCW 61.24.127(2)(c). Despite these clear, unambiguous bans on its claims, Appellant, through counsel who was alerted to the specific terms of the statutes and the consequences of sanctions and statutory damages, not only refused to withdraw the original

complaint, but filed the Amended Complaint after the Motion to Remove Lis Pendens was pending. All of this was done with the malicious intent of trying to prevent the pending sale of the property to cause damage to Respondents.

Here, Appellant (a commercial development business entity) pledged its real property to secure a commercial development loan; the collateral was a consensual lien and deed of trust against Appellant's corporate owned property. All of Appellant's claims were therefore waived following the Trustee's Sale. *See*, RCW 61.24.127 (3) and (4).

Even if this was not a commercial loan and secured by owner-occupied real property, Appellant is prohibited by the strict limitations of the cited statutes from seeking to quiet title, filing a *lis pendens*, or seeking any remedy other than monetary damages. Also, it may not seek to affect the validity or finality of the foreclosure sale. Nevertheless, despite being advised of these clear statutory prohibitions in a letter to Appellant's counsel, Appellant failed to remove its *lis pendens* until ordered by the trial court.

Appellant also continued to seek, and if the trial court's decision is reversed, will continue to seek, among other things, equitable relief in the form an injunction and/or quiet title to the Priest Point Property.

Appellant's claims have been waived. Even if Appellant could assert the claims being raised in its Complaint, they are meritless and contradicted by long-standing and well established statutory and case law. The *lis pendens* was properly removed at the case dismissed.

D. Appellant's Primary Authority is Distinguishable.

Though Appellant has recited lengthy historical perspectives and numerous legal authorities regarding the DTA, Appellant has not – in the trial court or in this appeal – cited any defect or inconsistency with respect to the Trustee's Sale in this case. Appellant has not articulated how Respondents did not strictly comply with the terms of the DTA. In this regard, Appellant relies on *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn.2d 560, 563, 276 P.3d 1277, 1279 (2012). In *Albice*, the foreclosing trustee

continued the sale date beyond the maximum postponement date, and the lender was accepting late payments monthly from the defaulted borrower throughout the foreclosure process leading up to the sale. *Id.* at 564. The foregoing are serious irregularities with the sale; here, no such irregularities existed with respect to the nonjudicial foreclosure process here.

Appellant also relies heavily on *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 774, 295 P.3d 1179, 1181 (2013), which is also wholly dissimilar from the instant case. In *Klem*, the borrower (an individual) had passed away, and the foreclosing trustee was aware of a signed purchase and sale agreement between the estate and a qualified buyer that would have paid nearly three times the debt owed to the foreclosing lender. *Id.* Instead, the foreclosing trustee refused to continue the sale and sold the property for a *de minimis* amount to a third-party bidder for one dollar more than the borrower owed to the lender. *Id.*

Here, the foreclosing trustee continued the sale multiple times during the course of Appellant's successive bankruptcy

filings, and Appellant had years to consider voluntarily selling the property to repay BRMK.

Appellant has not cited any controlling authority that is directly on point to the facts of this case.

E. The Deed of Trust Is Fully Enforceable.

Appellant cannot lawfully dispute that the Deed of Trust it signed is, and always was, fully enforceable as a matter of contract between the parties, and Appellant has not shown otherwise. The loan documents and instruments in the record are clear, unambiguous, and enforceable. “The primary objective in contract interpretation is to ascertain the mutual intent of the parties at the time they executed the contract.” *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 712, 334 P.3d 116 (2014) (citing, *Int’l Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 282, 313 P.3d 395 (2013)). Washington follows the “objective manifestation theory” of contract interpretation, under which the focus is on the reasonable meaning of the contract language to determine the parties’ intent. *Hearst Commc’ns, Inc.*

v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

“We generally give words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent.” *Id.* at 504. The Washington Supreme Court views the contract as a whole, interpreting particular language in the context of other contract provisions. *See, Weyerhaeuser Co. v. Com. Union Ins. Co.*, 142 Wn.2d 654, 669-70, 15 P.3d 115 (2000).

“It is the duty of the court to declare the meaning of what is written, and not what was intended to be written.” *J.W. Seavey Hop Corp. v. Pollock*, 20 Wn.2d 337, 349, 147 P.2d 310 (1944), quoted with approval in *Berg v. Hudesman*, 115 Wn.2d 657, 669, 801 P.2d 222, 229 (1990). *See also, Lynott v. National Union Fire Ins. Co.*, 123 Wn.2d 678, 697, 871 P.2d 146 (1994) (Guy, J., dissenting); *Swanson v. Liquid Air Corp.*, 118 Wn.2d 512, 550, 826 P.2d 664 (1992) (Andersen, J., concurring). *U.S. Credit Life Ins. Co. v. Williams*, 129 Wn.2d 565, 572, 919 P.2d 594, 598 (1996).

Respectfully, Appellant may not challenge the substance or

validity of its contract with BRMK, and so each and every written agreement between the parties should be enforced and upheld on appeal, as was done in the trial court.

Pursuant to the express written terms of the Deed of Trust on the Priest Point Property, BRMK's rights and remedies upon default included nonjudicial foreclosure. *See, **Appendix B***, Deed of Trust. BRMK proceeded accordingly by statute.

Under long-standing Washington law, parties are bound to the contracts they voluntarily sign.¹ Upon default, BRMK is

¹ The relevant principles are set forth in *National Bank v. Equity Investors*, 81 Wn.2d 886, 912-13, 506 P.2d 20 (1973):

It is a general rule that a party to a contract which he has voluntarily signed will not be heard to declare that he did not read it, or was ignorant of its contents. *Perry v. Continental Ins. Co.*, 178 Wash. 24, 33 P.2d 661 (1934). One cannot, in the absence of fraud, deceit or coercion be heard to repudiate his own signature voluntarily and knowingly fixed to an instrument whose contents he was in law bound to understand. [The plaintiff], being not only a person of ordinary understanding but one with more than ordinary experience in land transactions and instruments of conveyance and security, and with time and opportunity both to consult with an attorney and to inspect the instruments before signing, cannot now be heard in law to repudiate his signature. The whole panoply of contract law rests on the principle that one is bound by the contract which he voluntarily and knowingly signs. As we said in *Lake Air, Inc. v. Duffy*, 42 Wn.2d 478, 480, 256 P.2d 301

contractually and legally entitled to be repaid, including without limitation by way of liquidation of its collateral. This result follow a general receivership in early 2020, a Chapter 11 bankruptcy case in mid-2020, a year of settlement negotiations, two successive Chapter 11 bankruptcy case filings by Appellant in 2022, an adversary proceeding filed (and dismissed) within the second Chapter 11 bankruptcy case by Appellant, a foreclosure sale in August 2022, an unlawful detainer proceeding in October 22, and many months of repairs and refurbishments to the Priest Point Property. CP 146-147. Only once the Property went “pending” on the MLS did Appellant suddenly file its complaint in the trial court. CP 143, 448. This is well beyond the statutory and legal parameters for attempting

(1953):

Appellant had ample opportunity to examine the contract in as great a detail as he cared, and he failed to do so for his own personal reasons. [H]e cannot be heard to deny that he executed the contract, and he is bound by it.

Id. at 913.

to restrain a trustee's sale, and Appellant has no legal or factual basis for any other claims or causes of action against Respondents. As such, the trial court's findings, conclusions, and final Judgment should be upheld and affirmed.

F. Respondents Respectfully Request Their Attorneys' Fees and Costs on Appeal.

The trial court found and concluded that Appellant was not substantially justified in recording the *lis pendens* against the Priest Point Property, that Appellant had no legal basis for doing so [CP 223], and, having made that finding, properly exercised its discretion and awarded BRMK its attorneys' fees and costs. *Id.*

Pursuant to the clear terms of the Loan Documents, because Respondents were the prevailing parties in the trial court, and pursuant to RCW 4.84.330, Respondents are entitled to all their attorneys' fees and costs incurred in this appeal. The admitted Loan Documents in the record all specify that Respondents are entitled to their attorneys' fees, costs, and

general expenses related to collection upon default under the agreements.

Pursuant to RAP 18.1, Respondents hereby requests such fees and costs incurred in this appeal.

VIII. CONCLUSION

Appellant's overarching and single-minded theory of the case is actually to argue for a change in the law that prohibits lenders' attorneys from serving as Successor Trustees in order to prevent said attorneys from overseeing nonjudicial foreclosure sales in this State. [Appellant's Brief, pg. 3] That is simply not the law in Washington. Appellant's energies in this regard would be better spent arguing for this desired statutory amendment in the Legislature.

Additionally, Appellant's arguments come too late, and their substance is too little. Serial litigants, Appellant and its principals, Valentin and Viktoriya Stelmakh, have spent years attempting to thwart BRMK's collection efforts, incurring significant default interest and costs of collection along the

way. Appellant has not met its burden to show any legitimacy in any of its issues on appeal: Respondent Hacker & Willig may serve as counsel for the lender and foreclosing trustee, there were no irregularities in any aspect of the foreclosure process, and thus the trial court's findings, orders, and judgment should be affirmed. The obligors on the BRMK loan are legally and contractually required to repay the full loan balance to BRMK. No error or irregularity exists in or following the trial court proceedings, and thus this case should be affirmed.

It is hereby certified that this Brief of Respondent contains 7,897 words pursuant to RAP 18.17. Appellant's Brief is 69 pages in length, which exceeds the page limitation set forth under RAP 18.17(c)(2). Appellant's word count appears to have exceeded the limitation as well because footnotes *are* to be counted under RAP 18.17.

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DATED this 16th day of February, 2024.

Respectfully submitted,

HACKER & WILLIG, INC., P.S.

/s/ Charles L. Butler, III

Arnold M. Willig, WSBA #20104

Elizabeth H. Shea, WSBA #27189

Charles L. Butler, III, WSBA #36893

Attorneys for Respondents

DECLARATION OF SERVICE

On February 16, 2024, I caused to be electronically served via the Appellate Court E-Filing Application, and via e-mail pursuant to the parties' e-service agreement in this case, a true and accurate copy of this Brief of Respondent in the above-captioned case to the following parties:

Counsel for Judgment Debtor
Boris Davidovskiy, Esq.
Law Office of Boris Davidovskiy, P.C.
6100 219th Street SW, Suite 480
Mountlake Terrace, WA 98043
(425) 582-5200
boris@davidovskiylaw.com

I declare under penalty of perjury according to the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of February, 2024.

HACKER & WILLIG, INC., P.S.

/s/ Alice M. Gallagher

Paralegal

Appendix A

1099532

RETURN NAME & ADDRESS

VS DEVELOPING LLC
1904 98th PLACE SW UNIT A
EVERETT, WA 98204



201604070227 3 PGS
 04/07/2016 11:22am \$75.00
 SNOHOMISH COUNTY, WASHINGTON

Please print neatly or type information
 Document Title(s)

QUITCLAIM DEED

Reference Number(s) of related documents:

Additional Reference #'s on page ____

Grantor(s) (Last, First, and Middle Initial)

STELMAKH,

VITA

Additional Grantors on page ____

Grantee(s) (Last, First, and Middle Initial)

VS DEVELOPING LLC

Additional Grantees on page ____

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

SECTION 36 TOWNSHIP 30 RANGE 04 QUARTER NW AND SEC 01 TWP 29
OTR SW PREST POINT PARK, LOT 24 PAGE 04
 Complete legal on page ____

Assessor's Property Tax Parcel/Account Number

00548200002406

Additional parcel #'s on page ____

The Auditor/Recorder will rely on the information provided on this form. The responsibility for the accuracy of the indexing information is that of the document preparer.

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

[Signature]
 Signature of Requesting Party

No. 8657470 4/7/2016 11:19 AM 10.00
 Thank you for your payment.
 NICHOLE

When recorded return to:

VS Developing LLC
Attn: Valentin and Viktoriya Stelmakh
1904 98th Place SW Unit A
Everett, WA 98204

QUITCLAIM DEED

Under Wash. Rev. Code s. 64.04.050

The Grantor,

Vita Stelmakh, an unmarried woman, as her sole property.
2227 Merchant Way
Everett, WA 98208
Snohomish County

For and in consideration of love and affection, exempt from real estate recording taxes pursuant to WAC 458-61A-201

Conveys and quitclaims to the grantee,

VS Developing LLC
1904 98th Place SW Unit A
Everett, WA 98204

All interest in the following described real estate, situated in the County of Snohomish State of Washington:

Section 36 Township 30 Range 04 Quarter NW & Sec 01 Twp 29 Rge 04 Qtr SW PRIEST POINT PARK DIV 2 BLK 000 D-06 - COM SW COR LOT 24 SD PLAT TH N00*31 28W ALG W LN THOF 126.03FT TO TPBTH S61*18 42E ALG LN 110FT N OF S LN SD LOT AS MEAS AT R/A TO SD S LN 323.93FT M/L TO E LN SD LOT 24 TH N00*24 50W ALG E LN SD LOT 232.77FT TH S89*32 29W 283.18FT M/L TO W LN SD LOT TH S00*31 28E ALGW LN SD LOT 75FT M/L TO TPB (AKA LOT 1 OF SNO CO BLA 96-108943 REC UND AFN 9701140119)

Tax Parcel Number: 00548200002406

Commonly known as: 4415 Priest Point Dr NW Marysville WA 98271.

Reference Numbers of documents assigned or released: NONE

Dated this 6th day of April, 2016.

Signed, sealed and delivered in the presence of:

Vita Stelmakh
Signature

Signature

Vita Stelmakh
Print Name

Print Name

Grantor
Capacity

Capacity

Construe all terms with the appropriate gender and quantity required by the sense of this deed.

STATE OF WASHINGTON }

ss.

COUNTY OF KING }

On this day personally appeared before me Vita Stelmakh, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 6th day of April, 2016.

Matthew J Mattson
Notary Public

In and for the State of Washington, residing at:

150 Lake Street #224
Kirkland, WA 98033

Matthew Mattson
Print Name

My Commission Expires:

04-09-17



Appendix B

AFTER RECORDING RETURN TO:

Pyatt Broadmark Management, LLC
600 University Street, Suite 1800
One Union Square
Seattle, WA 98101

**DEED OF TRUST, SECURITY AGREEMENT
AND FIXTURE FILING WITH ASSIGNMENT**

OF LEASES AND RENTS

07-136356
OLD REPUBLIC TITLE LTD 32/251

GRANTOR: VS Developing, LLC, a Washington limited liability company

BENEFICIARY: PBRELF I, LLC, a Washington limited liability company

PRIMARY OBLIGOR: VS Investments Assoc, LLC, a Washington Limited Liability Company

ABBREVIATED LEGAL DESCRIPTION: Lot 1, Boundary Line Adjustment, Recording No. 9701140119, portion of Lot 24, PLAT OF PRIEST POINT PARK NO. 2, Volume 10 of Plats, page 80, Snohomish County, Washington

ASSESSOR'S TAX PARCEL NO.: 005482-000-024-06

REFERENCE NO. FOR DOCUMENTS RELEASED OR ASSIGNED: N/A.

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF LEASES AND RENTS ("Deed of Trust") is made as of April 18, 2016 by VS Developing, LLC, a Washington limited liability company as "Grantor," whose address is 1904 98th Place SW, Unit A, Everett, WA 98204 to Old Republic Title, Ltd, as Trustee, whose address is 19020 33rd Ave W, Ste 360, Lynnwood, WA 98036 for the benefit of PBRELF I, LLC, a Washington Limited Liability Company or assigns, "Beneficiary," whose

AFTER RECORDING RETURN TO:

Pyatt Broadmark Management, LLC
600 University Street, Suite 1800
One Union Square
Seattle, WA 98101

**DEED OF TRUST, SECURITY AGREEMENT
AND FIXTURE FILING WITH ASSIGNMENT**

OF LEASES AND RENTS
07-136356
OLD REPUBLIC TITLE LTD 32/251

GRANTOR: VS Developing, LLC, a Washington limited liability company

BENEFICIARY: PBRELF I, LLC, a Washington limited liability company

PRIMARY OBLIGOR: V S Investments Assoc, LLC, a a Washington Limited Liability Company

ABBREVIATED LEGAL DESCRIPTION: Lot 1, Boundary Line Adjustment, Recording No. 9701140119, portion of Lot 24, PLAT OF PRIEST POINT PARK NO. 2, Volume 10 of Plats, page 80, Snohomish County, Washington

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address is 600 University Street, Suite 1800, One Union Square, Seattle, WA 98101. The property is legally described as:

LEGAL DESCRIPTION: Real property in the County of Snohomish, State of Washington, described as follows:

LOT 1, BOUNDARY LINE ADJUSTMENT, RECORDED ON JANUARY 14, 1997 UNDER RECORDING NO. 9701140119, BEING A PORTION OF LOT 24, PLAT OF PRIEST POINT PARK NO. 2, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 10 OF PLATS, PAGE 80, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

PHYSICAL ADDRESS: 4415 Priest Point Drive Northwest
Marysville, WA 98271

ARTICLE I

1. **Granting Clause.** As security for the Secured Obligations, Grantor hereby grants, bargains, sells and conveys to Trustee in trust, with power of sale and with right of entry and possession as provided herein for the use and benefit of Beneficiary, all Grantor's estate, right, title, interest, claim and demand, now owned or hereafter acquired, in and to the following (the "Property"):

a. The real property in Snohomish County, Washington, described above and any and all improvements now or hereafter located thereon ("Real Property").

b. All land lying in streets and roads adjoining the Real Property, and all access rights and easements pertaining to the Real Property.

c. All the lands, tenements, privileges, reversions, remainders, oil and gas rights, royalties, minerals and mineral rights, all development rights and credits, air rights, hereditaments and appurtenances belonging or in any way pertaining to the Real Property.

d. All (i) water and water rights (whether decreed or undeclared, tributary, nontributary or not nontributary, surface or underground, or appropriated or unappropriated); (ii) ditches and ditch rights; (iii) spring and spring rights; (iv) reservoir and reservoir rights; (v) well rights, whether adjudicated or evidenced by any well or other permit; (vi) decreed or pending plan or augmentation or water exchange plan; and (vii) shares of stock in water, ditch and canal companies and all other evidence of such rights, which are

now owned or hereafter acquired by Grantor and which are appurtenant to or which have been used in connection with such tract or improvements, if any.

e. All buildings, structures, improvements, fixtures, equipment and machinery and property now or hereafter attached to or used in connection with the use, occupancy or operation of the Real Property including, but not limited to, heating and incinerating apparatus and equipment, boilers, engines, motors, generating equipment, telephone and other communication systems, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, irrigation equipment, carpeting, under padding, elevators, escalators, partitions, mantles, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies, and shrubbery and plants. All property mentioned in this subsection (d) shall be deemed part of the realty and not severable wholly or in part without material injury to the Real Property.

f. All rents, issues and profits of the Real Property, all existing and future leases of the Real Property (including renewals, amendments, modifications, replacements, extensions and subleases), all agreements for use and occupancy of the Real Property (all such leases and agreements whether written or oral, are hereafter referred to as the "Leases"), and all guaranties of lessees' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including any income of any nature coming due during any redemption period) under the Leases or from or arising out of the Real Property including minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Property, all proceeds payable as a result of exercise of an option to purchase the Real Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, all security deposits or other deposits for the performance of any lessee's obligations under the Leases, and all proceeds from any rights and claims of any kind which Grantor may have against any lessee under the Leases or any occupants of the Real Property (all of the above are hereafter collectively referred to as the "Rents"). This subsection (f) is subject to the right, power and authority given to the Beneficiary herein to collect and apply the Rents.

g. All other and greater rights and interests of every nature in such Real Property and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Grantor.

h. All furniture, furnishings, appliances, machinery, vehicles, equipment and all other property of any kind now or hereafter located on the Real Property, used or intended to be used on the Real Property wherever actually located, or purchased with the proceeds of the Note (as defined herein), and all rights of Grantor as lessee of any property described in this Section 1(f) above.

i. All compensation, awards, damages, rights of action and proceeds (including insurance proceeds and any interest on any of the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake or other casualty, injury or decrease in the value of the Property.

j. All returned premiums or other payments on any insurance policies pertaining to the Property and any refunds or rebates of taxes or assessments on the Property.

k. All rights to the payment of money, accounts receivable, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all utility deposits), architectural and engineering plans, specifications and drawings, contract rights, governmental permits and licenses, and agreements and purchase orders which pertain to or are incidental to the design or construction of any improvements on the Real Property, Grantor's rights under any payment, performance, or other bond in connection with construction of improvements on the Real Property, and all construction materials, supplies, and equipment delivered to the Real Property or intended to be used in connection with the construction of improvements on the Real Property wherever actually located.

l. All contracts and agreements pertaining to or affecting the Property including, but not limited to, management, operating and franchise agreements, licenses, trade names and trademarks.

m. All of Grantor's interest in and to the proceeds of the loan evidenced by the Note (the "Loan"), whether disbursed or not, any account into which Loan proceeds are deposited, and Grantor's own funds now or later held on deposit as equity funds or for payment of bills relating to the Property.

n. All loan commitments or other agreements, now or hereafter in existence, which will provide Grantor with proceeds to satisfy the Secured Obligations (defined below) and the right to receive the proceeds due under such commitments or agreements including refundable deposits and fees.

o. All books and records pertaining to any and all of the Property and the other collateral described above, including computer readable memory and any computer hardware or software necessary to access and process such memory.

p. All additions, accessions, replacements, substitutions, proceeds and products of the Property described in this Section 1 and of any of the Property which is personal property.

2. **Security Agreement.** If any of the Property is determined to be personal property, Grantor, as Debtor, hereby grants to Beneficiary, as Secured Party, a security interest in all such personal property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement between Grantor and Beneficiary pursuant to the Uniform Commercial Code as adopted in the State of Washington, as now or hereafter amended (the "Uniform Commercial Code"), with respect to the Collateral Property, and any and all property affecting or related to the use and enjoyment of the Property, now or hereafter described in any Uniform Commercial Code Financing Statement naming Grantor as Debtor and Beneficiary as Secured Party. The remedies of Beneficiary for any violation of the covenants, terms and conditions of this Deed of Trust or any Loan Document (defined below) shall include all remedies available to secured parties under the Uniform Commercial Code.

3. **Financing Statement.** This Deed of Trust shall also constitute a financing statement filed for record in the real estate records as a fixture filing pursuant to the Uniform Commercial Code. This Deed of Trust may be given to secure an obligation incurred for the construction of improvements on the Real Property, including the acquisition of the Real Property, or to secure an obligation incurred to refinance an obligation incurred for the construction of improvements on the Real Property.

4. **Obligations Secured.** The following obligations ("Secured Obligations") are secured by this Deed of Trust:

a. Payment by V S Investments Assoc, LLC, a Washington Limited Liability Company ("Primary Obligor") of the sum of One Million Eight Hundred Eighty Thousand

Dollars (\$1,880,000.00) or so much thereof as may be advanced, with interest thereon according to the terms of a Promissory Note of even date in the original principal amount of One Million Eight Hundred Eighty Thousand Dollars (\$1,880,000.00) payable to Beneficiary, as Lender, or order and made by Primary Obligor, as Borrower, including all additional advances, renewals, amendments, modifications, replacements or extensions thereof therefore (the "Note").

b. Payment of any further sums now or hereafter advanced or loaned by Beneficiary to Primary Obligor, or any of its successors or assigns, and payment of every other present and future obligation owing by Primary Obligor to Beneficiary of any kind, and all modifications thereof, including any interest, fees, costs, service charges, indemnifications and expenses connected with such obligations, regardless of whether such sums exceed the amount stated above in subparagraph (a), if (i) the promissory note or other written document evidencing the future advance or loan or other obligation specifically states that it is secured by this Deed of Trust, or (ii) the advance, including costs and expenses incurred by Beneficiary, is made pursuant to the Note, this Deed of Trust or any other documents executed by Primary Obligor evidencing, securing, or relating to the Loan, and/or the Property, whether executed prior to, contemporaneously with, or subsequent to this Deed of Trust (the Note and all such other documents (but excluding the obligations under any personal guaranty), including any construction or loan agreement or any agreement evidencing an existing or future "swap transaction" (as referred to below), and all renewals, amendments, modifications, replacements or extensions thereof, are hereafter collectively referred to as the "Loan Documents", regardless of whether entered into between Beneficiary and Grantor, or Beneficiary and Primary Obligor), together with interest thereon at the rate or rates set forth in the Note, unless otherwise specified in the Loan Documents or agreed in writing.

c. Performance of each agreement, term and condition set forth herein or in the Loan Documents Grantor hereby waives notice and participation in any any renewal, amendment, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Secured Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Primary Obligor, and guarantor, and/or any other person at any time liable for the payment or performance of any or all of the Secured Obligations.

d. Performance and payment of the obligations of Primary Obligor (or any other obligor under the Note) under each and every existing or future "swap transaction" (i.e., any transactions governed by an ISDA master agreement), if any, to which Primary Obligor (or the obligor under the Note) and Beneficiary are parties, if this Deed of Trust is referenced in such transaction as a credit support document.

e. Notwithstanding any of the foregoing, the Secured Obligations shall not include the obligations of Grantor or Primary Obligor under any Certificate and Indemnity Agreement Regarding Building Laws and Hazardous Substances now or hereafter executed by Grantor (or any other person or entity) in connection with the loan evidenced by the Notes.

f. Notwithstanding any of the foregoing, the Secured Obligations shall not include the obligations of any Guarantor of the Secured Obligations under any Guaranty Agreement, regardless of the date of execution of the Guaranty Agreement.

ARTICLE II

1. **Assignment of Rents and Leases.** As further security for the Secured Obligations, Grantor hereby absolutely and irrevocably assigns to Beneficiary all Grantor's interest in the Rents and Leases. Grantor warrants it has made no prior assignment of the Rents or the Leases and will make no subsequent assignment (other than to Beneficiary) without the prior written consent of Beneficiary. At Beneficiary's request, Grantor shall execute and deliver to Beneficiary a separate assignment of rents containing such terms and conditions (not inconsistent with this Deed of Trust) as Beneficiary may reasonably require. The foregoing assignment is subject to the terms and conditions of any separate assignment of the Leases and/or Rents, whenever executed, in favor of Beneficiary and covering the Property, or any portion thereof.

a. Unless otherwise provided in any separate assignment of the Leases and/or the Rents, and so long as Grantor is not in default under this Deed of Trust and Primary Obligor is not in default under any Loan Document, Grantor may collect the Rents as the Rents become due. Grantor shall use the Rents to pay normal operating expenses for the Property and sums due and payments required under this Deed of Trust or under any Loan Document. No Rents shall be collected for a period subsequent to the current one month rental period and first or last month's rent. Grantor's right to collect the Rents shall not constitute Beneficiary's consent to the use of cash collateral in any bankruptcy proceeding.

b. If Grantor is in default under this Deed of Trust or if Primary Obligor is in default under any Loan Document, without notice to Grantor, Beneficiary or its agents, or a court appointed receiver, may collect the Rents. In doing so, Beneficiary may (i) evict lessees for nonpayment of rent, (ii) terminate in any lawful manner any tenancy or occupancy, (iii) lease the Real Property in the name of the then owner on such terms as it may deem best, (iv) institute proceedings against any lessee for past due rent, and (v) do all other acts and things as Beneficiary deems necessary or desirable, including, without limitation, the right to notify lessees that all Rent under such Leases are thereafter to be paid to Beneficiary. Each lessee shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rent made pursuant to such notice. The Rents received shall be applied to payment of the costs and expenses of collecting the Rents, including a reasonable fee to Beneficiary, a receiver or an agent, operating expenses for the Real Property and any sums due or payments required by Grantor under this Deed of Trust or Primary Obligor under any Loan Document, in such order as Beneficiary may determine in its sole discretion. Any excess shall be paid to Grantor, however, Beneficiary may withhold from any excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Beneficiary's failure to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Beneficiary of its rights to collect the Rents. The collection of the Rents by or for Beneficiary shall not cure or waive any default by Grantor under this Deed of Trust or Primary Obligor under any Loan Document. Any Rents paid to Beneficiary or a receiver shall be credited against the amount due from the lessees under the Leases. In the event any lessee under a Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of any Lease assigned hereby, Grantor covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Beneficiary; any check in payment of damages for rejection or termination of any such Lease will be made payable both to the Grantor and Beneficiary; and Grantor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary, it will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to the Secured Obligations in such manner as Beneficiary may elect.

c. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Real Property or any part thereof, Beneficiary is not and shall not be deemed to be: (i) "a mortgagee in possession" for any purpose; (ii) responsible for performing any of the obligations of the lessor under any Lease; (iii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Real Property, or any negligence in the management, upkeep, repair or control of the Real Property; or (iv) liable in any manner for the Real Property or the use, occupancy,

enjoyment or operation of all or any part of it. In exercising its rights under this Section 1 Beneficiary shall be liable only for the proper application of and accounting for the Rents collected by Beneficiary or its agents.

2. **Leases.** Grantor shall fully comply with all of the terms, conditions and provisions of the Leases so that the same shall not become in default and do all things necessary to preserve the Leases in force. Unless otherwise agreed in writing by Beneficiary, without Beneficiary's prior written consent, Grantor will not enter into any Lease (i) on a form of Lease not previously approved by Beneficiary, (ii) for a term of three (3) years or more, or (iii) containing an option or right to purchase all or any part of the Property in favor of any lessee. With respect to any Lease of the whole or any part of the Real Property involving an initial term of three (3) years or more, Grantor shall not, without the prior written consent of Beneficiary, (a) permit the assignment or subletting of all or part of the lessee's rights under the Lease unless the right to assign or sublet is expressly reserved by the lessee under the Lease, (b) modify or amend the Lease for a lesser rental or term, or (c) accept surrender of the Lease or terminate the Lease except in accordance with the terms of the Lease providing for termination in the event of a default. Any proceeds or damages resulting from a lessee's default under any Lease, at Beneficiary's option, shall be paid to Beneficiary and applied against sums owed by Grantor under this Deed of Trust or Primary Obligor under any Loan Document even though such sums may not be due and payable. Except for real estate taxes and assessments, without Beneficiary's prior written consent, Grantor shall not permit any lien to be created against the Real Property which may be or may become prior to any Lease. If the Real Property is partially condemned or suffers a casualty, Grantor shall promptly repair and restore the Real Property in order to comply with the Leases.

3. **Indemnification of Beneficiary.** Nothing herein contained shall be deemed to obligate Beneficiary to perform or discharge any obligation, duty or liability of lessor under any Lease, and Grantor shall and does hereby indemnify and hold Beneficiary harmless from any and all liability, loss or damage which Beneficiary may or might incur under any Lease or by reason of the assignment, with the exception of any liability, loss or damage which results solely from the actions of Beneficiary following the time Beneficiary or its agents or a receiver applied for by Beneficiary takes possession of the Real Property; and any and all such liability, loss or damage incurred by Beneficiary, together with the costs and expenses, including reasonable attorneys' fees, incurred by Beneficiary in defense of any such claims or demands therefor (whether successful or not), shall be additional Secured Obligations, and Grantor shall reimburse Beneficiary therefor on demand.

ARTICLE III

1. **Non-Agricultural Use.** Grantor represents and warrants to Beneficiary that the Property is not used principally or primarily for agricultural or farming purposes.

2. **Performance of Obligations.** Grantor shall promptly and timely comply with all terms and conditions of this Deed of Trust, cause Primary Obligor to pay all sums due pursuant to the Loan Documents, cause Primary Obligor to strictly comply with all the terms and conditions of the Loan Documents, and cause Primary Obligor to perform each Secured Obligation in accordance with its terms.

3. **Warranty of Title.** Grantor warrants that it has good and marketable title to an indefeasible fee simple estate in the Real Property (unless Grantor's present interest in the Real Property is described above as a leasehold interest, in which case Grantor warrants that it lawfully possesses and holds a valid leasehold interest in the Real Property as described above), and good marketable title to the personal property, subject to no liens, encumbrances, easements, assessments, security interests, claims or defects of any kind prior or subordinate to the lien of this Deed of Trust, except those listed in Beneficiary's title insurance policy or approved by Beneficiary in writing (the "Exceptions") and real estate taxes and assessments for the current year. Grantor warrants the Exceptions and the real estate taxes and assessments are not delinquent or in default, and Grantor has the right to convey the Real Property to Trustee for the benefit of Beneficiary, and the right to grant a security interest in the personal property. Grantor will warrant and defend title to the Property and will defend the validity and priority of the lien of this Deed of Trust and the security interests granted herein against any claims or demands.

4. **Waiver of Homestead Exemption.** Grantor hereby waives all rights to any homestead exemption to which Grantor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law.

5. **Prohibited Liens.**

a. Subject to Grantor's rights under subsection (b) below, Grantor shall not permit any governmental or statutory liens (including taxes, mechanic's or materialmen's liens) to be filed against the Property except for real estate taxes and assessments not yet due or liens approved by Beneficiary in writing.

b. Grantor will have the right to contest in good faith by appropriate legal or administrative proceeding the validity of any prohibited lien, encumbrance or charge so

long as (i) no default by Grantor exists under this Deed of Trust or Primary Obligor under any Loan Document, (ii) Grantor first deposits with Beneficiary a bond or other security satisfactory to Beneficiary in the amount reasonably required by Beneficiary, but not more than the amounts specified in RCW 60.04.161, as now or hereafter amended; (iii) Grantor immediately commences its contest of such lien, encumbrance or charge, applies to court for a show cause as provided for in RCW 60.04.221(9), as now or hereafter amended, and continuously pursues the contest in good faith and with due diligence; (iv) foreclosure of the lien, encumbrance or charge is stayed; and (v) Grantor pays any judgment rendered for the lien claimant or other third party within ten (10) days after the entry of the judgment. If the contested item is a mechanic's or material men's lien, Grantor will furnish Beneficiary with an endorsement to its title insurance policy which insures the priority of this Deed of Trust over the lien being contested. Grantor will discharge or elect to contest and post an appropriate bond or other security within twenty (20) days of written demand by Beneficiary.

6. **Payment of Taxes and Other Encumbrances.** Grantor shall pay the real estate taxes and any assessments or ground rents, if any, at least seven (7) days prior to delinquency unless otherwise provided for in the reserve account described in Section 17 below. All other encumbrances, charges and liens affecting the Property, including mortgages and deeds of trust, whether prior to or subordinate to the lien of this Deed of Trust, shall be paid when due and shall not be in default. On request, Grantor shall furnish evidence of payment of these items.

7. **Maintenance-No Waste.** Grantor shall protect and preserve the Property and maintain it in good condition and repair. Grantor shall do all acts and take all precautions, which from the character and use of the Property are reasonable, proper, or necessary to so maintain, protect and preserve the Property. Grantor shall not commit or permit any waste of the Property.

8. **Alterations, Removal and Demolition.** Unless otherwise agreed in writing by Beneficiary, Grantor shall not structurally alter, remove or demolish any building or improvement on the Real Property without Beneficiary's prior written consent. Grantor shall not remove any fixture or other item of property which is part of the Property without Beneficiary's prior written consent unless the fixture or item of property is replaced by an article of equal suitability, owned by Grantor free and clear of any lien or security interest.

9. **Completion, Repair and Restoration.** Grantor shall promptly complete or repair and restore in good workmanlike manner any building or improvement on the Real Property which may be constructed or damaged or destroyed and shall pay all costs incurred therefor. Prior to commencement of any construction requiring a building permit, Grantor

shall submit the plans and specifications for Beneficiary's approval and furnish evidence of sufficient funds to complete the work.

10. **Compliance With Laws.** Grantor shall comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property, including, without limitation, all applicable requirements of the Fair Housing Act of 1968 (as amended) and the Americans With Disabilities Act of 1990 (as the same may be amended from time to time), and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, regulations, covenants, conditions, and restrictions. Grantor shall defend, indemnify and hold Beneficiary harmless from and against all liability threatened against or suffered by Beneficiary by reason of a breach by Grantor of the foregoing representations, warranties, covenants and agreements. The foregoing indemnity shall include the cost of all alterations to the Property (including architectural, engineering, legal and accounting costs), all fines, fees and penalties, and all legal and other expenses (including attorneys' fees) incurred in connection with the Real Property being in violation of any such laws, ordinances, regulations, covenants, conditions and restrictions. If Beneficiary or its designee shall become the owner of or acquire an interest in or rights to the Property by foreclosure or deed in lieu of foreclosure of this Deed of Trust or by other means, the foregoing indemnification obligation shall survive such foreclosure or deed in lieu of foreclosure or other acquisition of the Property. Notwithstanding the preceding sentence, Grantor shall have no obligation to defend, indemnify or hold Beneficiary harmless from any liability arising from or out of the activities of Beneficiary or its agents with respect to the Property on or after the transfer of the Property to Beneficiary pursuant to foreclosure proceedings or in lieu thereof.

11. **Impairment of Collateral.** Grantor shall not, without Beneficiary's prior written consent, change the general nature of the occupancy of the Real Property, initiate, acquire or permit (within its control) any change in any public or private restrictions (including without limitation a zoning reclassification) limiting the uses which may be made of the Property, or take or permit (within its control) any action which would impair the Property or Beneficiary's lien or security interest in the Property.

12. **Inspection of Collateral.** Beneficiary and/or its representative may inspect the Property at reasonable times after reasonable notice.

13. **Grantor's Defense of Collateral.** Grantor shall appear in and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee under this Deed of Trust.

14. **Beneficiary's Right to Protect Collateral.** Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee under this Deed of Trust. Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien not listed as an Exception which in its judgment appears to be prior or superior to the lien of this Deed of Trust. If Grantor fails to make any payment or do any act required under this Deed of Trust or Primary Obligor fails to make any payment or do any act required under any Loan Document, Beneficiary, without any obligation to do so and without releasing Grantor from any obligations under this Deed of Trust or Primary Obligor under any Loan Document, may make the payment or cause the act to be performed in such manner and to such extent as Beneficiary may deem necessary to protect the Property. Beneficiary is authorized to enter upon the Real Property for such purposes. In exercising any of these powers Beneficiary may incur such expenses, in its absolute discretion, it deems necessary.

15. **Environmental Matters.** Grantor is responsible for all obligations of compliance with any and all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, concerning public health, safety or the environment, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental conditions or concerns as may now or at any time hereafter be in effect. Grantor covenants and agrees to comply with all obligations imposed by applicable law, rules, regulations or requirements of any governmental authority regarding the generation, storage and disposal of hazardous substances at the Real Property. Grantor further agrees to promptly notify Beneficiary of any violation as to any environmental matter and any spills or accidents involving a hazardous substance, and to permit reasonable entry onto the Real Property by Beneficiary for verification of Grantor's compliance with this covenant. Grantor agrees to indemnify and hold Beneficiary, and its successors and assigns, harmless against any and all loss, claim, damage, liability, fine, penalty, cost or expense resulting from a breach of this Section and Grantor will pay or reimburse Beneficiary for all costs and expenses (including, without limitation, expert opinions or investigations, clean-up expenses, third party claims and environmental impairment expenses, loss of rent, and attorneys' fees and expenses) incurred by Beneficiary in connection with Grantor's generation, storage or disposal of hazardous substances. This indemnification by Grantor shall survive the termination or expiration of this Deed of Trust and the repayment of the Loan.

16. **Prohibited Activities.** Grantor shall not use, occupy, or permit the use or occupancy of any portion of the Real Property by Grantor, Primary Obligor or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a

violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation any law relating to the use, sale, possession, cultivation, manufacture, distribution or marketing of any controlled substances or other contraband (whether for commercial, medical, or personal purposes), or any law relating to the use or distribution of marijuana (collectively, "Prohibited Activities"). If Grantor becomes aware that any lessee is likely engaged in any Prohibited Activities, Grantor shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities. Failure by Grantor to comply with this Section shall constitute a material non-curable default. In addition and not by way of limitation, Grantor shall indemnify, defend and hold Beneficiary, and its successors and assigns, harmless from and against any and all loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of or related to any Prohibited Activities by Grantor or any lessee, tenant, licensee, permittee, agent, or any other person. This indemnity includes, without limitation any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture.

17. **Reserve Account.**

a. Subject to subsection (d) below, if Beneficiary so requires, Grantor (or in Beneficiary's discretion, Primary Obligor) shall pay to Beneficiary monthly, together with and in addition to any payments due under the Note, a sum, as estimated by Beneficiary, equal to the ground rents, if any, the real estate taxes and assessments next due on the Real Property and the premiums next due on insurance policies required under this Deed of Trust or any Loan Document, less all sums already paid therefore, divided by the number of months to elapse before two (2) months prior to the date when the ground rents, if any, real estate taxes, assessments and insurance premiums will become delinquent. The monthly reserve accounts payments and, if agreed that Primary Obligor may make such payments, any other payments due under the Note shall be paid in a single payment and applied by Beneficiary, at its option, and in the following order if Beneficiary does not elect a different order: (1) ground rents, if any, real estate taxes, assessments and insurance premiums, (2) expenditures made pursuant to the Loan Documents and interest thereon, (3) interest on the Note, and (4) principal due on the Note. Grantor shall promptly deliver to Beneficiary all bills and notices pertaining to the ground rents, if any, taxes, assessments and insurance premiums.

b. The reserve account is solely for the protection of Beneficiary. Beneficiary shall have no responsibility except to credit properly the sums actually received by it. No interest will be paid on the funds in the reserve account and Beneficiary shall have no

obligation to deposit the funds in an interest-bearing account. Upon assignment of this Deed of Trust by Beneficiary, any funds in the reserve account shall be turned over to the assignee and any responsibility of Beneficiary with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the grantee all rights of Grantor to any funds in the reserve account.

c. If the total of the payments to the reserve account exceeds the amount of payments actually made by Beneficiary, plus such amounts as have been reasonably accumulated in the reserve account toward payments to become due, such excess may, at Beneficiary's election, be (1) credited by Beneficiary against sums then due and payable under this Deed of Trust or by Primary Obligor under any Loan Document, or (2) refunded to Grantor as its name appears on the records of Beneficiary. If, however, the reserve account does not have sufficient funds to make the payments when they become due, Grantor, or with Beneficiary's consent, Primary Obligor, shall pay to Beneficiary the amount necessary to make up the deficiency within fifteen (15) days after written notice to Grantor. If this Deed of Trust is foreclosed or if Beneficiary otherwise acquires the Property, the Beneficiary shall, at the time of commencement of the proceedings or at the time the Property is otherwise acquired, apply the remaining funds in the reserve account, less such sums as will become due during the pendency of the proceedings, against the sums due by Grantor under this Deed of Trust or Primary Obligor under any Loan Document and/or to make payments required by Grantor under this Deed of Trust or Primary Obligor under any Loan Document.

d. Grantor shall not be required to pay monthly reserve account payments so long as there has been no more than four (4) late payments by Primary Obligor due under the Note throughout the term of the Loan and there is no other default under this Deed of Trust or by Primary Obligor under any Loan Document and so long as Grantor remains in ownership of the Property, provided receipted bills evidencing the payment of all taxes and/or assessments and insurance premiums are exhibited to Beneficiary within fifteen (15) days after Beneficiary's request therefore. Upon any change in any of these conditions, Beneficiary may, at its option then or thereafter exercised, require the payment of reserves pursuant to this Section 17.

18. **Repayment of Beneficiary's Expenditures.** Grantor, and in Beneficiary's discretion, Primary Obligor, shall pay within ten (10) days after written notice from Beneficiary all sums expended by Beneficiary and all costs and expenses incurred by Beneficiary in taking any actions pursuant to this Deed of Trust or the Loan Documents including attorneys' fees, accountants' fees, appraisal and inspection fees, and the costs for title reports. If any laws or regulations are passed subsequent to the date of this Deed of Trust which require Beneficiary to incur out-of-pocket expenses in order to maintain, modify,

extend or foreclose this Deed of Trust, revise the terms of the Loan or consent to an Accelerating Transfer (as defined below), Grantor shall reimburse Beneficiary for such expenses within ten (10) days after written notice from Beneficiary. Expenditures by Beneficiary shall bear interest from the date of such advance or expenditure at the default interest rate in the Note, shall constitute advances made under this Deed of Trust and shall be secured by and have the same priority as the lien of this Deed of Trust. If Grantor or Primary Obligor fails to pay any such expenditures, costs and expenses and interest thereon, Beneficiary may, at its option, without foreclosing the lien of this Deed of Trust, commence an independent action against Grantor or Primary Obligor for the recovery of the expenditures and/or advance any undisbursed Loan proceeds to pay the expenditures.

19. **Accelerating Transfers.**

a. "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, transfer of full possessory rights, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law or otherwise, and whether or not for record or for consideration. If Grantor is a corporation, "Accelerating Transfer" also means any transfer or transfers of shares possessing, in the aggregate, more than fifty percent (50%) of the voting power. If Grantor is a partnership, "Accelerating Transfer" also means withdrawal or removal of any general partner, dissolution of the partnership under Washington law, or any transfer or any transfers of, in the aggregate, more than fifty percent (50%) of the partnership interests. If Grantor is a limited liability company or other form of limited liability entity, "Accelerating Transfer" also means any transfer or transfers of membership or management units, shares or other forms of interest in such entity, possessing, in the aggregate, more than fifty percent (50%) of the voting power. If Grantor is the majority owner of a business, either through ownership of shares of a corporation or interest in a partnership, limited liability company or other entity, which occupies seventy-five percent (75%) or more of the improvements on the Real Property, "Accelerating Transfer" also means any sale, contract to sell, or other transfer of the business or substantial assets of the business, other than in the ordinary course, or the failure of the business to continue to occupy the Real Property.

b. Grantor acknowledges Beneficiary is taking actions in reliance on the expertise, skill, experience and reliability of Grantor, and the obligations secured hereby include material elements similar in nature to a personal service contract or ownership interest. In consideration of Beneficiary's reliance, Grantor agrees that Grantor shall not make any Accelerating Transfer without Beneficiary's prior written consent, which Beneficiary may withhold in its sole discretion. If Beneficiary consents, it may charge the Grantor a fee as consideration for such consent and condition its consent on or Primary Obligor

consenting to changes to the terms and conditions of the Note and any other Loan Documents as Beneficiary may require, including without limitation increasing the interest rate on the Note. Grantor shall pay Beneficiary's actual costs incurred in making its decision to consent to an Accelerating Transfer, including but not limited to the cost of credit reports, an updated appraisal of the Real Property, an updated environmental assessment and documentation. If any Accelerating Transfer occurs without Beneficiary's prior written consent, Beneficiary in its sole discretion may declare an immediate default and all sums secured by this Deed of Trust and due by Grantor and/or Primary Obligor to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided herein. This provision shall apply to each and every Accelerating Transfer regardless of whether or not Beneficiary has consented or waived its rights, whether by action or nonaction, in connection with any previous Accelerating Transfer(s).

c. If all or any part of this Section 19 relevant to a particular Accelerating Transfer is unenforceable according to the law in effect at the time of the Accelerating Transfer, then Grantor shall reimburse Beneficiary for its actual costs incurred in processing the Accelerating Transfer on its records, including but not limited to the cost of modifications of Loan Documents, an appraisal, and obtaining relevant credit and financial information.

20. **Release of Parties or Collateral.** Without affecting the obligations of any party under this Deed of Trust or any Loan Document, and without affecting the lien of this Deed of Trust and Beneficiary's security interest in the Property, Beneficiary and/or Trustee may, without notice (a) release all or any Grantor, Primary Obligor and/or any other party now or hereafter liable for any of the Secured Obligations (including guarantors), (b) release all or any part of the Property, (c) subordinate the lien of this Deed of Trust or Beneficiary's security interest in the Property, (d) take and/or release any other security for or guarantees of the Secured Obligations, (e) grant an extension of time for performance of the Secured Obligations, (f) modify, waive, forbear, delay or fail to enforce any of the Secured Obligations, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Property, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, with or without notice to Grantor, (i) consent to the making of any map or plat of the Real Property, and (j) join in the grant of any easement on the Real Property. Any subordinate lienholder shall be subject to all such releases, extensions or modifications without notice to or consent from the subordinate lienholder. Grantor shall pay any Trustee's, attorneys', title insurance, recording, inspection or other fees or expenses incurred in connection with release of Property, the making of a map, plat or the grant of an easement.

ARTICLE IV

1. **Insurance.**

a. Grantor shall maintain such insurance on the Property as may be required from time to time by Beneficiary, with premiums prepaid, providing replacement cost coverage and insuring against loss by fire and such other risks covered by extended coverage insurance, and such other perils and risks as Beneficiary may require from time to time, including loss of rents and business interruption. Grantor also shall maintain continuous coverage of comprehensive general public liability insurance, naming Beneficiary or assigns as additional insured's, and if the Real Property is located in a designated flood hazard area, flood insurance. All insurance shall be with companies satisfactory to Beneficiary and in such amounts and with such coverage's as Beneficiary may require from time to time, with lender's loss payable clauses in favor of and in form satisfactory to Beneficiary. At least thirty (30) days prior to the expiration of the term of any insurance policy, Grantor shall furnish Beneficiary with written evidence of renewal or issuance of a satisfactory replacement policy. If requested, Grantor shall deliver copies of all policies to Beneficiary. Each policy of insurance shall provide Beneficiary with no less than forty-five (45) days prior written notice of any cancellation, expiration, non-renewal or modification.

b. In the event of foreclosure of this Deed of Trust all interest of Grantor in any insurance policies pertaining to the Property and in any claims against the policies and in any proceeds due under the policies shall pass to Beneficiary.

c. If under the terms of any Lease the lessee is required to maintain insurance of the type required by the Loan Documents and if the insurance is maintained for the benefit of both the lessor and Beneficiary, Beneficiary will accept such policies provided all of the requirements of Beneficiary and the Loan Documents are met. In the event the lessee fails to maintain such insurance, Grantor shall promptly obtain such policies as are required by the Loan Documents.

d. If Grantor fails to maintain any insurance required of it by Beneficiary, or fails to pay any premiums with respect to such insurance, Beneficiary may obtain such replacement insurance as it deems necessary or desirable, or pay the necessary premium on behalf of Grantor, and any sums expended by Beneficiary in so doing shall be added to the principal balance of the Note and bear interest at the default interest rate set forth in the Note.

2. **Damages and Condemnation and Insurance Proceeds.**

a. Grantor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payer to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment: (i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; (ii) all other awards, claims and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; (iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property; and (iv) all interest which may accrue on any of the foregoing.

b. Grantor shall immediately notify Beneficiary in writing if: (i) any damage occurs or any injury or loss is sustained in the amount of \$25,000 or more to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or (ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property. If Beneficiary chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Grantor in adjusting any loss covered by insurance.

c. All proceeds of these assigned claims, other property and rights which Grantor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including attorneys' fees.

d. If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Grantor to use the balance of the proceeds ("Net Claims Proceeds") to pay costs of repairing or reconstructing the Property in the manner described below: (i) the plans and specifications, cost breakdown, construction contract, construction schedule, contractor, and if reasonably required by Beneficiary (following its review of the financial condition of the contractor) payment and performance bond for the work of repair or reconstruction must all be acceptable to Beneficiary; (ii) Beneficiary must receive evidence satisfactory to it that after repair or reconstruction, the Property will be at least as valuable as it was immediately before the damage or condemnation occurred; (iii) the Net Claims Proceeds must be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all

associated development costs and interest projected to be payable on the Note until the repair or reconstruction is complete; or Grantor must provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Grantor and found acceptable by Beneficiary, of the total cost of repair or reconstruction; (iv) Beneficiary must receive evidence satisfactory to it that all Leases will continue after the repair or reconstruction is complete; (v) Beneficiary has received evidence satisfactory to it, that reconstruction and/or repair can be completed at least three (3) months prior to the date the Note secured by this Deed of Trust is due and payable; and (vi) no default by Grantor under this Deed of Trust or Primary Obligor under any Loan Document shall have occurred and be continuing. If the foregoing conditions are met to Beneficiary's satisfaction, Beneficiary shall hold the Net Claims Proceeds and any funds which Grantor is required to provide and shall disburse them to Grantor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Beneficiary that repair or reconstruction has been completed satisfactorily and lien-free. However, if Beneficiary finds that one or more of the conditions are not satisfied, it may apply the Net Claims Proceeds to pay or prepay some or all of Primary Obligor's obligations under the Note and Loan Documents.

ARTICLE V

1. Default.

a. Grantor will be in default ("Default") under this Deed of Trust if (i) Grantor or Primary Obligor, as applicable, fail to make any payment when due under the Note, this Deed of Trust or any Loan Document within ten (10) days of the due date, regardless of how such amount may have become due; (ii) there is a default by Grantor under, a breach of, or failure to perform any other covenant, agreement or obligation to be performed under this Deed of Trust or by Primary Obligor under any Loan Document beyond any applicable notice and cure period; (iii) any representation or warranty contained in this Deed of Trust or any Loan Document, or any financial information furnished by Grantor, Primary Obligor or their agents to Beneficiary in connection with the Loan, proves to be false or misleading in any material respect; (iv) Grantor defaults under any lease or other contract or agreement relating to the Property, and such default is not cured within the applicable cure period, if any; (v) the occurrence of a default or an event of default under any other agreement between Grantor and Beneficiary, Primary Obligor and Beneficiary or between Beneficiary and any guarantor of the Loan; (vi) Grantor, Primary Obligor or any guarantor of the Loan fails to pay his, her or its debts generally as they become due, or files a petition or action for relief under any bankruptcy, reorganization or insolvency laws or makes an assignment for the benefit of creditor; (vii) an involuntary petition is filed against Grantor, Primary Obligor or any guarantor of the Loan under any bankruptcy, reorganization or other insolvency laws,

or a custodian, receiver or trustee is appointed to take possession, custody or control of the Property or any other properties of Grantor, Primary Obligor or the assets of any guarantor of the Loan, and such petition or appointment is not set aside, withdrawn or dismissed within thirty (30) days from the date of filing or appointment; or Goods, Inventory; or (viii) the death, dissolution or liquidation of Grantor, Primary Obligor or any guarantor.

b. Notwithstanding any other provision of this Deed of Trust, Beneficiary shall not accelerate the maturity of one or more of the Secured Obligations (a) because of a monetary default (defined below) by Grantor or Primary Obligor unless Grantor or Primary Obligor, as applicable, fail to cure the default within ten (10) days of the date on which Beneficiary mails or delivers written notice of the default to Grantor or Primary Obligor, as applicable, or (b) because of a nonmonetary default (defined below) by Grantor or Primary Obligor unless Grantor or Primary Obligor, as applicable, fails to cure the default within thirty (30) days of the date on which Beneficiary mails or delivers written notice of the default to Grantor or Primary Obligor, as applicable. For purposes of this Deed of Trust, the term "monetary default" means a failure by Grantor or Primary Obligor, as applicable, to make any payment required of it hereunder or pursuant to this Deed of Trust, the Note or any Loan Document, and the term "nonmonetary default" means a failure by Primary Obligor or any other person or entity to perform any obligation contained herein, in the Note or any Loan Document, other than the obligation to make payments provided for herein, in the Note or any Loan Document. If a nonmonetary default is capable of being cured and the cure cannot reasonably be completed within the thirty (30) day cure period, the cure period shall be extended up to sixty (60) days so long as Grantor or Primary Obligor has commenced action to cure within the thirty (30) day cure period, and in Beneficiary's reasonable opinion, Grantor or Primary Obligor, as applicable, is proceeding to cure the default with due diligence. None of the foregoing shall be construed to obligate Beneficiary to forebear in any other manner from exercising its remedies and Beneficiary may pursue any other rights or remedies which Beneficiary may have because of a default.

2. **Remedies.** Immediately upon or any time after the occurrence and during the continuance of any Default hereunder, Beneficiary may exercise any remedy available at law or in equity, including but not limited to those listed herein and those listed in the Loan Documents, in such sequence or combination as Beneficiary may determine in Beneficiary's sole discretion:

a. **Performance of Defaulted Obligations.** Beneficiary may make any payment or perform any other obligation under the Loan Documents which Grantor or Primary Obligor has failed to make or perform, and Grantor hereby irrevocably appoints Beneficiary as the true and lawful attorney-in-fact for Grantor to make any such payment

and perform any such obligation in the name of Grantor or Primary Obligor. All reasonable payments made and expenses (including attorneys' fees) incurred by Beneficiary in this connection, together with interest thereon at the Past Due Rate, as defined in the Note, from the date paid or incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Grantor and Primary Obligor to Beneficiary. In lieu of advancing Beneficiary's own funds for such purposes, Beneficiary may use any funds of Grantor or Primary Obligor which may be in Beneficiary's possession, including but not limited to insurance or condemnation proceeds and amounts deposited for taxes, insurance premiums, or other purposes.

b. **Specific Performance and Injunctive Relief.** Notwithstanding the availability of legal remedies, Beneficiary will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Grantor and/or Primary Obligor to cure or refrain from repeating any Default.

c. **Acceleration of Loan Documents.** Beneficiary may, without notice or demand, declare the Loan, the Note, or any other Secured Obligations or Loan Document to which Grantor or Primary Obligor is or may become primarily obligated immediately due and payable in full.

d. **Suit for Monetary Relief.** With or without accelerating the maturity of Note, Beneficiary may sue from time to time for any amount due under any of the Loan Documents.

e. **Possession of Real Property.** Beneficiary may enter and take possession of the Real Property without seeking or obtaining the appointment of a receiver, may employ a managing agent for the Real Property, and may lease or rent all or any part of the Real Property, either in Beneficiary's name or in the name of Grantor, and may collect the rents, issues, and profits of the Real Property. Any revenues collected by Beneficiary under this section, at Beneficiary's option, shall be paid to Beneficiary and applied against sums owed under this Deed of Trust or any Loan Document even though such sums may not be due and payable, or may be obligations of Primary Obligor.

f. **Enforcement of Security Interests.** Beneficiary may exercise all rights of a secured party under the Uniform Commercial Code with respect to Grantor's personal property, including but not limited to taking possession of, holding, and selling such personal property. Any requirement for reasonable notice of the time and place of any public sale, or of the time after which any private sale or other disposition is to be made, will be satisfied by Beneficiary's giving of such notice to Grantor at least ten (10) days prior

to the time of any public sale or the time after which any private sale or other intended disposition is to be made.

g. Foreclosure Against the Real Property. Beneficiary may foreclose this Deed of Trust, insofar as it encumbers the Real Property, either by judicial action or through Trustee and power of sale, in accordance with the laws of the State of Washington then in force. All reasonable fees, costs and expenses of any kind incurred by Beneficiary in connection with foreclosure of this Deed of Trust, including, without limitation, the reasonable costs of any appraisals of the Real Property obtained by Beneficiary, all reasonable costs of any receivership for the Real Property advanced by Beneficiary, all environmental audit and clean-up costs and all attorneys' and consultants' fees incurred by Beneficiary, shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Grantor and Primary Obligor to Beneficiary at any foreclosure sale. The proceeds of any sale under this section shall be applied first to the fees and expenses of the officer conducting the sale, and then to the reduction or discharge of the Secured Obligations; any surplus remaining shall be paid over to Grantor or to such other person or persons as may be lawfully entitled to such surplus. After the expiration of all applicable periods of redemption, unless the property sold has been redeemed as permitted by applicable law, the officer who conducted such sale shall, upon request, execute and deliver an appropriate deed to the holder of the certificate of purchase or the last certificate of redemption, as the case may be. Nothing in this Section dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Washington law, and any such inconsistency shall be resolved in favor of Washington law applicable at the time of foreclosure.

In the event that, upon foreclosure of the Real Property pursuant to this Deed of Trust, the purchaser at the foreclosure sale has bid an amount less than the full indebtedness owed by Grantor and Primary Obligor and secured by this Deed of Trust, then the full amount bid and the full amount of the deficiency shall bear interest thereon at the Past Due Rate, as defined in the Note. Thereafter, the deficiency shall be a continuing obligation of Primary Obligor for which Beneficiary shall be entitled to monetary judgment. At all times after Default, Beneficiary shall be entitled to interest at the Past Due Rate, as defined in the Note, which survive the entry of judgment.

If Beneficiary initiates a foreclosure proceeding, Beneficiary may order an environmental inspection. In the event that the environmental auditor recommends additional tests or inspections, Beneficiary may instruct the environmental auditor to

conduct those additional measures. In the event that such inspections or tests identify that any hazardous waste or substance is located at the Real Property, even those previously disclosed to Beneficiary in environmental reports, Beneficiary may take any action necessary to abate, remediate or remove any hazardous waste or substance, as determined by Beneficiary in Beneficiary's reasonable discretion. (Without limiting the generality of the appropriate factual basis upon which such a decision would be reasonable, Beneficiary's decision to take such remedial measures shall conclusively be considered reasonable if they are recommended by an environmental consultant engaged by Beneficiary.) Such activities may be conducted through a receiver at the election of Beneficiary and may be taken before, during or after the completion of foreclosure proceedings. All costs and expenses of such actions shall be the responsibility of Grantor and at the Beneficiary's election may be capture costs from the foreclosure sales proceeds. It is the intent of this section that, if Beneficiary should obtain title to the Real Property through foreclosure, the Real Property should be free of contamination or possible contamination of any hazardous waste or substance on or about the Real Property.

h. No Waiver of Remedies. Nothing contained in this Deed of Trust or any exercise by Beneficiary of any right or remedy pursuant to this Deed of Trust or any of the Loan Documents, shall modify or limit any obligations or liabilities the Grantor hereunder or Primary Obligor under any of the Loan Documents. Grantor hereby agrees and acknowledges that Beneficiary may seek to enforce any rights and remedies set forth in this Deed of Trust and any of the Loan Documents.

i. Appointment of Receiver. Beneficiary shall be entitled, as a matter of absolute right and without regard to the value of any security for the Secured Obligations, or the solvency of any person liable therefor, to the appointment of a receiver for the Real Property upon ex-parte application to any court of competent jurisdiction. Grantor waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver and his agents shall be empowered: (a) to take possession of the Real Property and any businesses conducted by Grantor or any other person thereon and any business assets used in connection therewith; (b) to exclude Grantor and Grantor's agents, servants, and employees from the Real Property; (c) to collect the rents, issues, profits, and income therefrom; (d) to complete any construction which may be in progress; (e) to do such maintenance and make such repairs and alterations as the receiver reasonably deems necessary; (f) to use all stores of materials, supplies, and maintenance equipment on the Real Property, as necessary to maintain the Real Property and replace such items at the expense of the receivership estate; (g) to pay all taxes and assessments against the Real Property and the chattels, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance; and

(h) generally to do anything which Grantor could legally do if Grantor was in possession of the Real Property. All expenses incurred by the receiver or his agents shall constitute a part of the Secured Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Beneficiary, together with interest thereon at the Past Due Rate, as defined in the Note, from the date incurred until repaid, and the balance shall be applied toward the Secured Obligations or in such other manner as the court may direct. Unless sooner terminated with the express consent of Beneficiary, any such receivership will continue until the Secured Obligations have been discharged in full, or until title to the Real Property has passed after foreclosure sale and all applicable periods of redemption have expired.

j. Right to Make Repairs, Improvements. Should any part of the Real Property come into the possession of Beneficiary, after the occurrence and during the continuance of any Default, Beneficiary may (but shall not be required to) use, operate, and/or make repairs, alterations, additions and improvements to the Real Property for the purpose of preserving it or its value. Grantor covenants to promptly reimburse and pay to Beneficiary, at the place where the Note is payable, or at such other place as may be designated by Beneficiary in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Beneficiary in connection with its custody, preservation, use or operation of the Real Property, after the occurrence and during the continuance of any Default, together with interest thereon from the date incurred by Beneficiary at the Past Due Rate, as defined in the Note, and all such expenses, costs, taxes, interest, and other charges shall be a part of the Secured Obligations. It is agreed, however, that the risk of accidental loss or damage to the Real Property is undertaken by Grantor and, except for Beneficiary's willful misconduct or gross negligence, Beneficiary shall have no liability whatsoever for decline in value of the Real Property, for failure to obtain or maintain insurance, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

k. Surrender of Insurance. Beneficiary may surrender the insurance policies maintained pursuant to the terms hereof, or any part thereof, and receive and apply any unearned premiums as a credit on the Secured Obligations and, in connection therewith, Grantor hereby appoints Beneficiary (or any officer of Beneficiary) as the true and lawful agent and attorney-in-fact for Grantor (with full powers of substitution), which power of attorney shall be deemed to be a power coupled with an interest and therefore irrevocable, to collect such premiums.

l. **Costs in Enforcing Performance.** Grantor shall pay all costs and expenses including, without limitation, costs of title searches and title policy commitments, Uniform Commercial Code searches, appraisals, environmental audits, court costs and reasonable in-house and outside attorneys' fees, incurred by Beneficiary in enforcing payment and performance of the Obligations or in exercising the rights and remedies of Beneficiary hereunder. All such costs and expenses shall be secured by this Deed of Trust and by all other lien and security documents securing the Secured Obligations. In the event of any court proceedings, court costs and attorney fees shall be set by the court and not by jury and shall be included in any judgment obtained by Beneficiary.

m. **Cumulative Remedies.** To the fullest extent allowed by law, all Beneficiary's and Trustee's rights and remedies specified herein and in the Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law or in equity. Without waiving its rights in the Property, Beneficiary may proceed against Grantor, Primary Obligor or may proceed against any other security or guaranty for the Secured Obligations, in such order and manner as Beneficiary may elect. The commencement of proceedings to enforce a particular remedy shall not preclude the discontinuance of the proceedings and the commencement of proceedings to enforce a different remedy.

ARTICLE VI

1. **Additional Security Documents.** Grantor shall within fifteen (15) days after request by Beneficiary execute and deliver any financing statement, renewal, affidavit, certificate, continuation statement, or other document Beneficiary may request in order to perfect, preserve, continue, extend, or maintain security interests or liens granted herein to Beneficiary and the priority of such security interests or liens. Grantor shall pay all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing, and refilling of any such document.

2. **Reconveyance After Payment.** Upon written request of Beneficiary stating that all obligations secured by this Deed of Trust have been paid, Trustee shall reconvey, without warranty, the Collateral then subject to the lien of this Deed of Trust. Grantor shall pay any costs, trustee's fees and recording fees incurred in so reconveying the Property.

3. **Nonwaiver of Terms and Conditions.** Time is of the essence with respect to performance of the obligations under this Deed of Trust or any Loan Document. Beneficiary's failure to require prompt enforcement of any such obligation of Grantor or

Primary Obligor shall not constitute a waiver of the obligation or any subsequent required performance of the obligation. No term or condition of this Deed of Trust or any Loan Documents may be waived, modified or amended except by a written agreement signed by Grantor or Primary Obligor, as applicable, and Beneficiary. Any waiver of any term or condition shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

4. **Waivers by Grantor.** Without affecting any of Grantor's obligations under this Deed of Trust or Primary Obligor's obligations under any Loan Document, Grantor waives the following: (a) any right to require Beneficiary to marshal its assets and remedies or to proceed against any specific party liable for sums due under this Deed of Trust or any Loan Document (including Primary Obligor) or to proceed against or exhaust any specific security for sums due under this Deed of Trust or any Loan Document; (b) notice of new or additional indebtedness of any Grantor, Primary Obligor or any other party liable for sums due under this Deed of Trust or any Loan Document to Beneficiary; (c) any defense arising out of Beneficiary entering into additional financing or other arrangements with any Grantor, Primary Obligor or any other party liable for sums due under this Deed of Trust or any Loan Document and any action taken by Beneficiary in connection with any such financing or other arrangements or any pending financing or other arrangements; (d) any defense arising out of the absence, impairment, or loss of any or all rights of recourse, reimbursement, contribution or subrogation or any other rights or remedies of Beneficiary against any Grantor, Primary Obligor or any other party liable for sums due under this Deed of Trust or any Loan Document or any Property; and (e) any obligation of Beneficiary to see to the proper use and application of any proceeds advanced pursuant to this Deed of Trust or any Loan Document.

5. **Right of Subrogation.** Beneficiary is subrogated to the rights, whether legal or equitable, of all beneficiaries, mortgagees, lienholders and owners directly or indirectly paid off or satisfied in whole or in part by any proceeds advanced by Beneficiary under this Deed of Trust or any Loan Document, regardless of whether such parties assigned or released of record their rights or liens upon payment.

6. **Joint and Several Liability.** If there is more than one Grantor of this Deed of Trust, their obligations shall be joint and several.

7. **Statement of Amount Owed.** Grantor, within fifteen (15) days after request by Beneficiary will furnish Beneficiary a written statement of the amount secured by this Deed of Trust or due under any Loan Document, any offsets or defenses against the amount claimed by Grantor, and such other factual matters as Beneficiary may reasonably request.

8. **Appraisals.** In the event of a Default, Beneficiary may obtain a current regulatory conforming appraisal of the Property. In addition, appraisals may be commissioned by Beneficiary when required by laws and regulations which govern Beneficiary's lending practices. The cost of all such appraisals (and related internal review fees and costs) will be paid by Grantor within fifteen (15) days after request by Beneficiary.

9. **Payment of New Taxes.** If any federal, state or local law is passed subsequent to the date of this Deed of Trust which requires Beneficiary to pay any tax because of this Deed of Trust or the sums due under this Deed of Trust or any Loan Document (excluding income taxes), then Grantor and Primary Obligor shall pay to Beneficiary on demand any such taxes if it is lawful for Grantor to pay them, or, in the alternative Grantor may repay all sums due under this Deed of Trust or any Loan Document plus any prepayment fee within thirty (30) days of such demand. If it is not lawful for Grantor to pay such taxes, then at its option Beneficiary may declare a default under this Deed of Trust or any Loan Document.

10. **Notices.** Any notice required or desired to be given hereunder shall be in writing and shall be considered effective, if by personal delivery, when delivered, if by nationally recognized overnight carrier, when delivered if prior to 5:00 p.m. local time of the recipient on a business day, or if not, at 9:00 a.m., local time on the next business day, if mailed by certified mail, return receipt requested, postage prepaid, upon the earlier of (i) first attempted delivery by the U.S. Postal Service after mailing or (ii) the second (2nd) business day following the date of mailing, addressed to the party at the address set forth above (or such other address as a party may specify by written notice given pursuant to this paragraph), or with respect to the Grantor, to the address at which Beneficiary customarily or last communicated with Grantor. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt.

11. **Controlling Document.** In the event of a conflict or inconsistency between the terms and conditions of this Deed of Trust and the terms and conditions of any of the Loan Documents (except for any separate assignment of the Rents and/or the Leases and any loan agreement which shall prevail over this Deed of Trust), the terms and conditions of this Deed of Trust shall prevail.

12. **Invalidity of Terms and Conditions.** If any term or condition of this Deed of Trust is found to be invalid, the invalidity shall not affect any other term or condition of the Deed of Trust and the Deed of Trust shall be construed as if not containing the invalid term or condition.

13. **Legislation Affecting Beneficiary's Rights.** If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Deed of Trust unenforceable according to its terms, Beneficiary, at its option, may require immediate payment in full of all Secured Obligations and may invoke any remedies permitted herein.

14. **Rules of Construction.** This Deed of Trust shall be construed so that, whenever applicable, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships, limited partnerships, limited liability companies and other forms of entities. This Deed of Trust inures to the benefit of, and binds all parties named herein and their successors and assigns. The headings to the various sections have been inserted for convenience of reference only and shall not be used to construe this Deed of Trust.

15. **Applicable Law.** The Loan Documents shall be governed by and construed in accordance with the laws of the State of Washington, venued in King County, Seattle Division.

16. **Waiver of Jury Trial:** GRANTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GRANTOR AND BENEFICIARY MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS DEED OF TRUST OR ANY OF THE LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS DEED OF TRUST. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GRANTOR, AND GRANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GRANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

(Signatures to Follow)

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

Signed and delivered as of the date first mentioned above.

GRANTOR:

VS Developing, LLC, a Washington limited liability company

By:  member
Valentin Stelmakh, Member

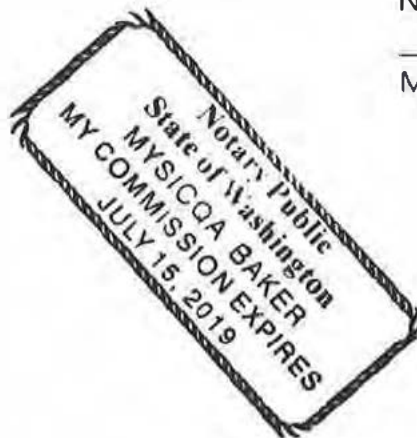
By:  member
Viktoriya Stelmakh, Member

STATE OF WA)
) S.S.
COUNTY OF Snohomish)

I certify that I know or have satisfactory evidence that Valentin Stelmakh and Viktoriya Stelmakh are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they was authorized to execute the instrument and acknowledged it as Members of VS Developing, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4-18/10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]
Print Name: MYSICQA BAKER
NOTARY PUBLIC in and for the State of
WA residing at: Edmonds
My appointment expires: 7/15/19

HACKER & WILLIG INC PS

December 20, 2024 - 2:22 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,636-1
Appellate Court Case Title: VS Developing, LLC v. BRMK Priest Point, LLC, et al.
Superior Court Case Number: 23-2-03724-1

The following documents have been uploaded:

- 1036361_Answer_Reply_20241220141344SC621257_6312.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
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A copy of the uploaded files will be sent to:

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- eshea@hackerwillig.com
- thao@hackerwillig.com

Comments:

Sender Name: Charles Butler - Email: charlie@hackerwillig.com

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