

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Wells Fargo Bank, National Association
Real Estate Banking Group (AU #7572)
299 South Main Street, 6th Floor
Salt Lake City, Utah 84111
Attn: Malerie Young
Loan No. 1002255

11054045
10/15/2010 2:15:00 PM \$69.00
Book - 9869 Pg - 914-937
Gary W. Ott
Recorder, Salt Lake County, UT
UNITED TITLE SERVICES
BY: eCASH, DEPUTY - EF 24 P.

APN: 16-32-352-061, 16-32-352-060, 16-32-352-057
16-32-352-062, 16-32-352-059, 16-32-352-011,
16-32-352-012, 16-32-352-013, 16-32-352-068,
16-32-352-066 and 16-32-352-067

THIS DEED OF TRUST SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE

DEED OF TRUST
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

THE PARTIES TO THIS DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made as of October 13, 2010, are JDJ PROPERTIES, INC., a Utah corporation, WOODLANDS III HOLDINGS, LLC, a Utah limited liability company, and WOODLANDS IV HOLDINGS, LLC, a Utah limited liability company (individually and collectively as the context requires, and jointly and severally, "Trustor"), W K ASSOCIATES, INC., a Utah corporation d/b/a United Title Services ("Trustee"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Beneficiary").

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ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the City of Salt Lake, County of Salt Lake, State of Utah, described on Exhibit A attached hereto, together with all right, title, interest, and privileges of Trustor in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all right, title, interest and privileges of Trustor under that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Woodlands Business Park dated as of October 11, 2010 and recorded concurrently herewith in the records of the County Recorder of Salt Lake County, Utah (including all supplemental addenda thereto, the "CC&Rs"), pertaining to the real property described on Exhibit A attached hereto, provided, however, that Beneficiary shall have no liability under such CC&Rs unless and until Beneficiary forecloses on the real property; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the "Improvements"); all interest or estate which Trustor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 1.2 **ADDRESS.** The address of the Subject Property (if known) is: 3929, 3949, 3981, 4001, 4021, and 4041 South 700 East, Salt Lake City, Utah 84107. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing the following obligations (the "Secured Obligations"):
 - (a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note Secured by Deed of Trust (the "Note") of even date herewith, in the principal amount of THIRTY-ONE MILLION FIVE HUNDRED THOUSAND AND

NO/100THS DOLLARS (\$31,500,000.00) executed by Trustor, as borrower, and payable to the order of Beneficiary, as lender; and

- (b) Payment and performance of all covenants and obligations of Trustor under this Deed of Trust; and
 - (c) Payment and performance of all covenants and obligations on the part of Trustor under that certain Loan Agreement (the "Loan Agreement") of even date herewith by and between Trustor and Beneficiary, as lender; and
 - (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Deed of Trust; and
 - (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
 - (f) Payment and performance of all covenants and obligations of Trustor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Trustor and Beneficiary in connection with the Loan, as defined in the Loan Agreement, including, without limitation, the Swap Contract (as defined in the Loan Agreement); and
 - (g) All modifications, increases, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations. For purposes of *Utah Code Annotated* Section 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents (as defined in the Loan Agreement) shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Subject Property, and (ii) Beneficiary may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of either Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Subject Property pursuant to this Deed of Trust. For purposes of *Utah Code Annotated* Section 57-1-25 and *Utah Code Annotated* Section 78B-6-901.5, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof (the "Leases"); and (b) the rents, revenue, income, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (the "Payments"). The term "Leases", as referred to herein, shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property. This Article 3 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Article 3 and the provisions of the Act, the provisions of the Act shall control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

- 3.2 **GRANT OF LICENSE.** Beneficiary confers upon Trustor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary or Trustee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Beneficiary or Trustee hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that: (a) the Schedule of Leases attached hereto as Schedule 1 is, as of the date hereof, a true, accurate and complete list of all Leases; (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.
- 3.5 **COVENANTS.** Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Beneficiary prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) exercise Trustor's best efforts to keep all portions of the Subject Property that are capable of being leased at all times at rentals not less than the fair market rental value; (d) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the lessor and lessee) of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request. Trustor shall not, without Beneficiary's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into any Leases after the date hereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when they become due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Section shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.
- 3.6 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Beneficiary.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Trustor hereby grants and assigns to Beneficiary as of the Effective Date (defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information,

wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Subject Property; together with all rents and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts (including any impound accounts), accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Trustor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; all of Trustor's right, title and interest, now or hereafter acquired, to the payment of money from Beneficiary to Trustor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Trustor and Beneficiary in connection with the Loan, as defined in the Loan Agreement, including, without limitation, the Swap Contract, as defined in the Loan Agreement; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Utah Uniform Commercial Code, as amended or recodified from time to time ("UCC").

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Trustor's principal place of business is located at the address shown in Section 7.10, and Trustor is organized under the laws of the State of Utah.
- 4.3 **RIGHTS OF BENEFICIARY.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC Section 70A-9a-620, or other applicable law.
- 4.4 **RIGHTS OF BENEFICIARY ON DEFAULT.** Upon the occurrence of a Default (hereinafter defined) under this Deed of Trust, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:
- (a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
 - (b) In the event of any bankruptcy auction sale with respect to any or all of the Collateral, whether such sale is conducted pursuant to *United States Code* Title 11, Section 363 or *United States Code* Title 11, Section 1129(b)(2)(A), Beneficiary shall have the absolute right to bid and become the purchaser at any such sales and credit the Secured Obligations against any such successful bid.
 - (c) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and

collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC Section 70A-9a-620, or other applicable law.

- 4.5 **POWER OF ATTORNEY.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary. Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file or record any initial financing statements and amendments thereto that (a) indicate the Collateral: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of UCC Article 9a, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of UCC Article 9a, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under UCC Section 9a-509(4)(b). Trustor will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.
- 4.6 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Deed of Trust is a first and prior lien on the Subject Property.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Trustor's rights to contest payment of taxes as may be provided in the Loan Agreement, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 5.3 **TAX AND INSURANCE IMPOUNDS.** Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary, as directed by Beneficiary, Impounds (as defined in the Loan Agreement) pursuant to the terms in the Loan Agreement.
- 5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Trustor shall promptly pay and perform each Secured Obligation when due.
- 5.5 **LIENS, ENCUMBRANCES AND CHARGES.**
- (a) Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Trustor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein, whether senior or subordinate hereto.
 - (b) With respect to any construction, renovation, equipping, refurbishing or similar activities with respect to the Subject Property and the improvements, Trustor shall timely comply with all requirements of *Utah Code Annotated* Title 38 Part 1 of with regard to filings and notices and further agrees that Beneficiary may file a Notice of Commencement, Notice of

Intent to File Notice of Completion, and Notice of Completion as contemplated by *Utah Code Annotated* Section 38-1-31, *Utah Code Annotated* Section 38-1-33, and *Utah Code Annotated* Section 38-1-40, in each case in the State Construction Registry of the State of Utah. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Subject Property and Improvements in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1-27(3). Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Subject Property or Improvements that are included in the State Construction Registry and/or received by Trustor. Trustor shall, upon completion of the Improvements, promptly file a Notice of Intent to File Notice of Completion, and Notice of Completion in the State Construction Registry as permitted by *Utah Code Annotated* Section 38-1-33 and *Utah Code Annotated* Section 38-1-40.

- (c) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Subject Property and Improvements, or any part thereof or interest therein, whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or entered into the construction of any and all buildings now being erected or that hereafter may be erected on the Subject Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* Section 38-1-28 and otherwise complies with the requirements of *Utah Code Annotated* Section 38-1-28 to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (i) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* Section 38-1-28(7) without previously recording a notice of release of lien and substitution of alternate security or (ii) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.
- (d) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* Section 38-1-28 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

5.6 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.

- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Beneficiary to be maintained by Trustor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Beneficiary, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.
- (b) At its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with

respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

5.7 **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.** Subject to the provisions of the Loan Agreement, Trustor covenants: (a) to insure the Subject Property and Collateral against such risks as Beneficiary may require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof, not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent or as provided in the Loan Agreement; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions (including, without limitation, the CC&Rs) and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property or Collateral; and (g) to do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.

5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.

5.9 **ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.**

- (a) Trustee accepts this trust when this Deed of Trust is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.
- (b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.
- (c) With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or

for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Subject Property for debts contracted for or liability or damages incurred in the management or operation of the Subject Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. **TRUSTOR WILL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES.**

- (d) All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.
- (e) Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.
- (f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

5.10 **COMPENSATION; EXCULPATION; INDEMNIFICATION**

- (a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or Collateral or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether the same constitutes negligence) of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.
- (b) **TRUSTOR INDEMNIFIES TRUSTEE AND BENEFICIARY AGAINST, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (i) BY REASON OF THIS DEED OF TRUST; (ii) BY REASON OF THE EXECUTION OF THIS DEED OF TRUST OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF TRUSTOR TO PERFORM TRUSTOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE SUBJECT PROPERTY; PROVIDED, TRUSTOR'S INDEMNITY SHALL NOT EXTEND TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY. THE ABOVE OBLIGATION OF TRUSTOR TO INDEMNIFY AND HOLD HARMLESS TRUSTEE AND BENEFICIARY SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE AND RECONVEYANCE OR PARTIAL RELEASE AND RECONVEYANCE OF THIS DEED OF TRUST.**
- (c) Trustor shall pay all amounts and indebtedness arising under this Section immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

- 5.11 **SUBSTITUTION OF TRUSTEES.** From time to time, in writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new Trustee.
- 5.12 **DUE ON SALE OR ENCUMBRANCE.** If the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Trustor), mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary or as permitted by the Loan Agreement, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations (the "Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Deed of Trust upon the Subject Property and Collateral.
- 5.14 **RECONVEYANCE.** Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby (or other evidence that the obligation securing the trust deed has been "satisfied" within the meaning of *Utah Code Annotated* Section 57-1-33.1(1)(b)), Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.
- 5.15 **SUBROGATION.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to the Loan Documents or by the proceeds of any loan secured by this Deed of Trust.
- 5.16 **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and Collateral and ascertaining Trustor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean (a) at Beneficiary's option, the failure of Trustor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or otherwise, and such failure continues for more than ten (10) days after notice from Lender to Borrower of such failure; (b) the failure of Trustor to perform any non-monetary obligation hereunder, and such failure continues for more than thirty (30) days after notice from Lender to Borrower of such failure; or (c) the existence of any Default as defined in the Loan Agreement.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:
- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons;

- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment without notice or hearing;
- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;
- (f) To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give, publish and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable in the manner and the time set forth in the notice of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* Section 57-1-27. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale. Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, any Beneficiary may commence suit to collect such deficiency in accordance with *Utah Annotated Code* Section 57-1-32 or other applicable law;
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion;
- (h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property;

- (i) If Trustor, Trustor's successor interest or any other person having a subordinate lien or encumbrance of record on the Subject Property, reinstates this Deed of Trust and the Loan with three (3) months of the recordation of a notice of default in accordance with *Utah Annotated Code* Section 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Annotated Code* Section 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.
- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in this Deed of Trust; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or person's legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* Section 57-1-29.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Deed of Trust.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of commencement, notices of completion, notice of intent to complete, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Subject Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Beneficiary under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and Collateral and such further rights and agreements are incorporated herein by this reference.
- 7.2 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing and in accordance with the terms of the Loan Agreement.

- 7.3 **OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL.** If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.
- 7.4 **WAIVER OF MARSHALLING RIGHTS.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation (the "Other Property") marshalled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.5 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.
- 7.6 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of Section 5.12.
- 7.7 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.8 **CHOICE OF LAW.** This Deed of Trust shall be construed in accordance with the laws of the State of Utah, except to the extent that federal laws preempt the laws of the State of Utah.
- 7.9 **INCORPORATION.** All exhibits, schedules or other items attached hereto are incorporated into this Deed of Trust by this reference.
- 7.10 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Trustor: JDJ Properties, Inc.
Woodlands III Holdings, LLC
Woodlands IV Holdings, LLC
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321
Attention: Dale Christiansen

With a copy to: Dell Loy Hansen
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321
and

John Miller
299 South Main Street, Suite 2450
Salt Lake City, Utah 84111

and

Jonathan Bullen
299 South Main Street, Suite 2420
Salt Lake City, Utah 84111

and

Olson & Hoggan, P.C.
130 South Main Street, Suite 200
Logan, Utah 84321
Attention: Robert B. Funk, Esq.

Trustee: W K Associates, Inc.
4001 South 700 East, Suite 300
Salt Lake City, Utah 84107
Reference: Loan No. 1002255; Beneficiary AU #7525

Beneficiary: Wells Fargo Bank, National Association
Real Estate Banking Group (AU #7572)
299 South Main Street, 6th Floor
Salt Lake City, Utah 84111
Attention: Erik Bengtzen
Loan No. 1002255

With a copy to: Wells Fargo Bank, National Association
Minneapolis Loan Center
608 2nd Avenue South, 11th Floor
Minneapolis, Minnesota 55402
Attention: Garwo Freeman
Loan No. 1002255

and

Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Brian D. Cunningham, Esq.

Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Subject Property or to Trustor naming Beneficiary, "Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the ability of Trustor to perform its obligations to Beneficiary under the Note or the Loan Agreement.

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DESCRIPTION OF SUBJECT PROPERTY

Exhibit A to Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by JDJ PROPERTIES, INC., a Utah corporation, WOODLANDS III HOLDINGS, LLC, a Utah limited liability company, and WOODLANDS IV HOLDINGS, LLC, a Utah limited liability company, as Trustor, to W K ASSOCIATES, INC., a Utah corporation d/b/a United Title Services, as Trustee, for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Beneficiary, dated as of October 13, 2010.

All the certain real property located in the County of Salt Lake County, State of Utah, described as follows:

Parcel 1A:

Parcel 1A, within THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, located in Block 5, Ten Acre Plat "A", Big Field Survey, being recorded December 23, 1988, as Entry No. 4717916, in Book 88-12, at Page 123, in the Office of the Salt Lake County Recorder, State of Utah.

Together with a non-exclusive Easement of Right of Use and Enjoyment in and to the Common Areas of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, as created by and subject to the terms, provisions, covenants and conditions contained in the Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK, a Commercial Planned Unit Development, recorded June 20, 1984 as Entry No. 3957732, in Book 5566, at Page 2152 of Official Records, First Amendment recorded June 17, 1987, as Entry No. 4476357, in Book 5931, at Page 972 of Official Records, Second Amendment recorded December 23, 1988, as Entry No. 4717915, in Book 6091, at Page 2427 of Official Records, Third Amendment recorded December 11, 1991, as Entry No. 5167401, in Book 6386, at Page 1363 of Official Records, Fourth Amendment recorded June 14, 1994, as Entry No. 5849190, in Book 6961, at Page 183 of Official Records, Fifth Amendment recorded March 03, 1996, as Entry No. 6296914, in Book 7345, at Page 2137 of Official Records, Sixth Amendment recorded March 06, 1996, as Entry No. 6296916, in Book 7345, at Page 2165 of Official Records, Seventh Amendment recorded November 10, 2005, as Entry No. 9550711 in Book 9215, at Page 7852 of Official Records, and as amended and restated in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK dated October 11, 2010 and recorded October 15, 2010 in the Official Records, and as further defined and described as the Official Plat of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, recorded December 23, 1988, as Entry No. 4767916, in Book 88-12 of Plats, at Page 123 of Official Records.

Together with all rights and privileges granted under the above referenced Covenants and Amendments thereof.

Also, all appurtenant rights over and through said Common Areas, granted under the License and Easement Agreement dated January 22, 1991 and recorded January 24, 1991, as Entry No. 5015481, in Book 6284, at Page 1939 of Official Records.

Also, a Non-Exclusive Easement over the following described property as created by that certain Declaration of Easements, Covenants and Restrictions dated October 27, 1983 and recorded October 27, 1983, as Entry No. 3862259, in Book 5502, at Page 1559 of Official Records, and Amendment dated June 19, 1984 and recorded June 20, 1984 as Entry No. 3957731 in Book 5566 at Page 2146 of Official Records wherein Woodland Investment Company, a limited partnership, appears as Grantor and the Woodland Associates, appears as Grantee:

Beginning at a point which is South 00°05'44" West 271.18 feet from the Northeast corner of Lot 11, Block 5, Ten Acre Plat "A", Big Field Survey, said point also being South 00°05'44" West 843.69 feet from the Northeast corner of Lot 10, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence North 89°59'32" West 766.0 feet, more or less, to the West line of said Lot 11; thence South 00°05'44" West 25.00 feet; thence South 89°59'32" East 766.0 feet, to the East line of Lot 11; thence North 0°05'44" East 25.00 feet to the point of beginning.

Parcel 1B:

Parcel 1B, within THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, located in Block 5, Ten Acre Plat "A", Big Field Survey, being recorded December 23, 1988, as Entry No. 4717916, in Book 88-12, at Page 123, in the Office of the Salt Lake County Recorder, State of Utah.

Together with a non-exclusive Easement of Right of Use and Enjoyment in and to the Common Areas of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, as created by and subject to the terms, provisions, covenants and conditions contained in the Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK, a Commercial Planned Unit Development, recorded June 20, 1984 as Entry No. 3957732, in Book 5566, at Page 2152 of Official Records, First Amendment recorded June 17, 1987, as Entry No. 4476357, in Book 5931, at Page 972 of Official Records, Second Amendment recorded December 23, 1988, as Entry No. 4717915, in Book 6091, at Page 2427 of Official Records, Third Amendment recorded December 11, 1991, as Entry No. 5167401, in Book 6386, at Page 1363 of Official Records, Fourth Amendment recorded June 14, 1994, as Entry No. 5849190, in Book 6961, at Page 183 of Official Records, Fifth Amendment

recorded March 03, 1996, as Entry No. 6296914, in Book 7345, at Page 2137 of Official Records, Sixth Amendment recorded March 06, 1996, as Entry No. 6296916, in Book 7345, at Page 2165 of Official Records, Seventh Amendment recorded November 10, 2005, as Entry No. 9550711 in Book 9215, at Page 7852 of Official Records, and as amended and restated in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK dated October 11, 2010 and recorded October 15, 2010 in the Official Records, and as further defined and described as the Official Plat of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, recorded December 23, 1988, as Entry No. 4767916, in Book 88-12 of Plats, at Page 123 of Official Records.

Also, a Non-Exclusive Easement over the following described property as created by that certain Declaration of Easements, Covenants and Restrictions dated October 27, 1983 and recorded October 27, 1983, as Entry No. 3862259, in Book 5502, at Page 1559 of Official Records, wherein Woodland Investment Company, a limited partnership, appears as Grantor and the Woodland Associates, appears as Grantee:

Beginning at a point which is South 00°05'44" West 271.18 feet from the Northeast corner of Lot 11, Block 5, Ten Acre Plat "A", Big Field Survey, said point also being South 00°05'44" West 843.69 feet from the Northeast corner of Lot 10, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence North 89°59'32" West 766.0 feet, more or less, to the West line of said Lot 11; thence South 00°05'44" West 25.00 feet; thence South 89°59'32" East 766.0 feet, to the East line of Lot 11; thence North 0°05'44" East 25.00 feet to the point of beginning.

Parcel 2:

Parcel 2, within THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, located in Block 5, Ten Acre Plat "A", Big Field Survey, being recorded December 23, 1988, as Entry No. 4717916, in Book 88-12, at Page 123, in the Office of the Salt Lake County Recorder, State of Utah.

Together with a non-exclusive Easement of Right of Use and Enjoyment in and to the Common Areas of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, as created by and subject to the terms, provisions, covenants and conditions contained in the Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK, a Commercial Planned Unit Development, recorded June 20, 1984 as Entry No. 3957732, in Book 5566, at Page 2152 of Official Records, First Amendment recorded June 17, 1987, as Entry No. 4476357, in Book 5931, at Page 972 of Official Records, Second Amendment recorded December 23, 1988, as Entry No. 4717915, in Book 6091, at Page 2427 of Official Records, Third Amendment recorded December 11, 1991, as Entry No. 5167401, in Book 6386, at Page 1363 of Official Records, Fourth Amendment recorded June 14, 1994, as Entry No. 5849190, in Book 6961, at Page 183 of Official Records, Fifth Amendment recorded March 03, 1996, as Entry No. 6296914, in Book 7345, at Page 2137 of Official Records, Sixth Amendment recorded March 06, 1996, as Entry No. 6296916, in Book 7345, at Page 2165 of Official Records, Seventh Amendment recorded November 10, 2005, as Entry No. 9550711 in Book 9215, at Page 7852 of Official Records, and as amended and restated in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK dated October 11, 2010 and recorded October 15, 2010 in the Official Records, and as further defined and described as the Official Plat of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, recorded December 23, 1988, as Entry No. 4767916, in Book 88-12 of Plats, at Page 123 of Official Records.

Also, a Non-Exclusive Easement over the following described property as created by that certain Declaration of Easements, Covenants and Restrictions dated October 27, 1983 and recorded October 27, 1983, as Entry No. 3862259, in Book 5502, at Page 1559 of Official Records, wherein Woodland Investment Company, a limited partnership, appears as Grantor and the Woodland Associates, appears as Grantee:

Beginning at a point which is South 00°05'44" West 271.18 feet from the Northeast corner of Lot 11, Block 5, Ten Acre Plat "A", Big Field Survey, said point also being South 00°05'44" West 843.69 feet from the Northeast corner of Lot 10, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence North 89°59'32" West 766.0 feet, more or less, to the West line of said Lot 11; thence South 00°05'44" West 25.00 feet; thence South 89°59'32" East 766.0 feet, to the East line of Lot 11; thence North 0°05'44" East 25.00 feet to the point of beginning.

Also, a Non-Exclusive Easement as created by the certain Grant of Easement dated March 05, 1996 and recorded March 06, 1996, as Entry No. 6296915, in Book 7345, at Page 2154 of Official Records.

Parcel 3:

Parcel 3, within THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, located in Block 5, Ten Acre Plat "A", Big Field Survey, being recorded December 23, 1988, as Entry No. 4717916, in Book 88-12, at Page 123, in the Office of the Salt Lake County Recorder, State of Utah.

Together with a non-exclusive Easement of Right of Use and Enjoyment in and to the Common Areas of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, as created by and subject to the terms, provisions, covenants and conditions contained in the Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK, a Commercial Planned Unit Development, recorded June 20, 1984 as Entry No. 3957732, in Book 5566, at Page 2152 of Official Records, First Amendment recorded June 17, 1987, as Entry No.

4476357, in Book 5931, at Page 972 of Official Records, Second Amendment recorded December 23, 1988, as Entry No. 4717915, in Book 6091, at Page 2427 of Official Records, Third Amendment recorded December 11, 1991, as Entry No. 5167401, in Book 6386, at Page 1363 of Official Records, Fourth Amendment recorded June 14, 1994, as Entry No. 5849190, in Book 6961, at Page 183 of Official Records, Fifth Amendment recorded March 03, 1996, as Entry No. 6296914, in Book 7345, at Page 2137 of Official Records, Sixth Amendment recorded March 06, 1996, as Entry No. 6296916, in Book 7345, at Page 2165 of Official Records, Seventh Amendment recorded November 10, 2005, as Entry No. 9550711 in Book 9215, at Page 7852 of Official Records, and as amended and restated in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK dated October 11, 2010 and recorded October 15, 2010 in the Official Records, and as further defined and described as the Official Plat of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, recorded December 23, 1988, as Entry No. 4767916, in Book 88-12 of Plats, at Page 123 of Official Records.

Together with all rights and privileges granted under the above referenced Covenants and Amendments thereof.

Also, all appurtenant rights over and through said Common Areas, granted under the License and Easement Agreement dated January 22, 1991 and recorded January 24, 1991, as Entry No. 5015481, in Book 6284, at Page 1939 of Official Records.

Also, a Non-Exclusive Easement over the following described property as created by that certain Declaration of Easements, Covenants and Restrictions dated October 27, 1983 and recorded October 27, 1983, as Entry No. 3862259, in Book 5502, at Page 1559 of Official Records, and Amendment dated June 19, 1984 and recorded June 20, 1984 as Entry No. 3957731 in Book 5566 at Page 2146 of Official Records wherein Woodland Investment Company, a limited partnership, appears as Grantor and the Woodland Associates, appears as Grantee:

Beginning at a point which is South 00°05'44" West 271.18 feet from the Northeast corner of Lot 11, Block 5, Ten Acre Plat "A", Big Field Survey, said point also being South 00°05'44" West 843.69 feet from the Northeast corner of Lot 10, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence North 89°59'32" West 766.0 feet, more or less, to the West line of said Lot 11; thence South 00°05'44" West 25.00 feet; thence South 89°59'32" East 766.0 feet, to the East line of Lot 11; thence North 0°05'44" East 25.00 feet to the point of beginning.

Parcel 4:

Parcel 4, within THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, located in Block 5, Ten Acre Plat "A", Big Field Survey, being recorded December 23, 1988, as Entry No. 4717916, in Book 88-12, at Page 123, in the Office of the Salt Lake County Recorder, State of Utah.

Together with a non-exclusive Easement of Right of Use and Enjoyment in and to the Common Areas of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, as created by and subject to the terms, provisions, covenants and conditions contained in the Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK, a Commercial Planned Unit Development, recorded June 20, 1984 as Entry No. 3957732, in Book 5566, at Page 2152 of Official Records, First Amendment recorded December 23, 1988, as Entry No. 4717915, in Book 6091, at Page 2427 of Official Records, Third Amendment recorded December 11, 1991, as Entry No. 5167401, in Book 6386, at Page 1363 of Official Records, Fourth Amendment recorded June 14, 1994, as Entry No. 5849190, in Book 6961, at Page 183 of Official Records, Fifth Amendment recorded March 03, 1996, as Entry No. 6296914, in Book 7345, at Page 2137 of Official Records, Sixth Amendment recorded March 06, 1996, as Entry No. 6296916, in Book 7345, at Page 2165 of Official Records, Seventh Amendment recorded November 10, 2005, as Entry No. 9550711 in Book 9215, at Page 7852 of Official Records, and as amended and restated in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of THE WOODLANDS BUSINESS PARK dated October 11, 2010 and recorded October 15, 2010 in the Official Records, and as further defined and described as the Official Plat of THE WOODLANDS BUSINESS PARK 2ND AMENDED, a Commercial Planned Unit Development, recorded December 23, 1988, as Entry No. 4767916, in Book 88-12 of Plats, at Page 123 of Official Records.

Also, a Non-Exclusive Easement over the following described property as created by that certain Declaration of Easements, Covenants and Restrictions dated October 27, 1983 and recorded October 27, 1983, as Entry No. 3862259, in Book 5502, at Page 1559 of Official Records, where in Woodland Investment Company, a limited partnership, appears as Grantor and the Woodland Associates, appears as Grantee:

Beginning at a point which is South 00°05'44" West 271.18 feet from the Northeast corner of Lot 11, Block 5, Ten Acre Plat "A", Big Field Survey, said point also being South 00°05'44" West 843.69 feet from the Northeast corner of Lot 10, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence North 89°59'32" West 766.0 feet, more or less, to the West line of said Lot 11; thence South 00°05'44" West 25.00 feet; thence South 89°59'32" East 766.0 feet, to the East line of Lot 11; thence North 0°05'44" East 25.00 feet to the point of beginning.

Parcel 6A, NORTH TRACT WOODLANDS BUSINESS PARK EAST PARCEL:

Beginning at the Southwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence North 0°14'13" East along the East line of 700 East Street 220.97 feet; thence South 89°57'56" East 150.00 feet; thence North 0°13'23" East 65.00 feet; thence South 89°57'38" East

110.00 feet; thence South 0°02'22" West 208.635 feet to a point on a curve to the left, the radius point of which bears South 15°30'15" East 622.03 feet; thence Southwesterly along the arc of said curve 189.008 feet; thence North 89°58'24" West 89.30 feet to the point of beginning.

Parcel 6B, NORTH TRACT WOODLAND BUSINESS PARK WEST PARCEL:

Beginning at a point North 0°14'13" East along the East line of 700 East Street 220.97 feet and South 89°51'36" East 150.00 feet and North 0°13'23" East 65.00 feet and South 89°57'38" East 110.00 feet from the Southwest corner Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence South 89°57'38" East 285.26 feet; thence South 0°11'14" West 17.30 feet; thence South 85°34'00" East 220.80 feet; thence South 0°9'59" West 251.59 feet to the Southeast corner Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, said point also being on a curve to the left, the radius point of which bears South 32°58'02" West 622.08 feet; thence Westerly along the arc of said curve 526.228 feet; thence North 0°02'22" East 208.635 feet to the point of beginning.

Parcel 7, NORTH TRACT WOODLANDS BUSINESS PARK ADDITION:

Beginning at a point 221 feet North and 150 feet East from the Southwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence North 30.00 feet; thence West 80.00 feet; thence South 30.00 feet; thence East 80.00 feet to the point of beginning.

Together with an Exclusive Easement for parking, pedestrian walkways, vehicular driveways and approaches, pedestrian and vehicular ingress and egress, landscaping, signage, drainage and other similar uses as granted October 25, 2005 and recorded November 08, 2005, as Entry No. 7756101, in Book 8399, at Page 8658 of Official Records over the Grantors property more particularly described as follows:

Beginning on the East line of 700 East Street at a point which lies South 0°14'13" West 287.10 feet from the Northwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, said point also lying South 0°14'13" West 320.10 feet and South 89°45'47" East 33.00 feet from the Salt Lake County Brasscap Monument at the intersection of 700 East and 3900 South Streets, and running thence South 80°57'38" East 149.98 feet; thence South 0°13'23" West 35.58 feet; thence North 89°57'56" West 80.00 feet; thence South 0°13'23" West 30.00 feet; thence North 89°57'56" West 70.00 feet to said East line; thence along said East line North 0°14'13" East 65.58 feet to the point of beginning.

Parcel 8A:

Beginning 187.1 feet South from the Northwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence South 100 feet; thence East 282.67 feet; thence North 1°22' West 100 feet, more or less, to a point due East from beginning; thence West 280 feet to the point of beginning.

Less and Excepting the following:

Beginning on the East line of 700 East Street at a point which lies South 0°14'13" West 187.10 feet from the Northwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, said point also lying South 0°14'13" West 220.10 feet and South 89°45'47" East 33.00 feet from the Salt Lake County Brasscap Monument at the intersection of 700 East and 3900 South Streets; and running thence South 89°57'58" East 201.00 feet to the Southeast corner of a parcel of land described in a Warranty Deed recorded as Entry No. 3908986, in Book 5534, at Page 353, in the Office of the Salt Lake County Recorder; thence South 0°14'13" West 65.00 feet thence North 89°57'58" West 201.00 feet to said East line; thence along said East line North 0°14'13" East 65.00 feet to the point of beginning.

Parcel 8B:

Beginning 221 feet North from the Southwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, thence East 150 feet; thence North 65.58 feet; thence West 150 feet; thence South 65.58 feet to the point of beginning.

Less and Excepting the following:

Beginning at a point 221 feet North and 150 feet East from the Southwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence North 30.00 feet; thence West 80.00 feet; thence South 30.00 feet; thence East 80.00 feet to the point of beginning.

CROSS-DEFAULT RIDER

Exhibit B to Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by JDJ PROPERTIES, INC., a Utah corporation, WOODLANDS III HOLDINGS, LLC, a Utah limited liability company, and WOODLANDS IV HOLDINGS, LLC, a Utah limited liability company, collectively as Trustor, to W K ASSOCIATES, INC., a Utah corporation d/b/a United Title Services, as Trustee, for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Beneficiary, dated as of October 13, 2010 (the "Deed of Trust").

1. **DEFAULT - OTHER DEED OF TRUST.** A default under that certain deed of trust (Loan No. 1003253) made by Trustor to Trustee for the benefit of Beneficiary, dated as of October 13, 2010 (the "Other Deed of Trust"), to be recorded concurrently with the Deed of Trust in the Office of the County Recorder of Salt Lake County, Utah, shall, at Beneficiary's option, constitute a Default under this Deed of Trust.
2. **DEFAULT - DEED OF TRUST.** A Default under this Deed of Trust shall, at Beneficiary's option, constitute a default under the Other Deed of Trust.

SCHEDULE OF LEASES

Schedule 1 to Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by JDJ PROPERTIES, INC., a Utah corporation, WOODLANDS III HOLDINGS, LLC, a Utah limited liability company, and WOODLANDS IV HOLDINGS, LLC, a Utah limited liability company, as Trustor, to W K ASSOCIATES, INC., a Utah corporation d/b/a United Title Services, as Trustee, for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Beneficiary, dated as of October 13, 2010.

1. That certain lease between JDJ Properties, Inc., as "Landlord", and Bank of America, N.A., successor in interest to Countrywide Home Loans Inc., successor in interest to Countrywide Funding Corporation, as "Tenant", dated February 10, 1989 for that certain premises located at the building commonly known as 3981 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
2. That certain lease between JDJ Properties, Inc., as "Landlord", and Flirts Salon & Boutique, L.L.C., successor in interest to Lucky Girl, L.L.C., successor in interest to Statement Bodystyles, Inc., as "Tenant", dated September 12, 1995 for that certain premises located at the building commonly known as 3981 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
3. That certain lease between JDJ Properties, Inc., as "Landlord", and Jeanne Hansen and Merrill Hansen, successor in interest to Restaurant Services, Inc. as "Tenant", dated August 19, 1999 for that certain premises located at the building commonly known as 3981 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
4. That certain lease between JDJ Properties, Inc., as "Landlord", and Staffing Solutions Southwest, Inc., successor in interest to Staffing Resources of Utah, Inc., successor-in-interest to Pace Temporary Services, Inc., as "Tenant", dated January 9, 1992 for that certain premises located at the building commonly known as 3981 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
5. Those certain leases between JDJ Properties, Inc., as "Landlord", and Citywide Home Loans, as "Tenant", dated July 27, 2001; November 19, 2002; November 25, 2005; April 6, 2006; March 15, 2007, and January 11, 2010 for those certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
6. That certain lease between JDJ Properties, Inc., as "Landlord", and Davis Benefits, Inc., as "Tenant", dated February 11, 2010 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
7. That certain lease between JDJ Properties, Inc., as "Landlord", and Dirtt Environmental Solutions, Inc., as "Tenant", dated June 1, 2007 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
8. That certain lease between JDJ Properties, Inc., as "Landlord", and David L. Skalka, Dr. Francis J. Wapner, Dr. Kevin H. Charlton, Dr. Fred E. Clayson, and Dr. Paul F. Olson, collectively, as "Tenant", dated January 1, 2002 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
9. That certain lease between JDJ Properties, Inc., as "Landlord", and Securitas Security Services USA, Inc., as "Tenant", dated August 31, 2007 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
10. That certain lease between JDJ Properties, Inc., as "Landlord", and Stantec Consulting Services, Inc., as "Tenant", dated October 1, 2010 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
11. That certain lease between JDJ Properties, Inc., as "Landlord", and T-Mobile West Corporation, successor in interest to Voicestream PSC II Corporation f/k/a Western PCS II Corporation, as "Tenant", dated March 19, 1996 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
12. That certain lease between JDJ Properties, Inc., as "Landlord", and Tom McLeod Software Corporation, as "Tenant", dated November 5, 2008 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
13. That certain license between JDJ Properties, Inc., as "Landlord", and Utah Broadband, LLC, successor in interest to Metrobridge Networks (Utah) Inc., successor in interest to Utah Broadband, LLC, as "Licensee", dated August 1, 2006 for that certain premises located at the

building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.

14. Those certain leases between JDJ Properties, Inc., as "Landlord", and W K Associates, Inc., d/b/a United Title Services, as "Tenant", dated December 20, 2002 and July 1, 2007, respectively, for those certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
15. That certain lease between JDJ Properties, Inc., as "Landlord", and Wasatch Clinical Research, L.C., as "Tenant", dated December 18, 2000 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
16. That certain lease between JDJ Properties, Inc., as "Landlord", and Woodlands Commercial Bank, successor in interest to Barclays Capital Inc., successor in interest to Lehman Brothers Holdings Inc., successor in interest to SIB Mortgage Corp., as "Tenant", dated August 8, 2003 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
17. That certain lease between JDJ Properties, Inc., as "Landlord", and Western Governors University, as "Tenant", dated October 28, 2003 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
18. That certain lease between JDJ Properties, Inc., as "Landlord", and Woodlands Executive Suites, LLC, as "Tenant", dated January 1, 2005 for that certain premises located at the building commonly known as 4001 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
19. That certain lease between Woodlands III Holdings, LLC, as "Landlord", and Jean Patee Wigs, Inc. f/k/a Jean Patee Weegs, Inc., as "Tenant", dated July 18, 2000 for that certain premises located at the building commonly known as 4041 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
20. That certain lease between Woodlands III Holdings, LLC, as "Landlord", and JPMorgan Chase Bank, N.A., successor in interest to the Federal Deposit Insurance Corporation, receiver of Washington Mutual Bank FSB, successor by merger to Olympus Bank, as "Tenant", dated December 31, 1999, for that certain premises located at the building commonly known as 4041 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
21. That certain lease between Woodlands III Holdings, LLC, as "Landlord", and Nexant, Inc., as "Tenant", dated November 7, 2008 for that certain premises located at the building commonly known as 4021 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
22. That certain lease between Woodlands III Holdings, LLC, as "Landlord", and Principal Life Insurance Company f/k/a Principal Mutual Life Insurance Company, as "Tenant", dated September 27, 1989 for that certain premises located at the building commonly known as 4021 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
23. That certain lease between Woodlands III Holdings, LLC, as "Landlord", and Staff Care, Inc., as "Tenant", dated June 22, 2007, and that certain sublease between Staff Care, Inc., as sublessor, and Stevens-Henager College, Inc., as sublessee, dated November 19, 2009 for that certain premises located at the building commonly known as 4021 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
24. That certain lease between Woodlands III Holdings, LLC, as "Landlord", and Stevens-Henager College, Inc., as "Tenant", dated September 8, 2010 for that certain premises located at 4021 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
25. That certain lease between Woodlands IV Holdings, LLC, as "Landlord", and Hospice Specialists, LLC, successor in interest to Odyssey HealthCare Operating A, LP d/b/a Odyssey Healthcare of Salt Lake, as "Tenant", dated November 3, 2005 for that certain premises located at the building commonly known as 3949 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
26. That certain lease between Woodlands IV Holdings, LLC, as "Landlord", and HDR Engineering, Inc., as "Tenant", dated April 24, 1997 for that certain premises located at the building commonly known as 3949 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
27. That certain lease between Woodlands IV Holdings, LLC, as "Landlord", and JPMorgan Chase Bank, N.A., successor in interest to First USA Financial Services, Inc., as "Tenant", dated March 15, 1999 for that certain premises located at the building commonly known as 3949 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
28. That certain lease between Woodlands IV Holdings, LLC, as "Landlord", and NetDeposit, LLC f/k/a NetDeposit, Inc., as "Tenant", dated June 19, 2008 and that certain sublease between NetDeposit, LLC, as sublessor, and BSERV, Inc., as sublessee, dated September 3, 2010

for that certain premises located at the building commonly known as 3949 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.

29. That certain lease between Woodlands IV Holdings, LLC, as "Landlord", and Nuco Education Corporation, d/b/a National Institute of Technology, as "Tenant", dated August 19, 2008 for that certain premises located at the building commonly known as 3949 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.
30. That certain lease between Woodlands IV Holdings, LLC, as "Landlord", and Salt Lake Wound Care and Hyperbaric Center, L.L.C., as "Tenant", dated March 1, 2005 for that certain premises located at the building commonly known as 3949 South 700 East, Salt Lake City, Utah 84107, together with all amendments and exhibits and addenda attached thereto.