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 JEFFERY SMITH  
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 2012 Jun 21 12:11 pm FEE 46.00 BY ED  
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Hunton & Williams LLP  
 Bank of America Plaza, Suite 4100  
 600 Peachtree Street, N.E.  
 Atlanta, Georgia 30308-2216  
 Attn: John A. Decker, Esq.  
 247725-2 EJM  
 Property Location: 4949 South 300 West, Provo UT  
 84604, Utah County, Utah

Space above this line for recorder's use only

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

This **LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING**, dated as of JUNE 11, 2012 (this "**Deed of Trust**"), is by and from **VIVINT, INC.**, a Utah corporation, having an address at 4931 North 300 West, Provo, Utah 84604 ("**Trustor**"), to Utah First Title Insurance Agency, Inc., a Utah corporation, having an address at 416 West, 800 North, Orem Utah 84057, as deed of trust trustee (in such capacity, together with its successors and assigns, "**Trustee**") for the benefit of **GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.**, as Administrative Agent, Collateral Agent, Documentation Agent, Syndication Agent and Lead Arranger, having an address at 6011 Connection Drive, Irving, Texas 75039, Attention: APX Account Manager (in such capacity, together with its successors and assigns, "**Agent**" or "**Beneficiary**").

**RECITALS:**

**WHEREAS**, reference is made to that certain Credit Agreement, dated as of May 11, 2006, as amended and restated pursuant to that certain Amended and Restated Credit and Guaranty Agreement dated July 10, 2008, as amended by that certain Consent and First Amendment Under Amended and Restated Credit and Guaranty Agreement dated December 11, 2008, that certain Limited Waiver and Second Amendment to Amended and Restated Credit and Guaranty Agreement dated December 31, 2008, that certain Limited Waiver, Consent and Third Amendment to Amended and Restated Credit and Guaranty Agreement, that certain Limited Waiver and Fourth Amendment to Amended and Restated Credit and Guaranty Agreement dated May 27, 2009, that certain Second Amended and Restated Credit and Guaranty Agreement dated October 2, 2009, that certain Consent, Limited Waiver and First Amendment to Second Amended and Restated Credit and Guaranty Agreement dated May 21, 2010, that certain Third Amended and Restated Credit and Guaranty Agreement dated September 27, 2010, that certain Consent and First Amendment to Third Amended and Restated Credit and Guaranty Agreement

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dated December 30, 2010, that certain Second Amendment to Third Amended and Restated Credit and Guaranty Agreement dated March 28, 2011, that certain Consent and Third Amendment to Third Amended and Restated Credit and Guaranty Agreement dated June 10, 2011, that certain Fourth Amendment to Third Amended and Restated Credit and Guaranty Agreement dated October 3, 2011, and as further amended and restated by that certain Fourth Amended and Restated Credit and Guaranty Agreement dated February 28, 2012 (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower named therein ("**Borrower**"), the other Credit Parties party thereto from time to time, **GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.**, as Administrative Agent, Collateral Agent, Syndication Agent and Lead Arranger (in its capacity as Collateral Agent, "**Agent**") under which Lenders agreed to extend certain credit facilities to Borrower, in an aggregate principal amount of Seven Hundred Sixty-Two Million and No/100 Dollars (\$762,000,000.00).

**WHEREAS**, subject to the terms and conditions of the Credit Agreement, Trustor may enter into one or more Hedge Agreements with one or more Lender Counterparties; and

**WHEREAS**, in consideration of the extensions of credit and other accommodations of Lenders and Lender Counterparties as set forth in the Credit Agreement and the Hedge Agreements, respectively, Trustor has agreed, subject to the terms and conditions hereof, each other Credit Document and each of the Hedge Agreements, to secure Trustor's obligations under the Credit Documents and the Hedge Agreements as set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, Trustor agrees as follows:

## **SECTION 1. DEFINITIONS**

**1.1. Definitions.** Capitalized terms used herein (including in the recitals hereto) not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. In the event terms used herein conflict with the terms of the Credit Agreement, the terms of the Credit Agreement shall control. In addition, as used herein, the following terms shall have the following meanings:

**"Indebtedness"** means (i) with respect to Borrower, all obligations and liabilities of every nature of Borrower now or hereafter existing under or arising out of or in connection with the Credit Agreement and the other Credit Documents and any Hedge Agreement; and (ii) with respect to any other Trustor, all obligations and liabilities of every nature of such Trustor now or hereafter existing under or arising out of or in connection with any Credit Document, in each case together with all extensions or renewals thereof, whether for principal, interest (including interest that, but for the filing of a petition in bankruptcy with respect to Borrowers, would accrue on such obligations, whether or not a claim is allowed against Borrowers for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, payments for early termination of Hedge Agreements, fees, expenses, indemnities or otherwise, whether voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time

decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from Trustor, any Lender or Lender Counterparty as a preference, fraudulent transfer or otherwise, and all obligations of every nature of Trustor now or hereafter existing under this Deed of Trust. The Credit Agreement contains a revolving credit facility which permits the Borrowers to borrow certain principal amounts, repay all or a portion of such principal amounts, and reborrow the amounts previously paid to the Agent or Lenders, all upon satisfaction of certain conditions stated in the Credit Agreement. This Deed of Trust secures all advances and re-advances under the revolving credit feature of the Credit Agreement.

**“Property”** means all of Trustor’s right, title and interest in and to (i) any leasehold estate in the real property described in Exhibit A created by the Subject Lease (as defined below), together with any greater or additional estate therein as hereafter may be acquired by Trustor (the **“Land”**); (ii) all assignments, modifications, extensions and renewals of the Subject Lease and all credits, deposits, options, privileges and rights of Trustor as tenant under the Subject Lease, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the Subject Lease for a succeeding term or terms, (iii) all improvements now owned or hereafter acquired by Trustor, now or at any time situated, placed or constructed upon the Land subject to the Permitted Liens, (the **“Improvements”**); the Land and Improvements are collectively referred to as the **“Premises”**); (iv) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Trustor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, which constitute fixtures with respect to the Land and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**); (v) all right, title and interest of Trustor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC (defined below), now owned or hereafter acquired by Trustor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the **“Personalty”**); (vi) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Trustor with respect to the Property (the **“Deposit Accounts”**); (vii) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person (other than Trustor) a possessory interest in, or the right to use, all or any part of the Property, together with all related security and other deposits subject to depositors rights and requirements of law (the **“Leases”**); (viii) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits subject to depositors rights and requirements of law, and other benefits paid or payable by parties to the Leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Property (the **“Rents”**), (ix) to the extent mortgageable or assignable all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Property (the **“Property Agreements”**); (x) to the extent mortgageable or assignable all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing; (xi) all property tax refunds payable to Trustor (the **“Tax Refunds”**); (xii) all

accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the **"Proceeds"**); (xiii) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Trustor (the **"Insurance"**); and (xiv) all of Trustor's right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty (the **"Condemnation Awards"**). As used in this Deed of Trust, the term **"Property"** shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

**"Obligations"** means all of the agreements, covenants, conditions, warranties, representations and other obligations of Trustor (including, without limitation, the obligation to repay the Indebtedness) under the Credit Agreement, any other Credit Documents or any of the Hedge Agreements.

**"Subject Lease"** means that certain Lease Agreement dated June 11, 2012, pursuant to which Trustor leases all or a portion of the Land from KC GARDNER RIVERWOODS 2, L.C., a memorandum of which is being recorded contemporaneously herewith with the Recorder of Utah County, Utah.

**"UCC"** means the Uniform Commercial Code of New York or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than New York, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

**1.2. Interpretation.** References to "Sections" shall be to Sections of this Deed of Trust unless otherwise specifically provided. Section headings in this Deed of Trust are included herein for convenience of reference only and shall not constitute a part of this Deed of Trust for any other purpose or be given any substantive effect. The rules of construction set forth in Section 1.3 of the Credit Agreement shall be applicable to this Deed of Trust mutatis mutandis. If any conflict or inconsistency exists between this Deed of Trust and the Credit Agreement, the Credit Agreement shall govern.

## **SECTION 2. GRANT**

To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Trustor has granted, bargained, sold, conveyed, assigned, transferred, and pledged, and does hereby GRANT, BARGAIN, ASSIGN, SELL, TRANSFER, SET OVER and CONVEY to the Trustee IN TRUST, with power of sale, for the benefit of Beneficiary, the Property, subject, however, to the Permitted Liens, TO HAVE AND TO HOLD the Property and Trustor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Property unto the Trustee for so long as any of the Obligations remain outstanding.

## **SECTION 3. WARRANTIES, REPRESENTATIONS AND COVENANTS**

**3.1. Title.** Trustor represents and warrants to Trustee and Beneficiary that except for the Permitted Liens, (a) Trustor owns the Property free and clear of any liens, claims or interests, and (b) this Deed of Trust creates valid, enforceable first priority liens and security interests against the Property.

**3.2. First Lien Status.** Trustor shall preserve and protect the first lien and security interest status of this Deed of Trust and the other Credit Documents to the extent related to the Property except as to Permitted Liens, until Borrower's Obligations have been paid in full and satisfied. If any lien or security interest other than a Permitted Lien is asserted against the Property, Trustor shall promptly, and at its expense, (a) give Trustee and Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released.

**3.3. Payment and Performance.** Trustor shall pay the Indebtedness when due under the Credit Documents and shall perform the Obligations in full when they are required to be performed as required under the Credit Documents.

**3.4. Replacement of Fixtures and Personalty.** Except such as may be permitted under the Credit Agreement or first approved in writing by Beneficiary, Trustor shall not, without the prior written consent of Trustee and Beneficiary, which shall not be unreasonably withheld, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Trustor subject to the liens and security interests of this Deed of Trust and the other Credit Documents, and free and clear of any other lien or security interest other than Permitted Liens except such as may be permitted under the Credit Agreement or first approved in writing by Trustee and Beneficiary.

**3.5. Inspection.** Trustor shall reasonably permit Trustee and Beneficiary, and Trustee and Beneficiary's agents, representatives and employees, upon reasonable prior notice to Trustor, and in compliance with the Subject Lease to inspect the Property and all books and records of Trustor located thereon, and to conduct such environmental and engineering studies as Trustee and Beneficiary may reasonably require; provided, such inspections and studies shall not materially interfere with the use and operation of the Property.

**3.6. Covenants Running with the Land.** All Obligations contained in this Deed of Trust are intended by Trustor and Trustee and Beneficiary to be, and shall be construed as, covenants running with the Property. As used herein, "Trustor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Property. All Persons who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Credit Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Trustee and Beneficiary. In addition, all of the covenants of Trustor in any Credit Document party thereto are incorporated herein by reference and, together with covenants in this Section, shall be covenants running with the land.

**3.7. Condemnation Awards and Insurance Proceeds.** Any awards and compensation paid for any condemnation or other taking, or any purchase in lieu thereof, shall be subject to the terms of the Credit Agreement. All proceeds of any insurance policies insuring against loss or damage to the Property are subject to the terms of the Credit Agreement.

**3.8. Change in Tax Law.** Upon the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (i) deducting or allowing Trustor to deduct from the value of the Property for the purpose of taxation any lien or security interest thereon or (ii) subjecting Trustee and Beneficiary or any of the Lenders to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Deed of Trust, the Indebtedness or Trustee and Beneficiary, and the result is to increase the taxes imposed upon or the cost to Trustee and Beneficiary of maintaining the Indebtedness, or to reduce the amount of any payments receivable hereunder, then, and in any such event, Trustor shall, on demand, pay to Trustee and Beneficiary and the Lenders additional amounts to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful, or taxable to Trustee and Beneficiary, or would constitute usury or render the Indebtedness wholly or partially usurious under applicable law, then Trustor shall pay or reimburse Trustee and Beneficiary or the Lenders for payment of the lawful and non-usurious portion thereof.

**3.9. Tax.** Trustor shall (i) pay when due any tax imposed upon it or upon Trustee and Beneficiary or Trustee and Beneficiary or any Lender pursuant to the tax law of the state in which the Property is located in connection with the execution, delivery and recordation of this Deed of Trust and any of the other Credit Documents, and (ii) prepare, execute and file any form required to be prepared, executed and filed in connection therewith.

**3.10. Reduction Of Secured Amount.** In the event that the amount secured by the Deed of Trust is less than the Indebtedness, then the amount secured shall be reduced only by the last and final sums that Trustor (or Borrowers) repays with respect to the Indebtedness and shall not be reduced by any intervening repayments of the Indebtedness unless arising from the Property. So long as the balance of the Indebtedness exceeds the amount secured, any payments of the Indebtedness shall not be deemed to be applied against, or to reduce, the portion of the Indebtedness secured by this Deed of Trust. Such payments shall instead be deemed to reduce only such portions of the Indebtedness as are secured by other collateral located outside of the state in which the Property is located or as are unsecured.

**3.11. Certain Leasehold Representations, Warranties and Covenants.**

3.11.1. Trustor represents and warrants to Trustee and Beneficiary that (a) the Subject Lease is unmodified and in full force and effect, (b) all rent and other charges therein have been paid to the extent they are payable to the date hereof, (c) Trustor enjoys the quiet and peaceful possession of the property demised thereby, (d) Trustor is not in default under any of the terms thereof and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder, and (e) the lessor thereunder is not in default under any of the terms or provisions thereof on the part of the lessor to be observed or performed (but this statement is made for the benefit of and may only be relied upon by

Trustee and Beneficiary and Lenders). Trustor shall promptly pay, when due and payable, the rent and other charges payable pursuant to the Subject Lease, and will timely perform and observe all of the other terms, covenants and conditions required to be performed and observed by Trustor as lessee under the Subject Lease. Trustor shall notify Trustee and Beneficiary in writing of any default by Trustor in the performance or observance of any terms, covenants or conditions on the part of Trustor to be performed or observed under the Subject Lease within ten (10) days after Trustor knows of such default. Trustor shall, promptly following the receipt thereof, deliver a copy of any notice of default given to Trustor by the lessor pursuant to the Subject Lease and promptly notify Trustee and Beneficiary in writing of any default by the lessor in the performance or observance of any of the terms, covenants or conditions on the part of the lessor to be performed or observed thereunder. Unless required under the terms of the Subject Lease, except as set forth in the Credit Agreement, Trustor shall not, without the prior written consent of Trustee and Beneficiary (which may be granted or withheld in Trustee and Beneficiary's sole and absolute discretion) (i) terminate, or surrender the Subject Lease, or (ii) enter into any modification of the Subject Lease which materially impairs the practical realization of the security interest granted by this Deed of Trust, and any such attempted termination, modification or surrender without Trustee and Beneficiary's written consent shall be void. Trustor shall, within thirty (30) days after written request from Trustee and Beneficiary, use reasonable efforts to obtain from the lessor and deliver to Trustee and Beneficiary a certificate setting forth the name of the tenant thereunder and stating that the Subject Lease is in full force and effect, is unmodified or, if the Subject Lease has been modified, the date of each modification (together with copies of each such modification), that no notice of termination thereon has been served on Trustor, stating that to the best of Trustee and Beneficiary's knowledge, no default or event which with notice or lapse of time (or both) would become a default is existing under the Subject Lease, stating the date to which rent has been paid, and specifying the nature of any defaults, if any, and containing such other statements and representations as may be reasonably requested by Trustee and Beneficiary.

3.11.2. So long as any of the Indebtedness or the Obligations remain unpaid or unperformed, the fee title to and the leasehold estate in the premises subject to each Subject Lease shall not merge but shall always be kept separate and distinct notwithstanding the union of such estates in the lessor or Trustor, or in a third party, by purchase or otherwise. If Trustor acquires the fee title or any other estate, title or interest in the property demised by the Subject Lease, or any part thereof, the lien of this Deed of Trust shall attach to, cover and be a lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of the Property with the same force and effect as if specifically encumbered herein. Trustor agrees to execute all instruments and documents that Trustee and Beneficiary may reasonably require to ratify, confirm and further evidence the lien of this Deed of Trust on the acquired estate, title or interest. Furthermore, Trustor hereby appoints Trustee and Beneficiary as its true and lawful attorney-in-fact to execute and deliver, following an Event of Default, all such instruments and documents in the name and on behalf of Trustor. This power, being coupled with an interest, shall be irrevocable as long as any portion of the Indebtedness remains unpaid.

3.11.3. If the Subject Lease shall be terminated prior to the natural expiration of its term due to default by Trustor or any tenant thereunder, and if, pursuant to the provisions of the Subject Lease, Trustee and Beneficiary or its designee shall acquire from the lessor a new

lease of the premises subject to the Subject Lease, Trustor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

3.11.4. Notwithstanding anything to the contrary contained herein, this Deed of Trust shall not constitute an assignment of any Subject Lease within the meaning of any provision thereof prohibiting its assignment and Trustee and Beneficiary shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust. Trustee and Beneficiary shall be liable for the obligations of the tenant arising out of any Subject Lease for only that period of time for which Trustee and Beneficiary is in possession of the premises demised thereunder or has acquired, by foreclosure or otherwise, and is holding all of Trustor's right, title and interest therein.

#### SECTION 4. DEFAULT AND REMEDIES

**4.1. General Remedies.** If an Event of Default has occurred and is continuing, Trustee and Beneficiary may, at Trustee and Beneficiary's election, exercise any or all of the following rights, remedies and recourses, in addition to all other rights and remedies set forth in this Section 4, subject to all requirements of applicable law: (a) declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Trustor), whereupon the same shall become immediately due and payable; (b) enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto; (c) if Trustor remains in possession of the Property without Trustee and Beneficiary's written consent, which shall not be unreasonably withheld or delayed, invoke any legal remedies to dispossess Trustor; (d) hold, lease, develop, manage, operate or otherwise use the Property upon such terms and conditions as Trustee and Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Trustee and Beneficiary deems necessary or desirable); (e) apply all Rents and other amounts collected by Trustee and Beneficiary in connection with the Property in accordance with the provisions hereof; and (f) make application to a court of competent jurisdiction for the appointment of a receiver of the Property (and Trustor irrevocably consents to such appointment) and any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions hereof; and/or (g) exercise all other rights, remedies and recourses granted under the Credit Documents or otherwise available at law or in equity.

**4.2. Notice of Default.** Upon the occurrence of an Event of Default, Trustee and Beneficiary may elect to have the Property sold in the manner provided herein. Trustee and Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations secured hereby. Notwithstanding anything to the contrary in the foregoing, all procedures shall be conducted in compliance with applicable law. Trustor requests that a copy of any notice of sale be mailed to Trustor at the address for notices set forth in the Credit Agreement.



**4.3 Exercise of Power of Sale.** After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than 45 days beyond the day 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 or as otherwise required by law. Any person, including Beneficiary, may bid at the sale.

Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and costs and reasonable attorneys fees and legal expenses; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest at the highest default rate provided for in the Credit Agreement; (d) all obligations secured by this Deed of Trust; and (e) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the Clerk of the District Court of the county where the Property is located. Notwithstanding anything to the contrary in the foregoing, all procedures shall be conducted in compliance with applicable law.

**4.4 Surrender of Possession.** If possession has not previously been surrendered by Trustor, Trustor shall surrender possession of the Property to the purchaser immediately after the Trustee's sale.

**4.5 UCC Remedies.** Notwithstanding anything to the contrary herein, with regard to all fixtures and personal property conveyed to Trustee and Beneficiary by this Deed of Trust, Trustee and Beneficiary shall have the right, at the option of Trustee and Beneficiary, to exercise any and all rights and remedies available to Trustee and Beneficiary as a secured party under the UCC, and any and all rights and remedies available to Trustee and Beneficiary at law, in equity, or by statute. Upon written demand from Trustee and Beneficiary, Trustor shall, at Trustor's expense, assemble such fixtures and personal property and make them available to Trustee and Beneficiary at a reasonably convenient place designated by Trustee and Beneficiary.

**4.6. Foreclosure.** Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incidental thereto, including reasonable attorneys fees and legal expenses, in such amounts as shall be fixed by the court.

**4.7. Remedies Cumulative, Concurrent and Nonexclusive.** Trustee and Beneficiary shall have all rights, remedies and recourses granted in the Credit Documents and available at law or equity (including the UCC), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Trustor or others obligated under the Credit Documents, or against the Property, or against any one or more of them, at the sole discretion of Trustee and Beneficiary or the Lenders, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Trustee and Beneficiary or the Lenders in the enforcement of any rights, remedies or recourses under the Credit Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**4.8. Release of and Resort to Collateral.** Trustee and Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Credit Documents or their status as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness, Trustee and Beneficiary may resort to any other security in such order and manner as Trustee and Beneficiary may elect.

**4.9. Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Trustor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Trustor by virtue of any present or future statute of limitations or law or judicial decision exempting the Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any Event of Default or of Trustee and Beneficiary's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Credit Documents; and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**4.10. Discontinuance of Proceedings.** If Trustee and Beneficiary or the Lenders shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Documents and shall thereafter elect to discontinue or abandon it for any reason, Trustee and Beneficiary or the Lenders shall have the unqualified right to do so and, in such an event, Trustor and Trustee and Beneficiary or the Lenders shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Credit Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Trustee and Beneficiary or the Lenders shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Trustee and Beneficiary or the Lenders thereafter to exercise any right, remedy or recourse under the Credit Documents for such Event of Default.

**4.11. Application of Proceeds.** Except as provided in the Credit Agreement, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Trustee and Beneficiary (or the receiver, if one is appointed) in the following order unless otherwise required by

applicable law: first, to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (a) receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (b) court costs, (c) reasonable attorneys' and accountants' fees and expenses, (d) costs of advertisement and (e) the payment of all rent and other charges under the Subject Lease; and second, as provided in Section 2.15 of the Credit Agreement.

**4.12. Occupancy After Foreclosure.** Any sale of the Property or any part thereof will divest all right, title and interest of Trustor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Trustor retains possession of such property or any part thereof subsequent to such sale, Trustor will be considered a tenant at sufferance of the purchaser, and will, if Trustor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**4.13. Additional Advances and Disbursements; Costs of Enforcement.** If any Event of Default exists, Trustee and Beneficiary and each of the Lenders shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Trustor in accordance with the Credit Agreement. All sums advanced and expenses incurred at any time by Trustee and Beneficiary or any Lender under this Section, or otherwise under this Deed of Trust or any of the other Credit Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred if not repaid within five (5) days after demand therefor, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Indebtedness, and all such sums, together with interest thereon, shall be secured by this Deed of Trust. Trustor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Credit Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Deed of Trust and the other Credit Documents, and for the curing thereof, or for defending or asserting the rights and claims of Trustee and Beneficiary or the Lenders in respect thereof, by litigation or otherwise.

**4.14. No Trustee and Beneficiary in Possession.** Neither the enforcement of any of the remedies under this Section, the assignment of the Rents and Leases under Section 5, the security interests under Section 6, nor any other remedies afforded to Beneficiary or the Lenders under the Credit Documents, at law or in equity shall cause Beneficiary or any Lender to be deemed or construed to be a "mortgagee in possession" of the Property, to obligate Beneficiary or any Lender to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**4.15 Effect of Sale.** At any sale of the Property pursuant to this Section 4, the title to the right of possession of any such property shall pass to the purchaser thereof, and the fullest extent permitted by law, Trustor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption and demand whatsoever, in and to the property sold and such sale shall be perpetual bar both at law and in equity against Trustor, and against all

other Persons claiming or to claim the property sold or any part thereof, by, through or under Trustor.

## SECTION 5. ASSIGNMENT OF RENTS AND LEASES

**5.1. Assignment.** In furtherance of and in addition to the assignment made by Trustor herein, Trustor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Trustee and Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Trustor shall have a revocable license from Trustee and Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Trustor, the license herein granted shall automatically expire and terminate, without notice by Trustee and Beneficiary (any such notice being hereby expressly waived by Trustor).

**5.2. Perfection Upon Recordation.** Trustor acknowledges that Trustee and Beneficiary has taken all reasonable actions necessary to obtain, and that upon recordation of this Deed of Trust Trustee and Beneficiary shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases subject to the Permitted Liens and in the case of security deposits, rights of depositors and requirements of law. Trustor acknowledges and agrees that upon recordation of this Deed of Trust Trustee and Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Trustor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "**Bankruptcy Code**"), without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**5.3. Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Trustor and Trustee and Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Trustor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents, and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

## SECTION 6. SECURITY AGREEMENT

**6.1. Security Interest.** This Deed of Trust constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to

the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Trustor grants to Trustee and Beneficiary a first and prior security interest in the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations subject to the Permitted Liens, and agrees that Trustee and Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Trustee and Beneficiary with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Trustor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Trustor. To the extent that the Property constitutes or includes personal property, including goods or items of personal property which are or are to become fixtures under applicable law, the Trustor hereby grants a security interest therein and this Deed of Trust shall also be construed as a pledge and a security agreement under the UCC applicable in the State or Commonwealth in which the Property is located; and, if any Event of Default has occurred and is continuing, the Beneficiary shall be entitled with respect to such personal property to all remedies available under the UCC and all other remedies available under applicable law. Without limiting the foregoing, any personal property may, at the Beneficiary's option and, except as otherwise required by applicable law, without the giving of notice, (i) be sold hereunder, (ii) be sold pursuant to the UCC or (iii) be dealt with by the Beneficiary in any other manner permitted under applicable law. If any Event of Default has occurred and is continuing, the Beneficiary shall be the attorney-in-fact of the Trustor with respect to any and all matters pertaining to the personal property with full power and authority to give instructions with respect to the collection and remittance of payments, to endorse checks, to enforce the rights and remedies of the Trustor and to execute on behalf of the Trustor and in the Trustor's name any instruction, agreement or other writing required therefor.

**6.2. Financing Statements.** Trustor shall execute and deliver to Trustee and Beneficiary, in form and substance reasonably satisfactory to Trustee and Beneficiary, such financing statements and such further assurances as Trustee and Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Trustee and Beneficiary's security interest hereunder and Trustee and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Trustor's chief executive office is at the address set forth on Appendix B to the Credit Agreement.

**6.3. Fixture Filing.** This Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC against all of the Property which is or is to become Fixtures. To the extent that the Property includes goods or items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing of this Deed of Trust in the real estate records of the county in which the Property is located shall also operate from the time of filing as a fixture filing with respect to such Property.

## SECTION 7. ATTORNEY-IN-FACT

Trustor hereby irrevocably appoints Trustee and Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Trustee and Beneficiary deems appropriate to protect Trustee and Beneficiary's interest, if Trustor shall fail to do so within ten (10) days after written request by Trustee and Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Fixtures, Personalty, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and 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 Trustee and Beneficiary's security interests and rights in or to any of the Property, and (d) while any Event of Default exists, to perform any obligation of Trustor hereunder; provided, (i) Trustee and Beneficiary shall not under any circumstances be obligated to perform any obligation of Trustor; (ii) any sums advanced by Trustee and Beneficiary in such performance shall be added to and included in the Indebtedness and shall bear interest at the rate or rates at which interest is then computed on the Indebtedness provided that from the date incurred said advance is not repaid within five (5) days demand therefor; (iii) Trustee and Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Trustee and Beneficiary; and (iv) Trustee and Beneficiary shall not be liable to Trustor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

## SECTION 8. BENEFICIARY AS AGENT

Agent has been appointed to act as the Agent and Beneficiary hereunder by Lenders and, by their acceptance of the benefits hereof, Lender Counterparties. Beneficiary shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including the release or substitution of Property), solely in accordance with this Deed of Trust and the Credit Agreement; provided, Beneficiary shall exercise, or refrain from exercising, any remedies provided for herein in accordance with the instructions of (a) Requisite Lenders, or (b) after payment in full of all Obligations under the Credit Agreement and the other Credit Documents, the holders of a majority of the aggregate notional amount (or, with respect to any Hedge Agreement that has been terminated in accordance with its terms, the amount then due and payable (exclusive of expenses and similar payments but including any early termination payments then due) under such Hedge Agreement) under all Hedge Agreements (Requisite Lenders or, if applicable, such holders being referred to herein as "**Requisite Obligees**"). In furtherance of the foregoing provisions of this Section, each Lender Counterparty, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Property, it being understood and agreed by such Lender Counterparty that all rights and remedies hereunder may be exercised solely by Beneficiary for the benefit of Lenders and Lender Counterparties in accordance with the terms of this Section. Beneficiary shall at all times be the same Person that is Agent under the Credit Agreement. Written notice of resignation by Agent pursuant to terms of the Credit Agreement shall also constitute notice of resignation as Beneficiary under this Deed of Trust; removal of Agent pursuant to the terms of the Credit Agreement shall also constitute

removal as Beneficiary under this Deed of Trust; and appointment of a successor Agent pursuant to the terms of the Credit Agreement shall also constitute appointment of a successor Beneficiary under this Deed of Trust. Upon the acceptance of any appointment as Agent under the terms of the Credit Agreement by a successor Agent, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Beneficiary under this Deed of Trust, and the retiring or removed Beneficiary under this Deed of Trust shall promptly (i) transfer to such successor Beneficiary all sums, securities and other items of Property held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Beneficiary under this Deed of Trust, and (ii) execute and deliver to such successor Beneficiary such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Beneficiary of the security interests created hereunder, whereupon such retiring or removed Beneficiary shall be discharged from its duties and obligations under this Deed of Trust thereafter accruing. After any retiring or removed Agent's resignation or removal hereunder as Beneficiary, the provisions of this Deed of Trust shall continue to enure to its benefit as to any actions taken or omitted to be taken by it under this Deed of Trust while it was Beneficiary hereunder.

## **SECTION 9. TRUSTEE MATTERS**

**9.1. Actions by Trustee.** At any time and from time to time upon written request of Beneficiary, payment of its fees and, in the case of full reconveyance, presentation of this Deed of Trust and the promissory notes secured hereby, without affecting the liability of any person for the payment of the Indebtedness, Trustee may (a) with the consent of Trustor, join in granting any easement or creating any restriction on or relating to the Property; (b) join in any subordination or other agreement affecting this Deed of Trust which is authorized in writing by Beneficiary; and (c) reconvey, without warranty, all or any part of the Property upon written request of Beneficiary or as provided by law. Trustor agrees to pay reasonable Trustee's fees, including reasonable attorneys fees and legal expenses, for any of such services.

**9.2. Successor Trustee.** Beneficiary may appoint a successor trustee at any time by filing a substitution of trustee for record in the office of the county recorder of the county where the Property is located. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

**9.3. Acceptance of Trust.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

## **SECTION 10. REVOLVING NATURE OF INDEBTEDNESS**

The Credit Agreement shall include a revolving line of credit under which the Borrowers may repeatedly draw and repay funds, so long as no Event of Default has occurred under the

Credit Agreement, and so long as the aggregate, outstanding principal amount of the Revolving Loan at any time does not exceed the principal amount of the Revolving Loan Note, Disbursements under the Revolving Loan Note shall be made in accordance with the Credit Agreement. If, at any time prior to the maturity of the Revolving Loan Note, the Revolving Loan Note shall have a zero balance owing, this Deed of Trust shall not be deemed satisfied or terminated but shall remain in full force and effect for future draws unless terminated upon other grounds.

## SECTION 11. MISCELLANEOUS

Any notice required or permitted to be given under this Deed of Trust shall be given in accordance with Section 10.1 of the Credit Agreement. All notices given to Trustee and Beneficiary by any person or entity (other than Trustor) shall be in writing and shall be sent exclusively by registered or certified mail, return receipt requested, to Trustee and Beneficiary Goldman Sachs Specialty Lending Group, L.P., 6011 Connection Drive, Irving, Texas 75039, Attention: APX Account Manager with copies to Goldman Sachs Specialty Lending Group, L.P., 6011 Connection Drive, Irving, Texas 75039, Attention: APX, GSSLG In-House Counsel and Hunton & Williams LLP, 600 Peachtree Street, NE, Suite 4100, Atlanta, Georgia 30308, Attention: John R. Schneider, Esq., or at such other location as noticed to Trustor in writing. No failure or delay on the part of Trustee and Beneficiary or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Deed of Trust and the other Credit Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Deed of Trust shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Deed of Trust shall be binding upon and inure to the benefit of Trustee and Beneficiary and Trustor and their respective successors and assigns. Except as permitted in the Credit Agreement, Trustor shall not, without the prior written consent of Trustee and Beneficiary, which shall not be unreasonably withheld or delayed, assign any rights, duties or obligations hereunder. Upon payment in full of the Indebtedness and performance in full of the Obligations, or upon prepayment of a portion of the Indebtedness equal to the Net Asset Sale Proceeds for the Property in connection with a permitted Asset Sale, subject to and in accordance with the terms and provisions of the Credit Agreement, Trustee and Beneficiary, at Trustor's expense, shall release the liens and security interests created by this Deed of Trust or reconvey the Property to Trustor or, at the request of Trustor, assign this Deed of Trust without recourse. This Deed of Trust and the other Credit Documents embody the entire agreement and understanding between Trustee and Beneficiary and Trustor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Credit



Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

THE PROVISIONS OF THIS DEED OF TRUST REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS DEED OF TRUST AND THE RIGHTS AND OBLIGATIONS OF TRUSTOR AND TRUSTEE AND BENEFICIARY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

Return To: \_\_\_\_\_

**Corporation Service Company**

P.O. Box 2969  
Springfield, IL 62708  
PH: 800-927-9801 Ext.5012



**EXHIBIT A**

Legal Description of Leased Premises

The leased premises is situated in a building located on the following real property:

All of Lots 1 and 2, Phase VII Riverwoods Research and Business Park, according to the official plat thereof, filed on October 1, 2008, as Entry No. 107880:2008 in the Official Records of the Utah County Recorder.

Tax Parcel Id No:

Lot 1 Parcel Number – 51-511-001

Lot 2 Parcel Number – 51-511-002

Address - 4949 South 300 West, Provo UT 84604