

Return to:
McGuire Woods LLP
201 North Tryon Street
Charlotte, North Carolina 28202
Attention: Katherine B. Cumbus, Esq.



Skagit County Auditor \$317.00
6/26/2014 Page 1 of 30 9:42AM

After recording, please return this document to:
Post Closing Department
Chicago Title Insurance Company-National Division
10 S. LaSalle Street, Suite 3100
Chicago, IL 60603
ATTN: Dante Robinson

**THIRD AMENDED AND RESTATED LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT, AND FIXTURE FILING**

GRANTOR: APPLE WASHINGTON LLC, a Delaware limited liability company,
GRANTEE/BENEFICIARY: BANK OF AMERICA, N.A., a national banking association, as Agent
GRANTEE/TRUSTEE: CHICAGO TITLE INSURANCE COMPANY
LEGAL DESCRIPTION:
Abbreviated form: Portion of Lot 6, Cascade Mall Binding Site Plan, 8/170
Additional Legal on Exhibit A (Page 29) of document
ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):
P120093 & P120731

REFERENCE NUMBER OF DOCUMENTS ASSIGNED OR AFFECTED (if applicable):

Instrument Number of Memorandum of Ground Lease assigned: 200211130194
Deed of Trust: Instrument Number 200301080089; as amended by Instrument Number 200307280294; as further amended by Instrument Number 200310290170; as further amended by Instrument Number 200404130106; as further amended by Instrument Number 200410060050; as further amended by Instrument Number 200511040042; as further amended by Instrument Number 201002040065; as further amended by Instrument Number 201105110031; as further amended by Instrument Number 201207100036; as further amended by Instrument Number 201302060071

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Burlington, WA

**THIRD AMENDED AND RESTATED LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT, AND FIXTURE FILING
(Washington)**

THIS THIRD AMENDED AND RESTATED LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FIXTURE FILING (“**Deed of Trust**”) is made as of May 21, 2014, and executed by **APPLE WASHINGTON LLC**, a Delaware limited liability company, having its principal place of business at 6200 Oak Tree Boulevard, Suite 250, Independence, Ohio 44131 as grantor (“**Grantor**”), in favor of Chicago Title Insurance Company, whose address is 701 5th Avenue, Suite 2300, Seattle, Washington, 98104, as trustee (“**Trustee**”), for the benefit of and **BANK OF AMERICA, N.A.**, a national banking association having an address of 900 West Trade Street, Mail Code NC1-026-06-03, Charlotte, North Carolina 28255, Attention: Agency Management (Erik Truette), acting in its capacity as administrative agent pursuant to the Loan Agreement described below (in such agency capacity and as the successor in such capacity to Fleet Business Credit, LLC, together with its successors, the “**Agent**”) for the Secured Parties, as beneficiary. The “**Secured Parties**” as used herein means the Agent, the Lenders parties to the Loan Agreement from time to time, each Related Swap Counterparty party to a Related Swap Contract from time to time, and each Related Cash Management Bank party to a Related Cash Management Agreement from time to time. All capitalized terms used herein without definition are as defined in the Loan Agreement (as hereinafter defined).

To secure the obligations under the Existing Loan Agreement (as hereinafter defined), Grantor heretofore executed and delivered that certain Existing Deed of Trust (as hereinafter defined), and in consideration of the mutual covenants and promises contained herein, Grantor and Agent have agreed to, and do hereby, amend and restate the Existing Deed of Trust in its entirety in the manner as set forth below, and the terms, conditions and provisions set forth herein shall hereafter govern the rights and obligations of Grantor, Trustee and Agent thereunder which shall be as follows.

RECITALS

A. Grantor is the owner of a leasehold interest in the premises described in Exhibit A attached hereto pursuant to a certain lease identified on Schedule 1 attached hereto (the “**Ground Lease**”). By execution or joinder, Grantor (which term for purposes of this Recital A and Recital C below shall include Apple Northwest LLC, the predecessor in interest to Apple Washington LLC in the Property described below, and the original grantor of the Existing Deed of Trust described below) and certain affiliates of Grantor, as borrowers, Agent (as successor to Fleet Business Credit, LLC (“**Fleet**”) in its capacity as Agent) and certain lenders were parties to that certain Loan and Security Agreement dated as of November 9, 2001 (said Loan and Security Agreement being the “**Initial Loan Agreement**”). Bank of America, N.A., acting in its capacity as Agent herein, is the successor to Fleet pursuant to the provisions set forth in Section 10.13(a) of the Initial Loan



Agreement which provide for the replacement of the Agent and pursuant to the resignation letter from Fleet dated March 11, 2003, the Appointment of Successor Agent, and the Agreement and Acceptance of Appointment effective as of May 28, 2003.

B. By execution or joinder, Grantor and certain affiliates of Grantor, as borrowers, Agent and the lenders identified therein are parties to that certain Fourth Amended and Restated Loan and Security Agreement dated as of May 9, 2011, as amended, which is an amendment and restatement of that certain Third Amended and Restated Loan and Security Agreement dated as of January 29, 2010, which is an amendment and restatement of that certain Second Amended and Restated Loan and Security Agreement dated as of November 1, 2005, as amended, which is an amendment and restatement of that certain Amended and Restated Loan and Security Agreement dated as of October 23, 2003, as amended, which is an amendment and restatement of the Initial Loan Agreement (said Initial Loan Agreement, as amended and restated or otherwise amended from time to time, including without limitation by the documents identified above, being referred to as the "Existing Loan Agreement").

C. To secure the obligations under the Existing Loan Agreement, Grantor executed and delivered a Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing dated as of December 10, 2002, and recorded as Instrument Number 200301080089 in the Office of the Recorder of Skagit County, Washington (as the same may have from time to time been amended, modified or amended and restated prior to the date hereof in those instruments whose recording numbers are listed on the cover page hereof, the "Existing Deed of Trust").

D. Grantor and certain other Borrowers identified therein, the Lenders identified therein and the Agent have entered into that certain Fifth Amended and Restated Loan and Security Agreement dated as of May 2, 2014 to be effective as of the date hereof (the "Fifth Restated Agreement") (the Existing Loan Agreement as amended and restated by the Fifth Restated Agreement and as it may hereafter be extended, amended, modified, supplemented or amended and restated from time to time being referred to as the "Loan Agreement") pursuant to which, among other things, the Lenders have agreed, subject to the terms thereof, to increase the aggregate amount of the loans to the Borrowers to an aggregate principal amount not to exceed \$622,000,000.00 (collectively, the "Loans"), which may be outstanding at any one time. The terms, conditions, covenants, representations and warranties of Grantor under the Loan Agreement are hereby incorporated herein by reference as if fully set forth herein. All capitalized terms used herein without definition are as defined in the Loan Agreement.

E. Pursuant to the Fifth Restated Agreement, Grantor and the other Borrowers have executed and delivered to the Lenders promissory notes in an aggregate amount not to exceed \$622,000,000.00 (the "Loan Notes"; the Loan Notes, together with any other notes now or hereafter issued in connection with the Loan Agreement, together with any and all amendments, renewals, extensions for any period, increases, rearrangements, restatements and replacements thereof, being collectively referred to as the "Notes"), certain of which



Notes are executed and delivered in substitution for, and replacement of, those certain promissory notes issued in connection with the Existing Loan Agreement.

F. As a condition to the extension of certain financial accommodations to Borrowers, including, without limitation, the extension of credit evidenced by the Notes and pursuant to the Loan Agreement, Agent and the other Secured Parties have required that Grantor execute this Deed of Trust and grant to Agent for the benefit of the Secured Parties the liens and security interests referred to herein to secure: (i) the payment of the aggregate principal amount evidenced by the Notes, together with interest thereon; (ii) payment and performance of the other Obligations; (iii) payment of the principal amount together with interest thereon, of all present and future advances of money made by Agent and the other Secured Parties under the Loan Documents, any Related Swap Contract and/or any Related Cash Management Agreement, as well as all other liabilities and obligations in favor of Agent and/or the other Secured Parties arising under the Loan Documents, any Related Swap Contract and/or any Related Cash Management Agreement; and (iv) other payment and performance obligations related to this Deed of Trust, including the unpaid balances of advances made by Agent and/or the Secured Parties for the payment of taxes, assessments, insurance premiums and costs incurred for the protection of the Property (as hereinafter defined) (collectively, the “**Secured Obligations**”). The term “**Obligations**” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Related Swap Contract or Related Cash Management Agreement, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Notwithstanding anything to the contrary contained herein, the terms “**Obligations**” and “**Secured Obligations**” shall exclude any Excluded Swap Obligations, and this Deed of Trust shall not secure any Excluded Swap Obligations.

NOW, THEREFORE, in consideration of the premises contained herein and to secure payment and performance of the Secured Obligations and in consideration of Ten Dollars (\$10.00) in hand paid, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby irrevocably GRANTS, TRANSFERS, BARGAINS, SELLS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, and with right of entry and possession as provided herein, for the benefit of Agent for the benefit of the Secured Parties, all of Grantor’s right, title, interest claim or demand whatsoever in the Property (as defined below), and does further grant a security interest to Agent, for the benefit of the Secured Parties, in all Fixtures and Personal Property (each as defined below), as well as all other Property in which a security interest may be created under the Code (as defined below):



Grantor's leasehold interest in the real property legally described on **Exhibit A** attached hereto (the "**Land**") located in the State of Washington (the "**State**") pursuant to the Ground Lease, which Land is not used primarily or principally for agricultural or farming purposes, and all right, title and interest, if any, which Grantor may now have or hereafter acquire in and to all improvements, buildings and structures now or hereafter located thereon of every nature whatsoever, herein collectively with Grantor's leasehold interest in the Land called the "**Premises**."

TOGETHER WITH all right, title and interest, if any, including any after acquired right, title and interest, and including any right of use or occupancy, which Grantor may now have or hereafter acquire under the Ground Lease and in and to (a) all easements, rights of way, gores of land or any lands occupied by streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and public places adjoining the Land, and any other interests in property constituting appurtenances to the Premises, or which hereafter shall in any way belong, relate or be appurtenant thereto, and (b) all hereditaments, gas, oil, minerals (with the right to extract, sever and remove such gas, oil and minerals), and easements, of every nature whatsoever, located in or on the Premises and all other rights and privileges thereunto belonging or appertaining and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or of any of the rights and interests described in subparagraphs (a) and (b) above (hereinafter the "**Property Rights**").

TOGETHER WITH all right, title and interest, if any, including any after acquired right, title and interest, and including any right of use or occupancy, which Grantor may now have or hereafter acquire in and to all fixtures and appurtenances of every nature whatsoever now or hereafter located in, on or attached to, and used or intended to be used in connection with, or with the operation of, the Premises, including, but not limited to all apparatus, machinery and equipment of Grantor and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or of any of the foregoing (the "**Fixtures**"); as well as all personal property and equipment of every nature whatsoever now or hereafter located in or on the Premises, including but not limited to (a) accounts, contract rights, general intangibles, tax refunds, chattel paper, instruments, notes, letters of credit, documents, documents of title; (b) inventory; (c) equipment; (d) all of Grantor's now owned or hereafter acquired monies, and any and all other property or interest in property of Grantor now or hereafter coming to the actual possession custody or control of Agent or any other Secured Party or any agent or affiliate of Agent or any other Secured Party in any way or for any purpose (whether for safekeeping, deposit, custody, pledge, transmission, collection or otherwise); (e) all insurance proceeds of or relating to any of the foregoing; and (f) all accessions and additions to, substitutions for, and replacements, products and proceeds of any of the foregoing clauses (a) through (e) (the items described in the foregoing clauses (a) through (e) and any other personal property referred to in this paragraph being the "**Personal Property**"). It is mutually agreed, intended and declared that the Premises and all of the Property Rights and Fixtures owned by Grantor (referred to collectively herein as the "**Real Property**") shall, so far as permitted by law, be deemed to form a part and parcel of the Land and for the purpose of this Deed of Trust to be real estate and covered by



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this Deed of Trust. It is also agreed that if any of the property herein conveyed is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, as adopted and in effect in the State (the "Code"), this instrument shall constitute a security agreement, fixture filing and financing statement, Agent is hereby authorized to file or refile any financing statement, continuation statement, or other instruments which Agent may reasonably require from time to time to perfect or renew such security interest under the Code, and, if execution by Grantor of any financing statement is required by the law or filing procedures of the State or the county in which the Premises are located, Grantor hereby agrees to promptly execute the same upon the request of Agent. To the extent permitted by law, all of the Fixtures are or are to become fixtures on the Land and this instrument, upon recording or registration in the real estate records, of the proper office, shall constitute a "fixture filing" within the meaning of the Code. For such purposes: (a) Grantor is the debtor and Agent is the secured party, and (b) Grantor's business identification number is DE 3699223. Subject to the terms and conditions of the Loan Agreement, the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law or, as to that part of the security in which a security interest may be perfected under the Code, by the specific statutory consequences now or hereafter enacted and specified in the Code, all at Agent's sole election.

TOGETHER WITH all unexpired claims, warranties, guaranties and sureties in connection with the construction, furnishing and equipping of the Property, all plans, specifications, architectural renderings, drawings, licenses, permits, certificates of occupancy, soil test reports of examination or analyses of the Land, buildings, or other improvements, contracts for services to be rendered to Grantor or otherwise in connection with the improvements and all other property, contracts, including without limitation, general contracts or subcontracts and material supply contracts relating to the construction of any building or other improvements relating thereto, including reports, proposals and other materials in any way relating to the Land or the improvements or the construction of additional improvements and any and all other intangible property of Grantor used solely in connection with or otherwise related to the acquisition, development or sale and marketing of the Property and all trade styles, trademarks and service marks used in connection therewith.

TOGETHER WITH all the estate, right, title and interest of Grantor, if any, under the Ground Lease in and to (i) all judgments, insurance proceeds, awards of damages and settlements resulting from condemnation proceedings or the taking of the Real Property, or any part thereof, under the power of eminent domain or for any damage (whether caused by such taking or otherwise) to the Real Property, or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the Real Property or any part thereof; and (except as otherwise provided herein or in the Loan Agreement), Agent is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor, and to apply the same as provided in the Loan Agreement; and (ii) all contract rights, general intangibles, actions and rights in action



relating to the Real Property or the Personal Property including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Real Property or the Personal Property; and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Real Property and the Personal Property. (The rights and interests described in this paragraph and the immediately preceding paragraph shall hereinafter be called the "Intangibles.")

TOGETHER WITH (a) any and all other, further or additional title, estates, interests or rights which may at any time be acquired by Grantor in or to the premises demised by the Ground Lease; (b) any and all rights or options Grantor may have to renew or extend the Ground Lease; (c) any and all options or rights to purchase the premises demised by the Ground Lease which the Grantor may now have or hereafter acquire; and (d) any and all deposits, securities or other property which may be held at any time and from time to time by the lessor under the Ground Lease to secure the performance of the covenants, conditions and agreements of the Grantor contained in the Ground Lease.

As additional security for the Secured Obligations secured hereby, Grantor (i) does hereby pledge and assign to Agent, for the benefit of the Secured Parties, from and after the date hereof (including any period of redemption), primarily and on a parity with the Real Property, and not secondarily, all the rents, issues and profits of the Real Property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent, for security or as earnest money or as down payment for the purchase of all or any part of the Real Property) (the "Rents") under any and all present and future leases, contracts or other agreements relative to the ownership or occupancy of all or any portion of the Real Property, and (ii) except to the extent such a transfer or assignment is not permitted by the terms thereof, does hereby transfer and assign to Agent all such leases and agreements (including all Grantor's rights under any contracts for the sale of any portion of the Property and all revenues and royalties under any oil, gas and mineral leases relating to the Real Property) (the "Leases"). Agent hereby grants to Grantor the right to collect and use the Rents as they become due and payable under the Leases, but not more than one (1) month in advance thereof, unless and until an Event of Default shall have occurred; provided that the existence of such right shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Grantor, and any such subsequent assignment shall be subject to the rights of Agent under this Deed of Trust. Upon the occurrence of an Event of Default, the right of Grantor to collect and use the Rents as herein granted, shall terminate immediately without further action by Agent and shall be deemed to be automatically revoked. Agent shall have and hereby expressly reserves the right and privilege (but assumes no obligation) to demand, collect, sue for, receive and recover the Rents, or any part thereof, now existing or hereafter made, and apply the same in accordance with the provisions of the Loan Agreement. Grantor agrees to execute and deliver such assignments of leases or assignments of land sale contracts as Agent may from time to time request. If an Event of Default has occurred and is continuing, Grantor agrees, upon demand, to deliver to Agent all of the Leases with such additional assignments thereof as Agent may request and agrees that the Agent may assume



the management of the Real Property and collect the Rents, applying the same upon the Secured Obligations in the manner provided in the Loan Agreement, and Grantor hereby authorizes and directs all tenants, purchasers or other persons occupying or otherwise acquiring any interest in any part of the Real Property to pay the Rents due under the Leases to Agent upon request of Agent. Grantor hereby appoints Agent as its true and lawful attorney-in-fact to manage said property and collect the Rents, with full power to bring suit for collection of the Rents and possession of the Real Property, giving and granting unto Agent and unto its agent or attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the protection of the security hereby conveyed; provided, however, that this power of attorney and assignment of rents shall not be construed as an obligation upon Agent to make or cause to be made any repairs that may be needful or necessary and Agent agrees that, until such Event of Default as aforesaid, Agent shall permit Grantor to perform the aforementioned management responsibilities. Upon Agent's receipt of the Rents, at Agent's option, it may use the proceeds of the Rents to pay: reasonable charges for collection thereof, costs of necessary repairs and other costs requisite and necessary during the continuance of this power of attorney and assignment of rents; general and special taxes and insurance premiums; and any or all of the Secured Obligations in accordance with the terms of the Loan Agreement. This power of attorney and assignment of rents shall be irrevocable until this Deed of Trust shall have been satisfied and released of record.

All of the property described above, and each item of property therein described, not limited to but including the Grantor's leasehold estate in the Land, and Grantor's interest in the Premises, the Property Rights, the Fixtures, the Personal Property, the Real Property, the Intangibles, the Rents and the Leases, is herein referred to as the "Property."

Nothing herein contained shall be construed as constituting Agent a mortgagee-in-possession in the absence of the taking of actual possession of the Property by Agent. Nothing contained in this Deed of Trust shall be construed as imposing on Agent any of the obligations of the lessor under any Lease of the Property, or any of the obligations of the lessee under the Ground Lease, in the absence of an explicit assumption thereof by Agent. In the exercise of the powers herein granted to Agent, except as provided in the Loan Agreement, no liability shall be asserted or enforced against Agent, all such liability being expressly waived and released by Grantor.

TO HAVE AND TO HOLD the Property, properties, rights and privileges hereby conveyed or assigned, or intended so to be, unto Trustee, its beneficiaries, successors and assigns, for the benefit of Agent, acting in its capacity as administrative agent pursuant to the Loan Agreement for the Secured Parties, forever for the uses and purposes herein set forth. Grantor hereby releases and waives all rights under and by virtue of the homestead exemption laws, if any, of the State and Grantor hereby covenants, represents and warrants that, at the time of the ensembling and delivery of these presents, Grantor has lawful authority to sell, assign, convey and mortgage the Property, and that the Property is free and clear of



all encumbrances, except for the Permitted Exceptions, and that, except for the Permitted Exceptions, Grantor will forever defend the same against all lawful claims.

The following provisions shall also constitute an integral part of this Deed of Trust:

1. **Payment of Taxes on the Deed of Trust.** Without limiting any of the provisions of the Loan Agreement, Grantor agrees that, if the United States or any department, agency or bureau thereof or if the State or any of its subdivisions having jurisdiction shall at any time require documentary stamps to be affixed to this Deed of Trust or shall levy, assess, or charge any tax, assessment or imposition upon this Deed of Trust or the credit or indebtedness secured hereby or the interest of Agent in the Premises or upon Agent by reason of or as holder of any of the foregoing then, Grantor shall pay for such documentary stamps in the required amount and deliver them to Agent or pay (or reimburse Agent for) such taxes, assessments or impositions. Grantor agrees to exhibit to Agent, at any time upon request, official receipts showing payment of all taxes, assessments and charges which Grantor is required or elects to pay under this paragraph. Grantor agrees to indemnify Agent against liability on account of such documentary stamps, taxes, assessments or impositions, whether such liability arises before or after payment of the Secured Obligations and regardless of whether this Deed of Trust shall have been released.

2. **Covenants Regarding Leases Affecting the Real Property.**

(a) **Ground Lease.**

(i) Grantor is the lessee under the Ground Lease. Grantor warrants that it is the owner of a valid and subsisting interest in the Land as lessee under the Ground Lease, that the Ground Lease is in full force and effect, there are no defaults thereunder and no event has occurred which after notice or passage of time or both will result in such a default, that the Ground Lease is subject to no lien, charge or encumbrance of any kind and is prior to all liens, charges and encumbrances whatsoever on the fee interest of the lessor, except such as are listed as exceptions to title in the title policy insuring the lien of this Deed of Trust and other Permitted Exceptions. Grantor has full power and lawful authority to convey the Property in the form and manner herein done. Until the satisfaction of the conditions set forth in the Loan Agreement for the release of this Deed of Trust, this Deed of Trust is and will remain a valid and enforceable lien on the leasehold estate in the Land created by the Ground Lease and, subject only to the exceptions referred to above, Grantor will preserve the leasehold estate in the Land created by the Ground Lease, and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomever. Except as otherwise permitted in the Loan Agreement, Grantor (a) will perform or cause to be performed all of the covenants to be performed by it under the Ground Lease, (b) will do all things necessary to preserve unimpaired its rights thereunder, and (c) will not enter into an



UNNOTIFIED

agreement modifying or amending the Ground Lease without Agent's prior written approval, which approval may be granted or withheld in Agent's sole discretion, or releasing the lessor thereunder from any obligations imposed upon it thereby. If Grantor receives a notice of default under the Ground Lease or if Grantor notifies the lessor under the Ground Lease of any default thereunder, Grantor shall immediately cause a copy of such notice to be sent by certified United States Mail to Agent. Fee title to the Land and the estate conveyed by the Ground Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either lessor, Grantor or a third party, whether by purchase or otherwise. If Grantor acquires the fee title or any other estate, title or interest in the Land demised by the Ground Lease, the lien of this Deed of Trust shall attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of the Property with the same force and effect as if specifically encumbered herein; and Grantor agrees to execute all instruments and documents which Agent may reasonably require to ratify, confirm and further evidence Agent's lien on the acquired estate, title or interest. Grantor agrees that no release or forbearance of any of Grantor's obligations as lessee under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Grantor from any obligations under this Deed of Trust, including without limitation, each of the payment and performance obligations under the Ground Lease.

(ii) Other than in connection with a Permitted Restaurant Disposition or as otherwise permitted under the Loan Agreement, Grantor will not, without the prior written consent of the Agent, surrender, cancel or terminate the Ground Lease or consent to or accept any cancellation or termination thereof or consent to or accept the lessor's termination of the Ground Lease upon a casualty or partial condemnation, or give any consent, waiver or approval thereunder, or waive any default thereunder or breach thereof, agree in any manner to any other amendment, modification or change of any term or condition of the Ground Lease, or take any other action in connection with the Ground Lease. Unless the Ground Lease is terminated in connection with a Permitted Restaurant Disposition or as otherwise permitted under the Loan Agreement, Grantor shall exercise all rights to renew the Ground Lease by timely notice to the lessor required by the Ground Lease so that the Ground Lease will not expire or terminate prior to its final expiration date shown in parenthesis in the column designated "Option(s) and Final Expiration Date" in Schedule 1.02-B of the Loan Agreement. Unless the Ground Lease is terminated in connection with a Permitted Restaurant Disposition or as otherwise permitted under the Loan Agreement, Grantor hereby authorizes and appoints Agent its attorney in fact to exercise any option to renew or purchase the Ground Lease in the name of and upon behalf of Grantor, which power of attorney shall be irrevocable and deemed

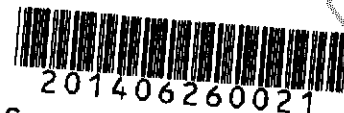


to be coupled with an interest. As further security for the payment and performance of the Secured Obligations, Grantor hereby assigns to Agent all of the rights, privileges, and prerogatives of Grantor, as lessee under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate, cancel, modify, change, supplement or alter the Ground Lease, and any such surrender of the leasehold estate created by the Ground Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior consent of Agent shall be null and void and of no force and effect.

(iii) Subject to the foregoing, if Grantor defaults under subsection (i) hereof by failing to make any payment required to be made by Grantor pursuant to the provisions of the Ground Lease or to keep, observe or perform, or cause to be kept, observed or performed, any of the terms, covenants, provisions or agreements of the Ground Lease (unless waived by the lessor under such Ground Lease), Grantor agrees that Agent may (but shall not be obligated to) take any action on behalf of Grantor (with right of entry onto the Real Property), to keep or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Real Property (after reasonable advance notice to Grantor) and take all such action thereon as may be reasonably necessary therefor, and all money so expended by Agent, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Grantor to Agent promptly upon demand by Agent and shall be added to the Secured Obligations secured by this Deed of Trust. If Agent shall make any payment or perform any act or take any action in accordance with the preceding sentence, then the payment, performance or action shall not remove or waive, as between Grantor and Agent, the corresponding default under the terms of this Deed of Trust.

(iv) If the Ground Lease shall be terminated prior to the natural expiration of its term due to default by the lessee thereunder, and if pursuant to any provision of such Ground Lease or pursuant to Agent's exercise of its rights hereunder or under any other Loan Document, the Agent or its designee shall acquire from the lessor under the Ground Lease a new lease of the Property, Grantor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

(v) Except as required by the terms of the Ground Lease, Grantor will not subordinate or consent to the subordination of the Ground Lease to any mortgage, deed of trust, lease or other interest on or in the lessor's interest in all or any part of the Property, unless, in each such case, the written consent of Agent shall have been first had and obtained; provided,



however, that in the event that such subordination is required by the Ground Lease, to the extent permitted by the Ground Lease, such subordination shall also contain non-disturbance provisions which protect the lessee in the event of a default of the lessor thereunder.

(vi) Grantor will: (A) promptly notify Agent in writing of the commencement of a proceeding under the federal bankruptcy laws by or against Grantor or the lessor under the Ground Lease; (B) if any of the Secured Obligations remains unpaid at the time when notice may be given by the lessee under the Ground Lease of the exercise of any right to renew or extend the term of the Ground Lease, promptly give notice to the lessor of the exercise of such right of extension or renewal; (C) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Agent pursuant to the requirements of the Ground Lease, promptly notify Agent in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; and (D) promptly notify Agent in writing of any request made by either party to the Ground Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Ground Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Agent a copy of the determination of the arbitrators or appraisers in each such proceeding.

(vii) Grantor acknowledges that pursuant to Section 365 of the Bankruptcy Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") it is possible that a trustee in bankruptcy of the lessor under the Ground Lease, or the lessor as a debtor-in-possession could reject the Ground Lease, if any, in which case Grantor, as lessee, would have the election described in Section 365(h) of the Bankruptcy Code (such election together with any comparable right under any other state or federal law relating to bankruptcy, reorganization or other relief for debtors, whether now or hereafter in effect, the "**Election**") to treat such Ground Lease as terminated by such rejection or, in the alternative, to remain in possession for the balance of the term of the Ground Lease and any renewal or extension thereof that is enforceable by the lessee under applicable nonbankruptcy law.

(viii) Grantor covenants that it will not suffer or permit the termination of the Ground Lease by exercise of the Election or other involuntary termination without the prior written consent of Agent. Grantor acknowledges that since the Ground Lease is a primary part of the security for the Secured Obligations, it is not anticipated that Agent would consent to termination of the Ground Lease in connection with any such election and Agent shall not under any circumstances be obliged to give such consent.



(ix) In order to secure the covenant made in this section and as security for the Secured Obligations, Grantor assigns the Election and all rights related thereto to Agent. Grantor acknowledges and agrees that the foregoing assignment of the Election and related rights is one of the rights which Agent may use at any time in order to protect and preserve the other rights and interests of Agent under this Deed of Trust, since exercise of the Election in favor of terminating the Ground Lease would constitute waste hereunder.

(x) Grantor acknowledges and agrees that the Election is in the nature of a remedy and is not a property interest which Grantor can separate from the Ground Lease. Therefore, Grantor agrees that exercise of the Election in favor of preserving the right to possession under the Ground Lease shall not be deemed to constitute a taking or sale of the Property by Agent and shall not entitle Grantor to any credit against the Secured Obligations secured by this Deed of Trust.

(xi) Grantor acknowledges and agrees that in the event the Election is exercised in favor of Grantor remaining in possession, Grantor's resulting rights under the Ground Lease, as adjusted by the effect of Section 365 of the Bankruptcy Code, shall then be part of the Property and shall be subject to the lien created by this Deed of Trust.

(xii) Agent shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease by the lessor or any other party, including, without limitation, the right to file and prosecute under the Bankruptcy Code, without joining or the joinder of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents. Any amounts received by Agent as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of Agent (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph. Grantor acknowledges that the assignment of all claims and rights to the payment of damages from the rejection of the Ground Lease made under the granting clauses of this Deed of Trust constitutes a present irreversible and unconditional assignment and Grantor shall, at the request of Agent, promptly make, execute, acknowledge and deliver, in form and substance satisfactory to Agent, a UCC Financing Statement (Form UCC-1) and all such additional instruments, agreements and other documents, as may at any time hereafter be required by Agent to carry out such assignment.

(xiii) If pursuant to Subsection 365(h)(1)(B) of the Bankruptcy Code, Grantor shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the



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lessor or any other party of any of their respective obligations under the Ground Lease after the rejection by the lessor or such other party of such Ground Lease under the Bankruptcy Code, then Grantor shall, prior to effecting such offset, notify Agent of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. Agent shall have the right to object to all or any part of such offset that, in the reasonable judgment of Agent, would constitute a breach of such Ground Lease, and in the event of such objection, Grantor shall not effect any offset of the amounts found objectionable by Agent. Neither Agent's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Agent. Grantor shall indemnify and hold Agent harmless from and against any and all claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including without limitation, attorneys fees) arising from or relating to any such offset by Grantor.

(xiv) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lessor under the Ground Lease or any other party or in respect of the Ground Lease in connection with any case under the Bankruptcy Code, then Agent shall have the option, exercisable upon notice from Agent to Grantor, to conduct and control any such litigation with counsel of Agent's choice. Agent may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents or other documents required by Agent in connection therewith. Grantor shall, upon demand, pay to Agent all costs and expenses (including attorneys' fees) paid or incurred by Agent in connection with the prosecution or conduct of any such proceedings. Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of Agent.

(xv) Grantor shall, after obtaining knowledge thereof, promptly notify Agent of any filing by or against the lessor or other party with an interest in the Land of a petition under the Bankruptcy Code. Grantor shall promptly deliver to Agent, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and any proceedings relating thereto.

(xvi) If there shall be filed by or against Grantor a petition under the Bankruptcy Code and Grantor, as lessee under the Ground Lease, shall determine to reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, then Grantor shall give Agent not less than twenty (20) days' prior notice of the date on which Grantor shall apply to the Bankruptcy



Court for authority to reject the Ground Lease. Agent shall have the right, but not the obligation, to serve upon Grantor within such twenty (20) day period a notice stating that Agent demands that Grantor assume and assign the Ground Lease to Agent pursuant to Section 365 of the Bankruptcy Code. If Agent shall serve upon Grantor the notice described in the preceding sentence, Grantor shall not seek to reject such Ground Lease and shall comply with the demand provided for in the preceding sentence. In addition, effective upon the entry of an order for relief with respect to Grantor under the Bankruptcy Code, Grantor hereby assigns and transfers to Agent a non-exclusive right to apply to the Bankruptcy Court under subsection 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Ground Lease may be rejected or assumed.

(b) **Leases.** Except as permitted by the Loan Agreement, Grantor shall not sublease the Premises, or assign its interest in the Ground Lease, without Agent's prior written consent. Grantor agrees faithfully to perform all of its material obligations under all present and future Leases at any time assigned to Agent as additional security, and to refrain from any action or inaction which would result in termination of all such Leases or in the diminution of the value thereof or of the Rents due thereunder. All future lessees under any Lease made after the date of recording of this Deed of Trust shall, at Agent's option and without any further documentation, attorn to Agent as lessor if for any reason Agent becomes lessor thereunder, and, upon demand, pay rent to Agent, and Agent shall not be responsible under such Lease for matters arising prior to Agent becoming lessor thereunder. Grantor agrees that if Grantor fails to pay its rent on a timely basis or to fulfill any material provision of said Lease, or if Grantor shall terminate or modify any such Lease without Agent's prior written consent, or if Grantor shall suffer any default under the provisions of any assignment of any Lease given as additional security for the payment of the Secured Obligations, then such default shall constitute an Event of Default hereunder.

In the event of any failure by Grantor to perform any covenant to be observed and performed by Grantor under the Ground Lease or any other Lease, the performance of Agent on behalf of Grantor shall not remove or waive, as between Grantor and Agent, the corresponding Event of Default under the terms hereof, and any amount advanced by Agent or any costs incurred by Agent in connection therewith, with interest thereon at the Default Rate, shall constitute additional Secured Obligations.

3. **No Easements, Streets and Utilities.** Grantor agrees that it shall not knowingly permit the public to use the Real Property in any manner that might tend, in Agent's reasonable judgment, to impair Grantor's title to such property or any portion thereof, or to make possible any claim or claims of easement by prescription or of implied dedication to public use. Grantor hereby represents and warrants that the Property is



benefited by such easements or other rights as may be necessary for vehicular and pedestrian ingress and egress, the installation and maintenance of utilities, parking and other site improvements, for the Property and the operation of Grantor's business, subject to the Permitted Exceptions.

4. **Indemnification.** Grantor shall not use or permit the use of any part of the Real Property for an illegal purpose, including, without limitation, the violation, in any material respect, of any environmental laws, statutes, codes, regulations or practices. Without limiting any indemnification Grantor has granted in the Loan Agreement, Grantor agrees to indemnify and hold harmless Agent and the other Secured Parties from and against any and all losses, suits, liabilities, fines, damages, judgments, penalties, claims, charges, costs and expenses (including reasonable attorneys' and paralegals' fees, court costs and disbursements) which may be imposed on, incurred or paid by or asserted against the Real Property by reason or on account of or in connection with (i) the construction, reconstruction or alteration of the Real Property, (ii) any negligence or misconduct of Grantor, any lessee of the Real Property, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees, (iii) any accident, injury, death or damage to any person or property occurring in, on or about the Real Property or any street, drive, sidewalk, curb or passageway adjacent thereto, or (iv) any other transaction arising out of or in any way connected with the Property. Notwithstanding the foregoing, Grantor shall not be required to indemnify and hold harmless Agent and the other Secured Parties from any such losses, suits, liabilities, fines, damages, judgments, penalties, claims, charges, costs and expenses in connection with the foregoing matters which result solely from the gross negligence or willful misconduct of Agent or any of the other Secured Parties.

5. **Taxes and Assessments.** Grantor shall pay promptly, on or before all applicable due dates, all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Property or any part thereof.

6. **Mechanic's and Other Liens.** Grantor shall not permit or suffer any mechanic's, laborer's, materialmen's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Property; provided, however, Grantor may contest any such lien or encumbrance to the extent permitted by and in accordance with the terms of the Loan Agreement. ALL CONTRACTORS, SUBCONTRACTORS AND ANY OTHER PARTIES DEALING WITH THE PROPERTY OR WITH ANY PARTIES INTERESTED THEREIN ARE HEREBY REQUESTED TO TAKE NOTICE OF THIS PROVISION.

7. **Insurance.** Grantor shall, at its sole expense, obtain for, deliver to, assign and maintain for the benefit of Agent, until the satisfaction of the conditions set forth in the Loan Agreement for the release of this Deed of Trust, insurance policies as specified in the Loan Agreement. In the event of a casualty loss, the net insurance proceeds from such insurance policies shall be paid and applied as specified in the Loan Agreement.



8. **Condemnation Awards.** Grantor hereby assigns to Agent, as additional security, all awards of damages resulting from condemnation proceedings or the taking of or injury to the Real Property or any interest in the Ground Lease for public use, which are or become available to Grantor under the terms and provisions of the Ground Lease, and Grantor agrees that the proceeds of all such awards shall be paid to Agent and applied as specified in the Loan Agreement.

9. **Transfer or Encumbrance of the Property.** Grantor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease or encumbrance of, or any contract for any of the foregoing on an installment basis or otherwise pertaining to the Property, or any part thereof, any interest therein or any of the financial interests in any corporation, partnership or other entity which owns all or part of the Property, whether by operation of law or otherwise, except as permitted in the Loan Agreement.

10. **Estoppels.** Grantor, within ten (10) days after written notice from Agent, shall furnish a written statement executed by Grantor setting forth the unpaid principal of, and interest on, the Notes, and any other unpaid sums secured hereby, and whether or not any offsets or defenses are claimed to exist against the payment of such principal and interest or other sums and, if any such offsets or defenses are claimed, the specific basis and amount of such claim.

11. **Remedies.** Subject to the provisions of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default under the terms of the Loan Agreement, in addition to any rights and remedies provided for in the Loan Agreement, and to the extent permitted by applicable law, the following provisions shall apply:

(a) **Acceleration Upon Default; Additional Remedies.** Upon the occurrence of an Event of Default, Agent may, at its option and without notice to or demand upon Grantor, exercise any one or more of the following actions: declare all amounts secured by this Deed of Trust immediately due and payable; bring a court action to enforce the provisions of this Deed of Trust or any of the other Loan Documents; foreclose this Deed of Trust as a mortgage; cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law; exercise Agent's rights with respect to the Leases and the Rents; and/or exercise any or all of the other rights and remedies under this Deed of Trust and the other Loan Documents or available under law or in equity. To the extent permitted by law, every right and remedy provided in this Deed of Trust or afforded by law or equity or any other agreement between Agent and Grantor may be exercised concurrently, independently or successively, in any order whatsoever. Agent may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

(b) **Exercise of Power of Sale.** For any sale under the power of sale granted by this Deed of Trust, Agent or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law,



Trustee may sell the Property upon any terms and conditions specified by Agent and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place noticed for the sale. If the Property includes several lots or parcels, Agent in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by the Trustee is personal property, then Trustee shall be acting as the agent of the Agent in selling such Property. Any person permitted by law to do so may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

(c) **Application of Sale Proceeds.** The proceeds of any sale under this Deed of Trust shall be applied in the following manner: FIRST: Payment of the costs and expenses of the sale, including without limitation Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the applicable interest rate or rates chargeable on the Loans; SECOND: Payment of all reasonable sums expended by Agent under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the applicable interest rate under the Notes from time to time; THIRD: Payment of all other indebtedness secured by this Deed of Trust in any order that the Agent chooses; FOURTH: The remainder, if any, to the person or persons legally entitled to it.

(d) **Waiver of Order of Sale and Marshalling.** Agent shall have the right to determine the order in which any or all portions of the secured indebtedness are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Grantor, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waives any and all right to require marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust.

(e) **Non-Waiver of Defaults.** The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.



(f) **Expenses During Redemption Period.** If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the default rate of interest stated in the Notes shall be added to and become a part of the amount required to be paid for redemption from such sale.

(g) **Foreclosure Subject to Tenancies.** Agent shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

(h) **Agent's and Trustee's Expenses.** Grantor will pay all of Agent's and Trustee's reasonable expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any suit is filed, including without limitation legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Grantor secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate.

(i) **Receiver.** Agent shall be entitled (regardless of the adequacy of Agent's security) to the appointment of a receiver, Grantor hereby consenting to the appointment of such receiver without bond. Grantor acknowledges and agrees that the provisions of RCW 7.60.025(n), which authorizes appointment of a receiver as necessary to secure ample justice to the parties, apply to Grantor's consent herein to the appointment of a receiver. Grantor expressly acknowledges that enforcement of Agent's right to appointment of a receiver hereunder is necessary to secure ample justice to the parties. Grantor hereby further agrees to the extent permitted by law that the pendency of any action brought by Agent for the appointment of a receiver shall not prevent the foreclosure of this Deed of Trust pursuant to RCW Chapter 61.24 (or any laws in replacement thereof), and Grantor hereby expressly waives the effect, if any, of RCW 61.24.030(4) (or any similar statute) in this regard. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Agent by this section. Agent or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

12. **Protective Advances.** If Grantor fails to pay any tax, assessment, encumbrance or other imposition, or any insurance premiums or fails to perform any other covenant, condition or term in this Deed of Trust, Agent may, but shall not be obligated to pay, obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred by Agent in connection therewith shall be due and payable within ten (10) days following receipt of written demand from



Agent. The amounts so incurred shall bear interest at the Default Rate, from the date due until paid in full, and together with interest shall be added to the Secured Obligations.

13. **Application of Proceeds from Foreclosure or Sale.** The proceeds of any sale (whether through a foreclosure proceeding or Agent's exercise of the power of sale) shall be distributed and applied in accordance with the terms of the Loan Agreement.

14. **Cumulative Remedies; Delay or Omission Not a Waiver.** Each remedy or right of Agent shall not be exclusive of, but shall be in addition to, every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing on the occurrence or existence of any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or acquiescence therein, nor shall it affect any subsequent Event of Default of the same or different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Agent.

15. **Agent's Remedies against Multiple Parcels.** If more than one property, lot or parcel is covered by this Deed of Trust, and if this Deed of Trust is foreclosed upon, or judgment is entered upon any Secured Obligations secured hereby, or if Agent exercises its power of sale, execution may be made upon or Agent may exercise its power of sale against any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and execution sales or sales by advertisement may likewise be conducted separately or concurrently, in each case at Agent's election.

16. **No Merger.** In the event of a foreclosure of this Deed of Trust or any other mortgage or deed of trust securing the Secured Obligations, the Secured Obligations then due Agent and/or the other Secured Parties shall not be merged into any decree of foreclosure entered by the court, and Agent may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Secured Obligations.

17. **Notices.** Except as otherwise provided herein, any notices, demands, consents, requests, approvals, undertakings or other instruments required or permitted to be given in connection with this Deed of Trust (and all copies of such notices or other instruments) shall be given in accordance with the terms of the Loan Agreement.

18. **Extension of Payments.** Grantor agrees that, without affecting the liability of any person for payment of the Secured Obligations secured hereby or affecting the lien of this Deed of Trust upon the Property or any part thereof (other than persons or property explicitly released as a result of the exercise by Agent of its rights and privileges hereunder), Agent may at any time and from time to time, on request of Grantor, without notice to any person liable for payment of any Secured Obligations secured hereby, but otherwise subject to the provisions of the Loan Agreement, extend the time, or agree to alter or amend the terms of payment of such Secured Obligations. Grantor further agrees that any part of the



security herein described may be released with or without consideration without affecting the remainder of the Secured Obligations or the remainder of the security.

19. **Governing Law.** Grantor agrees that this Deed of Trust is to be construed, governed and enforced in accordance with the laws of the State. Wherever possible, each provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Deed of Trust shall be prohibited by or invalid under applicable law, to the extent permitted by law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Deed of Trust.

20. **Satisfaction of Deed of Trust.** Upon satisfaction of the conditions set forth in the Loan Agreement for release of all or any portion of the Property from this Deed of Trust, a satisfaction or reconveyance of the applicable Property in recordable form shall promptly be provided by Agent to Grantor.

21. **Successors and Assigns Included in Parties.** This Deed of Trust shall be binding upon Grantor and upon the successors and assigns of Grantor and shall inure to the benefit of Agent's successors and assigns; all references herein to Grantor shall be deemed to include Grantor's successors and assigns, and to Agent shall be deemed to include Agent's successors pursuant to the Loan Agreement. Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for Grantor. Wherever used, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.

22. **Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Grantor agrees, to the full extent permitted by law, that at all times following the occurrence and during the continuation of an Event of Default, neither Grantor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, or extension laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat; and Grantor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws and any and all right to have the assets comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that Agent or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. To the full extent permitted by law, Grantor hereby waives any and all statutory or other rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof.

23. **Interpretation with Other Documents.** Notwithstanding anything in this Deed of Trust to the contrary, in the event of a conflict or inconsistency between this Deed of Trust and the Loan Agreement, the provisions of the Loan Agreement shall govern.



24. **Future Advances.** This Deed of Trust is given for the purpose of securing extensions of credit which Agent and/or the other Secured Parties have made and may hereafter make to or for the Borrowers or any of them, and certain other Secured Obligations incurred by the Borrowers or any of them, in each case pursuant and subject to the terms and provisions of the Loan Agreement, any Related Swap Contract and/or any Related Cash Management Agreement. The parties hereto intend that, in addition to any advances or Secured Obligations outstanding as of the date hereof and secured hereby, this Deed of Trust shall secure unpaid balances of loan advances made under the Loan Documents, the Related Swap Contracts and/or the Related Cash Management Agreements, and other Secured Obligations incurred, after this Deed of Trust is delivered to the proper authorities for filing or recordation, whether made pursuant to an obligation of Agent and/or the other Secured Parties or otherwise, and such future advances and such other future Secured Obligations shall be secured to the same extent as if such future advances were made, or such other future Secured Obligations were incurred, on the date hereof, although there may be no advance made, or other Secured Obligation incurred, at the time of execution hereof and although there may be no indebtedness outstanding at the time any future advance is made or such other future Secured Obligation is incurred, provided that the aggregate maximum principal amount of all loan advances now or hereafter made by Agent and the other Secured Parties, together with the amount of other Secured Obligations now outstanding or hereafter incurred, shall not exceed \$1,000,000,000.00 outstanding at any one time.

25. **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained in this Deed of Trust shall be invalid, illegal or unenforceable in any respect, to the extent permitted by law, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Loan Agreement shall not be in any way affected, prejudiced or disturbed thereby. In the event that the application of any of the covenants, agreements, terms or provisions of this Deed of Trust is held to be invalid, illegal or unenforceable, those covenants, agreements, terms and provisions shall not be in any way affected, prejudiced or disturbed when otherwise applied.

26. **Changes.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Grantor and Agent relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

27. **Time of Essence.** Time is of the essence with respect to the provisions of this Deed of Trust.

28. **Waiver of Trial by Jury.** GRANTOR HEREBY WAIVES GRANTOR'S RIGHT TO TRIAL BY JURY IN ANY LITIGATION RELATING TO OR IN ANY WAY CONNECTED WITH THIS DEED OF TRUST OR THE TRANSACTION CONTEMPLATED HEREBY.



29. **Replacement of Notes.** Any one or more of the financial institutions which are or become a party to the Loan Agreement as Lenders may from time to time be replaced and the amount of Loans and commitments of Lenders may change from time to time, and, accordingly, one or more of the Notes may from time to time be replaced. As the indebtedness secured by this Deed of Trust shall remain the same, such replacement of the Notes shall not be construed as a novation and shall not affect, diminish or abrogate Grantor's liability under this Deed of Trust or the priority of this Deed of Trust.

30. **Intentionally Deleted.**

31. **Successor Trustee.** In accordance with applicable law, Agent may from time to time appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

32. **Oral Agreements 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.**

33. **Other Mortgages and Deeds of Trust.** The Secured Obligations are secured by mortgages and deeds of trust (the "**Other Mortgages and Deeds of Trust**") encumbering other properties owned or leased by Grantor or affiliates of Grantor. To the full extent permitted by law, Agent may exercise its rights and remedies under this Deed of Trust and the Other Mortgages and Deeds of Trust by applicable proceeding, whether foreclosure or, exercise of power of sale, either separately or together, or in any combination thereof in one or more proceedings, and concurrently or at different times, and Grantor will not object to any such separate or consolidated exercise of such rights and remedies or any efforts by Agent to consolidate one or more actions in the exercise of its rights and remedies under this Deed of Trust and the Other Mortgages and Deeds of Trust.

34. **Related Swap Contracts and Related Cash Management Agreements.** No Related Swap Counterparty or Related Cash Management Bank who obtains the benefit of any Lien by virtue of the provisions of this Deed of Trust shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Property (including the release or impairment of any Property) other than in its capacity as Lender and only to the extent expressly provided in the Loan Documents. Each Related Swap Counterparty and each Related Cash Management Bank not a party to the Loan Agreement who obtains through the Agent the benefit of the lien of this Deed of Trust shall be deemed to have acknowledged and accepted the appointment of the Agent pursuant to the terms of the Loan Agreement, and that with respect to the actions and omissions of the Agent hereunder or otherwise relating hereto that do or may affect such Secured Party, the Agent and its Related Parties shall be entitled to all the rights, benefits and immunities conferred under Article IX of the Loan Agreement. Upon request by Agent, each Related Swap Party and each Related Cash Management Bank



as a condition to continuing to have the benefit of the security of this Deed of Trust and as a condition to continuing to be a Secured Party hereunder, shall execute (within such reasonable time as Agent may require by written notice) such document or documents as Agent may reasonably request to confirm that such Related Swap Party or Related Cash Management Bank, as applicable, has appointed Agent to act as its agent for purposes of holding the security evidenced by this Deed of Trust.

35. **Conveyance.** The conveyance of the Property to the Trustee contained herein shall be for the benefit of the Agent, acting in its capacity as administrative agent pursuant to the Loan Agreement for the Secured Parties.

36. **No Novation.** Grantor and Agent acknowledge and agree that (i) the amendment and restatement of the Existing Loan Agreement pursuant to the Fifth Restated Agreement does not constitute a novation of such loan agreement or the indebtedness described therein; (ii) the issuance of new Notes in replacement of, and in substitution for, the promissory notes previously delivered pursuant to the Existing Loan Agreement shall not be construed as a novation and shall not affect, diminish or abrogate Grantor's liability under this Deed of Trust or the priority of this Deed of Trust; and (iii) modifications to the Existing Deed of Trust herein do not constitute a novation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, this instrument is executed as of the day and year first above written by the persons identified below on behalf of Grantor and Agent (and each such person hereby represents that s/he possesses full power and authority to execute this instrument on behalf of the party for which s/he is signing).

GRANTOR:

APPLE WASHINGTON LLC, a Delaware limited liability company

By: _____

Name: Lorin M. Cortina

Its: Executive Vice President and Chief Financial Officer



201406260021

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

On May 8, 2014, before me, Marlene Gonzaga Adamson, personally appeared Lorin M. Cortina, Executive Vice President and Chief Financial Officer of APPLE WASHINGTON LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



Agent hereby agrees to and acknowledges the terms of the foregoing instrument.

AGENT:

BANK OF AMERICA, N.A., a national
banking association, as Agent

By: *Erik M. Truette* (seal)

Print Name: Erik M. Truette

Its: Assistant Vice President

UNOFFICIAL DOCUMENT

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Skagit County Auditor

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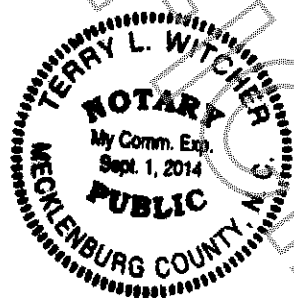
ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Erik M. Truette.

GIVEN under my hand and notarial seal this 19th day of May, 2014.



Terry L. Witcher
Notary Public

Printed or Typed Name: Terry L. Witcher
My Commission Expires: September 1, 2014



EXHIBIT A

Legal Description

Land

Leasehold estate in the following parcel(s) of real property:

PARCEL A

THAT PORTION OF LOT 6, "CASCADE MALL BINDING SITE PLAN" AS RECORDED ON OCTOBER 19, 1989 IN VOLUME 8 OF SHORT PLATS, PAGES 170 THROUGH 180, INCLUSIVE, UNDER AUDITOR'S FILE NO. 8910190065, RECORDS OF SKAGIT COUNTY WASHINGTON, BEING IN A PORTION OF THE SOUTHEAST OF THE NORTHEAST AND THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 5 OF SAID BINDING SITE PLAN, ALSO BEING THE NORTHEAST CORNER OF SAID LOT 6, THENCE SOUTH 0°32'18" EAST, ALONG THE EAST LINE OF SAID LOT 6 AND THE WEST MARGIN OF BURLINGTON BOULEVARD AS SHOWN ON SAID BINDING SITE PLAN, A DISTANCE OF 1299.30 FEET; THENCE AT A RIGHT ANGLE SOUTH 89°27'42" WEST, 77.05 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°27'42" WEST, 130.16 FEET; THENCE NORTH 13°00'35" WEST, 10.58 FEET; THENCE NORTH 0°32'18" WEST, 28.18 FEET; THENCE NORTH 89°27'42" EAST, 14.41 FEET; THENCE NORTH 0°32'18" WEST 38.64 FEET; THENCE NORTH 89°27'42" EAST, 118.04 FEET TO A POINT WHICH LIES NORTH 0°32'18" WEST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 0°32'18" EAST 77.15 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND PARKING AS DESCRIBED AND SET FORTH IN THAT DOCUMENT ENTITLED DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS MADE BY PAN PACIFIC DEVELOPMENT, INC., RECORDED JULY 21, 1989 UNDER AUDITOR'S FILE NO. 8907210046 AND AMENDED BY INSTRUMENTS RECORDED UNDER AUDITOR'S FILE NOS. 9710300078, 9805080072 AND 9902240173.

SITUATE IN THE CITY OF BURLINGTON, COUNTY OF SKAGIT, STATE OF WASHINGTON.



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Skagit County Auditor

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Burlington, WA
Skagit County

SCHEDULE 1

GROUND LEASE

That certain Ground Lease dated April 6, 2001, as amended, by and between PPR Cascade, LLC, a Delaware limited liability company, as Landlord, and Apple Northwest LLC, a Washington limited liability company, as Tenant, as the same may have been or may hereafter be amended from time to time, a memorandum of which is recorded as Instrument Number 200211130194 in the Office of the Recorder of Skagit County, Washington. Tenant's interest in said lease was assigned to Apple Washington LLC, a Delaware limited liability company, by instrument recorded as Instrument Number 200311030288 in the aforesaid Recorder's Office.

After recording, please return this document to:
Post Closing Department
Chicago Title Insurance Company-National Division
10 S. LaSalle Street, Suite 3100
Chicago, IL 60603
ATTN: Denta Robinson



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Skagit County Auditor

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