



**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association
Commercial Real Estate (AU #64073)
3800 Howard Hughes Parkway, 4th Floor
Las Vegas, Nevada 89169

Attn: **Dean Lambertson**
Loan No. 1003351
10329590R

**MODIFICATION AGREEMENT
(Secured Swap Contract)**

THIS MODIFICATION AGREEMENT ("**Modification Agreement**") is executed to be effective as of April 30, 2012 by and between WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Lender**"), and DAVID B. DAVIS and SHARON LYNN DAVIS, Trustees of the DAVIS FAMILY TRUST DATED MAY 4, 1992 ("**Borrower**").

- A. Pursuant to the terms of a Building Loan Agreement ("**Loan Agreement**") between Borrower and Lender, dated December 21, 2010, Lender made a loan to Borrower in the principal amount of TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00) ("**Loan**"). The Loan is evidenced and secured by a promissory note and by certain other documents described in the Loan Agreement as loan documents (the "**Loan Documents**"), including, without limitation, a deed of trust ("**Deed of Trust**") dated December 21, 2010, executed by Borrower, as Trustor in favor of Lender, as Beneficiary. The Deed of Trust was recorded on December 22, 2010 in Book 1210, Page 5274, Document No. 775869 in the Records Office of Douglas County, State of Nevada. The real property which is the subject of the Deed of Trust is hereafter defined as the "**Property**".
- B. Since the date of the Loan, Borrower and Lender entered into a separate interest rate swap transaction with a trade date of May 1, 2012 and identified as Trade Number 8792403, (such transaction, together with all documents and agreements relating thereto, including any ISDA Master Agreement, Schedule and/or Confirmation, together with all modifications, extensions, renewals and replacements thereof, is hereinafter referred to as the "**Swap Contract**").
- C. Borrower's obligations to Lender under the Swap Contract are to be secured by the Deed of Trust. Lender's obligations to pay money to Borrower under the Swap Contract, if any, are to be assigned to Lender as additional collateral for the Loan.

NOW, THEREFORE, Borrower and Lender agree as follows:

- 1. **REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants, as of the effective date above, that:
 - 1.1 **Title To The Property.** Since the recordation date of the Deed of Trust (stated above),



Borrower has not further encumbered the Property, including, without limitation, by entering into any deed of trust deed to secure debt or mortgage, ground lease, and/or any option to purchase or right of first refusal with respect to the Property.

- 1.2 **No Default.** No Default (as defined in the Deed of Trust), breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under the Deed of Trust (or under any of the other Loan Documents) and all representations and warranties herein and in the Loan Documents are true and correct.
2. **MODIFICATION OF DEED OF TRUST:** The Deed of Trust (and the other Loan Documents) are hereby supplemented and modified to incorporate the following terms, which shall supersede and prevail over any conflicting provisions:
 - 2.1 **Secured Obligations.** The Secured Obligations (as defined in the Deed of Trust) are hereby amended to include, in addition to all existing Secured Obligations, the payment to Lender of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between Borrower and Lender in connection with the Loan, including but not limited to, any such transaction or arrangement entered into between Borrower and Lender pursuant to the Swap Contract.
 - 2.2 **Cross-Default.** The existence of any default by Borrower under the any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between Borrower and Lender in connection with the Loan, including, without limitation, the Swap Contract, shall be a Default (as defined in the Deed of Trust) under the Deed of Trust and any Default by Borrower under the Deed of Trust (or under any of the other Loan Documents) shall be a Default under the Swap Contract. Any breach of any representation or condition contained in this Modification Agreement shall be a Default under the Deed of Trust and a default under the Swap Contract.
 - 2.3 **Security Interest.** Without limiting the generality of Section 4.1 of the Deed of Trust, and in order to further secure payment and performance of all of the Secured Obligations, Borrower grants and assigns to Lender a security interest in all of Borrower's right, title and interest, now or hereafter acquired, to the payment of money from Lender to Borrower under the Swap Contract, together with all replacements and proceeds of, and additions and accessions to, any of the foregoing.
3. **NON-IMPAIRMENT.** Except as expressly provided herein, nothing in this Modification Agreement shall alter or affect any provision, condition, or covenant contained in the Deed of Trust (or in any other Loan Document) or affect or impair any rights, powers, or remedies of Lender.
4. **MISCELLANEOUS.** This Modification Agreement shall be governed by and interpreted in accordance with the laws of the State of Nevada except if preempted by federal law. Time is of the essence of each term hereof.
5. **COUNTERPARTS.** This Modification Agreement may be executed in several counterparts by the parties with the same effect as if the parties executing the several counterparts had all executed one counterpart.
6. **INTEGRATION; INTERPRETATION.** This Modification Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the

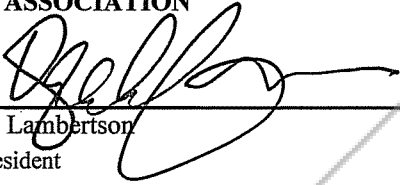


matters contemplated herein and supersedes all prior negotiations or agreements, written or oral, and shall not be modified except by written instrument executed by all parties.

IN WITNESS WHEREOF, Borrower and Lender have caused this Modification Agreement to be duly executed as of the date first above written.

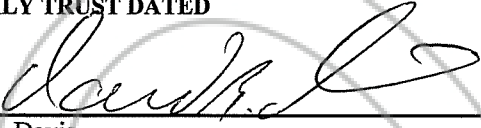
"LENDER"

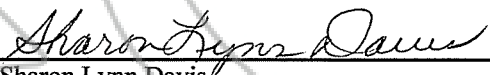
**WELLS FARGO BANK,
NATIONAL ASSOCIATION**

By: 
Dean A. Lambertson
Title: Vice President

"BORROWER"

**DAVIS FAMILY TRUST DATED
MAY 4, 1992**

By: 
David B. Davis
Title: Co-Trustee

By: 
Sharon Lynn Davis
Title: Co-Trustee

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

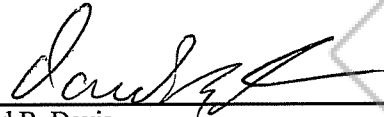


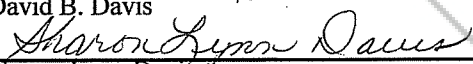
GUARANTOR'S CONSENT

The undersigned (individually and collectively) ("**Guarantor**") consents to the foregoing Modification Agreement and the transactions contemplated thereby and reaffirms its obligations under the Repayment and Completion Guaranty ("**Guaranty**") dated December 21, 2010. Guarantor further reaffirms that its obligations under the Guaranty are separate and distinct from Borrower's obligations.

Dated as of: April 30, 2012

"GUARANTOR"

By: 
David B. Davis

By: 
Sharon Lynn Davis

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

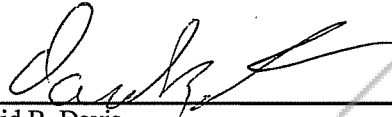


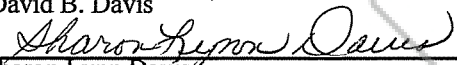
TRUSTEE'S CONSENT

The undersigned (individually and collectively) ("Trustee") consents to the foregoing Modification Agreement and the transactions contemplated thereby and reaffirms as of the date hereof each and every term of that certain Trustee's Certification of Trust, dated December 21, 2010 previously delivered by the undersigned to Lender.

Dated as of: April 30, 2012

"TRUSTEE"

By: 
David B. Davis

By: 
Sharon Lynn Davis

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

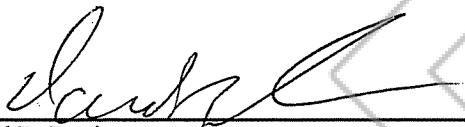



HAZARDOUS MATERIALS INDEMNITOR'S CONSENT

The undersigned (individually and collectively) ("**Indemnitor**") consents to the foregoing Modification Agreement and the transactions contemplated thereby and reaffirms its obligations under the Hazardous Materials Indemnity Agreement ("**Indemnity**") dated December 21, 2010, and its waivers, as set forth in the Indemnity, of each and every one of the possible defenses to such obligations. Indemnitor further reaffirms that its obligations under the Indemnity are separate and distinct from Borrower's obligations.

Dated as of: April 30, 2012

"INDEMNITOR"

By: 
David B. Davis
By: 
Sharon Lynn Davis

(ALL SIGNATURES MUST BE ACKNOWLEDGED)



STATE OF NEVADA

COUNTY OF

Douglas

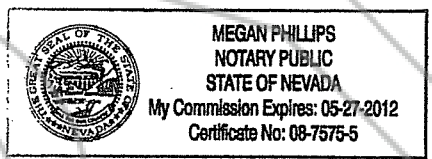
ss.

This instrument was acknowledged before me on May 3rd, 2012
by David B. Davis as Co-Trustee of

Davis Family Trust & dated May 4, 1992

Signature Megan Phillips
Notary Public for Nevada

My commission expires 5/27/2012



STATE OF NEVADA

COUNTY OF

Douglas

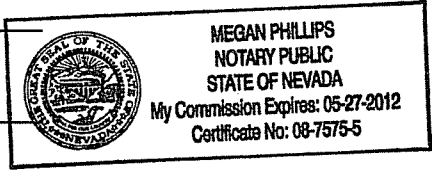
ss.

This instrument was acknowledged before me on May 3rd, 2012
by Sharon L. Davis as Co-trustee of

Davis Family Trust & dated may 4, 1992

Signature Megan Phillips
Notary Public for Nevada

My commission expires 5/27/2012





STATE OF NEVADA

COUNTY OF CLARK

ss.

This instrument was acknowledged before me on May 7th, 2012
by Dean A. Lambertson as Vice President of
Wells Fargo Bank a _____

Signature Billie E. Ferre
Notary Public for Nevada

My commission expires 6-1-2014

