

Loan No. ⁰³²~~254~~-1077635-01-001

ENT 31807:2011 PG 1 of 11
Jeffery Smith
UTAH COUNTY RECORDER
2011 Apr 26 2:51 pm FEE 30.00 BY SS
RECORDED FOR FIRST AMERICAN NCS - SOUTH
ELECTRONICALLY RECORDED

WHEN RECORDED, RETURN TO:

Zions First National Bank
Real Estate Department
One South Main Street, Suite 470
Salt Lake City, Utah 84133
Attention: Real Estate Department Manager

**SECOND SUPPLEMENTAL TRUST DEED
(Financial Center Property)**

This Second Supplemental Trust Deed (the "Supplemental Trust Deed") is made and entered into this 31st day of March, 2011 (the "Effective Date"), by and between Block 29 Developers, LLC, a Utah limited liability company, whose address is 180 North University Avenue, Suite 820, Provo, Utah 84601 ("Borrower"), and Zions First National Bank, a national banking association, whose address is One South Main Street, Suite 470, Salt Lake City, Utah 84133 ("Lender").

RECITALS

A. Lender and Borrower entered into a Construction Loan Agreement dated December 19, 2008 (the "Loan Agreement"), whereby Lender agreed to make a loan to Borrower in the original principal amount of Seventeen Million Eight Hundred Thousand Dollars (\$17,800,000.00) (the "Loan"). Pursuant to the Loan Modification Agreement dated December 30, 2010 executed by and between Borrower and Lender, the Principal Amount of the Loan was reduced and the Loan is evidenced by a Renewal and Substitute Promissory Note dated December 30, 2010 executed by Borrower for the benefit of Lender, and which Promissory Note is in the principal amount of Seventeen Million Two Hundred Twenty-One Thousand Five Hundred Sixty-Five Dollars (\$17,221,565.00) (the "Original Note").

B. Borrower's obligations under the Original Note are secured by the collateral described in the Construction Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated December 29, 2008 executed by Borrower, as "Trustor," to Lender, as "Trustee", for the benefit of Lender, as "Beneficiary," and which was recorded in the office of the County Recorder of Utah County, State of Utah, on December 29, 2008, as Entry No. 134712:2008, as amended by a Supplemental Trust Deed dated December 30, 2010 entered into between Borrower and Lender and which was recorded in the office of the County Recorder of Utah County, State of Utah, on March 7, 2011, as Entry No. 18676:2011 (the "Trust Deed"). The Trust Deed encumbers real property located in Utah County, State of Utah, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

556360.5

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named herein. First American Title Insurance Company hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

C. In accordance with a Second Loan Modification Agreement dated the Effective Date, entered into between Borrower and Lender (the "Modification Agreement"), Borrower is executing a Second Renewal and Substitute Promissory Note dated the Effective Date, in the principal amount of Fourteen Million Eight Hundred Fifty Thousand Dollars (\$14,850,000.00) (the "Renewal Note"), which Renewal Note replaces the Original Note.

The Loan Agreement, Renewal Note, Trust Deed, and all other documents defined as Loan Documents in the Loan Agreement, are hereinafter collectively referred to as the "Loan Documents".

D. Borrower and Lender now desire to amend and supplement the Trust Deed to modify the obligations secured thereby consistent with the Modification Agreement and the Renewal Note.

AGREEMENT

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Borrower and Lender agree as follows:

1. **Reaffirmation of the Trust Deed.** Borrower and Lender agree and acknowledge that it was their intention at the time of the execution of the Trust Deed, that the Trust Deed encumber the Property, and it continues to be their intention that the Trust Deed, as amended and supplemented by this Supplemental Trust Deed, continues, without interruption, to encumber the Property.

2. **Amendment and Supplementation of Trust Deed.** The Trust Deed is hereby amended as follows:

a. The Trust Deed is hereby amended to include in the indebtedness secured by the Trust Deed, the Renewal Note (which replaces the Original Note). Specifically, the second paragraph on Page 1 of the Trust Deed is hereby amended to read in its entirety as follows:

Beneficiary has made a loan to Trustor in the amount of Fourteen Million Eight Hundred Fifty Thousand Dollars (\$14,850,000.00) (the "Loan"). The Loan is evidenced by a Second Renewal and Substitute Promissory Note dated March 31, 2011, in the original principal amount of the Loan (the "Note"). The Loan will be advanced from time to time under a Construction Loan Agreement between Trustor and Beneficiary dated December 19, 2008 (the "Loan Agreement").

b. Section 8.10, **Due on Sale**, of the Trust Deed is hereby amended to read in its entirety as follows:

8.10 **Due On Sale or Change of Control.** Beneficiary has approved the Loan in material reliance upon the ownership and control of Trustor and the Trust

Estate being the same as exists as of the Closing Date. It is acknowledged that any change in such ownership or control of (a) Trustor and/or (b) the Trust Estate (whether direct or indirect and regardless of the percentage interest conveyed) materially affects the financial risks anticipated by Beneficiary in extending the Loan. Accordingly, other than as set forth herein or with the prior written consent of Beneficiary, it is and shall be a default under this Trust Deed, the Note and all of the Loan Documents for there to be any sale, transfer, or conveyance (collectively a “conveyance”) of any ownership interest or beneficial interest (regardless of the percentage interest conveyed or whether such interest is held as a partner, member, shareholder, beneficiary or otherwise) in: (i) Trustor or in the Trust Estate, or (ii) the operation, management, income, or profits of or fee title to the Trust Estate (whether held directly or indirectly), or (iii) any entity holding an ownership or beneficial or controlling interest in Trustor or in the Trust Estate or (iv) any entity which through one or more intermediaries holds any ownership interest or beneficial interest, or controlling interest (direct or indirect) in Trustor or the Trust Estate. “Control” hereunder means the ability of any person or entity to (1) direct the business operations or voting procedures for any entity, (2) cause the election, selection, or the appointment of entity officers or managers, (3) cause the appointment of the management managing any entity, or (4) cast a majority of the votes in any election or decision making process for any entity, or (5) do any of the foregoing for any intermediary entity holding any ownership or beneficial or majority interest (whether direct or indirect) in Trustor or in the Trust Estate.

Notwithstanding anything to the contrary in the foregoing language, it shall not be a default under this Section 8.10 (collectively items [i], [ii] and [iii] below being referred to hereafter as the “Exception”):

(i) for the owners of University Building, LLP to transfer any of their ownership interests in University Building, LLP so long as University Building, LLP (x) continues to be the owner of 15% of the member interests in 200 North Investors, LLC (hereafter “200 North”) and (y) continues to be both a manager and member of 200 North, and (z) does not acquire more than 15% of the total member interests in 200 North;

(ii) for any of the shares of stock in Earl Corporation to be conveyed or transferred among the various members and decedents of the Earl family, so long as (v) Earl Corporation owns not less than 70% of the total member interests of 200 North, (w) Bruce T. Earl and/or C. Robert Earl remain on the Board of Directors of Earl Corporation and (x) either or both of Bruce T. Earl and/or C. Robert Earl remain as the principal operating officer officers of Earl Corporation and (y) Earl Corporation remains and is at all times the Majority Manager for 200 North, as defined in the Operating Agreement for 200 North, and (z) no assignment or delegation of authority has been or is exercised at any time by any manager of 200

North under Section 5.7 of the 200 North Operating Agreement, without Beneficiary's prior written consent; and

(iii) for the member interests in PEG Development LLC to be transferred to another person or entity so long as (x) PEG Development LLC owns not less than 15% of the total member interests of 200 North, (y) one or more of Cameron S. Gunter, Reed E. Halladay or Christine Halladay or the Halladay Family Trust own a majority of both the controlling and management interests in PEG Development LLC and are the manager or managers of PEG Development LLC, and (z) one or more of Cameron S. Gunter, Reed E. Halladay or Christine Halladay or the Halladay Family Trust control the management and operations of PEG Development LLC and remains and is or are at all times a manager and member of 200 North.

It is understood that 200 North is a manager controlled and operated limited liability company with three (3) managers elected by three (3) members. Currently the three members and the three (3) managers are the same three entities being: University Building, LLP, Earl Corporation, and PEG Development, LLC. For the above Exception set forth as items (i), (ii) and (iii) to be valid exceptions to this Section 8.10, each of the following must be in place or occur at all times throughout the Loan: (x) Earl Corporation and PEG Development LLC and University Building, LLP must continue to be the respective Members and Managers of 200 North; and (y) Earl Corporation must remain at all times the Majority Manager of 200 North; and (z) no assignment or delegation of authority can be made or shall have been made or in place by any manager of 200 North pursuant to Section 5.7 of the Operating Agreement of 200 North such that University Building, LLP, Earl Corporation, or PEG Development, LLC cease to act as or authorize another person or entity to act in their behalf as a manager of 200 North. In addition, it is understood that Trustor is a manager controlled limited liability company with two managers elected by its sole member 200 North. Currently, the managers of Trustor are PEG Development, LLC and Earl Corporation. For the Exception set forth as items (i), (ii), and (iii) above to be valid exceptions to this Section 8.10, 200 North must be at all times the sole member of Trustor and both PEG Development, LLC and Earl Corporation must at all times remain and be the respective managers of Trustor, unless another person or entity is approved in writing by Beneficiary.

If this Section 8.10 is breached, at the option of Beneficiary and without demand or notice, the full Principal Indebtedness of the Note and the other Obligations shall immediately become due and payable to Beneficiary. If Beneficiary elects to accelerate payment of the Principal Indebtedness because of a default under this Section 8.10, and if the Note or any other Loan Document contains a yield maintenance provision or a prepayment fee or prepayment premium, such acceleration shall be deemed to be a "prepayment" of the Principal Indebtedness under the Loan, whether or not the accelerated Loan balance is actually paid at the time of the subject conveyance. At the time the Principal Indebtedness is accelerated

by Beneficiary, any prepayment fee or prepayment premium or yield maintenance fee set forth in the Note or other Loan Document shall be immediately due and payable to Beneficiary together with the balance of the unpaid Principal Indebtedness and all unpaid-accrued interest on the Loan.

The foregoing limitations in this Section 8.10 regarding conveyances and control (collectively a “transfer”) shall not apply to the following situations: (a) a transfer to which Beneficiary has given its prior written consent, (b) a transfer of Personalty due to obsolescence or ordinary wear and tear or fire or casualty and which is promptly replaced by Trustor with Personalty of equal or greater value, or (c) any transfer by Trustor leasing any portion of the Trust Estate to a tenant which is expressly permitted pursuant to (i) the Loan Agreement, and/or (ii) the Assignment of Leases, provided, however, Beneficiary holds a security interest in the lease and a subordination and non-disturbance agreement is granted in favor of Beneficiary on a Beneficiary approved form (unless the same is waived or not required pursuant to the Loan Agreement or the Assignment of Leases), or (d) where the transfer under applicable state or federal law governing Beneficiary and the Loan (pursuant to either statutory authority or judicial opinion) expressly prohibits the use, exercise or enforcement of said due-on-sale or change-of-control clause in the form set forth in this Section 8.10.

In the event of any conflict among the Loan Agreement or this Trust Deed and any security agreement governing the Collateral for the Loan, the following conflict resolution provision shall apply: (i) if the Collateral is Personalty and does not constitute fixtures and is not part of the Trust Estate, such security agreement governing the Personalty shall control, unless Trustor and Beneficiary agree otherwise; or (ii) if the Collateral constitutes fixtures and is part of the Trust Estate, this Trust Deed shall control, unless Trustor and Beneficiary agree otherwise. In any event, the Loan Agreement shall control over any conflict between this Trust Deed or the security agreement governing the Collateral.

3. **Security.** Borrower and Lender agree and acknowledge that the Original Note, as amended and restated by the Renewal Note, and all other indebtedness and obligations described in the Trust Deed, are secured by the Trust Deed, as amended and supplemented by this Supplemental Trust Deed.

4. **Survival of Obligations; Continuation of Terms of Loan Documents.** Lender and Borrower agree that the Trust Deed, together with all of Borrower’s obligations thereunder, shall, except to the extent expressly modified by this Supplemental Trust Deed, remain in full force and effect and survive the execution of this Supplemental Trust Deed. Except as expressly modified by this Supplemental Trust Deed, all terms and conditions of the Loan Documents shall continue in full force and effect.

5. **Representations, Warranties, Covenants and Agreements.** Borrower represents, warrants, and agrees that the representations, warranties, covenants and agreements of Borrower contained in the Loan Documents (a) are true and accurate as of the date of this Supplemental Trust Deed, (b) are hereby remade and reaffirmed by Borrower, and (c) are in full force and effect as of the date of this Supplemental Trust Deed, enforceable in accordance with their terms. Borrower further represents and warrants that Borrower is not in default under any of the terms and conditions of the Loan Documents, and no conditions exist which, with the passage of time, the giving of notice, or both, would constitute a default under the Loan Documents.

6. **Defined Terms.** Unless otherwise defined in this Supplemental Trust Deed, capitalized terms used herein have the meanings given them in the Loan Agreement.

7. **Governing Law.** This Supplemental Trust Deed and all matters relating to this Supplemental Trust Deed shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah.

8. **Integrated Agreement and Subsequent Amendment.** This Supplemental Trust Deed, the Loan Documents, the Renewal Note, and the other agreements, documents, obligations, and transactions contemplated by the Loan Agreement and this Supplemental Trust Deed constitute the entire agreement between Lender and Borrower with respect to the subject matter of the agreements, and may not be altered or amended except by written agreement signed by Lender and Borrower. PURSUANT TO UTAH CODE SECTION 25-5-4, BORROWER IS NOTIFIED THAT THESE AGREEMENTS ARE A FINAL EXPRESSION OF THE AGREEMENTS BETWEEN LENDER AND BORROWER AND THESE AGREEMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

***[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]***

DATED: March 31, 2011.

BORROWER


BLOCK 29 DEVELOPERS, LLC,
a Utah limited liability company

By: Earl Corporation,
a Utah corporation, Manager

By: 

Bruce T. Earl, President

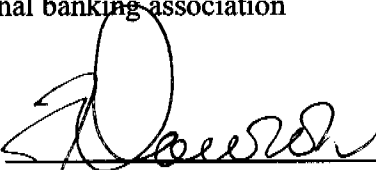
By: PEG Development, LLC,
a Utah limited liability company, Manager

By: 

Cameron S. Gunter, Manager

LENDER

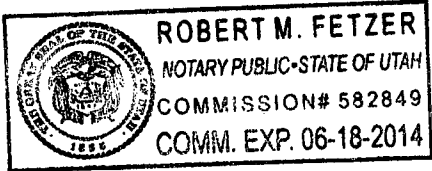
ZIONS FIRST NATIONAL BANK,
a national banking association

By: 

Flynn J. Dawson
Vice President

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 20 day of March, 2011, by Bruce T. Earl, President of Earl Corporation, a Utah corporation, Manager of Block 29 Developers, LLC, a Utah limited liability company.

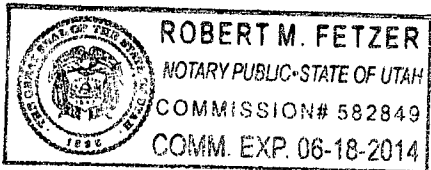


[Handwritten Signature]

NOTARY PUBLIC

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 30 day of March, 2011, by Cameron S. Gunter, Manager of PEG Development, LLC, a Utah limited liability company, Manager of Block 29 Developers, LLC, a Utah limited liability company.

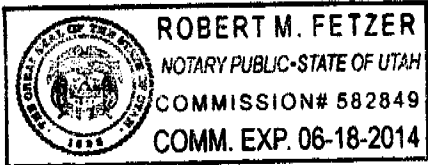


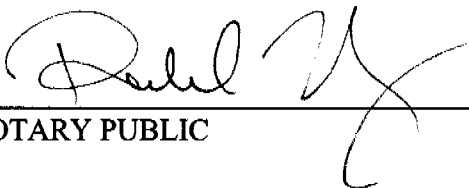
[Handwritten Signature]

NOTARY PUBLIC

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

The foregoing instrument was acknowledged before me this 20 day of March, 2011, by Flynn J. Dawson, Vice President of Zions First National Bank, a national banking association.





NOTARY PUBLIC

EXHIBIT A

REAL PROPERTY DESCRIPTION

The real property located in Utah County, State of Utah, and more particularly described as follows:

[SEE ATTACHED]

EXHIBIT 'A'

LOT 1, OF THAT CERTAIN PLAT ENTITLED "ZIONS BANK FINANCIAL CENTER" WHICH PLAT WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF UTAH, STATE OF UTAH ON NOVEMBER 25, 2008 AS ENTRY NO. 125406:2008.
A.P.N. 05-029-0004

LESS AND EXCEPTING THEREFROM UNITS 100, 300, 400, AND 410, CONTAINED WITHIN THE 200 NORTH CONDOMINIUM, A CONDOMINIUM PROJECT AS THE SAME IS IDENTIFIED IN THE RECORD OF SURVEY MAP RECORDED ON FEBRUARY 11, 2010 IN UTAH COUNTY, AS ENTRY NO. 12195:2010, IN BOOK 53, AT PAGE 448 (AS SAID RECORD OF SURVEY MAP MAY HAVE HERETOFORE BEEN AMENDED OR SUPPLEMENTED) AND IN THE DECLARATION RECORDED FEBRUARY 11, 2010 IN UTAH COUNTY, AS ENTRY NO. 12196:2010 (AS SAID DECLARATION MAY HAVE HERETOFORE BEEN AMENDED OR SUPPLEMENTED.)

TOGETHER WITH THE APPURTENANT UNDIVIDED INTEREST IN SAID PROJECT'S COMMON AREAS AS ESTABLISHED IN SAID DECLARATION AND ALLOWING FOR PERIODIC ALTERATION BOTH IN THE MAGNITUDE OF SAID UNDIVIDED INTEREST AND IN THE COMPOSITION OF THE COMMON AREAS AND FACILITIES TO WHICH SAID INTEREST RELATES.