

EXECUTION

STATE OF UTAH
 COUNTY OF SALT LAKE

PREPARED BY, AND WHEN
 RECORDED RETURN TO:
 Durham Jones & Pinegar
 111 East Broadway, Suite 900
 Salt Lake City, UT 84111
 Attention: Thomas R. Taylor

11341481
 2/29/2012 11:45:00 AM \$27.00
 Book - 9995 Pg - 3922-3929
 Gary W. Ott
 Recorder, Salt Lake County, UT
 FIRST AMERICAN NCS
 BY: eCASH, DEPUTY - EF 8 P.

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MODIFICATION OF DEED OF TRUST

THIS MODIFICATION OF DEED OF TRUST (the "**Modification**"), dated as of February 22, 2012, is made and executed between JHD DRAPER, LLC, a Utah limited liability company, whose address is 4091 W 3500 S, West Valley City, UT 84120 ("**Trustor**") and KEYBANK NATIONAL ASSOCIATION, a national banking association, with its main office at 4910 Tiedeman Road, Brooklyn, Ohio 44144 (together with its successors, assigns, and participating institutions, "**Beneficiary**").

RECITALS

WHEREAS, the C&M Investments, Ltd., a Utah limited partnership, whose address is 3500 S 400 W, West Valley City, UT 84119 ("**Original Trustor**") executed (i) that certain Deed of Trust, dated as of October 26, 2006, in favor of First American Title Insurance Company, whose address is 200 E South Temple, Suite 200, Salt Lake City, UT 84111, for the benefit of the Beneficiary, recorded on October 30, 2006, at the Salt Lake County Recorder's Office as Entry No. 9891076 in Book 9372 at Page 4594 (the "**Deed of Trust**"), to secure indebtedness in the original principal amount of Eight Million Nine Hundred Sixty Thousand and No/100 Dollars (\$8,960,000.00); and (ii) that certain Assignment of Rents, dated as of October 26, 2006, in favor of Beneficiary, recorded on October 30, 2006, at the Salt Lake County Recorder's Office as Entry No. 9891077 in Book 9372 at Page 4605 (the "**Assignment of Rents**"), pursuant to which Original Trustor assigned all rents, leases, income and profits accruing from the Property (as defined therein) to Beneficiary;

WHEREAS, Original Trustor and Beneficiary entered into that certain Modification of Deed of Trust, dated as of August 9, 2007, recorded on August 31, 2007, at the Salt Lake County Recorder's Office as Entry No. 10210460 in Book 9510 at Page 5593 (the "**First Modification**");

WHEREAS, Original Trustor and Beneficiary entered into that certain Modification of Deed of Trust, dated as of October 26, 2007, recorded on December 20, 2008, at the Salt Lake County Recorder's Office as Entry No. 10305064 in Book 9550 at Page 4660 (the "**Second Modification**");

WHEREAS, Original Trustor, Trustor, and Beneficiary entered into that certain Assumption Agreement, dated as of June 1, 2011, as disclosed of record pursuant to that certain Intercreditor and Subordination Agreement, recorded on October 31, 2011, at the Salt Lake County Recorder's Office as Entry No. 11270837 in Book 9962 at Page 7537 (the "**Assumption Agreement**"), pursuant to which (i) Trustor assumed all of Original Trustor's obligations under the Deed of Trust (as modified by the First Modification and the Second Modification), (ii) Trustor was substituted as "Trustor" under the Deed of Trust, and (iii) Beneficiary consented to such assignment and assumption;

WHEREAS, on December 20, 2007, Henry Day Ford, Inc. a Utah corporation ("**HDF**") entered into that certain Guaranty, dated as of December 20, 2008 (the "**HDF Guaranty**"), to and for the benefit of Beneficiary;

WHEREAS, in connection with the Assumption Agreement, on June 1, 2011, C&M Investments, Ltd., a Utah limited partnership, Michael H. Day and Carolyn Day, as Trustees of The Michael Henry Day Family Living Trust dated July 16, 1981, as amended, and Jeremy H. Day, as Trustee of The Jeremy H. Day Trust under Agreement dated March 4, 2008 (the "**Assumption Guarantors**") entered into that certain Guaranty, dated as of June 1, 2011 (the "**Assumption Guaranty**"), to and for the benefit of Beneficiary;

WHEREAS, simultaneously herewith, Trustor and Beneficiary entered into that certain Amended and Restated Promissory Note, dated as of the date hereof (the "**Note**"), by and between Trustor and Beneficiary, pursuant to which the Beneficiary agreed to continue to make certain advances of credit to Trustor;

WHEREAS, simultaneously herewith, Jeremy H. Day, an individual residing in the State of Utah ("**JHD**") entered into that certain Guaranty, dated as of the date hereof (the "**JHD Guaranty**"), in favor of Beneficiary, pursuant to which the Guarantors unconditionally guaranteed all of the indebtedness, liabilities and other obligations of Trustor under the Note;

WHEREAS, simultaneously herewith, Michael H. Day, an individual residing in the State of Utah, and Carolyn Day, an individual residing in the State of Utah (collectively with HDF, JHD, and the Assumption Guarantors, the "**Guarantors**") entered into that certain Guaranty, dated as of the date hereof (collectively with the HDF Guaranty, JHD Guaranty, and the Assumption Guaranty, the "**Guaranties**"), in favor of Beneficiary, pursuant to which the Guarantors unconditionally guaranteed all of the indebtedness, liabilities and other obligations of Trustor under the Note;

WHEREAS, Trustor is the owner of the real property described on Exhibit A attached hereto (the "**Real Property**"), as more particularly described in the Deed of Trust;

WHEREAS, the Deed of Trust provides that no amendment thereof is effective unless such amendment is in writing signed by the parties thereto; and

WHEREAS, Trustor has requested and Beneficiary has agreed to further modify and amend the Deed of Trust pursuant to the terms and conditions hereof.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agree as follows:

1. Reaffirmation. The Trustor hereby agrees to, acknowledges, and reaffirms all of the terms and provisions of the Deed of Trust (giving effect to the First Modification and the Second Modification). The Trustor acknowledges and agrees that the Deed of Trust (as modified to date) secures the full and prompt payment when due of all indebtedness, obligations, and other liabilities of Trustor under the Note, and the Guarantors under the Guaranties. This Modification is limited as specified and shall not constitute a modification, acceptance or waiver of any other provisions of the Deed of Trust. Except as specifically modified in this Modification, all of the terms and conditions of the Deed of Trust shall remain in full force and effect.

2. Modification.

(a) The Deed of Trust is hereby amended by replacing the phrase "C&M Investments, Ltd., a Utah limited partnership" wherever such phrase appears with the following language: "JHD Draper, LLC, a Utah limited liability company".

(b) The Deed of Trust is hereby further amended by replacing the phrase "C&M Investments, Ltd." wherever such phrase appears with the following language: "JHD Draper, LLC".

3. Miscellaneous.

(a) *Assignability.* This Modification and the Deed of Trust is not assignable or transferable by Trustor and any such purported assignment or transfer is void. This Modification and the Deed of Trust shall be binding upon the successors of Trustor. Trustor acknowledges and agrees that the Beneficiary may assign all or any portion of this Modification and the Deed of Trust, including, without limitation, assignment of the rights, benefits and remedies of the Beneficiary hereunder without any assignment of the duties, obligations or liabilities of the Beneficiary hereunder, and may sell participations in this financing

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

(c) *GOVERNING LAW.* THIS MODIFICATION SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF UTAH, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

(d) *JURY TRIAL WAIVER.* EACH PARTY HERETO WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN THE PARTIES ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS MODIFICATION, THE DEED OF TRUST, THE NOTE, THE GUARANTIES, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED THERETO.

(e) *EXCLUSIVE JURISDICTION.* THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF UTAH SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OF ANY AND ALL CLAIMS, DISPUTES, AND CONTROVERSIES ARISING UNDER OR RELATING TO THIS MODIFICATION OR THE DEED OF TRUST. NO LAWSUIT, PROCEEDING, ALTERNATIVE DISPUTE RESOLUTION, OR ANY OTHER ACTION RELATING TO OR ARISING UNDER THIS NOTE MAY BE COMMENCED OR PROSECUTED IN ANY OTHER FORUM, EXCEPT AS EXPRESSLY AGREED IN WRITING BY THE BENEFICIARY. TRUSTOR IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS MODIFICATION OR THE DEED OF TRUST BROUGHT IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, OR THE U.S. DISTRICT COURT FOR THE DISTRICT OF UTAH AND ANY CLAIM THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(f) *Interpretation of Agreement.* All of the terms and conditions of this Modification are expressly intended to be construed as covenants as well as conditions. The Recitals set forth above are expressly incorporated in this Modification by this reference. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Beneficiary of Trustor.

(g) *Entire Agreement.* This Modification, together with the Guaranties and Note, constitute the entire agreement between the Trustor and the Beneficiary concerning the subject matter hereof, and may not be altered or amended except by written agreement signed by the Trustor and the Beneficiary. All other prior and contemporaneous agreements, arrangements, and understandings between the parties hereto as to the subject matter hereof are rescinded.

(h) *Counterparts.* This Modification and any amendment, waivers, consents or supplements hereto or in connection herewith may be executed by one or more of the parties hereto on any number of separate counterparts, by facsimile or electronic mail, and all of said counterparts taken together shall be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or portable document format (“pdf”) signature page shall constitute an original for purposes hereof.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Modification has been executed as of the day and year first above written.

JHD DRAPER, LLC,
a Utah limited liability company,
as Trustor

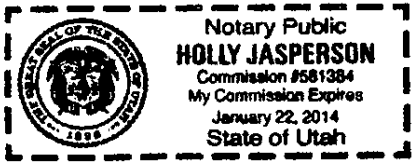
By: [Signature]
Name: Jeremy Day
Title: President

State of UTAH)
County of SALT LAKE

The foregoing instrument was acknowledged before me this 22 day of February 2012
by JEREMY DAY PRESIDENT of JHD Draper, LLC.

[Signature]
(Signature of Person Taking Acknowledgment)

My commission expires: 01/22/2014
Residing at: UTAH




[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURE PAGE]

MODIFICATION OF DEED OF TRUST
(JHD Draper, LLC)

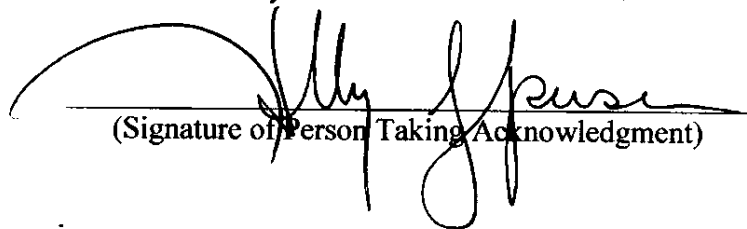
KEYBANK NATIONAL ASSOCIATION,
as Beneficiary

By: 
Name: Dan Ranger
Title: Vice President

State of UTAH

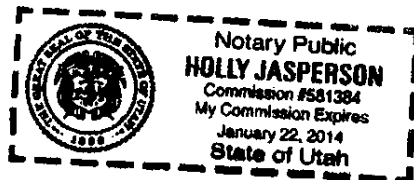
County of SALT LAKE

The foregoing instrument was acknowledged before me this 22 day of February, 2012
by Dan Ranger, Vice President of KeyBank National Association.


(Signature of Person Taking Acknowledgment)

My commission expires: 01-22-2014

Residing at: Utah



[SIGNATURE PAGE]

MODIFICATION OF DEED OF TRUST
(JHD Draper, LLC)

LEGAL DESCRIPTION

The land referred to herein is located in Salt Lake County, State of Utah and is described as:

PARCEL 1:

Commencing 561 feet South from the Northeast Corner of Section 31, Township 1 South, Range 1 West, Salt Lake Meridian; thence South 233.6 feet; thence West 370 feet; thence North 233.6 feet; thence East 370 feet to beginning.

PARCEL 2:

A tract of land located in full within a parcel of land recorded in the Official Records of the Salt Lake County Recorder's Office as Book 9040 at Page 2298, said parcel being within the Northeast Quarter of the Northeast Quarter of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian, approximately 4091 West 3500 South, West Valley City, Salt Lake County, State of Utah, and being more particularly described as follows:

Beginning at a point on the South right of way line of 3500 South Street, said point being 515.00 feet South 89°56'54" West and 40.00 feet South 00°01'50" East from the Northeast Corner of said Section 31; and running thence South 00°01'50" East a distance of 295.00 feet; thence North 89°56'54" East a distance of 475.03 feet (record 475.00 feet) to the West right of way line of 4000 West Street; thence along said street South 00°02'10" East a distance of 94.00 feet; thence South 89°56'54" West a distance of 290.04 feet; (record 290.00 feet); thence South 00°01'50" East a distance of 132.00 feet; thence South 89°56'54" West a distance of 40.00 feet; thence South 00°01'50" East a distance of 233.60 feet; thence North 89°56'54" East a distance of 330.08 feet (record 330.00 feet) to the West right of way line of 4000 West Street; thence along said street South 00°02'10" East a distance of 195.39 feet (record South 00°01'50" East) to the Northeast Corner of the Woodcove No. 1 Subdivision; thence along the North line of said subdivision South 89°57'50" West a distance of 705.10 feet; thence North 00°01'50" West a distance of 724.80 feet; thence North 89°56'54" East a distance of 72.84 feet; thence North 00°03'06" West a distance of 215.00 feet to the South right of way line of 3500 South Street; thence along said South line North 89°56'54" East a distance of 157.24 feet to the point of beginning.

LESS and EXCEPTING THEREFROM the following:

Beginning at a point on the West line of 4000 West Street, said point being 335.01 feet South 0°02'10" East along the section line, and 40.00 feet South 89°57'50" West from the Northeast Corner of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 0°02'10" East, a distance of 94.39 feet along said West line; thence South 89°57'50" West, a distance of 290.04; thence North 0°01'50" West, a distance of 9431 feet; thence North 89°56'54" East, a distance of 290.03 feet to the point of beginning.

PARCEL 3:

Beginning at a point on the West line of 4000 West Street, said point being 335.01 feet South 0°02'10" East along the Section line, 40.00 feet South 89°57'50" West, and 131.60 feet South 0°02'10" East from the Northeast Corner of Section 31, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 0°02'10" East, a distance of 94.39 feet along said West line to the North line of the Brock Childress LLC, property; thence South 89°57'50" West, a distance of 290.05 feet along said North line; thence North 0°01'50" West, a distance of 94.31 feet; thence North 89°56'54" East, a distance of 290.05 feet to the point of beginning.

15-31-226-031-0000 (portion of)

15-31-226-016-0000 (portion of)

15-31-226-028-0000 (portion of)