

11725413
9/16/2013 4:31:00 PM \$25.00
Book - 10177 Pg - 9456-9462
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 7 P.

NCS-334610 AH

WHEN RECORDED, RETURN TO:

ZIONS FIRST NATIONAL BANK
3270 SOUTH 2460 WEST
WEST VALLEY CITY, UTAH 84119
ATTN: LOAN SERVICING GROUP

ASSIGNMENT OF TENANT'S INTEREST IN GROUND LEASE FOR SECURITY

This Assignment of Tenant's Interest in Ground Lease for Security (this "Assignment") is made and executed this 13th day of September, 2013 by FABSTER, LLC ("Borrower") and ZIONS FIRST NATIONAL BANK, a national banking association ("Lender").

RECITALS

A. Pursuant to the Promissory Note of even date herewith executed by Borrower in favor Lender in the original principal amount of \$3,900,000.00 (the "Note"), and pursuant to the Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement"), Lender has loaned the proceeds of the Note to Borrower.

B. Pursuant to the Trust Deed of even date herewith (the "Trust Deed"), in which Borrower appears as "Trustor" and Lender appears as "Trustee" and "Beneficiary", which encumbers the real property together with the improvements thereon located in Salt Lake County, State of Utah, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"), Borrower has granted Lender a lien on the Property to secure the Note.

C. The Property is affected by a Ground Lease dated June 6, 2006 and Amended and Restated on January 1, 2012, in which Borrower appears as ["Lessee" or "Tenant"] and Boyer Quarry Bend, L.C., a Utah limited liability company ("Ground Lessor") appears as ["Lessor" or "Landlord"] (the "Ground Lease").

D. Lender desires and Borrower agrees to further secure the Note and the Loan Agreement with an assignment of the Ground Lease.

AGREEMENT

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

1. **Assignment.** Borrower hereby absolutely and unconditionally assigns and transfers unto Lender for security all the right, title, and interest of Borrower in and to the Ground Lease, together with all extensions, renewals, modifications or replacements thereof, as well as all guaranties of Borrower's obligations under any provisions thereof and under any and all extensions and renewals thereof (collectively the "Lease"). This Assignment shall inure to the benefit of Lender, its successors and assigns as security for the payment of the principal and interest provided to be paid in or by the Note, the performance of the agreements of Borrower contained in the Loan Agreement and Trust Deed, and the performance of the agreements of Borrower contained in any other document evidencing, securing or relating to the disbursement or administration of the proceeds of the Note (all of which agreements are collectively referred to as the "Loan Documents").

2. **Default Remedies of Lender.** If Borrower defaults under the Loan Documents, or this Assignment or if an Event of Default occurs, Lender shall be authorized at its option to enter and take possession of all or part of the Property, to perform all acts necessary for the operation and maintenance of the Property, and to perform the obligations of Borrower under the Lease in the same manner and to the same extent that Borrower might reasonably so act. Lender shall further be authorized to replace Borrower as lessee under the Lease.

3. **Termination of Assignment.** When Borrower pays Lender for the full amount of the Note and such payment is evidenced by a recorded satisfaction or release of the Trust Deed, this Assignment shall no longer be in effect and shall be void. Lender shall execute such instruments as may be reasonably required to evidence the termination of this Assignment.

4. **Notice to Ground Lessor of Borrower's Default.** Borrower shall irrevocably authorize Ground Lessor, upon demand and notice from Lender of Borrower's default under the Loan Documents, to accept from Lender performance of Borrower's obligations under the Lease. In such situation, Lender shall not be liable to Ground Lessor for the determination of the actual existence of any default claimed by Lender. Ground Lessor shall have the right to rely upon any such notices from Lender, without any obligation or right to inquire as to the actual existence of the default, notwithstanding any claim of Borrower to the contrary. Upon the curing of all defaults caused by Borrower under the Loan Documents, Lender shall give Ground Lessor written notice of such cure.

5. **Assignment of Borrower's Interest in Lease.** Lender shall have the right to assign Borrower's right, title, and interest in the Lease to any subsequent holder of the Note and to any person acquiring title to the Property through foreclosure or otherwise consistent with the terms of the Lease.

6. **Indemnification of Lender.** Borrower shall indemnify and hold Lender harmless of and from any and all liability, loss, or damage that Lender may incur under the Lease or by reason of this Assignment other than such liability, loss, or damage as may be occasioned by Lender's gross negligence or willful misconduct. Such indemnification shall also cover any and all claims that may be asserted against Lender by reason of any alleged obligation to be performed by Lender under the Lease or Assignment. Nothing in this paragraph shall be construed to bind Lender to the performance of any Lease provisions, or to otherwise impose any liability upon Lender. This Assignment shall not impose liability upon Lender for the operation and maintenance of the premises or for carrying out the Lease terms before Lender has entered and taken possession of the premises. Any loss or liability incurred by Lender by reason of actual entry and taking possession under the Lease or in the defense of any claims shall, at Lender's request, be reimbursed by Borrower. Such reimbursement shall include interest at the rate of three percent (3%) per annum above the interest rate provided in the Note, costs, expenses, and reasonable attorneys' fees.

7. **Quality of Borrower's Title to Lease.** Borrower represents itself to be the absolute owner of the leasehold interest in the Lease, with right and title to assign it consistent with the terms of the Lease; that the Lease is valid, in full force and effect, and has not been modified or amended except as stated herein; that there is no outstanding assignment or pledge thereof; that there are no existing defaults under the provisions thereof on the part of any party; and that Borrower is in possession and paying rent and other charges under the Lease as provided therein. Borrower covenants not to cancel, abridge, surrender, or terminate the Lease or change, alter, or modify it without the prior written consent of Lender. Any attempt at cancellation, surrender, termination, change, alteration, modification, assignment, or subordination of the Lease without the written consent of Lender shall be null and void.

8. No Merger. If the Property is under any lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Assignment and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Assignment on the Property pursuant to the provisions of this Assignment, any leases or subleases then existing and created by Borrower shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any lease or sublease unless Lender or such purchaser shall give written notice thereof to such tenant or subtenant.

9. Delivery of Necessary Instruments to Lender. Borrower shall execute and deliver to Lender and hereby irrevocably appoints Lender, its successors, and assigns as its attorney in fact to execute and deliver during the term of this Assignment, all further instruments as Lender may deem necessary to make this Assignment and any further assignment effective. The power hereby granted is coupled with an interest in the Property and is irrevocable.

10. Lease Guaranties; Assignment of Lease; Alterations of Premises. Borrower shall not alter, modify, cancel or terminate any guaranties of the Lease without the written consent of Lender. Borrower shall not consent to any Lease assignment or subletting, nor agree to a subordination of the Lease to any mortgage or other encumbrance, other than that of Lender, now or hereafter affecting the Property without Lender's prior written consent. Borrower shall not permit a material alteration of or addition to the Property without Lender's prior written consent.

11. Borrower to Ensure Continued Performance under Lease. Borrower shall perform all of its covenants as lessee under the Lease, including the obligation to pay rent to Ground Lessor. Lender shall promptly deliver to Borrower copies of all notices of default Borrower has received or may hereafter receive from Ground Lessor.

12. Changes in Loan Document Terms. Notwithstanding any variation of the terms of the Loan Documents, including increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or any release of part or parts of the real property subject to the Trust Deed, the Lease and the benefits hereby assigned shall continue as additional security in accordance with the terms of this Assignment.

13. Additions to and Replacement of Obligation. Lender may take security in addition to the security already given Lender for the payment of the principal and interest provided to be paid in or by the Loan Documents or release such other security, and may release any party primarily or secondarily liable on the Loan Documents, may grant or make extensions, renewals, modifications, or indulgences with respect to the Loan Documents and replacements thereof, which replacement of the Loan Documents may be on the same or on terms different from the present terms of the Loan Documents, and may apply any other security thereof held by it to the satisfaction of the Note, without prejudice to any of its rights hereunder.

14. Exercise of Lender's Rights. Lender's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Lender's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Lender has under the Loan Documents. Lender's rights and remedies hereunder may be exercised as often as Lender deems expedient.

15. Amendment, Modification, or Cancellation of Assignment. No amendment, modification, cancellation, or discharge hereof, or of any part hereof, shall be enforceable without Lender's prior written consent.

16. Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered or when deposited in the United States mail, by registered or certified mail, addressed as follows:

Lender: ZIONS FIRST NATIONAL BANK
2460 SOUTH 3270 WEST
WEST VALLEY CITY, UT 84119
Attn: LOAN SERVICING GROUP

Borrower: FABSTER, LLC
1075 EAST 9400 SOUTH
SANDY, UT 84094
ATTN: FRED L SMITH JR, Member

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

17. **Binding Effect.** All agreements herein shall inure to the benefit of, and bind the respective heirs, executors, administrators, successors, and assigns of Borrower and Lender.

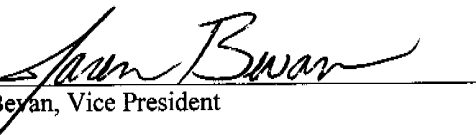
18. **Governing Law.** This Assignment shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah.

19. **Attorneys' Fees.** In the event Lender institutes legal action against Borrower with respect to this Assignment, Lender shall be entitled to an award of reasonable attorneys' fees from Borrower. Lender shall also be entitled to collect all reasonable attorneys' fees and costs incurred with respect to any insolvency or bankruptcy action or proceeding involving Borrower.

BORROWER: FABSTER, LLC

By: 
Fred L Smith Jr, Member

LENDER: ZIONS FIRST NATIONAL BANK

By: 
Jaren Bevan, Vice President

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

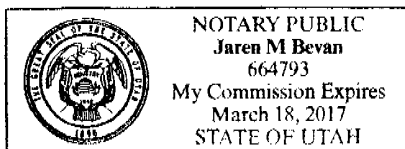
STATE OF UTAH
COUNTY OF SALT LAKE

On the 13TH day of September, 2013, personally appeared before me, Fred L Smith Jr. Who being duly sworn, did say that he/she is the Member of, the limited liability company that executed the above and foregoing instrument, and that said instrument was signed in behalf of said limited liability company by authority, and said Fred L Smith Jr Acknowledged to me that said limited liability company executed the same.

My Commission Expires: March 18, 2017

Notary Public
Residing at: DAVIS COUNTY





BK 10177 PG 9459

CORPORATE ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF *Weber*)

On the 11th day of September, 2013, personally appeared before me Jaren Bevan who being duly sworn, did say that he/she is the Loan Officer of ZIONS FIRST NATIONAL BANK, the corporation that executed the above and foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said Jaren Bevan acknowledged to me that said corporation executed the same.

Notary Public: *[Signature]*
My Commission Expires: *2-27-17*

Residing at: *Weber Co.*

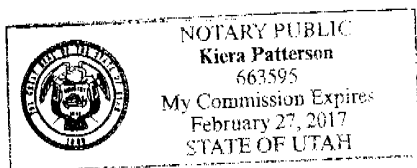


EXHIBIT
REAL PROPERTY DESCRIPTION

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

"NEW LOT 8, QUARRY BEND SUBDIVISION":

A PART OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY IN SALT LAKE COUNTY, UTAH:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF 9400 SOUTH STREET LOCATED 820.81 FEET SOUTH 89°06'33" EAST ALONG THE SECTION LINE; AND 91.73 FEET NORTH FROM THE SOUTH QUARTER CORNER OF SAID SECTION 5; AND RUNNING THENCE ALONG SAID NORTHERLY LINE OF 9400 SOUTH STREET THE FOLLOWING FIVE COURSES: NORTHWESTERLY ALONG THE ARC OF A 788.05 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 146.61 FEET (CENTER BEARS NORTH 3°19'23" EAST; CENTRAL ANGLE EQUALS 10°39'34" AND LONG CHORD BEARS NORTH 81°20'50" WEST 146.40 FEET; NORTH 0°14'51" EAST 10.30 FEET; NORTHWESTERLY ALONG THE ARC OF A 778.05 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 31.99 FEET (CENTER BEARS NORTH 14°09'45" EAST; CENTRAL ANGLE EQUALS 2°21'21" AND LONG CHORD BEARS NORTH 74°39'34" WEST 31.99 FEET); NORTH 61°40'05" WEST 116.01 FEET; AND NORTHWESTERLY ALONG THE ARC OF AN 893.50 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 80.71 FEET (CENTER BEARS NORTH 25°56'30" EAST; CENTRAL ANGLE EQUALS 5°10'33" AND LONG CHORD BEARS NORTH 61°28'14" WEST 80.69 FEET); THENCE ALONG THE SOUTHEASTERLY LINE OF A PUBLIC ROAD AS WIDENED THE FOLLOWING TWO COURSES: NORTH 13°39'11" EAST 18.20 FEET; AND NORTH 39°17'17" EAST 249.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 1500.00 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 116.54 (CENTER BEARS NORTH 40°03'16" EAST; CENTRAL ANGLE

EQUALS 4°27'05" AND LONG CHORD BEARS SOUTH 52°10'17" EAST 116.51 FEET) TO A POINT OF REVERSE CURVATURE; THENCE SOUTHEASTERLY ALONG THE ARC OF A 225.00 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 213.61 FEET (CENTRAL ANGLE EQUALS 54°23'46" AND LONG CHORD BEARS SOUTH 27°11'56" EAST 205.68 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 0°00'03" EAST 91.04 FEET TO THE POINT OF BEGINNING.

[THE SAID "NEW LOT 8, QUARRY BEND SUBDIVISION" BEING IDENTIFIED AND DEPICTED ON THAT CERTAIN PLAT ENTITLED "NOTICE OF APPROVAL OF LOT LINE ADJUSTMENT - QUARRY BEND SUBDIVISION" RECORDED DECEMBER 2, 2009 AS ENTRY NO. 10850684 IN BOOK 2009P AT PAGE 174 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.]

LESS AND EXCEPTING THEREFROM THE FOLLOWING PORTION OF PROPERTY CONVEYED TO SANDY CITY CORPORATION, A UTAH MUNICIPAL CORPORATION BY SPECIAL WARRANTY DEED OF DEDICATION RECORDED NOVEMBER 29, 2012 AS ENTRY NO. 11525068 IN BOOK 10082 AT PAGE 3779 OF OFFICIAL RECORDS. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

EXCEPTION TRACT 1 ('ROAD DEDICATION WEST'):

ALL THAT LAND BEING PART OF A PARCEL SHOWN AS "NEW LOT 8" IN THAT SPECIAL WARRANTY DEED RECORDED DECEMBER 02, 2009 AS ENTRY NO. 10850685, IN BOOK 9785, AT PAGE 1035 OF THE OFFICIAL RECORDS OF SALT LAKE COUNTY RECORDER, IN THE STATE OF UTAH, COUNTY OF SALT LAKE, CITY OF SANDY, BEING PART OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST CORNER OF SAID PARCEL, SAID POINT BEING SOUTH 89°06'33" EAST 472.23 FEET AND NORTH 00°00'00" EAST 220.69 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 5, AND RUNNING THENCE NORTH 13°39'11" EAST 18.20 FEET; THENCE NORTH 39°17'17" EAST 4.89 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST, WITH A RADIUS OF 20.00 FEET AND RADIAL BEARING OF NORTH 52°56'36" WEST; THENCE SOUTHERLY 33.84 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 96°55'41", TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, WITH A RADIUS OF 893.50 FEET AND A RADIAL BEARING OF SOUTH 30°07'31" WEST; THENCE NORTHWESTERLY 15.47 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°59'32", TO THE POINT OF BEGINNING.

EXCEPTION TRACT 2 ("ROAD DEDICATION EAST"):

ALL THAT LAND BEING PART OF PARCEL SHOWN AS "NEW LOT 8" IN THAT SPECIAL WARRANTY DEED RECORDED DECEMBER 02, 2009 AS ENTRY NO. 10850685, IN BOOK 9785, AT PAGE 1035 OF THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER, IN THE STATE OF UTAH, COUNTY OF SALT LAKE, CITY OF SANDY, BEING PART OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID PARCEL, SAID POINT BEING SOUTH 89°06'33" EAST 820.81 FEET, NORTH 00°00'00" EAST 91.73 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH WITH A RADIUS OF 788.05 FEET AND A RADIAL BEARING OF SOUTH 03°19'23" WEST, AND WESTERLY 139.11 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°06'52" FROM THE SOUTH QUARTER CORNER OF SAID SECTION 5, AND THENCE CONTINUING 7.50 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°32'42", TO THE EAST LINE OF ROAD DEDICATION C PER ROAD DEDICATION SR-209 PLAT RECORDED JUNE 15, 2006 AS ENTRY NO. 9754372, IN BOOK 2006P OF PLATS, AT PAGE 168 OF OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER; THENCE NORTH 00°14'51" EAST 2.15 FEET ALONG SAID EAST LINE; THENCE SOUTH 61°39'59" EAST 8.26 FEET TO THE POINT OF BEGINNING.

APN: 28 - 05 - 451 - 012 - 0000