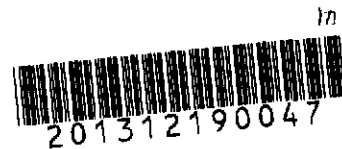


RECORDATION REQUESTED BY:

Raymond L. Ruff, Esq.
Phillips Lytle LLP
1400 First Federal Plaza
Rochester, New York 14614

WHEN RECORDED MAIL TO:

Phillips Lytle LLP
1400 First Federal Plaza
Rochester, New York 14614



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SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

GUARDIAN NORTHWEST TITLE CO.

ASSIGNMENT OF LEASES AND RENTS

106609-4

DATE: December 12, 2013

Reference No. (if applicable): PLP 65234650-07

Additional on page _____

Trustor:

Orca Property Management, LLC

Borrowers:

**Anacortes P.T., LLC, Anacortes Physical Therapy, Inc., P.S., Orca Property Management, LLC
and Skagit Island Rehabilitation Group, LLC**

Grantee(s)/Beneficiary:

KeyBank National Association, Lender, Beneficiary

Legal Description Abbreviated: Units 210A, 210B, 210C and 210D PMW Building Condominium

Additional Legal Description is on Schedule "A" of this document (page _____)

P112687, P112688, P112689, P112690

ASSIGNMENT OF LEASES AND RENTS

Loan No: PLP 65234650-07

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Assessor's Tax Parcel ID No.: 112687, 112688, 112689 and 112690

THIS ASSIGNMENT, dated as of December 12, 2013, given by **ORCA PROPERTY MANAGEMENT, LLC**, a Washington limited liability company with offices at 3001 R Avenue, Suite Suite 210 A-D, Anacortes, Washington 98221 (the "Trustor") and **KEYBANK NATIONAL ASSOCIATION**, a bank with offices at 4910 Tiedeman Road, Brooklyn, Ohio 44144 ("Beneficiary").

RECITALS:

WHEREAS:

A. The Trustor is the owner of certain land and improvements more particularly described in Schedule A attached hereto and made a part hereof (the "Property");

B. The Property has been mortgaged by the Trustor to the Beneficiary pursuant to a certain Deed of Trust dated of even date herewith (the "Deed of Trust") given to secure payment of all obligations of Trustor and Anacortes P.T., LLC, Anacortes Physical Therapy, Inc., P.S., Orca Property Management, LLC and Skagit Island Rehabilitation Group, LLC to the Beneficiary of any kind, direct or indirect, absolute or contingent, now or hereafter existing (the "Debt"); and

C. The Trustor has leased or will lease all or portions of the Property to tenants as described on Schedule B attached hereto and made a part hereof (the "Tenants") pursuant to leases described on Schedule B (the "Leases").

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, THE TRUSTOR DOES HEREBY ASSIGN, TRANSFER AND SET OVER UNTO THE BENEFICIARY AND ITS SUCCESSORS AND ASSIGNS FOREVER, all of the right, title and interest of the Trustor in and to the Leases and all other leases, tenancies and occupancies now or hereafter affecting the Property or any part thereof and all amendments, modifications, extensions and renewals thereof (collectively, the "Assigned Leases"), together with (a) all of the rents, issues and profits which may be or become due, or to which the Trustor may now or hereafter become entitled, arising or issuing out of the Assigned Leases or from or out of the Property or any part thereof, (b) all insurance proceeds heretofore and hereafter paid by reason of any use or occupancy loss, business interruption or interruption of rental payments under the Assigned Leases or any part thereof, and (c) all condemnation proceeds hereafter paid by reason of any taking related to the Assigned Leases, which rents, issues, profits, condemnation proceeds, and insurance proceeds, together with any and all claims of the Trustor with respect thereto, are hereby assigned to and pledged to the Beneficiary.

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ASSIGNMENT OF LEASES AND RENTS

Loan No: PLP 65234650-07

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This Assignment is delivered and accepted upon the following terms and conditions:

1. **Status of Leases:** Trustor represents and warrants that (a) there are no leases, tenancies or occupancies affecting the Property or any part thereof presently in effect other than those Leases described in Schedule B, (b) each of the Assigned Leases described in Schedule B is a valid and subsisting lease of the property therein described and purported to be demised thereby for the term therein set forth and is in full force and effect on the date hereof in accordance with its terms and, except as may otherwise be indicated on Schedule B, has not been modified or amended from the date of its execution to the date hereof, (c) the Trustor has duly and punctually performed and observed all of its covenants and obligations under each of the Assigned Leases, (d) neither the Trustor nor any of the Tenants has been declared to be in default with respect to the performance or observance of any of their respective covenants or obligations under the Assigned Leases, (e) there are no rights of off-set, abatement or reduction of rent presently accruing to any Tenant under any of the Assigned Leases by virtue of any provision of any of the Assigned Leases or otherwise, (f) the Trustor has not sold, assigned, transferred, mortgaged, pledged or otherwise encumbered any of the rents, issues or profits which may be or become due, or to which the Trustor may now or hereafter become entitled, arising or issuing out of the Assigned Leases or from or out of the Property or any part thereof, except for this Assignment to Beneficiary, (g) no rents, issues or profits from any of the Assigned Leases becoming due subsequent to the date hereof have been collected, nor has payment of the same been anticipated, waived, released, discounted or otherwise discharged or compromised, and (h) all of the Assigned Leases contain (and any Assigned Leases hereafter entered into will contain) a provision (or will be amended to contain a provision) whereby the Tenant agrees that the Assigned Lease and any and all modifications, amendments, renewals and extensions thereof is, shall be and shall remain in all respects subject and subordinate to any deed of trust held at any time by the Beneficiary and all disbursements to be made under any building loan contract between Trustor and the Beneficiary, and to all modifications, amendments, consolidations, extensions, renewals and increases of any such deeds of trust, that it will attorn to any purchaser of the fee and/or leasehold estates in and to the Property pursuant to a judicial sale in any action, suit or proceeding brought to foreclose any such deed of trust or by deed and/or assignment in lieu of foreclosure, including the Beneficiary, recognize such purchaser as landlord for all purposes of the Assigned Lease and continue to perform and observe all of its covenants and obligations as Tenant under the Assigned Lease for the remainder of the term thereof, all upon the same terms and conditions and with the same force and effect as if such purchaser were originally named as the landlord therein.

2. **Trustor's Covenants:** The Trustor covenants and agrees to (a) duly and punctually perform and observe all of its covenants and obligations under the Assigned Leases; (b) enforce or secure the performance and observance of all of the covenants and obligations of each Tenant under the Assigned Leases; (c) promptly deliver to the Beneficiary (i) all notices of default which the Trustor sends to any Tenant under any Assigned Leases, (ii) all notices of the commencement of summary proceedings which the Trustor brings against any Tenant under any Assigned Leases and (iii) all notices of default which any Tenant under any Assigned Leases sends to the Trustor; and (d) promptly obtain and deliver to the Beneficiary, upon its request, a certificate of estoppel of any Tenant under any Assigned Lease.

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ASSIGNMENT OF LEASES AND RENTS

Loan No: PLP 65234650-07

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3. **Actions Requiring Prior Written Consent:** Without the prior written consent of the Beneficiary in each instance, the Trustor agrees not to (a) enter into, modify or amend any Assigned Leases; (b) terminate any of the Assigned Leases; (c) consent to the cancellation or surrender of any of the Assigned Leases; (d) accept any prepayment of installments of rent to become due thereunder other than the acceptance of one month's rent in advance; (e) further sell, assign, transfer, mortgage, pledge or otherwise encumber any of the rents due or to become due under any of the Assigned Leases or any part thereof; or (f) subordinate or permit the subordination of any of the Assigned Leases to any lien subordinate to the lien of the Deed of Trust.

4. **Washington Real Property Law Provisions:** Notwithstanding the licenses to collect rents and otherwise granted to it hereunder, the Trustor agrees that it shall not have the right or power, as against the Beneficiary, without its consent, to cancel, abridge or otherwise modify, or to accept prepayments of installments of rent to become due under, any of the Assigned Leases other than the acceptance of one month's rent in advance. The agreement contained in the preceding sentence is made with reference to and shall be enforceable in accordance with the provisions of the Real Property Law of the State of Washington. The Trustor shall, upon request, enter into an agreement with the Beneficiary pursuant to Washington Real Property Law with respect to any Assigned Leases hereafter entered into, and the Trustor hereby irrevocably appoints the Beneficiary its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to execute, deliver and record on its behalf any such agreement which the Trustor has failed or refused to execute and deliver within ten (10) days after notice and request therefor is given by the Beneficiary. This Agreement is and shall be construed as an instrument relating to the Deed of Trust.

5. **Default by Trustor Under Any Assigned Lease:** In the event of any default by the Trustor in the performance or observance of any of its covenants or obligations under any Assigned Lease, the Beneficiary shall have the right, but not the obligation, to enter the Property or any part thereof at any time and from time to time for the purpose of curing such default, in which event, the cost thereof, together with interest thereon at a rate then in effect on the Debt, but in no event in excess of the maximum rate permitted by law, shall be paid by the Trustor to the Beneficiary on demand. Until so paid, such costs, together with interest thereon, shall be secured by the Deed of Trust, and, if not paid, may be added to the judgment in any action, suit or proceeding brought by the Beneficiary against the Trustor thereon.

6. **Expiration or Termination of Assigned Leases:** In the event of the expiration or other termination of any Assigned Leases prior to termination of the licenses given hereunder to Trustor by the Beneficiary, the Trustor will use its best efforts to promptly relet the portion of the Property affected thereby and not being used by the Trustor at the highest rental then obtainable and will use its best efforts to keep the Property fully rented at all times during which this Assignment is in effect.

7. **Maintenance of Property/Insurance:** The Trustor will maintain the Property in reasonably good and tenantable condition and, in default of so doing within a reasonable period not exceeding thirty (30) days after demand, the Beneficiary may put the Property in such condition and all sums paid by the Beneficiary for such purpose shall, together with interest thereon at the rate then borne by the Debt but never exceeding the maximum rate allowed by law, constitute an advance of monies

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ASSIGNMENT OF LEASES AND RENTS

hereunder and be secured hereby. Trustor will at all times carry hazard and liability insurance covering the Property satisfactory to the Beneficiary, with such policies endorsed to the Beneficiary as its interests may appear, and will promptly upon request deliver such policies to the Beneficiary together with evidence of payment of all premiums thereon.

8. **Trustor's License to Collect Rents:** So long as no event of default has occurred with respect to the Debt or under the Deed of Trust, the Trustor shall have a revocable license to manage and operate the Property, to collect, receive and apply for its own account all rents, issues, profits and insurance proceeds accruing by virtue of the Assigned Leases or from or out of the Property, or any part thereof and to execute and deliver proper receipts and acquittances therefor. This license shall be deemed to be automatically revoked, without the necessity of notice or other action by the Beneficiary, both of which are expressly waived upon the occurrence of any event of default with respect to the Debt or under the Deed of Trust. In such event, the right of the Beneficiary (which runs with the absolute assignment contained in this Agreement) to enter upon and take possession of the Property without further notice, by force, ejectment, the appointment of a receiver of the rents and profits of the Property or otherwise as the Beneficiary may elect is hereby expressly and irrevocably reconfirmed, and no further authorization shall be required. It is further reconfirmed that the Beneficiary shall have the right, but not the obligation, to:

- (a) manage and operate the Property or any part thereof;
- (b) lease the Property or any part thereof for such periods of time and upon such terms and conditions as it may, in the exercise of its discretion, deem proper;
- (c) amend, modify, extend or renew any Assigned Lease or any other lease then or thereafter entered into affecting the Property, or any part thereof;
- (d) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for, (i) all rents, issues and profits which may then be or thereafter become due, owing or payable under any Assigned Lease and any other lease then or thereafter entered into affecting the Property or any part thereof or from or out of the Property or any part thereof and (ii) all insurance proceeds paid or thereafter to be paid by reason of any use or occupancy loss, business interruption or interruption of rental payments under or related to the Assigned Leases or any lease thereafter entered into affecting the Property, or any part thereof;
- (e) institute, prosecute to completion or compromise and settle all summary proceedings, actions for rent or for removing any and all Tenants or occupants of the Property or any part thereof;
- (f) enforce or enjoin or restrain the violation of any of the terms, provisions or conditions of any Assigned Lease or any other lease then or thereafter entered into affecting the Property or any part thereof;
- (g) make such repairs and alterations to the Property as it may, in the exercise of its reasonable discretion, deem proper;



ASSIGNMENT OF LEASES AND RENTS

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(h) pay, from and out of the rents, issues, profits or insurance proceeds collected by the Beneficiary hereunder, or from or out of any other funds, (i) taxes, assessments, water charges, sewer rents or other governmental charges levied, assessed or imposed against the Property or any part thereof, (ii) premiums for fire, public liability and other insurance coverage affecting the Property or any part thereof and (iii) any and all other charges, costs and expenses which it may be necessary or advisable to pay in the management, operation and maintenance of the Property or any part thereof, including, but not limited to, costs of making repairs and alterations, commissions for renting the Property or any part thereof, and reasonable legal expenses incurred in enforcing claims, preparing papers or any other services that may be required; and

(i) generally do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Property or any part thereof, all as fully and to the same extent as the Trustor might do.

In the event that the Beneficiary, in any action, suit or proceeding brought to foreclose the Deed of Trust on the Property or otherwise, elects to have a receiver of the rents and profits of the Property appointed, such receiver shall have and may enforce all of the rights and remedies of such party under this Section to the maximum extent permitted by law. The Beneficiary or such receiver shall apply the net amount of rents, issues, profits and insurance proceeds collected by it hereunder, after payment or reimbursement of all proper costs, charges and expenses (including any liability, loss, damage or expense covered by the indemnification provisions of paragraph 11 hereof), to the reduction and payment of the Debt, any indebtedness secured by the Deed of Trust on the Property or otherwise as a court of competent jurisdiction may direct. The Beneficiary shall be accountable to the Trustor only for the rents, issues, profits, insurance proceeds and other funds actually collected by it hereunder. Without regard to waste, adequacy of the security or solvency of Trustor, Beneficiary may apply for the appointment of a receiver regarding the Property to collect the Rents and any and all other sums due under the Leases, whether or not foreclosure proceedings are pending under the Deed of Trust, and if such proceedings were commenced, whether or not a foreclosure sale has occurred; and Trustor consents to such application and appointment and to the fullest extent permitted by law hereby waives any requirement that Beneficiary commence a foreclosure proceeding with respect to any or all of the Property prior to the commencement of an action to have a receiver appointed.

9. **Direction to Pay Rent Upon Revocation of License:** The Trustor hereby irrevocably directs each Tenant under the Assigned Leases, upon demand and notice from the Beneficiary of the revocation of the licenses to Trustor contained herein, to pay to the Beneficiary or to a receiver of the rents and profits of the Property appointed in any action, suit or proceeding brought to foreclose the Deed of Trust covering the Property or otherwise, all rents accruing or due under the Assigned Leases from and after the receipt of such demand and notice. The Trustor agrees that any Tenant making such payment to the Beneficiary or such receiver shall be under no obligation to inquire or determine the actual existence of any default claimed by the Beneficiary to have caused a revocation of the license to collect rents contained herein.

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10. **No Obligation to Perform Trustor's Obligations:** Nothing contained herein shall operate or be construed to obligate the Beneficiary to perform or observe any of the covenants or obligations of the Trustor contained in any Assigned Lease, or otherwise to impose any obligation upon the Beneficiary with respect to any Assigned Lease, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event that the estate of any Tenant or occupant of the Property or any part thereof is terminated in any action, suit or proceeding except that, by its acceptance of this Assignment, the Beneficiary agrees not to name or join as a party defendant in such action, suit or proceeding any Tenant under any Assigned Lease to whom the Beneficiary has previously granted non-disturbance rights, and such Tenant's possession or right to possession shall not be otherwise disturbed or affected by reason of any such action, suit or proceeding; provided that any Tenant is not then in default under any of the terms or provisions of its Assigned Lease beyond any applicable grace period contained therein. This Assignment shall not operate to place upon the Beneficiary any responsibility for the management, operation or maintenance of the Property or any part thereof, and the execution of this Assignment by the Trustor shall constitute conclusive evidence that all responsibility for the management, operation and maintenance of the Property is, shall be and shall remain solely that of the Trustor.

11. **Indemnification:** Trustor hereby agrees to indemnify and hold the Beneficiary harmless from and against any and all liability, loss, damage and expense, including reasonable attorneys' fees, which the Beneficiary may or shall incur under any Assigned Lease or by reason of this Assignment, or by reason of any action taken by the Beneficiary hereunder, and from and against any and all claims and demands whatsoever which may be asserted against the Beneficiary by reason of any alleged undertaking on its part to perform or observe any of the covenants or obligations contained in any Assigned Lease, unless such liability, loss, damage or expense is due to the gross negligence of the Beneficiary. Should the Beneficiary incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the rate then in effect on the Debt, but in no event in excess of the maximum rate permitted by law, shall be paid by Trustor to the Beneficiary on demand and shall be secured by the Deed of Trust on the Property, or, at its option, the Beneficiary may reimburse itself therefor out of any rents, issues, profits, insurance proceeds or other funds collected by it hereunder.

12. **Exercise of Rights and Remedies:** No delay by the Beneficiary in exercising any of its respective rights or remedies hereunder for any period of time, or at any time or times, shall be deemed to constitute a waiver or to preclude the exercise of any of such rights or remedies. The rights and remedies of the Beneficiary hereunder are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Beneficiary shall have under or by virtue of any instrument evidencing the Debt or any related documents or otherwise provided by law and may be exercised from time to time and as often as such exercise is deemed expedient.

13. **Assignment:** The Beneficiary shall have the right to assign to any subsequent holder of the Deed of Trust, or to any person who may hereafter acquire its interest in the Property or the Debt, the right, title and interest of the Trustor in and to any and all Assigned Leases, subject, however, to the provisions of this Assignment. If the Trustor shall hereafter become barred and foreclosed of all right, title and interest and equity of redemption with respect to the Property, no assignee of the interest of the

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Trustor in any Assigned Lease shall be liable to account to the Trustor for any rents, issues, profits or insurance proceeds thereafter paid or accruing.

14. **Reassignment:** The Beneficiary agrees that at such time as the Debt have been paid in full and the Trustor has performed and observed all of its covenants and obligations under any and all documents, instruments, or agreements between Trustor and the Beneficiary, this Assignment will automatically terminate. If requested by the Assignor, and at the Assignor's sole cost and expense, the Beneficiary will reassign the interests assigned hereunder to the Trustor. Nothing contained in this Section shall be construed to mean that the Beneficiary has received by this Assignment less than an immediate, absolute and full assignment of the leases, rents and other interests assigned hereby. As to any Tenant or occupant under any Assigned Lease, any affidavit, certificate or other written statement of any officer of the Beneficiary stating that any part of the Debt remains unpaid shall be and constitute conclusive evidence of the then validity, effectiveness and continuing force of this Assignment, and any Tenant or occupant, firm or corporation receiving any such affidavit, certificate or statement may, and is hereby authorized to, rely thereon.

15. **Further Assurances:** The Trustor agrees to execute and deliver to the Beneficiary, at any time or times during which this Assignment is in effect, such further instruments as the Beneficiary may deem necessary to make effective this Assignment and the various covenants, obligations and agreements of the Trustor contained herein.

16. **Notices:** All notices to be given hereunder shall be in writing, shall be sent by registered or certified mail, or by courier, return receipt requested, postage or charges prepaid, addressed as first shown above in this Assignment, or to such other address as any party shall have furnished to the other parties in writing. Any such notice shall be deemed to have been given upon receipt of the party being notified or upon such party's refusal to accept delivery of such notice.

17. **Modification:** No modification, amendment, cancellation, release or discharge hereof, or of any part hereof, shall be valid unless the Beneficiary shall have consented thereto in writing.

18. **Successors and Assigns:** The terms, covenants and conditions contained herein shall be binding upon the Trustor, its heirs, representatives, successors and assigns and all subsequent owners, encumbrancers, Tenants and occupants of the Property and shall inure to the benefit of the Beneficiary and its successors and assigns and all subsequent holders of the Deed of Trust.

19. **Washington State Specific Provisions.**

(a) The Property is not used principally for agricultural purposes.

(b) NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

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(c) With respect to any contractual matters that Borrower establishes in any action within the scope of RCW Section 4.24.115, Borrower expressly (1) waives Borrower's immunity under RCW tit. 51 and acknowledges that such waiver was mutually negotiated by the parties; and (2) agrees to indemnify Lender. The scope of this indemnity shall be limited with regard to damages for bodily injury to persons or damage to property resulting from the concurrent negligence of Borrower or Borrower's agents or employees and of Lender or Lender's agents or employees, as to which Borrower agrees to indemnify Lender to the extent of the negligence of Borrower or Borrower's agents or employees. Nothing herein shall be deemed to require Borrower to indemnify Lender against the sole or concurrent negligence of Lender or Lender's agents or employees if such indemnity would be prohibited under RCW Section 4.24.115. The parties intend that under indemnity provisions herein, unless otherwise expressly limited herein, Borrower shall indemnify Lender to the fullest extent not prohibited by law, including, without limitation, in the event of the sole or concurrent negligence of Lender or of any other person or entity.

IN WITNESS WHEREOF, the Trustor has caused this Assignment to be duly executed as of the day and year first above written.

ORCA PROPERTY MANAGEMENT, LLC

By:

Gregory Fritz, Member

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

ss.:

On the 12 day of December, in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory Fritz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the Town/City of Mount Vernon, WASHINGTON State of Washington.

ERICA ANN SLATT
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 1, 2016

Erica Ann Slatt
Notary Public

ASSIGNMENT OF LEASES AND RENTS

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SCHEDULE "A"

Legal Description of Property

Units 210A, 210B, 210C AND 210D, PMW BUILDING CONDOMINIUM, according to Declaration and By-Laws thereof recorded under Auditor's File Nos. 9802250114 and 9802130062, and Survey Map and Plans thereof recorded in Volume 17 of plats, pages 1 and 2, records of Skagit County, Washington

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