

WHEN RECORDED MAIL TO:

Kevin Simon
Strachan, Strachan & Simon, P.C.
PO Box 910645
St. George, UT 84791

File No.: 123039-TOD

DEED OF TRUST

In Reference to Tax ID Number(s):

16-016-0-0206, 16-016-0-0208, 16-016-0-0209, 16-016-0-0210, 16-016-0-0211, 16-016-0-0212,
16-016-0-0213, 16-016-0-0214, 16-016-0-0215, 16-016-0-0216, 16-016-0-0217, 16-016-0-0218,
16-016-0-0219, 16-016-0-0220, 16-016-0-0221, 16-016-0-0222, 16-016-0-0224, 16-016-0-0225,
16-016-0-0227, 16-016-0-0228, 16-016-0-0229, 16-016-0-0230, 16-016-0-0233, 16-016-0-0234,
16-016-0-0235, 16-016-0-0236, 16-016-0-0237, 16-016-0-0238, 16-016-0-0239, 16-016-0-0240,
16-016-0-0241, 16-016-0-0242 and 16-016-0-0243

WHEN RECORDED, MAIL TO:

Kevin Simon
 Strachan, Strachan & Simon, P.C.
 P.O. Box 910645
 St. George, UT 84791

DEED OF TRUST

This Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing (the "**Trust Deed**"), is made and given as of February 25, 2020 (the "**Effective Date**"), by SEA RAY INVESTMENTS, LLC, a Nevada limited liability company, or its assigns, whose address is 1618 Hwy. 395, Ste. 200, Minden, NV 89423 ("**Trustor**"), to and in favor of KEVIN J. SIMON, ESQ. as Trustee ("**Trustee**"), whose address is 1031 S. Bluff St. 1st Floor, St. George, UT 84791, for the benefit of RICHARD CARNATION, whose address is 10555 Pelham Drive, Windsor, Ca 95492, THOMAS AND KANDIS MALEFYT, whose address is 20 Sleepy Hollow Drive; Carmel Valley, CA 93924, and THE MALEFYT FAMILY TRUST, whose address is 20 Sleepy Hollow Drive; Carmel Valley, CA 93924, (collectively, the "**Beneficiaries**"). For good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Trustor represents, warrants, covenants, and agrees as follows:

ARTICLE 1: GRANT AND CONVEYANCE OF COLLATERAL

1.01 **Conveyance of Real Property.** Trustor hereby assigns, grants, bargains, sells, conveys, warrants, and transfers to Trustee in trust, for the benefit of Beneficiary, with power of sale, all of Trustor's right, title, and interest in and to: (a) the real property identified as Parcel No. [Insert Individual Parcel Number Here], in Tooele County, Utah, as more fully described on **Exhibit "1"**, attached hereto (the "**Property**"), and incorporated herein by this reference, together with any strips, gaps, gores, alleys, and rights to any adjoining vacated alley ways or streets pertaining or appurtenant thereto (the "**Land**"); (b) all buildings, structures, fixtures, facilities, and other improvements now or hereafter located on or attached to the Land (the "**Improvements**"); and (c) all present and future licenses, permits, approvals and agreements from or with any governmental or quasi-governmental agency or entity or any other person relevant to the zoning, subdivision, division, development, improvement, use, lease, sale or other disposition of the Land or any portion thereof; (d) all rights to the use of any trade name, trademark or service mark by which the Real Property or any portion thereof, or any improvements or development thereon, are known; (e) all goods, materials, supplies, fixtures, machinery, furniture and furnishings, appliances, attachments, equipment, inventory, general intangibles, accounts, chattel paper, instruments, notes, drafts, letters of credit, documents and other personal property (to the extent that any of the foregoing constitute personal property under applicable law) that directly or indirectly relate to or are used or intended for use on or in connection with the use, leasing, development, design, financing, construction and/or sale of the Real Property or any portion thereof, or any buildings or improvements located thereon or any easements, appurtenances, hereditaments or privileges appurtenant or incident thereto; (f) all personal property used in connection with the Real Property; and (g) all water rights, water stock, royalties, mineral oil and

gas rights and profits, rights-of-way, easements. The foregoing are collectively referred to as the “**Real Property**” or “**Collateral**.”

1.02 **Secured Obligation**. This Trust Deed is given for the purpose of securing (a) the payment and performance of that certain portion of a Promissory Note of even or recent date herewith, which portion secured hereby is in the amount of \$1,529,500.00 (the “**Promissory Note**” or “**Note**”), together with all amendments, modifications, extensions, and renewals thereof, whether presently existing or hereafter made; (b) all late charges, default interest, fees, commitment fees and extension fees described in the Note and all costs of collecting the indebtedness or other amounts evidenced by the Note or described in this Trust Deed, including any and all costs and expenditures of a receiver in possession and reasonable attorneys’ fees; and (c) the payment and performance by Trustor of each agreement, obligation, liability, indebtedness, and undertaking contained in this Trust Deed. The obligations, liabilities, indebtedness, and undertakings referred to in the foregoing clauses (a) through (c) are referred to, collectively, as the “**Secured Obligation**”.

ARTICLE 2: REPRESENTATIONS AND WARRANTIES; COVENANTS

2.01 **Warranty of Title**. Trustor warrants that it is the sole owner of good and marketable fee title to the Property, and Trustor will forever defend the same against all claims and persons whomsoever, unto Beneficiary, its successors and assigns, subject only to the matters approved by Beneficiary as acceptable exceptions to title pursuant to written instructions to the title insurance company insuring the lien of this Trust Deed. All of Trustor’s present and future right, title and interest in the Property shall be subject to the lien and other terms and provisions of this Trust Deed regardless of the time that any such right, title and interest is created, obtained by or conveyed, transferred or assigned to Trustor.

2.02. Obligation to Maintain Property; Repairs; Inspection by Beneficiary.

(a) Trustor shall maintain the buildings and other improvements now or hereafter located on the Property in a first-class condition and state of repair and shall not allow any material changes in the current use of the Property or its zoning without Beneficiary’s consent. Trustor shall not commit or suffer any waste; shall promptly comply with all the requirements of federal, state, and municipal authorities and all other laws, ordinances, regulations, covenants, conditions, and restrictions respecting the Property or the use thereof; and shall pay all fees or charges of any kind in connection therewith. Trustor shall complete or restore promptly and in a workmanlike manner any building or improvement that may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor. Beneficiary and its employees and agents shall be entitled from time to time to enter on the Property (including the interior of any structures), at reasonable times and after reasonable notice, to inspect the Property, ascertain compliance with the Hazardous Substances warranties set forth below and other provisions of this Trust Deed (including the right to take soil samples and conduct other reasonable tests and investigations), conduct appraisals to determine the value of the Property, or to perform any other act authorized hereunder. Costs incurred in obtaining such inspections, appraisals, tests, and other activities described above shall be part of the obligations secured hereby.

Trustor will permit access to the Property and will fully cooperate with Beneficiary in this regard. Trustor shall not substantially alter the Property without the consent of Beneficiary.

(b) In connection with any alterations or construction permitted or required by this Trust Deed, Trustor shall comply in all material respects with all ordinances, orders, decrees, rules, regulations or requirements of any governmental authority, including applicable subdivision laws, regulations and ordinances, and any requirements, terms or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, building codes, flood protection laws and ordinances, zoning ordinances or stipulations, subdivision plats, master plans, development plans, or other instruments or documents now or in the future affecting any portion of the Real Property or any improvements thereon now or in the future affecting the Property.

(c) In the event of any loss, damage or destruction to the Property, Trustor shall promptly and in a good and workmanlike manner repair, rebuild and restore such loss, damage or destruction to its original condition, pay when due all costs incurred, and keep the Property free from all claims, charges, claims of liens, or encumbrances for work performed or materials furnished, whether superior or subordinate to the lien of this Trust Deed.

2.03. Insurance. Trustor shall at all times provide, maintain and keep in force, at its own cost and expense, insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on the Property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In event of loss, Trustee shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

2.04. Payment of Taxes, Assessments and Other Liens or Charges. At least ten (10) days prior to delinquency, Trustor shall pay or cause to be paid to the proper officials or persons all taxes and assessments, general or special, of every nature and description (including assessments, dues, use fees and charges for water) that shall have been levied or assessed on the Property and, upon Beneficiary's request, shall deliver to Beneficiary receipts evidencing such payments. Trustor shall pay or cause to be paid when due all charges for water, water delivery, gas, electric power and light, telephone, cable, satellite, sewer, waste removal, bills for repairs, and all other claims, encumbrances and expenses incident to the ownership and occupancy of the Property.

2.05. Eminent Domain. Any award or payment of damages or compensation in connection with any private trespass or injury to the Property, exercise of the right of eminent domain or any condemnation proceeding for public use of or injury to the Property or any part thereof, or any right or interest therein, is hereby assigned and payable to Beneficiary; provided

that the entire award or compensation shall be applied to the outstanding obligations under the Note.

2.06. Assignment of Rents, Profits and Leases.

(a) Trustor represents and warrants to Beneficiary (and to any title insurance company which insures the lien of this Trust Deed) that, as of the time of recordation of this Trust Deed, no recorded or unrecorded lease or rental agreement exists that affects any portion of the Property.

(b) All existing and future rents, revenues, income, receipts, issues and profits of the Property and now or hereafter arising out of any Leases (hereinafter defined) (collectively, “Rents”) and the entire right, title and interest of Trustor (including the right to exercise any landlord’s liens and any and all other rights and remedies to which Trustor would be entitled under any Lease or by law) in and under all present and future rental agreements, leases, subleases, licenses and all other agreements for the use and occupancy of all or any portion of the Property (including rights in any security deposits and advance rentals held for the benefit of Trustor), together with any extensions, renewals and modifications thereof (collectively, “Leases”), are hereby absolutely assigned and transferred to Beneficiary. Beneficiary is authorized to give notice of this assignment, and Trustor agrees to execute, and to cause its property managers and affiliates to execute, any and all further instruments that Beneficiary may require to perfect this assignment. Any provision hereof notwithstanding, so long as no Event of Default exists, Trustor shall have a license to collect assigned Rents as the same shall fall due. However, upon the occurrence of any Event of Default that remains uncured after the applicable Cure Period under the Parties’ Settlement Agreement, all right of Trustor to collect or receive such Rents (including those past due and unpaid) shall terminate, whereupon Beneficiary shall be entitled to demand and receive the payment of such Rents (including those past due and unpaid), and to proceed against any lessee or tenant (or its property) and/or any guarantors of the obligations of any lessee or tenant. In such event, Trustor directs and authorizes the lessees and tenants of the Property and any guarantors to make to Beneficiary all payments required under the applicable Leases; Trustor hereby relieves any and all lessees and tenants from any liability to Trustor that Trustor might otherwise assert by reason of the lessee/tenant’s making such payment to Beneficiary. All Rents collected by Beneficiary may be applied for the following purposes in any manner and order that Beneficiary deems advisable:

(i) To the payment of all taxes and assessments levied against the Property if provision for paying those items has not otherwise been made;

(ii) To the payment of construction and development and current operating costs and expenses (including management fees, sales taxes, repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Property;

(iii) To the payment of any amounts due and owing to Beneficiary under the terms of the Obligations;

(iv) To the payment of any lease payments under any ground lease or amounts secured by any other mortgage or deed of trust on the Property approved by Beneficiary; and

(v) Any remainder to Trustor or its designee or other assignee unless Beneficiary becomes the title owner of the Real Property referenced herein.

Receipt by Beneficiary of Rents shall not constitute a waiver of any other right that Beneficiary may have under this Trust Deed or the laws of Utah, nor shall the receipt and application thereof cure any Event of Default or affect any foreclosure proceeding or any sale authorized by this Trust Deed or the laws of Utah.

(c) Except as expressly permitted by this Trust Deed, Trustor shall not, without Beneficiary's prior written consent: (i) assign any of the Rents; (ii) collect any unreasonably large security deposits or any rent for more than one month in advance; (iii) change the general nature of the occupancy; (iv) initiate or acquiesce in any zoning reclassification; (v) terminate or accept a surrender of any Lease (except in the ordinary course of business in the exercise of Trustor's sound business judgment); (vi) amend or modify any Lease to reduce (or effectively reduce by means of rent concessions, rent-free occupancy periods or the granting of tenant improvement allowances) the rent, or to grant any options to purchase or renew or any rights of first refusal; (vii) subordinate, or permit the subordination of, any Lease to the lien of a mortgage or deed of trust that is junior to this Trust Deed; or (viii) take, fail to take or suffer any action that would impair the security for the Obligations or Beneficiary's interest in the Property or the Rents. Any action taken in violation of the foregoing sentence shall be null and void. Trustor shall fully and timely perform all of the obligations of the landlord under all Leases of any portion of the Property and shall enforce, short of termination, the performance by all lessees and tenants of all of their obligations under the Leases.

(d) Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any Lease, and Trustor hereby agrees to indemnify and hold Beneficiary harmless from any and all liability arising from any of the Leases or from the assignment contained in this **Section 7**. This **Section 7** shall not obligate Beneficiary to manage, care for or repair the Property or make Beneficiary liable for any loss or damage to any tenant, invitee, employee, licensee or any other person resulting from the failure to properly manage, care for or repair the Property.

2.07. Sale, Lease or Conveyance by Trustor; Due on Sale.

(c) Trustor acknowledges and agrees that the obligations secured by this Trust Deed are personal to Trustor. Trustor agrees that neither the Property nor any interest therein shall be encumbered, sold (by contract or otherwise), conveyed, leased, or otherwise transferred by Trustor, without the prior written consent of Beneficiary. Any such action

without Beneficiary's prior written consent shall be deemed to increase Beneficiary's risk, and shall be an Event of Default hereunder. If Beneficiary elects in its sole discretion to consent to any such action, Beneficiary may condition its consent on such terms and conditions as Beneficiary may require, such as payment of a transfer review fee and/or assumption fee, and/or an increase in the interest rate on the obligations secured hereby. Beneficiary shall not be required to release the original obligor or any other party liable for such obligations.

(d) If the ownership of the Property or any portion thereof becomes vested in any person other than Trustor, Beneficiary may deal with such successor(s) in interest with reference to the Obligations and this Trust Deed in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for payment of the Obligations. However, the foregoing sentence shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof.

ARTICLE 3: EVENTS OF DEFAULTS; REMEDIES

3.01 **Events of Default.** The occurrence or existence of any of the following events or conditions constitutes an "Event of Default" under the terms of this Trust Deed:

- A. The occurrence of an "Event of Default" as defined in the Note.
- B. A default by Trustor in the performance of any other duty, obligation, covenant, or undertaking contained in this Trust Deed, and the continuance of the same without cure for the periods set forth in the Note after written notice by Beneficiary or Trustee.
- C. If Trustor shall: (i) apply for, or consent in writing to the appointment of a receiver or trustee of all or substantially all of its assets; (ii) file a voluntary petition in bankruptcy or admit in writing an inability to pay debts as such debts become due; (iii) make a general assignment for the benefit of creditors; (iv) make and file a petition or an answer seeking a reorganization or an arrangement with creditors or take advantage of any insolvency law; (v) file an answer admitting the material allegations of a petition filed in bankruptcy, reorganization or insolvency proceedings; or (vi) dissolve or terminate existence, or become insolvent

3.02 **Remedies.** Upon the occurrence of an Event of Default hereunder, the entire Secured Obligation shall become immediately due and payable, and Beneficiary shall have all remedies available at law or in equity. Any one or more rights and remedies available to Beneficiary may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Beneficiary's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Beneficiary's delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or breach. By accepting any performance or payment of any portion of the Obligations after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence hereof, nor shall Beneficiary waive its rights to require prompt performance or payment when due of the remainder of the Obligations or to consider failure to so perform or pay a default hereunder.

3.03 Foreclosure or Exercise of Power of Sale. Upon the occurrence of an Event of Default, Beneficiary may elect to foreclose this Trust Deed as a mortgage or to exercise the power of sale granted herein or take any other action agreed to by the Trustor and Beneficiary. In pursuing any remedy, Beneficiary shall comply with, and be entitled to the benefits of all applicable laws at the time such remedy is pursued, including, without limitation, those applicable to the exercise of the power of sale pursuant to the trust deed statutes then in effect; provided, however, if the trust deed statutes have been repealed or the remedies therein have been, in Beneficiary's opinion, curtailed, then Beneficiary may, if the statutes so permit, apply applicable law at the time this Trust Deed is executed.

3.04 Foreclosure Expenses. Trustor acknowledges that, as a result of any default hereunder, Trustee or Beneficiary may elect to obtain title or foreclosure reports, title policies in favor of purchasers at any foreclosure or trustee's sale, appraisals, the services of an attorney, and other professional services to determine the condition, status, and value of the Collateral or to assist it in any foreclosure proceeding or the exercise of the power of sale granted herein. Such costs and expenses are a foreseeable consequence of any Event of Default and the pursuit of Beneficiary's remedies as a result thereof, whether incurred in connection with a judicial foreclosure, trustee's sale, or deed-in-lieu of foreclosure. All costs and expenses incurred in connection therewith shall be secured by this Trust Deed and Trustor agrees to reimburse Trustee or Beneficiary for the same upon demand.

3.05 Power of Sale. If Beneficiary exercises the power of sale granted herein and under the trust deed statutes of the state in which the Land is located, Trustee and/or Beneficiary shall follow the procedures required by law for the exercise of such power of sale. At the date, place and time designated for the trustee's sale, Trustee, without demand on Trustor, shall sell the Real Property either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States or Trustee credits at the time of sale or, with the consent of Beneficiary, within a reasonable time thereafter. The person conducting the sale may for any cause he deems expedient, postpone the sale from time to time until it shall be completed in accordance with applicable law, and in every such case notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale or as otherwise required by law. Trustee shall execute and deliver to the purchaser its Trustee's Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's Deed of any matters or fact shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale and purchase all or any part of the Real Property. Trustee shall apply the proceeds of the sale to the payment of (1) the costs and expenses of exercising the power of sale and of sale, including the payment of the reasonable Trustee's and attorney's fees and other costs and expenses actually incurred by the Trustee and the Beneficiary pursuant to Section 2.04 above; (2) the cost of any evidence of title procured in connection with such sale and revenue stamps on any Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest from date of expenditure as provided herein; (4) the Secured Obligations and all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

3.06 **Successor Trustee.** Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Real Property or some part thereof is situated, a substitution of trustee as required by law. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor 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.

ARTICLE 4: GENERAL PROVISIONS

4.01 **Successors and Assigns.** This Trust Deed shall apply to, inure to the benefit of, and shall be binding on, Trustor, Trustee, and Beneficiary, and their respective heirs, legatees, devisees, administrators, executors, successors and assigns, subject, however, to the restrictions on assignment contained herein.

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

4.03 **Choice of Laws.** This Trust Deed shall be construed according to the laws of the State of Utah.

4.04 **Request for Notice of Default.** Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at its address set forth on the first page of this Trust Deed; provided, however, such notices may, at the election of Trustee or Beneficiary, be sent to any other address for Trustor which Trustee or Beneficiary reasonably and good faith deem to be correct and appropriate. Trustor may change the address to which notice shall be sent only by sending to Beneficiary, by certified or registered mail, return receipt requested, written notice requesting that notice be sent to a different address.

[Signature page to follow]

IN WITNESS WHEREOF THE Trustor has caused these presents to be executed as of the day and year first above written.

Sea Ray Investments, LLC,
a Nevada limited liability company

By: [Signature] Ronald G. Bushnell.
Its: Manager Manager

STATE OF UTAH)
: ss.
County of Washington)

On the 24th of Feb, ~~2019~~ ²⁰²⁰, before me, the undersigned notary public, personally appeared Ronald G. Bushnell of Sea Ray Investments, who duly acknowledged to and before me that she/he signed the forgoing instrument, having all requisite authority to so act.

Kathryn Elizabeth O'Reilly
Notary Public



EXHIBIT 1 OF DEED OF TRUST

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

[TO BE INSERTED UPON ISSUANCE OF THE COMMITMENT]

File No. 123039-TOD.

**EXHIBIT A
PROPERTY DESCRIPTION**

Lots 206, 208 through 222, inclusive, 224, 225, 227 through 230, inclusive, 233 through 243, inclusive, SOUTH WILLOW RANCHES PHASE 2 SUBDIVISION, according to the official plat thereof as recorded in the office of the Tooele County Recorder, State of Utah.

Tax Id No.: 16-016-0-0206, 16-016-0-0208, 16-016-0-0209, 16-016-0-0210, 16-016-0-0211, 16-016-0-0212, 16-016-0-0213, 16-016-0-0214, 16-016-0-0215, 16-016-0-0216, 16-016-0-0217, 16-016-0-0218, 16-016-0-0219, 16-016-0-0220, 16-016-0-0221, 16-016-0-0222, 16-016-0-0224, 16-016-0-0225, 16-016-0-0227, 16-016-0-0228, 16-016-0-0229, 16-016-0-0230, 16-016-0-0233, 16-016-0-0234, 16-016-0-0235, 16-016-0-0236, 16-016-0-0237, 16-016-0-0238, 16-016-0-0239, 16-016-0-0240, 16-016-0-0241, 16-016-0-0242 and 16-016-0-0243