

WHEN RECORDED, RETURN TO

Mr. Matt Christiano  
21120 Wardell Road  
Saratoga, CA 95070

4/19/2004  
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04/19/2004 03:58 PM 27.00  
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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
JONES WALDO HOLBROOK MCDONOUGH  
170 S MAIN ST STE 1500  
SLC UT 84101  
BY: ZJM, DEPUTY - WI 9 P.

Tax Id. No. 15-26-352-008

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY  
AGREEMENT, AND FINANCING STATEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT (together with all amendments and supplements, this "Deed of Trust") is made as of April 14, 2004, by BP-UT 2, LLC, a Delaware limited liability company, having an address at 4885 South 900 East, Suite 100, Salt Lake City, Utah 84117, its successors and permitted assigns ("Trustor"), to FOUNDERS TITLE COMPANY, having an address at 746 East Winchester, Salt Lake City, Utah 84107 ("Trustee") and THE CHRISTIANO FAMILY TRUST, having an address at 21120 Wardell Road, Saratoga, CA 95070, its successors and assigns ("Beneficiary").

**1. GRANTING CLAUSE.**

Trustor hereby CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the real property situated in Salt Lake County, Utah being more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "Real Property"), together with all air rights, water, water rights and water stock related to the Real Property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the Real Property, including, but not limited to, all fixtures and articles of personal property now or hereafter attached to such buildings or improvements so that the same are fixtures under applicable law, including without limitation plumbing, heating, air conditioning, lighting, alarms, sprinkler equipment and fixtures, and all replacements thereof, and all substitutions therefore; together with all interest, estate or other claims both in law and in equity which Trustor now has or may hereafter acquire in the Real Property. All the foregoing are referred to collectively herein as the "Property".

TO HAVE AND TO HOLD the same IN TRUST, WITH POWER OF SALE, however, for the purpose of securing:

I. The payment of all indebtedness owing from Trustor to Beneficiary under that certain promissory note dated of even date herewith, for the principal sum of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (\$1,750,000.00) made by Trustor and payable to the order of Beneficiary (the "Note");

II. The payment of all sums expended or advanced by Beneficiary pursuant to the terms hereof (the principal and interest on the Note, and advances made by Beneficiary pursuant to the terms of this Deed of Trust, the Loan Agreement of even date herewith between Trustor, as borrower, and Beneficiary, as lender (the "Loan Agreement") or any other instrument now in

existence or hereafter executed or any amendment or modification thereto, the purpose of which is to secure the payment of the Note, are hereinafter referred to as the "Indebtedness"); and

III. the performance of all obligations of Trustor under all loan agreements and loan documents (hereafter "Loan Agreements" or "Loan Documents") executed in connection with the Note and this Deed of Trust and each other agreement herein contained or referred to herein between the Trustor and Beneficiary;

## 2. COVENANTS.

2.1 Insurance. Trustor shall keep and maintain, or cause to be kept and maintained, constantly during the time any of the Indebtedness remains outstanding, insurance as required in the Loan Agreement.

2.2 Condemnation and Insurance Proceeds. Trustor hereby assigns to Beneficiary the proceeds of any award or claim for damages, direct, consequential or of whatever nature, in connection with any condemnation or other taking of the Property, or any part thereof, or for conveyance in lieu of condemnation.

2.3 Payment of Taxes and Assessments. Trustor covenants and agrees to pay or cause to be paid before they become delinquent all taxes, special assessments, water and sewer rents or assessments, and all other charges imposed by law upon or against the Property, ordinary and extraordinary, unforeseen and foreseen.

2.4 Preservation of Lien Priority by Trustor. The lien of this Deed of Trust is and will be maintained as a valid second deed of trust lien on the Property. Trustor will keep and maintain the Property free from all liens of persons supplying labor and materials entering into the construction, modification, or repair of the Improvements.

2.5 Future-Acquired Property. All property of every kind acquired by Trustor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Deed of Trust shall, immediately upon its acquisition and without any further conveyance, assignment, or transfer, become subject to the lien of this Deed of Trust.

2.6 Compliance with Laws. Trustor will comply promptly with all present and future laws, statutes, ordinances, orders, rules, regulations, restrictions, and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, and officers, any national or local Board of Fire Underwriters, or any other body exercising similar functions, foreseen or unforeseen, ordinary or extraordinary, which may be applicable to Trustor, the Indebtedness, the Property, the landscaping, sidewalks, curbs, and vaults adjoining the Property, or to the use or manner of use of the Property whether or not such law, statute, ordinance, order, rule, regulation, restriction, or requirement necessitates structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural, or otherwise, onto or over the streets adjacent to the Property, or onto or over property contiguous or adjacent thereto, and including without limitation, all zoning, building code, environmental

protection and equal employment opportunity laws, statutes, ordinances, orders, rules, regulations, restrictions, and requirements.

2.7 Beneficiary's Right to Cure Trustor's Default. If Trustor fails to pay any sum due hereunder prior to delinquency, whether for taxes, insurance premiums, or other charges, Beneficiary may elect, but shall not be obligated, to pay all or part of such items. Trustor agrees to repay immediately upon demand all funds so advanced by Beneficiary with interest thereon from the date of such payments until repaid at the interest rate stated in the Note, and all of such advances and the interest thereon shall become part of the Indebtedness and shall be secured by this Deed of Trust.

2.8 Zoning and Private Covenants. Trustor will not initiate, join in, or consent to any change in any zoning ordinance or classification, any private restrictive covenant, or any other public or private restriction limiting or defining the uses of all or any part of the Real Property without Beneficiary's prior written consent. If the use of all or any part of the Real Property is or becomes a nonconforming use under applicable zoning provisions, Trustor will not cause or permit such use to be discontinued or abandoned without Beneficiary's prior written consent.

### 3. ASSIGNMENT OF RENTS AND LEASES.

As additional security for the payment of the Indebtedness, Trustor hereby presently and unconditionally assigns, transfers, and sets over to Beneficiary, all rents, profits, accounts, issues and income now or hereafter derived from the Property including all prepaid rent and security deposits (the "Rents") and all right, title, and interest of Trustor in and to any leases pertaining to the Property (collectively, the "Leases"), any modifications or renewals of the Leases and all guaranties of any lessee's obligation under the Leases. Trustor reserves and Beneficiary grants to Trustor a license to collect the Rents. Upon notice to Trustor and the lessees under the Leases, all Rent shall be paid directly to Beneficiary. If an Event of Default occurs, and without regard to the adequacy of its security hereunder and without notice to or demand upon Trustor, Beneficiary shall thereafter have full and complete right and authority to demand, collect, receive, and receipt for the Rents and to apply the net proceeds of the Rents to the Indebtedness until all delinquencies, advances, and the Indebtedness are paid in full or until Beneficiary obtains title to the Property through foreclosure or otherwise. Trustor hereby irrevocably authorizes and directs the lessee under the Leases, upon receipt of notice from Beneficiary, to pay thereafter all Rents directly to Beneficiary. Upon the occurrence of an Event of Default, Beneficiary or the holder of the certificate of purchase (issued by the Trustee after the Trustee's sale) may enforce its rights to the Rents by any appropriate civil suit or proceeding. Beneficiary or the holder of such certificate of purchase shall be entitled as a matter of right to a receiver for the Property without regard to the solvency or insolvency of Trustor or of the then owner of the Property or of the Property's value. Such receiver shall apply the Rents according to the law and the orders and directions of a court of competent jurisdiction. Neither the foregoing assignment of Rents to Beneficiary nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation

of all or any part of the Property, unless and until Beneficiary, in person or by agent, obtains title to the Property. The appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, shall not be deemed to make Beneficiary a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property.

#### **4. SECURITY AGREEMENT AND FINANCING STATEMENT.**

This Deed of Trust shall cover Trustor's interest in all property affixed to or located upon the Real Property, and all articles of personal property and all materials delivered to the Real Property for incorporation or use in any construction being conducted thereon and owned by Trustor (which to the fullest extent permitted by law shall be deemed fixtures and a part of the real property). If any property covered by this Deed of Trust consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust constitutes a security agreement and financing statement and is intended when recorded to create a perfected security interest in such property in favor of Beneficiary. For purposes of treating this Deed of Trust as a security agreement and financing statement, Beneficiary shall be deemed to be the secured party and Trustor shall be deemed to be the debtor.

#### **5. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default ("Event of Default") hereunder:

5.1 Overdue Payment. Trustor fails to pay any installment of principal or of interest on the Note or any other sum required to be paid pursuant to the Note or any Loan Document within ten (10) days after the date on which such payment is due.

5.2 Non-monetary Breach. Trustor commits any breach, not involving the payment of moneys, in the due observance or performance of any covenant, condition, or agreement contained in the Note, this Deed of Trust, or any Loan Document, and Trustor fails to cure such breach within thirty (30) days after Beneficiary gives written notice to Trustor of such breach; provided, if a different period or notice requirement is specified for any particular breach under this Deed of Trust or under the Note or under any Loan Document, such specific provision shall control.

5.3 Default under Senior Deed of Trust. Any default by Trustor under that certain Deed of Trust, dated April 14, 2004, made by Trustor for the benefit of Citibank USA, National Association, encumbering the Property.

## 6. REMEDIES.

Upon the occurrence of any Event of Default, Beneficiary shall have the following rights and remedies:

6.1 Acceleration. Beneficiary may declare the entire principal amount of the Indebtedness then outstanding (if not then due and payable), and accrued and unpaid interest thereon, and all other sums or payments required thereunder, to be due and payable immediately, and notwithstanding the stated maturity in the Note, the principal amount of the Indebtedness and the accrued and unpaid interest thereon and all other sums or payments required thereunder shall thereupon become and be immediately due and payable, and the Indebtedness shall thereafter bear interest at the Default Rate (as defined in the Loan Agreement) from the due date until paid and payment of such default interest shall be secured by this Deed of Trust.

6.2 Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument in the manner provided by law for the foreclosure of mortgages or to enforce any of the covenants and agreements hereof.

6.3 Receiver. Beneficiary shall have the right, with the irrevocable consent of Trustor hereby given and evidenced by the execution of this Deed of Trust, to obtain appointment of a receiver by any court of competent jurisdiction without further notice to Trustor, which receiver shall be authorized and empowered to enter upon and take possession of the Property, to let the Property, to receive all the Rents due or to become due, and apply the Rents after payment of all necessary charges and expenses to reduction of the Indebtedness.

6.4 Power of Sale. If any Event of Default occurs, Beneficiary is authorized and empowered, without further notice, to execute or cause the Trustee to execute a written notice of default and of election to cause the Property to be sold as required by law or as otherwise provided herein, and the Trustee shall file such notice for record in each county wherein the Property or any part thereof is situated. After such filing, the Trustee may lawfully foreclose and shall foreclose the lien of this Deed of Trust, and sell and dispose of the Property in masse or in separate parcels (as Beneficiary may elect) and all the right, title, and interest of Trustor therein, at a public auction at any place then authorized by law as may be specified in the notice of such sale, for the price permitted by law (the "Trustee's Sale"), legally required public notice having previously been given of the time and place of such sale. The Trustee, without demand on Trustor, shall sell the Property 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 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 at the time of sale. The person conducting the sale may, for any cause he deems expedient in accordance with applicable law, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given as required by law. Trustee shall execute and deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the 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 to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorneys' fees; (2) cost of any evidence of title procured in connection with such sale; (3) all sums expended under the terms hereof, not then repaid, with accrued interest as provided herein from date of expenditure; (4) 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.

6.5 Attorneys' Fees in the Event of Foreclosure. If this Deed of Trust is foreclosed by the Trustee, the Trustee shall allow a reasonable amount of attorneys' fees for services rendered in the supervision of such foreclosure proceedings as a part of the cost of foreclosure. If the foreclosure proceedings are made through court proceedings, attorneys' fees in an amount determined by the court to be reasonable shall be taxed by the court as a part of the cost of such foreclosure proceedings.

6.6 Beneficiary's Remedies Cumulative. Each right, power, and remedy herein conferred upon Beneficiary or the Trustee is cumulative of every other right or remedy of Beneficiary or the Trustee, whether conferred herein or by law, and may be enforced concurrently.

## 7. MISCELLANEOUS.

7.1 Subordinate Lien. Notwithstanding anything herein to the contrary, the lien and security interest provided for herein is and shall be subject to that certain Debt and collateral Subordination Agreement of even date herewith between Beneficiary, Borrower, and Citibank USA, National Association, to which agreement reference is hereby made for a statement thereof.

7.2 Severability of Clauses. If any term, covenant, condition, or provision of this Deed of Trust is held to be invalid, illegal, or unenforceable, this Deed of Trust shall be construed without such provision.

7.3 Notices. All notices, demands, and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given when delivered in person, delivered via a commercially accepted rapid means of delivery or five (5) business days after having been deposited in any post office, branch post office, or mail depository regularly maintained by the U.S. Postal Service and sent by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses first set forth above or addressed to each party at such other address as such party may hereafter furnish to the other parties in writing.

7.4 Waiver. Failure by Beneficiary to insist upon the strict performance of any covenant, agreement, term, or condition of this Deed of Trust or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No covenant, agreement, term, or condition in this

Deed of Trust and no breach thereof, may be waived, altered, or modified except by a written instrument executed by Beneficiary. The waiver of any breach shall not affect or alter this Deed of Trust, but each and every covenant, agreement, term, and condition of this Deed of Trust shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver, change, amendment, modification, cancellation, or discharge of any provision of this Deed of Trust, or any part hereof, will be valid unless in writing and signed by the parties hereto.

7.5 Inspection of Property. Beneficiary and its authorized representatives may enter and inspect all portions of the Property upon reasonable notice and at all reasonable times (subject to the rights of lessees and other occupants of the Property).

7.6 Binding Effect. This Deed of Trust shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. If Trustor is now or is ever composed of more than one party, the obligations and warranties contained herein and arising therefrom are and shall be joint and several as to each such party.

7.7 Applicable Law. This Deed of Trust shall be governed by the laws of the State of Utah.

7.8 Entire Agreement. This Deed of Trust constitutes the entire agreement between the parties hereto and none of the foregoing may be modified or amended in any manner other than by supplemental written agreement executed by the parties hereto; provided, all written and oral representations of Trustor, and of any partner, principal or agent of Trustor, previously made to Beneficiary shall be deemed to have been made to induce Beneficiary to make the loan secured hereby and to enter into the transaction evidenced hereby and shall survive the execution hereof and the closing pursuant hereto.

7.9 No Third Party Benefits. This Deed of Trust is made for the sole benefit of Trustor and Beneficiary and their successors and assigns, and no other legal interest of any kind shall be created hereunder or by reason of any of the foregoing. Whether or not Beneficiary elects to employ any or all the rights, powers or remedies available to it under any of the foregoing, Beneficiary shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of Beneficiary's actions or omissions pursuant thereto or otherwise in connection with this transaction.

7.10 Headings. Headings of the sections and paragraphs of this Deed of Trust are inserted for convenience only and shall not be deemed to constitute a part hereof.

7.11 Request for Notice. Trustor hereby requests that copies of all notices of default and/or sale be sent to Trustor at the address set forth above.

IN WITNESS WHEREOF, this Deed of Trust has been executed by Trustor as of the day and year first above written.

BP-UT 2, LLC,  
a Delaware limited liability company

By: BP-UT 2 Holdings, L.C.,  
a Utah limited liability company  
Its Managing Member

By *Daniel R. Stanger*  
Daniel R. Stanger, Manager

STATE OF UTAH )  
:ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 13th day of April, 2004, by Daniel R. Stanger, Manager of BP-UT 2, L.C., a Utah limited liability company, Managing Member of BP-UT 2, LLC, a Delaware limited liability company.

*Denise A. Kelly*  
NOTARY PUBLIC  
Residing at: *1269 So. Lakeview Terrace Rd.*  
*Saratoga Springs, UT 84043*

My Commission Expires:  
*10/23/2006*





## EXHIBIT A

The following described property situate in Salt Lake County, Utah, to wit:

### Parcel 1:

Beginning at a point which is on the North right of way of 3500 South Street, said point being North 89°57'29" East, 953.33 feet along the South section line of Section 29, and North 0°00'17" East 53.00 feet from the Southwest corner of said Section 29, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence North 0°00'17" East 766.30 feet along the projected line of the East boundary of Samuel P. Robinson property to a point on the Southerly right of way line of Rockwood Way, which said point is on a curve to the left, the radius point of which is North 52°35'37" West 259.18 feet; thence along said Southerly right of way line as follows: Easterly along the arc of said curve 42.71 feet to a point of tangency; thence North 27°57'50" East 9.49 feet to a point on a 230.44 foot radius curve to the right; thence Easterly along the arc of said curve 337.84 feet to a point of tangency; thence South 68°02'10" East 27.38 feet to a point on a 507.47 foot radius curve to the left; thence Easterly along the arc of said curve 194.54 feet to a point of tangency; thence East 160.91 feet to a point on a 105.00 foot radius curve to the left; thence Northeasterly along the arc of said curve 164.93 feet to a point on a 1843.86 foot radius curve to the right (radius point bears West); said point being on the Westerly line of a proposed thoroughfare; thence leaving the Southerly right of way line of Rockwood Way and running Southerly along the Westerly line of the proposed thoroughfare and the arc of said curve 6.13 feet (long chord bears South 0°05'43" West 6.13 feet) to a point on a 2659.75 foot radius curve to the right (radius point bears north 86°39'45" West); thence Southwesterly along the arc of said curve 458.99 feet (long chord bears South 8°16'53" West 458.42 feet); thence South 14°55'25" West 273.13 feet; thence South 89°57'29" West 411.99 feet along the projected line of the North boundary of F.C. Stangl III Property; thence South 0°00'17" West 50.00 feet along the West boundary of F.C. Stangl III Property; thence South 89°57'29" West 150.00 feet along the North boundary of Mondak Partners property; thence South 0°00'17" West 200.00 feet along the West boundary of Mondak Partners property to a point on the North right of way line of 3500 South Street; thence South 89°57'29" West 100.00 feet along said right of way line to the point of beginning.

Parcel Identification No. 15-26-352-008

### Parcel 2:

Together with a perpetual non exclusive easement for pedestrian purposes, through, over and across the following: Beginning at a point located North 89°57'29" East 708.33 feet and North 0°00'17" East 343 feet from the Southwest corner of Section 29, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 0°00'17" East, 15 feet; thence North 89°57'29" East 245.00 feet; thence South 0°00'17" West, 15 feet; thence South 89°57'29" West, 245.00 feet to the point of beginning, as created by that certain Grant of Easement recorded December 20, 1977 as Entry No. 3040777 in Book 4598 at Page 747 of Official Records.