

9277745

When Recorded Mail to:
Wells Fargo Bank, National Association
BBG - Boise Loan Operations Center
MAC #U1851-015
3033 Fider St.
Boise, ID 83705

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1/19/2005 3:45:00 PM \$19.00
Book - 9085 Pg - 4097-4101
Gary W. Ott
Recorder, Salt Lake County, UT
EQUITY TITLE
BY: eCASH, DEPUTY - EF 5 P.

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY



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HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT

THIS HAZARDOUS SUBSTANCES AGREEMENT dated January 7, 2005, is made and executed among and Wells Fargo Bank, National Association, Salt Lake North Business Banking Group, 299 South Main, 11th Floor, MAC #U1228-111, Salt Lake City, UT 84111 (referred to below as "Lender"). For good and valuable consideration and to induce Lender to make a Loan to Borrower, each party executing this Agreement hereby represents and agrees with Lender as follows:

PROPERTY DESCRIPTION. The word "Property" as used in this Agreement means the following Real Property located in Salt Lake County, State of Utah:

SEE EXHIBIT A

PARCEL 1:

LOTS 35 THROUGH 38, AND COMMENCING AT THE SOUTHWEST CORNER OF LOT 39, BLOCK 2, COATES & CORUM'S SUBDIVISION OF BLOCK 27, PLAT C, SALT LAKE CITY SURVEY; AND RUNNING THENCE EAST 25 FEET; THENCE NORTH 71 FEET; THENCE WEST 22 FEET, MORE OR LESS, TO THE CENTER OF THE DIVIDING WALL BETWEEN THE STORE AND THE APARTMENT BUILDING; THENCE NORTH 69 FEET; THENCE WEST 3 FEET; THENCE SOUTH 149 FEET TO THE POINT OF BEGINNING.

LESS THAT TRACT OF LAND DECEDED TO THE STATE ROAD COMMISSION AS SHOWN BY WARRANTY DEED RECORDED MAY 4, 1960 IN BOOK 1767 AT PAGE 564, AS ENTRY NO. 1714229 OF THE OFFICIAL RECORDS.

PARCEL 2:

COMMENCING 19 FEET WEST FROM THE NORTHEAST CORNER OF LOT 39, BLOCK 2, COATES & CORUM'S SUBDIVISION OF BLOCK 27, PLAT C, SALT LAKE CITY SURVEY; AND RUNNING THENCE WEST 3.00 FEET; THENCE SOUTH 69.00 FEET; THENCE EAST 6.43 FEET; THENCE NORTHERLY 69.09 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

The Real Property or its address is commonly known as 841-853 West 400 South, Salt Lake City, UT 84104. The Real Property tax identification number is 15-02-406-005 (as to Parcel 1) and 15-02-406-006 (as to Parcel 2)

REPRESENTATIONS. The following representations are made to Lender, subject to disclosures made and accepted by Lender in writing:

No Notices. Indemnitor has received no summons, citation, directive, letter or other communication, written or oral, from any agency or department of any county or state or the U.S. Government concerning any intentional or unintentional action or omission on, under, or about the Property which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into any waters or onto any lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

AFFIRMATIVE COVENANTS. Subject to disclosures made and accepted by Lender in writing, Indemnitor covenants with Lender as follows:

Notices. Indemnitor shall immediately notify Lender upon becoming aware of any of the following:

- (1) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.
- (2) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the Property or the operations conducted on the Property.
- (3) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.
- (4) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.
- (5) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Lender cause to be concerned that the value of Lender's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Indemnitor's ability to perform any of its obligations under this Agreement when such performance is due.

Access to Records. Indemnitor shall deliver to Lender, at Lender's request, copies of any and all documents in Indemnitor's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property and the operations conducted on the

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Property, including without limitation results of laboratory analyses, site assessments or studies, environmental audit reports and other consultants' studies and reports.

PAYMENT: FULL RECOURSE TO INDEMNITOR. Indemnitor intends that Lender shall have full recourse to Indemnitor for Indemnitor's obligations under this Agreement as they become due to Lender. Such liabilities, losses, claims, damages and expenses shall be reimbursable to Lender as Lender's obligations to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Indemnitor shall pay such liability, losses, claims, damages and expenses to Lender as so incurred within thirty (30) days after written notice from Lender. Lender's notice shall contain a brief itemization of the amounts incurred to the date of such notice.

SURVIVAL. The covenants contained in this Agreement shall survive (A) the repayment of the Indebtedness, (B) any foreclosure, whether judicial or nonjudicial, of the Property, and (C) any delivery of a deed in lieu of foreclosure to Lender or any successor of Lender. The covenants contained in this Agreement shall be for the benefit of Lender and any successor to Lender, as holder of any security interest in the Property or the indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure.

FACSIMILE AND COUNTERPART. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Indemnitor also will pay any court costs, in addition to all other sums provided by law.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Utah. This Agreement has been accepted by Lender in the State of Utah.

Joint and Several Liability. All obligations of Indemnitor under this Agreement shall be joint and several, and all references to Indemnitor shall mean each and every Indemnitor. This means that each Indemnitor signing below is responsible for all obligations in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Indemnitor, shall constitute a waiver of any of Lender's rights or of any of Indemnitor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender. Indemnitor hereby waives notice of acceptance of this Agreement by Lender.

Notices. Unless otherwise provided by applicable law, any notice required to be given under this Agreement or required by law shall be given in writing, and shall be effective when actually delivered in accordance with the law or with this Agreement, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Indemnitor agrees to keep Lender informed at all times of Indemnitor's current address. Unless otherwise provided by applicable law, if there is more than one Indemnitor, any notice given by Lender to any Indemnitor is deemed to be notice given to all Indemnitors.

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

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Indemnitor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Indemnitor, Lender, without notice to Indemnitor, may deal with Indemnitor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Indemnitor from the obligations of this Agreement or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**HAZARDOUS SUBSTANCES AGREEMENT
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Agreement. The word "Agreement" means this Hazardous Substances Agreement, as this Hazardous Substances Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Hazardous Substances Agreement from time to time.

Collateral. The word "Collateral" means all of Indemnitor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Indemnitor's obligations or expenses incurred by Lender to enforce Indemnitor's obligations under this Agreement, together with interest on such amounts as provided in this Agreement.

Lender. The word "Lender" means Wells Fargo Bank, National Association, its successors and assigns.

Property. The word "Property" means all of Indemnitor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS AGREEMENT EFFECTIVE. THIS AGREEMENT IS DATED JANUARY 7, 2005.

BORROWER:

X  _____ X
Borrower Borrower

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

X  _____
Authorized Signer

HAZARDOUS SUBSTANCES AGREEMENT
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INDIVIDUAL ACKNOWLEDGMENT

STATE OF Utah)
) SS
COUNTY OF Salt Lake)



On this day before me, the undersigned Notary Public, personally appeared Tekky K. Hutchison

, to me known to be the individual(s) described in and who executed the Hazardous Substances Agreement, and acknowledged that he or she/they signed the Agreement as his or her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 14 day of January, 2005
By Trina Pond Residing at Salt Lake
Notary Public in and for the State of Utah My commission expires 10.4.2008

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this day before me, the undersigned Notary Public, personally appeared _____

, to me known to be the individual(s) described in and who executed the Hazardous Substances Agreement, and acknowledged that he or she/they signed the Agreement as his or her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 20____.
By _____ Residing at _____
Notary Public in and for the State of _____ My commission expires _____

LENDER ACKNOWLEDGMENT

STATE OF Utah)
) SS
COUNTY OF Salt Lake)



On this 14 day of January, 2005, before me, the undersigned Notary Public, personally appeared Bill Allen and known to me to be the Vice President

, authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and that the seal affixed is the corporate seal of said Lender.

By Trina Pond Residing at Salt Lake
Notary Public in and for the State of Utah My commission expires 10.4.2008

PARCEL 1:

LOTS 35 THROUGH 38 INCLUSIVE, AND COMMENCING AT THE NORTHWEST CORNER OF LOT 39, BLOCK 2, COATES AND CORUM'S SUBDIVISION OF BLOCK 27, PLAT C OF THE SALT LAKE CITY SURVEY; THENCE SOUTH 140 FEET, THENCE EAST 12.97 FEET, THENCE NORTHERLY 71.09 FEET; THENCE WEST 6.43 FEET, THENCE NORTH 69 FEET, THENCE WEST 3 FEET TO THE POINT OF BEGINNING.

LESS THAT TRACT OF LAND DEEDED TO THE STATE ROAD COMMISSION AS SHOWN BY WARRANTY DEED RECORDED MAY 4, 1960 IN BOOK 1767 AT PAGE 564, AS ENTRY NO. 1714229 OF THE OFFICIAL RECORDS.

15-02-406-005

PARCEL 2:

COMMENCING 19 FEET WEST FROM THE NORTHEAST CORNER OF LOT 39, BLOCK 2, COATES & CORUM'S SUBDIVISION OF BLOCK 27, PLAT C, SALT LAKE CITY SURVEY; AND RUNNING THENCE WEST 3.00 FEET; THENCE SOUTH 69.00 FEET; THENCE EAST 6.43 FEET; THENCE NORTHERLY 69.09 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

15-02-406-006