



W2592089

E# 2592089 PG 1 OF 17
ERNEST D ROWLEY, WEBER COUNTY RECORDER
23-Aug-12 1144 AM FEE \$47.00 DEP SC
REC FOR: DEER CREEK TITLE INSURANCE, INC.
ELECTRONICALLY RECORDED

When Recorded Return To:

Scott R. Wangsgard
57 W. 200 So. #400
Salt Lake City, Utah 84101

DCT 5036

DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (as it may be amended and modified from time to time, this "Deed of Trust") is made and entered into effective as of August 20, 2012, by and among TIMOTHY PATRICK CHARLWOOD, an individual ("Trustor"), whose mailing address is P.O. Box 980400, Park City, Utah 84098-0400; PAXTON R. GUYMON ("Trustee"), an attorney licensed to practice law in the State of Utah, whose mailing address is 165 Regent Street, Salt Lake City, Utah 84111; and MCS/SRW, L.C., a Utah limited liability company ("Beneficiary"), whose mailing address is 57 West 200 South, Suite #400, Salt Lake City, Utah 84101.

WITNESSETH:

WHEREAS, Beneficiary has agreed to loan certain funds in the principal amount of SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00) (the "Loan"), to Trustor pursuant to the terms set forth in a Promissory Note of even date herewith (the "Note"); and,

WHEREAS, Beneficiary desires to secure the performance of Trustor's obligations under the Note.

GRANTING CLAUSES (All Collateral; Trust Estate)

NOW, THEREFORE, upon the terms, covenants and conditions set forth in this Deed of Trust, and for good and valuable consideration, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby (i) irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, and (ii) grants to Beneficiary, as secured party, a security interest in and to any and all personal property related thereto, including, without limitation, all water shares and water rights relating to the real property; for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, that certain real property located in Weber County, State of Utah (the "Property"), more particularly described on Exhibit "A" attached hereto and incorporated herein.

TOGETHER WITH any and all buildings and other improvements now or hereafter erected on the Property including, without limitation, fixtures, attachments, appliances, equipment, machinery, utilities, water systems, and all other real and personal property attached to or used in connection with the Property (the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Property and the Improvements (collectively the "Rents"), subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

TOGETHER WITH all present and future right, title, and interest of Trustor in and to all fixtures (as that term is defined in the Utah Uniform Commercial Code (the "UCC"), whether existing now or in the future and that is located at, upon, or about or affixed or attached to or installed in the Property, and all accessories,

additions, attachments, parts, proceeds, products, repairs, replacements, and substitutions of or to any such property (the "*Fixtures*");

TOGETHER WITH all existing and future water rights, water right exchange agreements, water shares, shares in water or irrigation companies or water conservancy districts, water right agreements and contracts, all rights to the wells located on the Property, and all water delivery systems or improvements that relate in any manner to, or are now or hereafter used in connection with, the Property, including, without limitation, the rights and contracts described in Section 7.9 below (the "*Water Rights*");

TOGETHER WITH all contracts and agreements relating to the planning, design, engineering, or architecture of the Improvements, as well as all drawings, models, plans, specifications, budgets, cost estimates, bid packages, bids, and other related documents relating to the development or construction of the Improvements; and all contracts and agreements relating to the installation, construction or demolition of any of the Improvements, including all retainages, payment and performance bonds, and performance escrows described in or required by any of the foregoing (the "*Improvement Contracts*");

TOGETHER WITH all contracts and agreements relating to the development of the Property or the Improvements, including all contracts with government authorities granting entitlements or development rights with respect to the Property, all development entitlements and approvals, appraisals, soils reports, feasibility studies, environmental assessment reports, and engineering, mechanical and wetlands reports (the "*Development Rights*");

TOGETHER WITH all contracts and agreements between Trustor and any utility company, water company or user association, or telecommunications company for the purpose of: (a) furnishing electricity, natural gas or oil, telephone, sewer, water, cable television, internet or other such services to the Property; (b) providing hook-ups, connections, lines or other necessary laterals or tie-ins to the Property and the Improvements constructed or to be constructed on the Property, including any "will serve" letters benefiting the Property; or (c) granting any such utility or other company access to the Improvements or to space in or on the Property or the Improvements to provide service to the Property (the "*Utility Rights*");

TOGETHER WITH all security deposits, connection fees, prepayments, reservation fees and other payments made by Borrower with respect to any of the foregoing (the "*Fees and Payments*");

TOGETHER WITH all right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property or of any Improvements now or hereafter situate thereon or of any estate or easement in the Property (including any awards for change of grade of streets), as well as any and all proceeds of insurance paid on account of partial or total destruction of the Improvements now or hereafter located upon the Property or any portion thereof (regardless of whether or not Trustor is required to carry such insurance under this Deed of Trust or any other document) (the "*Awards*").

TOGETHER WITH all right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all building materials, supplies and inventories acquired by Trustor with proceeds of the Loan and delivered to the Property for use in connection with or for incorporation into the Improvements on the Property (the "*Building Materials*").

TOGETHER WITH all easements, licenses, streets, ways, alleys, roads, passages, rights-of-way, waters, watercourses, water rights, ditches and ditch rights (whether now owned or hereafter acquired by Trustor and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Property or any portion of the Property (the "*Interests*").

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: all general intangibles of every nature and intellectual property owned by Trustor pertaining to the Property or the Improvements including, without limitation, any software, and any trade names, service names, trademarks, service marks, marketing materials, telephone numbers, domain names and any other names, numbers or materials used to identify, advertise or promote the Property or the Improvements; and all now existing or hereafter acquired chattel paper, accounts, deposit accounts, payment intangibles, letter of credit rights, supporting obligations, good will and other intangible personal property owned by Trustor and pertaining to the Property or the Improvements (the "*Intangibles*").

TOGETHER WITH all accessions to, substitutions for and replacements, modifications, amendments, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing, as well as all cash and noncash proceeds and all products of any of the foregoing, including, without limitation, insurance proceeds (the "*Proceeds*").

The entire estate, property, right, title and interest described above and hereby conveyed to Trustee may hereafter be collectively referred to as the "*Trust Estate*." The term "*Trust Estate*" shall mean and include, without limitation, the Property, the Improvements, the Rents, the Fixtures, the Water Rights, the Improvement Contracts, the Development Rights, the Utility Rights, the Fees and Payments, the Awards, the Building Materials, the Interests, the Intangibles, and the Proceeds, all as such terms are described and defined above, together with all rights and interests relating to, used in connection with, or resulting from such categories of the collateral. The Granting Clauses set forth above shall be construed as broadly as possible to include any and all rights and interests of Trustor, now existing or hereafter acquired, that include, relate to, or affect the Property.

ARTICLE 1: OBLIGATIONS SECURED

The obligations secured by this Deed of Trust shall include the following (the "*Obligations*"):

- (a) The payment and performance of all obligations of Trustor under the Note, including without limitation, the payment of indebtedness in the original principal amount of Seven Hundred Thousand Dollars (\$700,000.00), with interest thereon as evidenced by the Note.
- (b) The payment and performance of each and every agreement and obligation of Trustor under this Deed of Trust and under any other instrument given to further evidence or secure the payment and performance of any obligations secured by this Deed of Trust;
- (c) The payment and performance of any other agreement or obligation reciting that it is secured by this Deed of Trust; and
- (d) Any extensions, renewals or modifications of, or advances under the Note, or any of the obligations contained in or otherwise evidenced by the Note, regardless of the extent of or the subject matter of any such extension, renewal, modification or advance.

ARTICLE 2: REPRESENTATIONS AND WARRANTIES.

2.1 Property. Trustor represents and warrants to Beneficiary as follows:

- (a) Trustor is the owner of fee simple marketable title in and to the Property;
- (b) Trustor shall defend title to the Property against all claims and demands whatsoever;

and,

(c) Trustor shall defend title to, and all rights in, the Water Rights against all claims and demands whatsoever, and Trustor shall take all necessary action to protect, perfect, and preserve the Water Rights, as described more fully in Section 7.9 below.

ARTICLE 3: MAINTENANCE OF TRUST ESTATE

Trustor shall (1) maintain the Property at all times in good condition and repair; (2) not commit any waste of the Property; (3) complete promptly and in good and workmanlike manner any building, fixture, or improvement on the Property, or any portion of the Property, which may for any reason be constructed; (4) except to the extent that insurance proceeds are applied by Beneficiary to the satisfaction of the Obligations in accordance with the provisions of **Article 4**, restore promptly and in good and workmanlike manner any of the Improvements or any portion thereof which may for any reason be damaged or destroyed; (5) comply at all times with all laws, ordinances, regulations, covenants and restrictions in any manner affecting the Property; (6) not commit or permit any act upon the Property in violation of law; (7) do all acts which by reason of the character or use of the Property may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general.

ARTICLE 4: INSURANCE

4.1 **Insurance.** If a structure exists on the Property at any time during the Loan, Trustor shall secure and at all times maintain and promptly pay when due all premiums for hazard insurance against loss or damage to the Property by fire, vandalism, malicious mischief, and any of the risks covered by insurance of the type now known as "fire and extended coverage" in an amount not less than one hundred percent (100%) of the full replacement value thereof. Beneficiary shall be named as an additional insured on such policies.

4.2 **Policies and Premiums.** Trustor shall furnish Beneficiary with an original policy of all policies of required insurance. All such policies shall contain a provision that such policies will not be canceled or materially amended or altered without at least thirty (30) days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by **Section 4.1**, Beneficiary may, but without any obligation to do so, procure such insurance for such risks covering Beneficiary's interest and Trustor shall pay all premiums thereon promptly upon demand by Beneficiary. If Trustor fails to pay any premiums after demand by Beneficiary, Beneficiary, at Beneficiary's option, may advance any sums necessary to maintain and to keep in force such insurance. Any sums so advanced, together with interest thereon at the interest rate of 15% per annum, shall be secured by this Deed of Trust.

4.3 **Occurrence of Casualty.** In the event of loss or damage to the Property, Trustor shall have the option, in Trustor's discretion, to either (i) make a proof of loss to each insurance company insuring against such loss and apply all proceeds received to repair the Property in accordance with the Trustor's obligations described in *Article 3* above, or (ii) make a proof of loss to each insurance company insuring against such loss and deliver such proceeds to the Beneficiary, which proceeds shall reduce the indebtedness secured by this Deed of Trust (whether or not then due and payable). Except to the extent that insurance proceeds are received by Beneficiary and applied to the indebtedness secured by this Deed of Trust, nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property as provided in *Article 3* of this Deed of Trust or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

ARTICLE 5: INDEMNIFICATION AND OFF-SET

5.1 **Indemnification.** Trustor hereby indemnifies and holds Beneficiary harmless in accordance with the following:

(a) Trustor shall indemnify and hold Beneficiary harmless from any and all losses, damages, claims, causes of action, suits, debts, obligations, or liabilities which arise from or are related to, this Deed of Trust, any other document evidencing or securing the obligations of Trustor under the Note, or the use or occupation of the Property, or any part thereof. If Beneficiary commences an action against Trustor to enforce any of the terms, covenants or conditions of this Deed of Trust because of the breach by Trustor of any of such terms, covenants, or conditions, or for the recovery of any sum secured hereby, Trustor shall pay to Beneficiary attorneys fees and costs actually incurred by Beneficiary. The right to such attorneys fees and costs shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any material term, covenant or condition of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect Beneficiary's rights hereunder and in the event of such employment following any breach of Trustor, Trustor shall pay Beneficiary attorneys fees and costs actually incurred by Beneficiary, whether or not action is actually commenced against Trustor by reason of such material breach; and

(b) If Beneficiary is held liable or could be held liable for, or is subject to any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor, or material furnished in connection with or arising from the construction of any building, fixture and improvements, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability or expense arising therefrom including reasonable attorneys fees and costs.

5.2 Off-Set. All sums payable by Trustor under this Deed of Trust shall be paid without notices, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (1) any damage to or destruction of, or any condemnation or similar taking of the Property or any part thereof; (2) any destruction or prevention of or interference with any use of the Property or any part thereof; (3) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; or (4) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding.

ARTICLE 6: TAXES AND IMPOSITIONS

6.1 Payment of Taxes and Impositions. Trustor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and other governmental, municipal, or other charges or impositions of any kind or nature whatsoever (including without limitation, charges and assessments on water or water stocks used on or with the Property and levies or charges resulting from covenants, conditions and restrictions affecting the Property) which are assessed or imposed upon the Property, or become due and payable, and which create, may create, or appear to create, a lien upon the Property or any portion of the Property, or upon any equipment or other facility used in the construction, operation or maintenance of the Property (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "*Impositions*"); provided, however, that if, by law, any such Imposition is payable, or may at the election of the taxpayer be paid in installments, Trustor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

6.2 Evidence of Payment. Trustor shall, if requested by Beneficiary, furnish Beneficiary, within thirty (30) days after the date upon which such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payments thereof.

6.3 Right to Contest. Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in Section 6.1, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's option (a) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (b) Trustor shall furnish a good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

6.4 Tax on Deed of Trust. If at any time after the date hereof there shall be assessed or imposed (a) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by Trustor, or (b) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations or upon payments pursuant to the Note (whether principal or interest), then all such taxes, assessments and fees shall be deemed to be included within the term "Impositions" as defined in Section 6.1 of this Deed of Trust, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. Trustor shall have no obligation to pay any franchise, income, excess profits or similar tax levied on Beneficiary or on the obligation secured hereby.

ARTICLE 7: ADDITIONAL COVENANTS

7.1 Payment of Utilities. Trustor shall pay when due all utility charges incurred by Trustor for the benefit of the Property or which may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such assessments or charges are liens thereon.

7.2 Defense of Title. Trustor has and shall preserve good and marketable fee title to the Property free of all liens, claims, charges, security interests, encumbrances, easements or restrictions occurring or attaching after the date hereof. Trustor shall promptly discharge any above-described lien which has, or may have, priority over or equality with the lien created by this Deed of Trust. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Property, or the rights or powers of Beneficiary or Trustee. Should Beneficiary elect to appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including costs of evidence of title and reasonable attorney fees and costs, incurred by Beneficiary or Trustee.

7.3 Performance in Trustor's Stead. Should Trustor fail to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee, but without any obligation to do so, and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon the Property for such purposes); commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior to the lien of this Deed of Trust; and in exercising any such powers, incur any liability, expend such reasonable amounts as Beneficiary may deem necessary therefor, including cost of evidence of title, employment of attorneys, and payment of attorney fees and costs. All such amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, be added to the principal indebtedness secured by this Deed of Trust and shall accrue interest at the rate of 18% per annum until paid.

7.4 Repayment of Advances. Trustor shall immediately repay to Beneficiary sums, with interest thereon at rate of 18% per annum until paid, which at any time may be paid or advanced by Beneficiary for the payment of insurance premiums, taxes, assessments, other governmental, municipal, or other charges or

impositions, title searches, title reports or abstracts, and any other advances made by Beneficiary which are reasonably necessary or desirable to maintain this Deed of Trust as a prior, valid, and subsisting lien upon the Property, to preserve and protect Beneficiary's interest in this Deed of Trust, or to preserve, repair, or maintain the Property. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Deed of Trust.

7.5 Further Assurance. Trustor shall execute and deliver to Beneficiary such further instruments, including without limitation Uniform Commercial Code Financing Statements, and do such further acts as may be necessary or as may be reasonably required by Beneficiary to carry out more effectively the purposes of this Deed of Trust and to subject to the lien and mortgage created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Deed of Trust. Trustor authorizes (to the extent such authorization is valid under applicable law) Beneficiary to execute and file, without Trustor's signature, such Uniform Commercial Code Financing Statements as Beneficiary may deem necessary in order to perfect, or continue the perfection, of the security interests created by this Deed of Trust.

7.6 No Further Encumbrances. As an express condition of Beneficiary making the Loan secured by this Deed of Trust, Trustor shall not further encumber, pledge, mortgage, hypothecate, place any lien, charge or claim upon, or otherwise give as security the Property or any interest therein nor cause or allow by operation of law the encumbrance of the Property or any interest therein without the written consent of Beneficiary even though such encumbrance may be junior to the encumbrance created by this Deed of Trust. Encumbrance of the Property contrary to the provisions of this Section 7.6 without the express written consent of Beneficiary, whether the same be created by Trustor or an unaffiliated third party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect, shall constitute a default under this Deed of Trust.

7.7 Evidence of Title. Trustor shall deliver to, pay for and maintain with Beneficiary until the Obligations are fully satisfied or otherwise discharged in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereof.

7.8 Access to Property. During all times in which any amount is owed to Beneficiary under or in relation to the Note or this Deed of Trust, Beneficiary shall have the right to access, enter upon, and make recreational or hunting use of the Property, together with a reasonable number of friends and family members. Trustor hereby grants Beneficiary permission to use the Property in this manner, and such permission shall not be revoked or limited so long as any sum remains owing to Beneficiary relating to the Note or this Deed of Trust.

7.9 Water Rights. Trustor shall take any and all actions necessary to protect, perfect, preserve and maintain all contract rights with Weber Basin Water Conservancy District for 13-acre feet of water (as described in that certain Contract and Lien between Weber Basin Water Conservancy District and Trustor, dated August 29, 2006. The water right numbers are as follows: Water Right No. 35-12223 (E4905); Water Right No. 35-12225 (E4907); Water Right No. 35-12226 (E4908); Water Right No. 35-12227 (E4909); Water Right No. 35-12228 (E4910); and Water Right No. 35-12224 (E4906). Trustor shall also complete, finalize, and secure all exchange applications for said water rights, and obtain any and all extensions that may be necessary (for exchange applications or otherwise) to protect and preserve all such water rights. Trustor shall promptly file all applications and materials, and pay all necessary fees, with the Division of Water Rights, Utah Department of Natural Resources, to complete exchange of water applications and otherwise protect and preserve all rights relating to the 13-acre feet of water. Any failure of Trustor to strictly comply with the requirements of this provision shall be deemed a material breach of this Deed of Trust, and Beneficiary may immediately exercise all rights and enforce all remedies provided for in this Deed of Trust or otherwise available at law or in equity to protect the collateral and preserve the Water Rights.

ARTICLE 8: CONDEMNATION AWARDS

If the Property or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, or in any purchase in lieu thereof, Trustor shall deliver all net proceeds to Beneficiary (gross proceeds, to Beneficiary, less all expenses of Trustor allocable to such condemnation, including but not limited to attorneys fees incurred by Trustor in connection with such condemnation) which proceeds shall reduce the indebtedness secured by this Deed of Trust (whether or not then due and payable).

ARTICLE 9: ASSIGNMENT OF RENTS AND INCOME

9.1 Assignment. Trustor hereby assigns, transfers, and conveys to Beneficiary during the term of this Deed of Trust, any and all rents, subrents, issues, royalties, income, and profits of and from the Property. Until the occurrence of an Event of Default (as hereinafter defined), Trustor may collect and use all such rents, subrents, issues, royalties, income, and profits which become payable prior to default. Upon the occurrence of an Event of Default hereunder and upon Beneficiary's election to collect the rents, subrents, issues, royalties, income and profits as hereinafter provided, Trustor's right to collect and use any of such proceeds shall cease, and Beneficiary shall have the right, with or without taking possession of the Property, and either in person, by agent, or through a court-appointed receiver (Trustor hereby consents to the appointment of Beneficiary or Beneficiary's designee as such receiver), to sue for or otherwise collect all such rents, subrents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including attorney fees, shall be applied toward the payment of the Obligations. Such right of collection and use of such proceeds by Beneficiary shall obtain both before and after the exercise of the power of sale provisions of this Deed of Trust, the foreclosure of this Deed of Trust and throughout any period of redemption. The rights granted under this Section 9.1 shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Property is in danger of being lost, removed, or materially injured, or whether the Property or any other security is adequate to discharge the obligations secured by this Deed of Trust. Beneficiary's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Beneficiary thereafter to collect the same. Neither any provision contained herein, nor the Beneficiary's exercise of Beneficiary's right to collect such proceeds, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease, sublease, option, or other interest in the Property, or an assumption of liability under, or a subordination of the lien or charge of this Deed of Trust to, any tenancy, lease, sublease, option, or other interest in the Property. All tenants, lessees, sublessees and other persons which have any obligation to make any payment to Trustor in connection with the Property or any portion thereof are hereby authorized and directed to pay the rents, subrents, issues, royalties, income, and profits payable by them with respect to the Property, or any part thereof, directly to Beneficiary on the demand of Beneficiary. Beneficiary's receipt of such rents, subrents, issues, royalties, income, and profits shall be a good and sufficient discharge of the obligation of the tenant, lessee, sublessee, or other person concerned to make the payment connected with the amount so received by the Beneficiary. When all of the Obligations have been fully satisfied and such satisfaction is evidenced by a recorded deed of reconveyance of this Deed of Trust, this Assignment shall no longer be of effect and shall be void.

9.2 Application of Payments. If at any time during the term of this Deed of Trust, Beneficiary receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note and under all other instruments further evidencing or securing the Obligations, then Beneficiary shall allocate such payments as follows: first, to costs and expenses incurred by Beneficiary relating to the Note or the Obligations, second to accrued but unpaid interest, and third, to principal amounts outstanding.

9.3 No Waiver of Rights by Collection of Proceeds. The entering upon and taking possession of the Property or any portion of the Property or the collection of rents, subrents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of

the Property, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of any scheduled installments provided for in any of the Obligations secured by this Deed of Trust.

9.4 **Indemnification.** Trustor shall indemnify and hold Beneficiary harmless from and against all claims, demands, judgments, liabilities, actions, costs, and fees (including reasonable attorney fees) arising from or related to receipt by Beneficiary of the rents, subrents, issues, royalties, income and profit from the Property or any portion of the Property, except only those liabilities arising from Beneficiary's own gross negligence or willful misconduct.

ARTICLE 10: EVENTS OF DEFAULT AND REMEDIES

10.1 **Events of Default.** The occurrence and continuance of any one of the following shall constitute an event of default (herein referred to as an "*Event of Default*"):

- (a) Failure by the Trustor to observe and perform any of the terms, covenants, or conditions to be observed or performed by Trustor contained in either this Deed of Trust or the Note;
- (b) If Trustor shall fail to make any payment due and payable under the terms of the Note or this Deed of Trust;
- (c) Any material representation or warranty of the Trustor contained in this Deed of Trust or the Note was untrue when made;
- (d) If (1) Trustor commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Trustor or Trustor's debts under any law relating to bankruptcy, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for Trustor or for all or any substantial part of Trustor's property; or (2) any case, proceeding, or other action is commenced against Trustor that results in an order for relief against Trustor which is not fully stayed within ten (10) days after the entry thereof, or remains undismissed for a period of sixty (60) days; or
- (e) The occurrence of a default, breach or an event of default under the Note or any other document relating to, securing or evidencing the indebtedness evidenced by the Note.

10.2 **Acceleration Upon Default: Additional Remedies.** Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Beneficiary may, in addition to the exercise of any or all of the remedies specified herein

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to the Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in

possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, the Note or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale contained herein;

(b) Commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Section 10.5, or specifically enforce any of the covenants hereof;

(c) Exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Trust Estate to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law; or

(d) Exercise all other rights and remedies provided herein, the Note or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law.

10.3 Exercise of Power of Sale. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale in accordance with applicable law.

Upon any sale made under or by virtue of this Section 10.3, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Trust Estate, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the Obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to own, hold, lease, rent, operate, manage, and sell the same in any manner allowed for or provided by applicable laws.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

10.4 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Beneficiary, upon an Event of Default, may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by *Utah Code Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

10.5 Appointment of Receiver. Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefore and consents to Beneficiary being appointed as such receiver if Beneficiary so elects. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period, unless such receivership is sooner terminated.

10.6 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Note and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing under the law. Every power or remedy given by this Deed of Trust, the Note or by law to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by law, either of them may pursue inconsistent remedies.

10.7 Deficiency. Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law.

10.8 Request for Notice. Beneficiary hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale be mailed to it at its address set forth in the introductory paragraph hereof.

10.9 Fixture Filing. Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

10.10 Foreclosure as a Mortgage. If an Event of Default occurs hereunder, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys fees and costs in such amounts as shall be fixed by the court.

ARTICLE 11: DUE ON SALE

11.1 Right to Accelerate. Upon the sale of any portion of the Property, a portion of the principal and interest then outstanding under the Note equal in amount to 100% of the gross (less customary & closing costs & commissions) sales price of such portion of the Property (but not to exceed the amount due and owing under the Note), shall be immediately due and payable to Beneficiary, and upon such payment by Trustor to Beneficiary, Beneficiary shall release any lien created by this Deed of Trust on such portion of the Property; provided, however, that Beneficiary shall have the absolute right to approve the terms of any such sale of any portion of the Property and no such sale shall occur without Beneficiary's prior written approval. Nothing in this Section 11.1 or any other provision of this Deed of Trust shall be construed to limit or waive Beneficiary's right to collect the full amount of interest owed to Beneficiary, as Lender, under the terms of the Note.

ARTICLE 12: SECURITY AGREEMENT

12.1 Creation of Security Interest.

(a) Trustor hereby grants to Beneficiary, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to Beneficiary all of Trustor's "Personal Property," which is hereby defined to include all of the Rents, the Fixtures, the Water Rights, the Improvement Contracts, the Development Rights, the Utility Rights, the Fees and Payments, the Awards, the Building Materials, the Interests, the Intangibles, and the Proceeds, as said terms are described and defined in the Granting Clauses at the beginning of this Deed of Trust.

(b) This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Utah Uniform Commercial Code. Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the Utah Uniform Commercial Code.

(c) Trustor further agrees, at the request and option of Beneficiary, to take any and all actions Beneficiary may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of Beneficiary to enforce, Beneficiary's security interest in any and all of the Personal Property, including, without limitation, (a) causing Beneficiary's name to be noted as Beneficiary on any certificate of title for the Personal Property, or any portion thereof, if such notation is a condition to attachment, perfection or priority of, or ability of Beneficiary to enforce, Beneficiary's security interest in such Personal Property, (b) complying with any provision of any statute, regulation or treaty of any State or the United States as to any Personal Property if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Beneficiary to enforce, Beneficiary's security interest in such Personal Property, (c) obtaining governmental and other third party waivers, consents and approvals in form and substance satisfactory to Beneficiary, including, without limitation, any consent of any licensor, lessor or other person obligated on Personal Property, and (d) obtaining waivers from mortgagees and landlords in form and substance satisfactory to Beneficiary.

12.2 Financing Statements. Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file or record in any filing office in any Uniform Commercial Code jurisdiction, or in any county recorder's office or other public office for recording of public land records, or the State Engineer's Office, any and all financing statements and amendments thereto that indicate the Personal Property are encumbered and serve as collateral for the Obligations, and provide any other information required by Part 5 of Article 9a of the Uniform Commercial Code of the State of Utah, or such other jurisdiction, or the State Engineer's Office, in order to protect Beneficiary's security interest in the Personal Property. Trustor shall furnish any and all information to Beneficiary promptly upon request in order for Beneficiary to exercise its rights hereunder. Trustor also ratifies its authorization for Beneficiary to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Beneficiary is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9a-509(4)(b) of the Utah Uniform Commercial Code. Beneficiary will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

12.3 Remedies Upon an Event of Default.

(a) Remedies. If an Event of Default shall have occurred and be continuing, in addition to the remedies provided in Article 10 hereof, Beneficiary, without any other notice to or demand upon Trustor, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all

other rights and remedies, the rights and remedies of a Beneficiary under the Utah Uniform Commercial Code and any additional rights and remedies which may be provided to a Beneficiary in any jurisdiction in which Personal Property is located, including, without limitation:

(i) Either personally, or by means of a court-appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at such location or locations within the jurisdiction(s) of Trustor's principal office(s) or at such other locations as Beneficiary, or an agent or representative designated by Beneficiary, may reasonably designate. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's Property and Improvements to exercise Beneficiary's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, the Note, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public or private sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any other remedies of a secured party under the Utah Uniform Commercial Code, this Deed of Trust or the Note, or any other applicable law.

(b) Notice of Sale. Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give to Trustor at least ten (10) business days' prior written notice of the time and place of any public sale of Personal Property or of the time after which any private sale or any other intended disposition is to be made. Trustor hereby acknowledges that ten (10) Business Days' prior written notice of such sale or sales shall be reasonable notice. Such notice may be mailed to Trustor at the address set forth in **Section 13.1**. In addition, Trustor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of Beneficiary's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Personal Property and to exercise its rights and remedies with respect thereto.

(c) Proceeds of Dispositions: Expenses. Trustor shall pay to Beneficiary on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Beneficiary in protecting, preserving or enforcing Beneficiary's rights and remedies under or in respect of any of the Obligations or any of the Personal Property and arising from the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made). After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Personal Property shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Beneficiary may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9a-608(a)(1)(C) or 9a-615(a)(3) of the Utah Uniform Commercial Code, any excess shall be returned to Trustor. In the absence of final payment and satisfaction in full of all of the Obligations, Trustor shall remain liable for any deficiency. Until paid, all amounts due and payable by Trustor hereunder shall be a debt secured by the Trust Estate and shall bear, whether before or after judgment, interest at the Agreed Rate.

12.5 Successive Remedies. Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

ARTICLE 13: GENERAL PROVISIONS

13.1 Notices. All notices and other communications required to be given under this Deed of Trust shall be given in writing and shall be delivered in person, or by first class, postage prepaid, addressed as follows:

If to Trustor:

Timothy Patrick Charlwood
P.O. Box 980400
Park City, Utah 84098-0400

If to Beneficiary:

MCS/SRW, L.C.
c/o Scott R. Wangsgard
57 W. 200 So. #400
Salt Lake City, Utah 84101

With a copy to:

Paxton R. Guymon, Esq.
MILLER GUYMON, P.C.
165 Regent Street
Salt Lake City, Utah 84111

Such notice shall be deemed to have been given when delivered in person or two (2) days after deposit of the notice in the United States mail in the manner provided above. Any party may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications directed to it shall be sent.

13.2 Severability. If any provision of this Deed of Trust shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions contained in this Deed of Trust or render the same invalid, inoperative, or unenforceable to any extent whatsoever.

13.3 Amendments, Changes, and Modifications. This Deed of Trust may not be amended, changed, modified, altered, or terminated without the written consent of the party to be charged therewith.

13.4 Governing Law. This Deed of Trust shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah, without giving effect to its conflict of laws principles.

13.5 Interpretation. Whenever the context shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The section headings contained in this Deed of Trust are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

13.6 Binding Effect. This Deed of Trust shall be binding upon Trustor and Trustor's successors and assigns. This Deed of Trust shall inure to the benefit of Beneficiary, and Beneficiary's successors and assigns, and the holders of any of the Obligations secured hereby. The Trustor and the Trustee have both had the opportunity to be represented by competent counsel in the preparation and delivery of this Deed of Trust and the Note. As such, there shall be no construction in favor of either Trustor or Trustee in the enforcement and interpretation of this Deed of Trust.

13.7 Waivers. Beneficiary's failure at any time or times hereafter to require strict performance by Trustor of any of undertakings, agreements, or covenants contained in this Deed of Trust shall not waive, affect, or diminish any right of Beneficiary hereunder to demand strict compliance and performance therewith. Any waiver by Beneficiary of any Event of Default under this Deed of Trust shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements, or covenants of Trustor under this Deed of Trust shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Trustor specifying such waiver.

13.8 Access. Beneficiary, or Beneficiary's authorized agents and representatives, are hereby authorized and shall have the right, at all reasonable times during the existence of this Deed of Trust and upon reasonable written notice to Trustor, to enter upon the Property or any portion of the Property for the purpose of inspecting the Property or for the purpose of performing any of the acts that Beneficiary is authorized under this Deed of Trust to perform. This provision shall not be deemed or construed to limit the rights of Beneficiary set forth in Section 7.8 of this Deed of Trust.

13.9 Cross Default. A default by Trustor under the terms of any one or more of this Deed of Trust or the Note shall constitute a default under this Deed of Trust and the Note. Furthermore, if Trustor fails to make any payment when due or to perform any act required under the Note or any other promissory note, deed of trust, document, or instrument which is executed or guaranteed by Trustor, in which Beneficiary is the original lender or beneficiary, Trustor will be deemed to be in default under the Note and all other obligations Trustor has owing to Beneficiary. Trustor understands that this is often called a cross collateralization provision and means that if Trustor is in default under any note, loan or obligation owing to Beneficiary, then Trustor will be in default under all notes, loans, or obligations owing to Beneficiary. If Beneficiary has the right to declare immediately due the full amount of principal and interest on any note because of default, then Beneficiary shall have the right to declare immediately due the principal and interest on all notes or obligations Trustor owes to Beneficiary.

13.10 Successor Trustee. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of Weber County, State of Utah, a substitution of trustee. From the

time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

13.11 Heirs, Successors, Etc., Definitions. This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes both the feminine and neuter, and the singular number includes the plural.

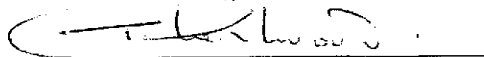
13.12 Acceptance of Trust. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

13.13 Request for Notice. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address for Trustor specified in Section 13.1.

13.14 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of the Deed of Trust, the prevailing party will have the right to recover its attorneys' fees and costs of suit from the other party. Also, Beneficiary and Trustee will have the right to recover all attorneys' fees and costs incurred with respect to any insolvency or bankruptcy action or proceeding involving Trustor as a debtor.

IN WITNESS WHEREOF, this Deed of Trust has been executed the date and year first above written.

"Trustor"

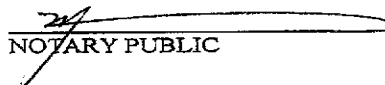


Timothy Patrick Charlwood

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

The foregoing instrument was acknowledged before me this 20th day of August, 2012, by Timothy Patrick Charlwood.

SEAL



NOTARY PUBLIC



**EXHIBIT "A"
LEGAL DESCRIPTION**

**ALL OF LOTS 4 AND 5, SECTION 4 TOWNSHIP 6 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. (BEING EAST HALF OF THE NORTHEAST QUARTER OF SECTION 4).
PARCEL NO.: 21-001-0008 /**

**THE NORTHEAST QUARTER OF LOT 6, SECTION 4, TOWNSHIP 6 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY.
PARCEL NO.: 21-001-0012 Ⓞ**

**THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY.
PARCEL NO.: 21-001-0009 Ⓞ**

**THE NORTH ONE HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 EAST, SALT LAKE MERIDIAN, U.S. SURVEY.
PARCEL NO.: 21-001-0010 /**

**THE NORTH ONE HALF OF THE SOUTH ON HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 EAST, SALT LAKE MERIDIAN, U.S. SURVEY.
PARCEL NO.: 21-001-0011 /**

**THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALT LAKE MERIDIAN, U.S. SURVEY.
PARCEL NO.: 23-012-0022 / Ⓞ**

**THE PROPERTY INCLUDES THE FOLLOWING EASEMENTS:
EASEMENT AND CONDITIONS CONTAINED THEREIN:**

**Grantor: GREEN HILL DEVELOPMENT INCORPORATED
Grantee: THOMAS J. NASS
Purpose: Perpetual right of way for ingress and egress and easement for utilities in favor of Grantee
Recorded: January 14, 1998
Entry No.: 1515370
Book/Page: 1901/2685**

EASEMENT AND CONDITIONS CONTAINED THEREIN:

**Grantor: GREEN HILL COUNTRY ESTATES
Grantee: THOMAS J. NASS
Purpose: RIGHT OF WAY AND UTILITY EASEMENT
Recorded: SEPTEMBER 23, 2004
Entry No.: 2058174**

EASEMENT AND CONDITIONS CONTAINED THEREIN:

**Grantor: THOMAS J. NASS
Grantee: GREEN HILL COUNTRY ESTATES HOMEOWNERS ASSOCIATION
Purpose: EASEMENT AGREEMENT AND DECLARATION OF COVENANTS
Recorded: SEPTEMBER 23, 2004
Entry No.: 2058175**