

WHEN RECORDED, RETURN TO:

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Salt Lake City, UT 84111-2221

ENT 23357:2008 PG 1 of 8
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2008 Feb 28 11:46 am FEE 25.00 BY SS
RECORDED FOR TITLE WEST - HIGHLAND OFFIC
ELECTRONICALLY RECORDED

Tax Serial Nos. 49:656:0203 and 49:656:0204

Loan No. 7252638.1

**ESTOPPEL CERTIFICATE, SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS ESTOPPEL CERTIFICATE, SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made and entered into this 15th day of February, 2008, by and between AMERICA FIRST FEDERAL CREDIT UNION ("Lender"), REAL PROPERTY, LLC, a Utah limited liability company ("Landlord"), and KIRTON & McCONKIE, P.C., a Utah professional corporation ("Tenant").

RECITALS:

A. Tenant, or its predecessor in interest, entered into a Lease Agreement March 29, 2007 (the "Lease"), wherein Tenant agreed to lease from Landlord certain space (the "Premises") in a building constructed on real property owned by Landlord located in Utah County, Utah. The real property is legally described on Exhibit "A" attached to and incorporated by reference in this Agreement.

B. As collateral security for the performance by Landlord of certain obligations owing to Lender, including, without limitation, the obligations created under the terms of a Term Loan Promissory Note, dated February 15, 2008, and all the instruments and documents relating thereto (collectively the "Indebtedness"), Landlord has granted to Lender a security interest in the Premises and the Lease.

C. As a condition to granting the Indebtedness to Landlord, Lender requires that Tenant, among other things, execute this Agreement.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Landlord and Tenant agree as follows:

1. Acknowledgment of Tenant Rights Under the Lease. Each of Landlord and Tenant hereby acknowledge that Tenant is the original tenant under the Lease. Moreover, Landlord and Tenant acknowledge that Tenant is entitled to all of the rights, benefits, privileges and responsibilities as the tenant under the Lease.

2. Estoppel Certificate. Tenant represents to and covenants with Lender that:

(a) Tenant is the lessee under the Lease and the same has not been modified, changed, altered, or amended in any respect and is the only lease agreement between Tenant and Landlord relating to the Premises, and the Lease represents the entire understanding between Tenant and Landlord with respect to the Premises.

(b) Tenant is not in default under any provision of the Lease, nor is there any fact or condition which, with notice or lapse of time, would constitute a default.

(c) The Lease is in full force and effect, and, except as otherwise provided in the Lease, Tenant is not entitled to any lien, credit, offset, or reduction in rent.

(d) Tenant's current minimum monthly installment of the rent under the Lease is \$14,064.01, as the same may be adjusted pursuant to the terms of the Lease.

(e) Except for a security deposit of \$16,479.54, Tenant has no other claim against Landlord for any deposit or prepaid rent.

(f) Except as otherwise permitted under the Lease, Tenant has not transferred, hypothecated or assigned Tenant's interest under the Lease; ~~Tenant shall not authorize or consent to any assignment or subletting of the Premises without the prior written consent of Lender.~~ WAD

(g) There are no actions or proceedings, whether voluntary or otherwise, pending or threatened against Tenant under any bankruptcy or insolvency laws or under any other laws providing relief to debtors.

(h) To the best of Tenant's knowledge, Landlord is not in default in any respect of its obligations under the Lease, nor is there now any fact or condition which, with notice or lapse of time, would constitute a default.

(i) Other than the possessory rights arising under the Lease, Tenant has no option to purchase the Premises or otherwise acquire title to or an interest in the Premises.

(j) Other than the assignment to Lender described herein, Tenant has no knowledge of any other assignment, hypothecation, mortgage or pledge of Landlord's interest in the Lease or the rents payable thereunder, except as may be disclosed by other recorded instruments.

(k) Tenant ratifies the Lease in all respects.

3. Agreement to Pay Rent to Lender. Upon notice from Lender of a default by Landlord of the Indebtedness, Tenant will pay all rental payments, charges, assessments and other amounts due under the Lease directly to Lender when such payments are due and at such place as Lender may direct. Tenant agrees that it will not assert against Lender any setoff, defense, or counterclaim which Tenant may claim against Landlord under the Lease, except to the extent ~~Lender has received the benefit of the net of Tenant giving rise to a right of setoff or a defense or counterclaim~~ (such as a repair made by Tenant which was the obligation of Landlord under the Lease), ~~and~~ such right of setoff is available to Tenant under the terms of the Lease. Notwithstanding Lender's exercise of the foregoing rights to receive payments from Tenant, Lender shall not be responsible for Landlord's duties and obligations under the

Lease, unless Lender or any successor to Lender's interest in the Premises acquires title to the land upon which the Premises are located and elects, pursuant to paragraph 8 below, to have Tenant attorn to Lender or such other new owner of the Premises.

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 twenty (20) 4. Additional Certificates. Throughout the term of the Lease, Tenant shall, from time to time within ~~ten (10)~~ days' notice from Lender, execute and deliver to Lender, without charge, such written statements and instruments certifying to Lender the status of the Lease, that it is unmodified (or if the Lease has been modified describing such modification), that the Lease is in full force and effect, the remaining term of the Lease, and specifying the dates to which the rental and other payments under the Lease have been paid.

5. Subordination. Tenant hereby subordinates the leasehold estate created by the Lease to the lien and encumbrance of the Term Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated the same date as this Agreement by Landlord, as Trustor, for the benefit of Lender, as beneficiary, recorded in the official records of Utah County, Utah as the same may be amended, supplemented, modified, renewed or replaced after the date of this Agreement (the "Deed of Trust"). The Deed of Trust encumbers the Premises for the benefit of Lender as security for the Indebtedness.

6. Non-Disturbance. In the event of any foreclosure of the Deed of Trust or any conveyance in lieu of foreclosure, provided Tenant is not then in default beyond any grace period under the Lease and that the Lease is then in full force and effect, Lender shall not terminate the Lease, join Tenant in foreclosure proceedings, or disturb Tenant's possession of the Premises, and the Lease shall continue in full force and effect as a direct lease between Tenant and Lender.

7. Attornment by Tenant. If, at any time during the term of the Lease, Landlord's interest in the Premises shall be foreclosed, Tenant agrees, at the election and upon the demand of any owner of the Premises, including, without limitation, the holder or beneficiary of any mortgage or trust deed affecting the Lease, to attorn to any such owner, mortgagee, beneficiary or holder (collectively the "Purchaser") and recognize such Purchaser as landlord upon the terms and conditions set forth in the Lease for the remainder of the Lease term. The foregoing shall inure to the benefit of any Purchaser; and shall be self-operative upon any such demand without requiring any further instrument to give effect to these provisions. Tenant, however, upon demand of any Purchaser, agrees to execute, from time to time, an instrument in confirmation of the foregoing provisions, satisfactory to Tenant and to any such owner, mortgagee, beneficiary or holder, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy, which shall be the same as those set forth in the Lease and shall apply to the remainder of the Lease term.

8. Termination of Lease. Tenant and Landlord agree that neither shall seek to terminate the Lease by reason of any act or omission of the other until written notice is given to Lender, by registered or certified mail, return receipt requested, setting forth the grounds, upon which such termination is sought. Such notice shall be given to Lender at 4646 South 1500 West, Suite 130, Riverdale, Utah 84405, to the attention of Business Services Department, at least 30 days before the effective date of any termination. During such 30-day period, Lender shall have the right, but not the obligation, to remedy or cure such default.

9. General Provisions.

(a) This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah, without giving effect to principles of

(f) This Agreement may be executed in counterparts.

DATED effective as of the date first above written.

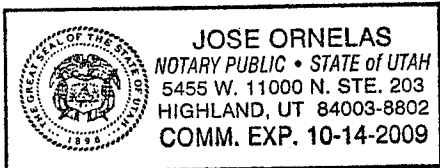
LENDER:

AMERICA FIRST FEDERAL CREDIT UNION

By: [Signature]
Title: Loan Officer

STATE OF UTAH)
)
) : ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 15th day of February, 2008, by Dennis Butt, who is a Loan Officer of AMERICA FIRST FEDERAL CREDIT UNION.



[Signature]
NOTARY PUBLIC
Residing at Utah County, Utah

My Commission Expires:

10-14-2009

LANDLORD:

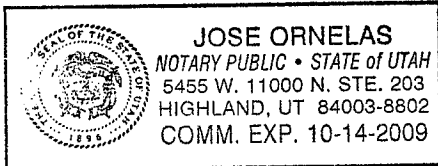
REAL PROPERTY, LLC, a Utah limited liability company

By: Terry A. Potter
TERRY A. POTTER, Manager

By: Rebecca J. Potter
REBECCA J. POTTER, Manager

STATE OF UTAH)
 : ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 15th day of February, 2008, by TERRY A. POTTER, who is a Manager of REAL PROPERTY, LLC, a Utah limited liability company.



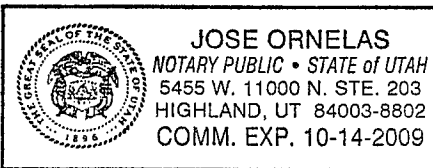
[Signature]
NOTARY PUBLIC
Residing at Utah County, Utah

My Commission Expires:

10-14-2009

STATE OF UTAH)
 : ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 5th day of February, 2008, by REBECCA J. POTTER, who is a Manager of REAL PROPERTY, LLC, a Utah limited liability company.



[Signature]
NOTARY PUBLIC
Residing at Utah County, Utah

My Commission Expires:

10-14-2009

EXHIBIT "A"

PROPERTY DESCRIPTION

The following described real property is located in Utah County, Utah:

PARCEL 1:

Units 203, and 204, Phase "3" Amended, contained within PINEHURST PLAZA OFFICE CONDOMINIUMS, an Expandable Condominium Project, as the same is identified in the record of survey map recorded in Utah County, Utah as Entry No. 4502:2007 of Official Records and also as Map No. 2053-133 (as said record of survey map may have heretofore been amended or supplemented) and as defined in the Declaration of Condominium of Pinehurst Office Condominiums recorded July 26 2001 as Entry No. 73686:2001 of Official Records (as said Declaration may have heretofore been amended or supplemented).

Together with the undivided ownership interest in and to the common areas and facilities which is appurtenant to said unit, as more particularly described in said Declaration (as said Declaration may have heretofore been amended).

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