

When Recorded Return To:

Brian D. Cunningham, Esq.
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Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

APN: 02-127-0-0060

01459-16422

**FIRST AMENDMENT TO DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FILING**

This **FIRST AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (the "Amendment") is dated January 12, 2018, by and between **WDG TOOELE, LLC** a Utah limited liability company ("Trustor"), whose mailing address is 1178 Legacy Crossing Blvd., Suite 100, Centerville, and **WASHINGTON FEDERAL, NATIONAL ASSOCIATION** ("Beneficiary"), whose mailing address is 1207 East Draper Parkway, Draper, UT 84020.

Recitals

A. Beneficiary extended to **MILLCREEK PARTNERS LLC**, a Utah limited liability company ("Borrower") a term loan (the "Initial Loan") in a principal amount of **Three Million Four Hundred Seventy Thousand Seven Hundred Sixty-Six and No/100 Dollars (\$3,470,766.00)** pursuant to that certain Term Loan Agreement dated October 30, 2015 (the "Initial Loan Agreement") and evidenced by that certain Promissory Note dated October 30, 2015 (the "Initial Note").

B. The Initial Loan and Initial Note are secured by, among other things, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated October 30, 2015 given by Trustor, an affiliate of Borrower, in favor of Beneficiary and recorded on November 3, 2015 as Entry No. 420892, Pages 1 to 35, inclusive, in the official records of Tooele County, Utah (the "Deed of Trust"). The Deed of Trust encumbers certain real property located in Tooele County, Utah, as more particularly described in Exhibit A of the Deed of Trust and attached hereto (the "Property").

C. Borrower has now applied to Lender for additional credit in the form of a term loan (the "Loan") in the principal amount of **Seven Hundred Eighty Thousand and No/100 Dollars (\$780,000.00)**, pursuant to that certain Term Loan Agreement of even date herewith (the "Loan Agreement") and evidenced by a Promissory Note of even date herewith (the "Note"). Capitalized terms used herein without definition shall have the meanings given to such terms in the Loan Agreement.

D. The Loan will be secured by, among other things, a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith, given by WDG American Fork, as trustor in favor of Beneficiary, to be recorded in the official records of Utah County, Utah, encumbering that certain property located in Utah County, Utah and more fully described on Exhibit A attached thereto, together with improvements located thereon and creating a first priority lien on the Project, as defined in the Loan Agreement.

E. In accordance with the terms and conditions of the Loan Agreement, Trustor and Beneficiary have agreed to further secure the Loan, Loan Agreement and Note with the Property and have accordingly agreed to modify and amend the Deed of Trust such that it will secure both the Loan, Loan Agreement, and Note (together with all other documents governing, evidencing or securing the Loan, the "Loan Documents") in addition to the Initial Loan, Initial Loan Agreement and Initial Note (together with all other documents governing, evidencing or securing the Initial Loan, the "Initial Loan Documents").

F. Concurrently with entering into the Loan and execution of the Loan Documents, Trustor and Beneficiary desire to amend the Deed of Trust, as more particularly set forth herein.

Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor and Beneficiary agree as follows:

1. Recitals. Trustor hereby acknowledges the accuracy of the Recitals which are incorporated herein by reference.

2. Modifications to Deed of Trust.

(a) Obligations Secured. The definition of Obligations as set forth in the Deed of Trust has been amended and modified pursuant to the Loan Documents. Accordingly, the Deed of Trust shall secure the Initial Loan in the amount of **Three Million Four Hundred Seventy Thousand Seven Hundred Sixty-Six and No/100 Dollars (\$3,470,766.00)** and the Loan in the amount of **Seven Hundred Eighty Thousand and No/100 Dollars (\$780,000.00)**.

(b) Cross-Collateralization. Without limiting the extent to which such matters are already granted and agreed to in the Loan Documents or Initial Loan Documents, Beneficiary and Trustor hereby agree and confirm that: (a) all collateral for the Loan shall secure the payment and performance of the Loan and all Other Loan; and (b) Beneficiary's liens and security interests in the existing collateral shall secure all existing obligations under the Loan and Other Loan and, except as otherwise provided in the Initial Loan Documents and/or Loan Documents, shall not be terminated or released in whole or in part unless and until all of such obligations under the Loan and Other Loans are fully paid and satisfied, notwithstanding the fact that one or more of the Loan or the Other Loans may become fully paid. As used herein, "*Other Loan*" has the meaning set forth in the Loan Agreement

(c) Cross-Default. Without limiting the extent to which such matters are already agreed to in the Loan Documents, Beneficiary and Trustor hereby agree and confirm that any default under any of the Loan Documents or Initial Loan Documents shall be a default under all Loan Documents or Initial Loan Documents.

(d) Trustor Provisions. The Deed of Trust is hereby amended to add the following as Article 7:

"ARTICLE 7

TRUSTOR PROVISIONS

7.1 Rights of Beneficiary. With respect to the Obligations, Trustor authorizes Beneficiary to perform any or all of the following acts at any time in its sole discretion, all without notice to or the

consent or approval of Trustor and without affecting Beneficiary's rights or Trustor's obligations under this Deed of Trust:

(a) Beneficiary may alter any Obligations, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, all or any part of any Obligations.

(b) Beneficiary may take and hold security for any Obligations, accept additional or substituted security therefor, and subordinate, exchange, enforce, waive, release, compromise, fail to perfect, and sell or otherwise dispose of any such security.

(c) Beneficiary may direct the order and manner of any public or private sale of all or any part of any security assigned to Beneficiary by Borrower or any other person, or otherwise to comply with the Uniform Commercial Code with respect to any personal property collateral, and Beneficiary may also bid at any such sale.

(d) Beneficiary may apply any payments or recoveries from Borrower or any Guarantor of any Obligation or any other source, and any proceeds of any security, to the Obligations in such manner, order and priority as Beneficiary may elect, whether or not those obligations are secured at the time of the application.

(e) Beneficiary may release Borrower, Guarantor or any other person of its liability for all or any part of any Obligations.

(f) Beneficiary may substitute, add, or release any one or more Guarantors or endorsers.

In addition to the Obligations, Beneficiary may extend other credit to Borrower, and may take and hold security for the credit so extended, all without affecting Trustor's liability under this Deed of Trust.

7.2 Trustor's Waivers. Trustor waives:

(a) Any right it may have to require Beneficiary to proceed against Borrower or any other person, proceed against or exhaust any security held from Borrower or any other person, or pursue any other remedy in Beneficiary's power to pursue;

(b) Any defense based on any claim that Trustor's obligations exceed or are more burdensome than those of Borrower;

(c) Any claim or defense that this Deed of Trust was made without consideration or is not supported by adequate consideration;

(d) Any defense based on (i) any legal disability of Borrower or any other person, (ii) any release, discharge, modification, impairment, or limitation of the liability of Borrower or any other person to Beneficiary from any cause, whether consented to by Beneficiary or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships ("*Insolvency Proceeding*"), and (iii) any rejection or disaffirmance of all or any part of any Obligation, or any security therefor, in any such *Insolvency Proceeding*;

(e) Any defense based on any action taken or omitted by Beneficiary in any Insolvency Proceeding involving Borrower, including any election to have Beneficiary's claim allowed as being secured, partially secured or unsecured, any extension of credit by Beneficiary to Borrower in any Insolvency Proceeding, and the taking and holding by Beneficiary of any security for any such extension of credit;

(f) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind;

(g) Any defense based on or arising out of any defense that Borrower may have to the payment or performance of all or any part of any Obligation;

(h) Any defense based on the unenforceability or invalidity of any collateral assignment or guaranty with respect to any Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien of this Deed of Trust) which secures any Obligation;

(i) Any defense based on the death, insolvency, bankruptcy, disability, incapacity, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other Person at any time liable for the payment or performance of any or all of the Obligations;

(j) Any other condition, event, omission, action that would in the absence of this paragraph result in the release or discharge of Trustor from the performance or observance of any obligation, covenant or agreement contained in this Deed of Trust or any other agreement;

(k) Any early termination of any of the Obligations;

(l) Beneficiary's enforcement or forbearance from enforcement of the Obligations on a net or gross basis;

(m) Any liability, irregularity or unenforceability in whole or in part of any transaction entered into under the Loan Documents, or any limitation on the liability of Borrower or Trustor thereunder or any limitation on the method or terms of payment thereunder which may now or hereafter be caused or imposed in any manner whatsoever;

(n) Any failure of Beneficiary to marshal assets in favor of Trustor or any other person.

7.3 Waivers of Subrogation and Other Rights.

(a) Upon a default by Borrower, Beneficiary in its sole discretion, without prior notice to or consent of Trustor, may elect to (i) foreclose either judicially or nonjudicially against any real or personal property security that Beneficiary may hold for the Obligations, (ii) accept a transfer of any such security in lieu of foreclosure, (iii) compromise or adjust all or any part of any Obligation or make any other accommodation with Borrower or any Guarantor, or (iv) exercise any other remedy against Borrower or any security. No such action by Beneficiary shall release or limit the liability of Trustor, who shall remain liable under this Deed of Trust after the action, even if the effect of the action is to deprive Trustor of any subrogation rights, rights of

indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Beneficiary, whether contractual or arising by operation of law or otherwise. Trustor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest, or claim in or to any real or personal property to be held by Beneficiary or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Obligations.

(b) Regardless of whether Trustor may have made any payments to Beneficiary, Trustor forever waives (i) all rights of subrogation, all rights of indemnity, and any other rights to collect reimbursement from Borrower for any sums paid by Trustor to Beneficiary with respect to the Obligations, whether contractual or arising by operation of law (including the United States Bankruptcy Code or any successor or similar statute) or otherwise, (ii) all rights to enforce any remedy that Trustor may have against Borrower with respect to the Obligations, and (iii) all rights to participate in any security now or later to be held by Beneficiary for the Obligations.

(c) Trustor understands and acknowledges that if Beneficiary forecloses judicially or nonjudicially against any real property security for the Loan, such foreclosure could impair or destroy any ability that Trustor may have to seek reimbursement, contribution, or indemnification from Borrower or others based on any right that Trustor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by Trustor under this Deed of Trust.

(d) All notices to Trustor, to Borrower, or to any other person, including, but not limited to, notices of the acceptance of this Deed of Trust, or the creation, renewal, extension, modification or accrual of any of the Obligations owed to Beneficiary and, enforcement of any right or remedy with respect thereto, and notice of any other matters relating thereto.

7.4 Information Regarding Borrower and the Trust Estate. Trustor warrants and agrees that Trustor has not relied, and will not rely, on any representations and warranties by Beneficiary to Trustor with respect to the creditworthiness of Borrower or the prospects of repayment of any Obligation from sources other than the Trust Estate. Before signing this Deed of Trust, Trustor will have investigated the financial condition and business operations of Borrower, the present and former condition, uses and ownership of the Trust Estate, and such other matters as Trustor may deem appropriate to assure itself of Borrower's ability to discharge its obligations under or with respect to the Obligations. Trustor assumes full responsibility for such due diligence, as well as for keeping informed of all matters which may affect Borrower's ability to pay and perform its obligations to Beneficiary. Beneficiary has no duty to disclose to Trustor any information which Beneficiary may have or receive about Borrower's financial condition or business operations, the condition or uses of any of the Trust Estate, or any other circumstances bearing on Borrower's ability to perform. Trustor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.

7.5 Subordination. Any rights of Trustor, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) owed to it by Borrower or any subsequent owner of any of the Trust Estate, or to withdraw capital invested by it in Borrower (if applicable), or to receive distributions from Borrower (if applicable), shall at all times be subordinate as to lien and time of payment and in all other respects to the full and prior repayment to Beneficiary of all Obligations; provided, however, that prior to the occurrence of an Event of Default, Trustor may receive payments of such subordinated obligations in the ordinary course of business and in a manner that is consistent with past practices.

7.6 Consideration.

(a) Trustor acknowledges that it expects to benefit from Beneficiary's entering into certain material transactions with respect to the Obligations because of Trustor's relationship to Borrower, and that it is executing this Deed of Trust in consideration of such anticipated benefit.

(b) Trustor does not intend to defraud any of its creditors by execution and delivery of this Deed of Trust. Trustor is not insolvent, and Trustor shall not be rendered insolvent by virtue of such execution of this Deed of Trust. Trustor has determined that, in its opinion, the fair market value of the benefits to be derived by it from such execution of this Deed of Trust will equal or exceed the cost and expense that may be incurred by Trustor under or in connection with this Deed of Trust.

7.7 Lawfulness and Reasonableness. Trustor warrants that all of the waivers in this Deed of Trust are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Trustor may destroy or impair rights which Trustor would otherwise have against Beneficiary, Borrower and other persons, or against collateral. Trustor agrees that (i) all such waivers are reasonable under the circumstances and (ii) if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.

7.8 Deed of Trust to be Absolute. Trustor expressly agrees that until each and every term, covenant and condition of this Deed of Trust is fully performed, Trustor shall not be released by or because of:

(a) Any act or event which might otherwise discharge, reduce, limit or modify Trustor's obligations under this Deed of Trust;

(b) Any waiver, extension, modification, forbearance, delay or other act or omission of Beneficiary, or its failure to proceed promptly or otherwise against Borrower, Trustor or any security;

(c) Any action, omission or circumstance which might increase the likelihood that Trustor may be called upon to perform under this Deed of Trust or which might affect the rights or remedies of Trustor against Borrower; or

(d) Any dealings occurring at any time between Borrower and Beneficiary, whether relating to the Obligations or otherwise.

(e) Trustor hereby expressly waives and surrenders any defense to its liability under this Deed of Trust based upon any of the foregoing acts, omissions, agreements, waivers or matters. It is the purpose and intent of this Deed of Trust that the obligations of Trustor under it shall be absolute and unconditional under any and all circumstances.

7.9 Limitation on Amount Obligated; Contribution by Other Persons. Anything contained in this Deed of Trust to the contrary notwithstanding, if any Fraudulent Transfer Law (as hereinafter defined) is determined by a court of competent jurisdiction to be applicable to the obligations of Trustor under this Deed of Trust, such obligations shall be limited to a maximum aggregate amount equal to the largest amount that would not render Trustor's obligations under this Deed of Trust subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law (collectively, the

“Fraudulent Transfer Laws”), in each case after giving effect to all other liabilities of Trustor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of Trustor in respect of intercompany indebtedness, if any, to Borrower or any Affiliate (as defined below) of Borrower to the extent that such indebtedness would be discharged in an amount equal to the amount paid by Trustor under this Deed of Trust pursuant to which the liability of Trustor under this Deed of Trust is included in the liabilities taken into account in determining such maximum amount) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, reimbursement, indemnification, or contribution of Trustor pursuant to applicable law or pursuant to the terms of any agreement. For purposes of this Section, an “Affiliate” of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, “control,” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. The term “Affiliate” does not include the officers, directors, or employees of a Person, if the Person is a corporation, and does not include the employees of a Person, if the Person is a limited liability company or limited partnership.

7.10 Enforceability. Trustor hereby acknowledges that (i) the obligations undertaken by Trustor in this Deed of Trust are complex in nature, (ii) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, (iii) as part of Beneficiary’s consideration for accepting this Deed of Trust as security the Loan, Beneficiary has specifically bargained for the waiver and relinquishment by Trustor of all such defenses, and (iv) Trustor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Trustor hereby represents and confirms to Beneficiary that Trustor is fully informed regarding, and that Trustor does thoroughly understand, (w) the nature of all such possible defenses, (x) the circumstances under which such defenses may arise, (y) the benefits which such defenses might confer upon Trustor, and (z) the legal consequences to Trustor of waiving such defenses. Trustor acknowledges that Trustor enters into this Deed of Trust with the intent that this Deed of Trust and all of the informed waivers in this Deed of Trust shall each and all be fully enforceable by Beneficiary, and that Beneficiary is accepting this Deed of Trust in material reliance upon the presumed full enforceability thereof.”

3. Not a Novation. The parties each agree and acknowledge that the modifications set forth herein are not intended to be a novation or to constitute or evidence a new loan but rather a continuation of the existing Loan and the lien and charge of the Deed of Trust against the Property and all assets and properties described in the Deed of Trust shall continue unabrogated and in full force and effect.

4. Ratification of Deed of Trust. As amended by this Amendment, the Deed of Trust is ratified and confirmed and continues in full force and effect and contains the entire understanding and agreement of the parties in respect of the Deed of Trust and supersedes all prior representations, warranties, agreements and understandings. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of Trustor and Beneficiary, and their respective successors and assigns. No provision of this Amendment may be changed, discharged, supplemented, terminated or waived except in a writing signed by Beneficiary.

5. Release and Discharge. Trustor fully, finally, and forever releases and discharges Beneficiary and its respective successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations,

and suits, of whatever kind or nature, in law or equity, that Trustor has or in the future may have, whether known or unknown, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Beneficiary in respect of the Loan or the Loan Documents, and (ii) arising from events occurring prior to the date of this Amendment.

6. Governing Law. This Amendment shall be governed by the law of the State of Utah without regard to its conflicts of laws principles.

7. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one document.

8. Miscellaneous. Except for the amendment above stated, all of the conditions and covenants of the Deed of Trust shall remain in full force effect, unchanged, and the Deed of Trust is in all respects ratified, confirmed and approved. All of the terms and conditions of the Deed of Trust are incorporated herein by reference.

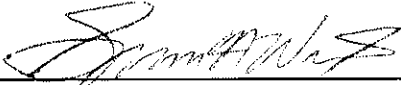
9. Binding Effect. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of Trustor and Beneficiary and their respective successors and assigns.

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IN WITNESS WHEREOF, Trustor and Beneficiary have caused this Amendment to be executed as of the date first above written.

TRUSTOR:

WDG TOOELE, LLC
a Utah limited liability company

By: 
Name: Spencer H. Wright
Title: Operating Manager

BENEFICIARY:

WASHINGTON FEDERAL, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, Trustor and Beneficiary have caused this Amendment to be executed as of the date first above written.

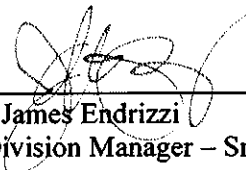
TRUSTOR:

WDG TOOELE, LLC
a Utah limited liability company

By: _____
Name: Spencer H. Wright
Title: Operating Manager

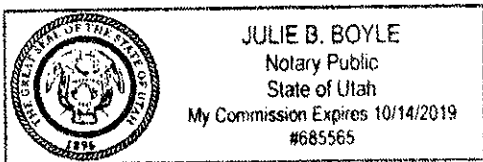
BENEFICIARY:

WASHINGTON FEDERAL, NATIONAL ASSOCIATION

By:  _____
Name: James Endrizzi
Title: Division Manager – Sr. Vice President

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

The foregoing instrument was acknowledged before me this 10th day of January, ²⁰¹⁸2017, by SPENCER H. WRIGHT, an operating manager of WDG TOOELE, LLC, a Utah limited liability company, on behalf of such company.



Julie B. Boyle
NOTARY PUBLIC
Residing at Fruit Heights, Utah

[SEAL]

STATE OF _____)
) :ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, a _____ of WASHINGTON FEDERAL, NATIONAL ASSOCIATION.

NOTARY PUBLIC
Residing at : _____

[SEAL]

STATE OF UTAH)
) :SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2018, by SPENCER H. WRIGHT, an operating manager of **WDG TOOELE, LLC**, a Utah limited liability company, on behalf of such company.

NOTARY PUBLIC
Residing at _____

[SEAL]

STATE OF UTAH)
) :SS.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 11th day of January 2018, by JAMES ENDRIZZI, a Division Manager – Sr. Vice President of **WASHINGTON FEDERAL, NATIONAL ASSOCIATION**.

Lori Newey

NOTARY PUBLIC
Residing at Salt Lake City, UT

[SEAL]

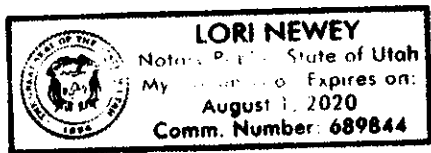


EXHIBIT A

LEGAL DESCRIPTION

That certain real property located in Tooele County, State of Utah and described as follows:

Beginning at a point on the East line of Main Street, which is located South 89°43'06" West 1240.38 feet along the Record Section Line and North 229.75 feet from the Southeast Corner of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence North 06°41'49" East 240.23 feet along said East line of Main Street to the Southwest Corner of Lot 1 of the Flinders Industrial Park, as recorded March 18, 1968 under Entry No. 283399 in Book 78 at Page 573-574 in the Tooele County Recorder's Office; thence South 80°46'37" East 198.71 feet along the South line of Flinders Industrial Park; thence South 06°41'49" West 240.23 feet; thence North 80°46'37" West 198.71 feet to the point of beginning.

Tax ID Number: 02-127-0-0060