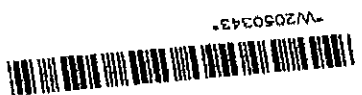


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WHEN RECORDED RETURN TO:
DR. W.C. SWANSON FAMILY FOUNDATION, INC.
2955 HARRISON BOULEVARD, SUITE 201
OGDEN, UTAH 84403-0336

FILE # 4089879
SERIAL # ~~12-203-0001~~
12-203-0001

SPECIAL WARRANTY DEED

THIS DEED is made and entered into between **OGDEN CITY CORPORATION**, a Utah Municipal Corporation, acting as the **Ogden Local Redevelopment Authority** (the "Grantor"), and **The Dr. W. C. Swanson Family Foundation, Inc.**, a Utah Corporation (the "Grantee").

WITNESSETH THAT:

WHEREAS, the 1995 Defense Base Closure and Realignment Commission, pursuant to Public Law 101-510, as amended, required the United States Department of Defense to close the military installation formerly known as the Defense Distribution Depot Ogden, Utah (the Former DDOU), and in connection therewith to dispose of certain surplus real and personal property; and

WHEREAS, the United States conveyed to **Grantor**, as the local redevelopment authority with regard to the Former DDOU pursuant to Public Law 101-510, Section 2905(b)(4)(A) as amended (Public Law 101-510 Section 2905 as amended by Public Law 103-160 Section 2903), a portion of the Former DDOU property by way of a Quitclaim Deed dated December 21, 2001, recorded on January 18, 2002 in Book No. 2203 at Page 183 as Entry No. 1821840 (the "Government Deed") in order to redevelop the property, a copy of which has been provided to Grantee; and

WHEREAS, the **Grantor** is now the record owner of certain real property located within the Former DDOU, a portion of which is to be herein conveyed, which portion is hereinafter referred to as the **Property** as more fully described at Exhibit A attached hereto and made a part hereof; and

WHEREAS, the **Property** is part of the Former DDOU, which the U.S. Environmental Protection Agency (EPA), pursuant to Section 105 of the CERCLA, 42 U.S.C. 9605, placed on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987; and

WHEREAS, the **Grantor** has made available to the **Grantee** a copy of the DDOU Federal Facility Agreement (FFA), entered into by EPA Region VIII, the Utah Department of

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Health (predecessor to the Utah Department of Environmental Quality (UDEQ)), and the Defense Logistics Agency, that became effective on November 30, 1989; and

WHEREAS, the **Grantor** assumed, and **Grantee** hereby assumes, certain obligations and liabilities with respect to the **Property** as set forth in the Government Deed; and

WHEREAS, the **Grantee** desires to acquire the **Property** and the **Grantor** desires to convey the **Property** to **Grantee**, subject to the same reservations, restrictions, obligations, and liabilities of **Grantor** as set forth in the Government Deed; and

WHEREAS, the United States encumbered the Property with respect to certain environmental and access matters as set forth more fully in the Government Deed, which encumbrances are assumed by **Grantee** and are binding on **Grantee** and its successors and assigns.

A. NOW, THEREFORE, the **Grantor**, for and in consideration of the monetary sum of Ten Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby conveys and warrants against all claiming by, through or under it to the **Grantee** the **Property**, including all land and buildings, facilities, fixtures located therein, except as hereinafter otherwise expressly provided, but subject to certain exclusions, reservations, covenants conditions, and restrictions set forth in this Deed or in the Government Deed.

B. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS

1. **Grantee** is hereby placed on notice that in the Government Deed, the United States reserved an irrevocable and permanent easement, which runs with the land and is binding on **Grantee**, its successors and assigns, providing access on and over the **Property** as more fully set forth in paragraph B.4. of the Government Deed, which is incorporated herein by this reference (Environmental Protection Easement).

2. **Grantor** further reserves unto itself the Environmental Protection Easement to the same extent, subject to the same conditions and with the same rights as reserved by the United States under paragraphs B.4.a.-e. of the Government Deed.

3. **Grantor** hereby reserves:

- a. Temporary appurtenant easements granted to **Grantor** under the Government Deed; and
- b. Existing utility lines, pipes, facilities, and associated infrastructure located therein comprising part of the utility distribution or collection systems for water, sanitary sewer, storm sewer, electric, gas, or telecommunications, or any other Common Utility Facilities located within Common Access Easements, as designated pursuant to the Master Declaration.

4. The **Property** is conveyed subject to:

- a. Easements established on, over, under, or across the **Property** as described on Business Depot Ogden — Plat 10, as recorded in the official

- records of Weber County, Utah, on November 25, 2003, in Book 58, at Page 96, as Entry No. 1994705; and
- b. The Master Declaration of Covenants, Conditions and Restrictions, dated December 28, 1999, recorded on December 30, 1999, as Entry No. 1682125, in Book 2051, at Page 1301; and as recorded against the **Property** by Supplementary Declaration No. 1, dated October 12, 2000, and recorded on November 15, 2000, as Entry No. 1737491, in Book 2101, at Page 1885; Supplementary Declaration No. 2, dated April 2003, and recorded on April 14, 2003, as Entry No. 1929811, in Book 2350, at Page 948; and, Supplementary Declaration No. 3, dated December 4, 2003, and recorded on December 12, 2003, as Entry no. 1998120, all in the records of the Weber County Recorder's Office (the "Master Declaration").
 - c. Together with and subject to a non-exclusive perpetual 45' wide Joint Driveway Easement on the North end of said Lot 19 and the South end of Lot 22, BDO, Plat 10, as depicted on the recorded plat. Said Joint Driveway Easement is for ingress and egress purposes for the benefit of Lots 19, 22 and 21, BDO Plat 10. Grantee, its' successors and assigns shall be responsible for its' pro rata share of all maintenance and repair and upkeep of the Joint Driveway Easement along with the owners of Lots 22 and 21.

C. TO HAVE AND TO HOLD the **Property** unto the **Grantee** and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following covenants and conditions, as applicable, which conditions shall be binding upon and enforceable against the **Grantee**, its successors and assigns, in perpetuity, as follows:

1. "AS IS"

- a. Paragraph C.1. "AS IS" of the Government Deed is incorporated herein by this reference.
- b. The **Property** is conveyed "As Is," "Where Is" without any representation, warranty or guarantee, by the **GRANTOR** pursuant to applicable law, as to Environmental Condition (as defined in paragraph C.3. below), quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the **GRANTOR** to make any alterations, repairs or additions, and the **GRANTOR** shall not be liable for any latent or patent defects in the **Property**. The **Grantee** acknowledges that the **GRANTOR** has made no representation or warranty concerning the condition and state of repair of the buildings and appurtenances on the **Property** nor any agreement or promise to alter, improve, adapt, or repair any portion of the **Property**, except as otherwise agreed upon by the **GRANTOR** in writing herein.

2. FEDERAL FACILITIES AGREEMENT

a. Paragraph C.2. FEDERAL FACILITIES AGREEMENT of the Government Deed is incorporated herein by this reference.

b. By accepting this Deed, the **Grantee** acknowledges that the **Grantee** has access to a copy of the FFA.

c. The provisions of this Paragraph C.2 FEDERAL FACILITIES AGREEMENT shall run with the land, shall be binding on Grantee and its successors and assigns, and shall be enforceable by the United States, Grantor, EPA and UDEQ>

3. ENVIRONMENTAL CONDITION

a. Paragraph C.3. ENVIRONMENTAL CONDITION of the Government Deed is incorporated herein by this reference.

b. As used in this Deed, "Environmental Condition" means any condition with respect to the environment (including soil, surface waters, ground waters, stream sediments, and the surface or subsurface strata on, at, in or relating to the **Property**, whether or not the condition is known or unknown, which could or does result in any liability, claim, cost, or order to or against **Grantor** or **Grantee**, their successors or assigns.

c. The **Grantee** acknowledges that it has been given full access to technical environmental reports, investigations, and studies relating to the **Property**, including the final EBS, the FFA and the Finding of Suitability of Transfer, dated January 20, 1999, (FOST) (collectively the Environmental Documents) and that it has reviewed the Environmental Documents and has had an opportunity to independently investigate the **Property** and to observe, investigate, test, and study its physical characteristics and existing conditions.

d. Subject to the conditions disclosed in the Environmental Documents, the Response Actions required in the Environmental Documents, the covenants and warranties of the United States under Section 120(h)(3) of CERCLA and as set forth in Paragraph C.4 CERCLA NOTICE AND COVENANTS of the Government Deed, **Grantee** hereby accepts the Environmental Condition of the **Property** and deems the **Property** to be safe for the **Grantee's** intended use. If, after conveyance of the **Property** to the **Grantee**, **Grantee** discovers an actual or threatened release of a CERCLA hazardous substance on the **Property** (other than asbestos or lead-based paint), or in the event that a hazardous substance is discovered or a pre-existing underground storage tank is found on the **Property** after the date of the conveyance, **Grantee** or its successor or assigns shall be responsible for such release, newly discovered substance, or underground storage tank unless **Grantee** is able to demonstrate that such release, such newly discovered substance, or such underground storage tank was due to **Grantor's** activities, ownership, use or occupation of the **Property**, or the activities of **Grantor's** contractors and/or agents. Nothing in this provision shall be construed to create an additional burden of proof applicable to any administrative or judicial proceedings.

e. **Grantee** understands that **Grantor** makes no representations or warranties regarding the Environmental Condition of the **Property**, including but not limited to items described or referred to in Paragraphs C.1. "AS IS;" C.3. ENVIRONMENTAL

CONDITION; C.4. CERCLA NOTICE AND COVENANTS; C.6. NOTICE OF THE PRESENCE OF ASBESTOS; C.7. NOTICE OF THE PRESENCE OF LEAD BASED PAINT; C.8. NOTICE OF POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; AND C.9. NOTICE OF THE PRESENCE OF PCB CONTAINING EQUIPMENT.

f. **Grantee**, on behalf of itself, its successors and assigns, hereby releases **Grantor**, its successors and assigns, from any and all liabilities, claims, or demands related to the condition, including the Environmental Condition, of the **Property**. Neither **Grantee** nor its successors or assigns shall assert or bring any claim against **Grantor**, its successors or assigns, for any representation, warranty, covenant, or obligation of the United States, the State of Utah, or any of their respective departments, agencies, or political subdivisions. Without limiting the foregoing, **Grantee's** sole and exclusive remedy for claims arising from or related to the Environmental Condition of the **Property** shall be against the United States as provided in the Government Deed or against other parties (other than **Grantor**, its successors and assigns) as allowed by law. **Grantor** makes no representation or warranty regarding the binding nature or enforceability by the **Grantee** of any representation, warranty, covenant, or obligation of the United States set forth in the Government Deed.

4. CERCLA NOTICE AND COVENANTS

a. Paragraph C.4. CERCLA NOTICE AND COVENANTS as set forth in the Government Deed is incorporated herein by this reference.

b. **Grantee** is hereby notified, based solely on representations made to the **Grantor** by the United States, of the storage, release, and disposal of hazardous substances on and around the **Property**, as set forth more fully in Paragraph C.4. CERCLA NOTICE AND COVENANTS of the Government Deed and references and citations made therein.

5. INDEMNIFICATION

a. Paragraph C.5. INDEMNIFICATION of the Government Deed is incorporated herein by this reference.

b. As consideration for this conveyance, the **Grantee**, its successors and assigns, shall release, indemnify and hold the **Grantor** harmless from any and all claims, liability, loss, cost, environmental contamination, or damage relating to the **Property** and arising out of or resulting from any actions or omissions of the **Grantee**, its successors and assigns, and their respective agents, employees, invitees, contractors, on the **Property** prior to or after the date of this Deed.

6. NOTICE OF THE PRESENCE OF ASBESTOS

a. The **Grantee** is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials (ACM) have been found on the following general areas of the **Property**, as described more fully in the Final EBS: Building 204 (1A).

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b. The **Grantee** covenants and agrees that its use and occupancy of the **Property** will be in compliance with all applicable laws relating to asbestos; and that the **Grantor** assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the **Grantee**, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the **Property** after the date of this Deed, whether the **Grantee**, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The **Grantee** agrees to be responsible for any future remediation of asbestos found to be necessary on the **Property**.

c. **Grantee**, its successors and assigns are hereby informed that unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

d. The **Grantee** acknowledges that it has had an opportunity to inspect the **Property** as to its asbestos content and condition and any hazardous or environmental conditions relating thereto.

e. The **Grantee** further agrees to release, indemnify and hold harmless the **Grantor**, its officers, agents and employees, from and against and to assume liability for all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees (1) arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the **Property** after this conveyance of the **Property** to the **Grantee** or (2) arising out of, or in any manner predicated upon any future remediation or abatement of asbestos or the need therefor.

f. The covenants, restrictions, and requirements of this Paragraph shall be binding upon the **Grantee**, its successors and assigns, and shall be deemed to run with the land.

7. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT

a. The **Grantee**, and its successors and assigns, are hereby informed and acknowledge that the following buildings on the **Property**, constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint based solely upon representations made by the United States: Building 204 (1A). **Grantee**, its successors and assigns are hereby informed that lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced

intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, as indicated by the United States, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS and (for residential properties) the lead-based paint risk assessment, which have been provided to the Grantee. Additionally, the federally-approved pamphlet on lead poisoning prevention and the *Finding of Suitability to Transfer (FOST)* have been provided to the Grantee. The Grantee hereby acknowledges receipt of all of the information described in this Paragraph.

c. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this document.

d. The Grantee, its successors and assigns, covenants and agrees that they shall not permit the occupancy or use of any buildings or structures located on the Property, which were constructed or rehabilitated prior to 1978, as residential real property without complying with this Paragraph C.7. NOTICE OF THE PRESENCE OF LEAD BASED PAINT and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards.

e. Prior to permitting the occupancy of any buildings or structures located on the Property, which were constructed or rehabilitated prior to 1978, where its use subsequent to sale is intended for residential habitation, Grantee, its successors and assigns, agree to perform, at its sole expense, the abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X). The Grantee, its successors and assigns shall, after consideration of the guidelines and regulations established pursuant to Title X:

(1) Comply with the joint HUD and EPA Disclosures Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments;

(2) Abate lead-based paint hazards in pre-1978 buildings and structures in paint, dust and bare soil in accordance with the HUD Guidelines; and

(3) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L).

In complying with these requirements, the **Grantee**, its successors and assigns, covenant and agree to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the **Property** found to be necessary as a result of the subsequent use of the **Property** for residential purposes. The **Grantee** its successors and assigns, covenant and agree to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

f. The **Grantor** assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the **Grantee**, its successors and assigns, sublessees or to any other person, including members of the general public, arising out of exposure to lead-based paint in connection with the **Grantee's** possession and/or use of any portion of the **Property** containing lead-based paint. The **Grantee**, its successors and assigns, further agree to release, indemnify and hold harmless the **Grantor**, its officers, agents and employees, from and against, and to assume liability for, all suits, claims, demands or actions liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of exposure to, after the date of this Deed, lead-based paint or lead-based paint hazards on the **Property**, if any portion of the **Property** is used for residential purposes.

g. The **Grantee's** obligation hereunder shall apply whenever the United States of America or **Grantor** incurs costs or liabilities for actions giving rise to liability under this paragraph.

h. The covenants, restrictions, and requirements of this Paragraph shall be binding upon the **Grantee**, its successors and assigns, and shall be deemed to run with the land.

8. NOTICE OF THE POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES

a. The United States has represented to the **Grantor** that no evidence exists that would indicate the **Property** is or has been contaminated with chemical weapons/substances (chemical test kits). However the **Grantee** is hereby informed and does acknowledge that chemical test kits have been removed from the Former DDOU in the area described in the Final EBS as Operable Unit 3. The location of Operable Unit 3 is depicted on Figure 5 of the Final EBS. For prudent safety precautions the **Grantee**, its successors and assigns, and any contractors performing ground intrusive work on the **Property** are notified that the Former DDOU had a Chemical Ordnance Supply Corps active from 1941 to 1947 which might have resulted in unexploded ordnance contamination. If any item is encountered that appears to be of an ordnance or explosive nature, stop-work procedures should be invoked and the Army notified immediately at U.S. Army Technical Escort Unit, Aberdeen Proving Ground, Maryland, telephone (410) 436-4259.

b. The provisions and requirements of this Paragraph shall be binding upon the **Grantee**, its successors and assigns, and shall be deemed to run with the land.

9. NOTICE OF THE PRESENCE OF POLYCHLORINATED BIPHENYL (PCB) CONTAINING EQUIPMENT

a. The United States has represented to the **Grantor**, and the **Grantee** is hereby informed, that certain equipment containing PCBs including pole and concrete mounted transformers, and fluorescent light ballasts and fixtures may have been, or may be stored and/or operated on the **Property**, as described more fully in Paragraph C.9.a of the Government Deed which is incorporated herein by this reference. **Grantee** acknowledges that it has been given full access to the reports regarding pole and concrete mounted transformers provided to the **Grantor** under Paragraph C.9.a.2 of the Government Deed. The United States has represented to the **Grantor** that (i) all PCB-containing equipment existing on the **Property** as of the date of this Deed has been properly labeled in accordance with applicable law and regulation to provide notification to future users; (ii) any PCB contamination or spills related to such equipment has been properly remediated prior to conveyance; (iii) the PCB equipment does not currently pose a threat to human health or the environment; and (iv) all PCB equipment is in good repair and is presently in full compliance with all applicable laws and regulations.

b. Upon request, the **Grantor** agrees to furnish to the **Grantee**, its successors and assigns, any and all records in its possession related to such PCB equipment necessary for the continued compliance by the **Grantee**, its successors and assigns, with applicable laws and regulations related to the use and storage of PCBs or PCB-containing equipment.

c. The **Grantee**, its successors and assigns, covenant and agree that its continued possession, use and management of any PCB-containing equipment will be in compliance with all applicable laws relating to PCBs and PCB-containing equipment, and that the **Grantor** assumes no, and is hereby released from, any and all liability for the future remediation of PCB contamination or damages for personal injury, illness, disability, or death to the **Grantee**, its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB-containing equipment, after the date of this Deed, whether or not the **Grantee**, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The **Grantee**, its successors and assigns, agree to be responsible for any future remediation of PCBs or PCB-containing equipment found to be necessary on the **Property** resulting from its use or possession thereof.

d. The covenants, restrictions, and requirements of this Paragraph shall be binding upon the **Grantee**, its successors and assigns, and shall be deemed to run with the land.

10. IMMUNITIES

The **Grantee** is not entitled to any of the immunities which the United States may have had in using the **Property** while it was a part of the Former DDOU. The **Grantee** is not exempt from acquiring the necessary permits and authorizations from, or from

meeting the requirements of the local, county, and state jurisdictions before using the **Property** for any purpose. The **Property**, immediately after conveyance to the **Grantee**, will be subject to all local, county, and state laws, regulations, and ordinances. The **Grantee** shall comply with the applicable environmental laws and regulations and all other Federal, state, and local laws, regulations, and standards that are or may become applicable to the **Grantee's** proposed use of the **Property**. The **Grantee** shall be solely responsible for fulfilling, at its own cost and expense, the requirements of the new governing authorities, independent of any existing permits or usages by the **Grantor**.

11. ENFORCEMENT AND NOTICE REQUIREMENT

a. The provisions of this Deed benefit the governments of the United States, the State of Utah, acting on behalf of the public in general, and the local governments of Weber County and Ogden City, and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of Utah, Weber County, **Grantor**, and by the **Grantee**, and their respective successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA.

b. The **Grantee**, its successors or assigns, shall neither transfer the **Property**, or any portion thereof, nor grant any interest, privilege, or license whatsoever in connection with the **Property** without the inclusion, to the extent applicable to the **Property** or any portion thereof, of the environmental protection provisions contained in Paragraphs B.4. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS (B.1 and 2 of this Deed), C.2. FEDERAL FACILITIES AGREEMENT; C.3. ENVIRONMENTAL CONDITION; C.4. CERCLA NOTICE AND COVENANTS; C.5. INDEMNIFICATION; C.6. NOTICE OF THE PRESENCE OF ASBESTOS; C.7. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT; C.8. NOTICE OF THE POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; and C.9. NOTICE OF THE PRESENCE OF PCB CONTAINING EQUIPMENT as set forth in the Government Deed and this Deed; and shall require the inclusion, to the extent applicable, of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

c. The **COVENANTS, CONDITIONS, and RESTRICTIONS** set forth in this Deed are a binding servitude on the **Property** and the burdens and benefits thereof will be deemed to run with the **Property** in perpetuity. Restrictions, stipulations and covenants contained in Paragraphs B.4. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS (B.1 and 2 of this Deed); C.2. FEDERAL FACILITIES AGREEMENT; C.3. ENVIRONMENTAL CONDITION; C.4. CERCLA NOTICE AND COVENANTS; C.5. INDEMNIFICATION; C.6. NOTICE OF THE PRESENCE OF; C.7. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT; C.8. NOTICE OF THE POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; and C.9. NOTICE OF THE PRESENCE OF PCB

CONTAINING EQUIPMENT of the Government Deed and/or this Deed will be inserted by the **Grantee**, its successors and assigns, to the extent applicable to the **Property** or any portion thereof, either verbatim, or by express reference in any deed or other legal instrument by which they divest themselves of either the fee simple title or any other lesser estate in the **Property** as provided in subparagraph b. above. The **Grantee**, its successors and assigns, shall neither transfer nor lease the **Property**, or any portion thereof, nor grant any interest, privilege, or license whatsoever in the **Property** without providing notice of the environmental protection provisions identified above, which apply to the property conveyed, and shall require notice of such environmental protection provisions in all further deeds, transfers, leases, or grants of any interest, privilege, or license, as provided in subparagraph b. above.

d. The obligations imposed in this Paragraph upon the successors or assigns of Grantee shall only extend to the property conveyed to any such successor or assign.

12. REVERSIONARY RESTRICTION, COVENANT TO SHARE SALE PROCEEDS AND FIRST RIGHT OF REFUSAL

a. **EXCLUSIVE USE.** **Grantee** accepts the **Property** subject, however, to the following condition subsequent, which shall be binding upon and enforceable against **Grantee**, its successors and assigns, as follows. The **Property** shall be solely used for the exclusive purposes of furthering and supporting the eleemosynary purposes of **Grantee** and consistent with and in harmony with the recognized Internal Revenue Code Section 501(C)(3) purposes and mission of **Grantee**. In the event of a breach of this condition subsequent, whether caused by the legal or other inability of **Grantee**, its successors and assigns, to perform said obligation, the **Grantor** or its successor, shall, at its option, have an immediate right of reentry to the **Property**, and to cause all right, title, and interest in and to the **Property** to revert to the **Grantor**, and the **Grantee**, its successors and assigns, shall forfeit all right, title, and interest in and to the **Property** and any and all of the tenements, hereditaments, and appurtenances thereunto belonging. This covenant shall be a covenant that shall run with the land.

b. **DIVISION OF SALES PROCEEDS UPON SALE BY GRANTEE.** In the event **Grantee** subsequently sells the **Property**, the sales proceeds shall be divided between **Grantor** and **Grantee** as follows: (i) all costs of sale will be deducted from the sale proceeds, (ii) the Purchase Price of \$100,000.00 paid by **Grantee**, together with accrued interest thereon, at the applicable federal rate designated by Internal Revenue Code Section 1274(d), from the date of recording of this deed will be paid to **Grantee**, (iii) **Grantee** will be reimbursed the cost of all capital improvements to the **Property**, together with interest on such costs from the date of expenditure until sale of the **Property**, with interest at the applicable federal rate designated by Internal Revenue Code Section 1274(d), (iv) the balance of the proceeds from any sale after the foregoing deductions shall be shared equally between **Grantor** and **Grantee**. This covenant shall be a covenant that shall run with the land.

c. **FIRST RIGHT OF REFUSAL TO PURCHASE PROPERTY IN FAVOR OF GRANTOR.** **Grantee** hereby grants to **Grantor**, its successors and assigns, the first right of refusal to purchase the **Property**. **IN CONSIDERATION** of this conveyance and other good and valuable consideration, the receipt and sufficiency of all of

which is hereby acknowledged, the Grantee hereby grants to the Grantor, its successors and assigns, an irrevocable RIGHT OF FIRST REFUSAL (hereinafter the "Right") in respect of the Property, or any portion thereof each on the terms set out below.

1. Right of First Refusal

1.1 If the Grantee receives a bona fide written offer ("Offer") from any person, firm or corporation dealing at arm's length with the Grantee to purchase the Property or a portion thereof upon terms acceptable to the Grantee, the Grantee shall, by notice ("Notice") in writing, offer (the "Second Offer") to sell the Property or a portion thereof to the Grantor at the same price and upon the same terms and conditions as are contained in the Offer. Such Notice shall be accompanied by a true copy of the Offer and an affidavit of the Grantee attesting to the fact that there is no commission or other similar fee that may be due and payable or may become due and payable to any broker, agent or other intermediary in connection with the sale of the Property or any portion thereof other than what is disclosed in the Offer, if such is the case. The Second Offer shall not be revocable except with the consent of the Grantor and shall be open for acceptance by the Grantor for a period of thirty (30) days from the date upon which such Notice was received or deemed to be received by the Grantor.

1.2 If the Second Offer is accepted by Grantor, then the Grantee shall sell and the Grantor shall purchase the Property or a portion thereof upon the terms and conditions contained in the Second Offer. The closing of the transaction of purchase and sale pursuant to the Second Offer shall take place thirty (30) days after the date on which the Second Offer is accepted by the Grantor.

13. GENERAL PROVISIONS

a. **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

b. **SEVERABILITY.** If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. **NO FORFEITURE.** Nothing contained herein will result in a forfeiture or reversion of title in any respect.

d. **CAPTIONS.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

e. RIGHT TO PERFORM. Any right which is exercisable by the Grantee, and its successors and assigns, to perform under this Deed may also be performed, in the event of default by the Grantee, or its successors and assigns, by a lender of the Grantee and its successors and assigns.

D. All rights and powers reserved to the Grantor, and all references in this Deed to Grantor, shall include its successor in function. The Grantor may agree to waive, eliminate, or reduce the obligations of the Grantee, or any subsequent transferee, successor, assignee, licensee, or lessee, that are contained in this Deed.

E. PROVIDED, HOWEVER, that the failure of the Grantor to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee, its successors and assigns, as applicable, with respect to such future performance pertaining to the Property shall continue in full force and effect.

THIS SPECIAL WARRANTY DEED is executed by the Grantor this 30th day of July, 2004.

OGDEN CITY, a Utah municipal corporation

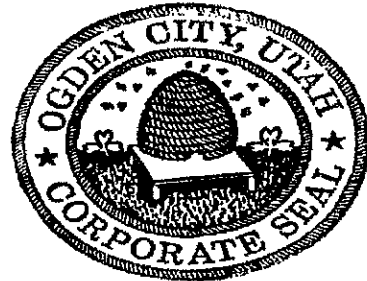
By: Matthew R. Godfrey
MATTHEW R. GODFREY, Mayor

ATTEST:

Gloria J. Berrett
CITY RECORDER

APPROVED AS TO FORM:

Buck Groves
OFFICE OF CITY ATTORNEY



ACKNOWLEDGMENT

STATE OF UTAH)
): ss
COUNTY OF WEBER)

On this 30 day of July, 2004, personally appeared before me, Matthew R. Godfrey and Gloria J. Berrett, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that they

are, respectively, the Mayor and the _____ City Recorder of Ogden City, a Utah municipal corporation, and that the foregoing document was signed by them on behalf of said Ogden City and acknowledged to me that said Ogden City executed the same.



Cassie Zee Morgan
NOTARY PUBLIC

ACCEPTANCE

Grantee accepts this special warranty deed for itself, its successors and assigns, subject to all of the conditions, reservations, restrictions, and terms contained herein.

GRANTEE:
The Dr. W. C. Swanson Family Foundation, Inc.

By: W. Charles Swanson
W. Charles Swanson
Chairman and Chief Executive Officer

ACKNOWLEDGMENT

STATE OF UTAH)
 : ss
WEBER COUNTY)

On this 13 day of August, 2004, personally appeared before me, W. Charles Swanson, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he is the Chairman and the Chief Executive Officer of The Dr. W.C. Swanson Family Foundation, Inc., and that the foregoing document was signed by him on behalf of said Dr. W.C. Swanson Family Foundation, Inc., and acknowledged to me that said Dr. W.C. Swanson Family Foundation, Inc., executed the same.

Lori M. Moore
NOTARY PUBLIC



EXHIBIT A

Special Warranty Deed

Grantor: Ogden City

Grantee: The Dr. W. C. Swanson Family Foundation, Inc.

Dated August 13, 2004

All of Lot 19, Business Depot Ogden – Plat 10, a recorded subdivision located in the Northeast Quarter of Section 18 and the Southeast Quarter of Section 7 all in Township 6 North, Range 1 West, Salt Lake Base and Meridian, Weber County, Utah

Tax Serial No. 122030001