

WHEN RECORDED MAIL TO:

Rock Canyon Bank  
215 W 2230 N,  
Provo, UT 84604

File No.: 97485-AF

ENT **122138:2017** PG 1 of 9  
**Jeffery Smith**  
**Utah County Recorder**  
2017 Dec 08 01:12 PM FEE 29.00 BY MG  
RECORDED FOR Cottonwood Title Insurance Agency, Inc.  
ELECTRONICALLY RECORDED

## **SUBORDINATION OF DEED OF TRUST**

In Reference to Tax ID Number(s): 30-079-0003, 30-079-0017 and 30-079-0061

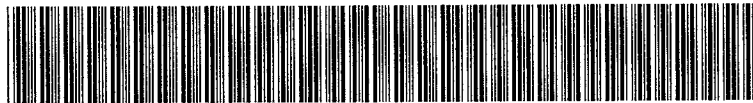
**RECORDATION REQUESTED BY:**

ROCK CANYON BANK  
Provo Office  
215 W 2230 N  
Provo, UT 84604

**WHEN RECORDED MAIL TO:**

ROCK CANYON BANK  
Provo Office  
215 W 2230 N  
Provo, UT 84604

**FOR RECORDER'S USE ONLY**



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**NOTICE: THIS SUBORDINATION OF DEED OF TRUST RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**SUBORDINATION OF DEED OF TRUST**

**THIS SUBORDINATION OF DEED OF TRUST dated December 1, 2017, is made and executed among RUSTLER INVESTMENTS, INC. ("Beneficiary"); COTTONWOOD TITLE ("Trustee"); RUSTLER INVESTMENTS, INC. ("Borrower"); and ROCK CANYON BANK ("Lender").**

**SUBORDINATED INDEBTEDNESS.** Beneficiary has extended the following described financial accommodations, secured by the Real Property (the "Subordinated Indebtedness"):

**\$2,800,000.00.**

**SUBORDINATION OF DEED OF TRUST  
(Continued)**

**Loan No: 4984196000**

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**SUBORDINATED DEED OF TRUST.** The Subordinated Indebtedness is or will be secured by the Real Property and evidenced by a deed of trust dated April 1, 2014 from PAYSON PROPERTIES LLC ("Trustor") to COTTONWOOD TITLE ("Trustee") in favor of RUSTLER INVESTMENTS, INC. ("Beneficiary") (the "Subordinated Deed of Trust") and recorded in UTAH County, State of Utah as follows:

**ENTRY #48080:2014 RECORDED 7-14-14.**

**REAL PROPERTY DESCRIPTION.** The Subordinated Deed of Trust covers the following described real property (the "Real Property") located in UTAH County, State of Utah:

See EXHIBIT "A", which is attached to this Subordination and made a part of this Subordination as if fully set forth herein.

The Real Property or its address is commonly known as 1150 RIM ROCK CANYON DRIVE, 1215 RANCH LANE , 2050 RIM ROCK CANYON DR AND GRAZING AND RECREATIONAL LAND , PAYSON, UT 84651. The Real Property tax identification number is PARCEL 1: (Parcel Nos. 30-073-0247 & 30-073-0248) PARCEL 2: (Parcel Nos. 30-073-0202 & 30-073-0204) PARCEL 3: (Parcel Nos. 30-073-0247, 30-073-0200 & 30-073-0201) PARCEL 4: (Parcel No. 30-073-0203) PARCEL 5: (Parcel No. 30-073-0249) PARCEL 6: (Parcel No. 30-079-0037) PARCEL 7: (Parcel No. 30-079-0038) PARCEL 8: (Parcel No. 30-073-0144) PARCEL 9: (Parcel No. 30-073-0027) PARCEL 10: (Parcel No. 30-073-0266) PARCEL 11: (Parcel No. 30-073-0270) PARCEL 14: (Parcel No. 30-079-0003) PARCEL 15: (Parcel No. 30-079-0065) PARCEL 16: (Parcel No. 30-079-0061)

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described financial accommodations to Borrower, secured by the Real Property (the "Superior Indebtedness"):

**\$2,800,000.00.**

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated December 1, 2017, from PAYSON PROPERTIES LLC to Lender (the "Lender's Lien"). As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Deed of Trust.

**REQUESTED FINANCIAL ACCOMMODATIONS.** Trustor, who may or may not be the same person or entity as Beneficiary, and Beneficiary each want Lender to provide financial accommodations to Beneficiary in the form of the Superior Indebtedness. Trustor and Beneficiary each represent and acknowledge to Lender that Beneficiary will benefit as a result of these financial accommodations from Lender to Beneficiary, and Beneficiary acknowledges receipt of valuable consideration for entering into this Subordination.

**NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:**

**SUBORDINATION.** The Subordinated Deed of Trust and the Subordinated Indebtedness secured by the Subordinated Deed of Trust is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinated Deed of Trust. Beneficiary also subordinates to Lender's Lien all other Security Interests in the Real Property held by Beneficiary, whether now existing or hereafter acquired. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**BENEFICIARY'S REPRESENTATIONS AND WARRANTIES.** Beneficiary represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Beneficiary which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at Beneficiary's request and not at the request of Lender; (C) Lender has made no representation to Beneficiary as to the creditworthiness of Beneficiary; and (D) Beneficiary has established adequate means of obtaining from Beneficiary on a continuing basis information regarding Beneficiary's financial condition. Beneficiary agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Beneficiary's risks under this Subordination, and Beneficiary further agrees that Lender shall have no obligation to disclose to Beneficiary information or material acquired by Lender in the course of its relationship with Beneficiary.

**BENEFICIARY WAIVERS.** Beneficiary waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Beneficiary or to grant any other financial accommodations to Beneficiary whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any Superior Indebtedness secured by Lender's Lien, or notice of any action or nonaction on the part of Beneficiary, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional

## SUBORDINATION OF DEED OF TRUST (Continued)

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indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Beneficiary; (D) to proceed directly against or exhaust any collateral held by Lender from Beneficiary, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Beneficiary or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

**LENDER'S RIGHTS.** Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may, without notice of any kind to Beneficiary, (A) make one or more additional secured or unsecured loans to Beneficiary; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Beneficiary's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

**DEFAULT BY BENEFICIARY.** If Beneficiary becomes insolvent or bankrupt, this Subordination shall remain in full force and effect. In the event of a corporate reorganization or corporate arrangement of Beneficiary under the provisions of the Bankruptcy Code, as amended, this Subordination shall remain in full force and effect and the court having jurisdiction over the reorganization or arrangement is hereby authorized to preserve such priority and subordination provided under this Subordination in approving any such plan of reorganization or arrangement. Any default by Beneficiary under the terms of the Subordinated Indebtedness also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Subordination:

**Amendments.** This Subordination constitutes the entire understanding and agreement of the parties as to the matters set forth in this Subordination. No alteration of or amendment to this Subordination shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Beneficiary also will pay any court costs, in addition to all other sums provided by law.

**Authority.** The person who signs this Subordination as or on behalf of Beneficiary represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Beneficiary's security interests in Beneficiary's property, if any.

**Caption Headings.** Caption headings in this Subordination are for convenience purposes only and are not to be used to interpret or define the provisions of this Subordination.

**Governing Law.** This Subordination will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Utah without regard to its conflicts of law provisions. This Subordination has been accepted by Lender in the State of Utah.

**Successors.** This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Beneficiary herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Subordination unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Subordination

**SUBORDINATION OF DEED OF TRUST  
(Continued)**

**Loan No: 4984196000**

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shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Subordination. No prior waiver by Lender, nor any course of dealing between Lender and Beneficiary, shall constitute a waiver of any of Lender's rights or of any of Beneficiary's obligations as to any future transactions. Whenever the consent of Lender is required under this Subordination, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED DECEMBER 1, 2017.**

**BORROWER:**

**RUSTLER INVESTMENTS, INC.**

By:   
DAN K SHAW, President of RUSTLER INVESTMENTS, INC.


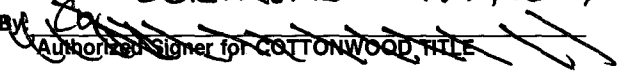
**BENEFICIARY:**

**RUSTLER INVESTMENTS, INC.**

By:   
DAN K SHAW, President of RUSTLER INVESTMENTS, INC.

**TRUSTEE:**

**COTTONWOOD TITLE**

By:   
Authorized Signer for COTTONWOOD TITLE  
**CORTLUND G. ASHTON, V.P.**  
By:   
Authorized Signer for COTTONWOOD TITLE

**LENDER:**

**ROCK CANYON BANK**

X \_\_\_\_\_  
Hayden Roney, Loan Officer

**SUBORDINATION OF DEED OF TRUST  
(Continued)**

Loan No: 4984196000

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shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Subordination. No prior waiver by Lender, nor any course of dealing between Lender and Beneficiary, shall constitute a waiver of any of Lender's rights or of any of Beneficiary's obligations as to any future transactions. Whenever the consent of Lender is required under this Subordination, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

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**BORROWER:**

**RUSTLER INVESTMENTS, INC.**

By: \_\_\_\_\_  
DAN K SHAW, President of RUSTLER INVESTMENTS, INC.

**BENEFICIARY:**

**RUSTLER INVESTMENTS, INC.**

By: \_\_\_\_\_  
DAN K SHAW, President of RUSTLER INVESTMENTS, INC.

**TRUSTEE:**

**COTTONWOOD TITLE**

By: \_\_\_\_\_  
Authorized Signer for COTTONWOOD TITLE

By: \_\_\_\_\_  
Authorized Signer for COTTONWOOD TITLE

**LENDER:**

**ROCK CANYON BANK**

x Hayden Roney  
Hayden Roney, Loan Officer

**SUBORDINATION OF DEED OF TRUST  
(Continued)**

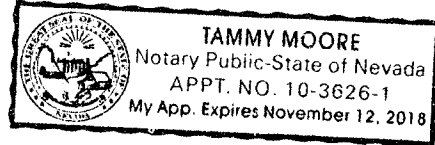
Loan No: 4984196000

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**CORPORATE ACKNOWLEDGMENT**

STATE OF Nevada  
COUNTY OF Clark

)  
) SS  
)



On this 1 day of December, 20 17, before me, the undersigned Notary Public, personally appeared **DAN K SHAW, President of RUSTLER INVESTMENTS, INC.**, and known to me to be an authorized agent of the corporation that executed the Subordination of Deed of Trust and acknowledged the Subordination to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Subordination and in fact executed the Subordination on behalf of the corporation.

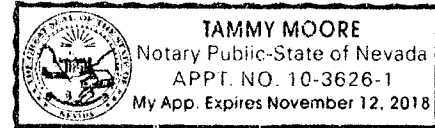
By J Moore  
Notary Public in and for the State of Nevada

Residing at 2520 St. Rose Pkwy Ste 111  
My commission expires 11.12.18

**CORPORATE ACKNOWLEDGMENT**

STATE OF Nevada  
COUNTY OF Clark

)  
) SS  
)



On this 1 day of December, 20 17, before me, the undersigned Notary Public, personally appeared **DAN K SHAW, President of RUSTLER INVESTMENTS, INC.**, and known to me to be an authorized agent of the corporation that executed the Subordination of Deed of Trust and acknowledged the Subordination to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Subordination and in fact executed the Subordination on behalf of the corporation.

By J Moore  
Notary Public in and for the State of Nevada

Residing at 2520 St. Rose Pkwy, Ste 111  
My commission expires 11.12.18

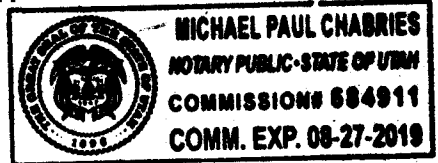
**SUBORDINATION OF DEED OF TRUST  
(Continued)**

Loan No: 4984196000

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**CORPORATE ACKNOWLEDGMENT**

STATE OF UTAH )  
 ) SS  
COUNTY OF SALT LAKE )



On this 4th day of DECEMBER, 20 17, before me, the undersigned Notary Public, personally appeared CORTLIND G. ASHTON

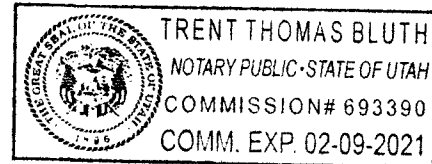
and known to me to be (an) authorized agent(s) of the corporation that executed the Subordination of Deed of Trust and acknowledged the Subordination to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Subordination and in fact executed the Subordination on behalf of the corporation.

By Michael P. Chabries  
Notary Public in and for the State of UTAH

Residing at DAVIS COUNTY  
My commission expires 8-27-2019

**LENDER ACKNOWLEDGMENT**

STATE OF Utah )  
 ) SS  
COUNTY OF Utah )



On this 4 day of December, 20 17, before me, the undersigned Notary Public, personally appeared Hayden Roney and known to me to be the Loan Officer, authorized agent for ROCK CANYON BANK that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of ROCK CANYON BANK, duly authorized by ROCK CANYON BANK through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of ROCK CANYON BANK.

By Trent Bluth  
Notary Public in and for the State of UT

Residing at Provo  
My commission expires 2-9-21



File No. ~~70813AF~~

**EXHIBIT A  
PROPERTY DESCRIPTION**

**PARCEL 1:**

The Southwest quarter of the Northeast quarter and the North 3/4 of the West half of the Southeast quarter of Section 27, Township 9 South, Range 2 East, Salt Lake Base and Meridian.

EXCEPTING from the herein described land, all oil, gas and minerals and all rights incidental thereto as heretofore reserved or conveyed in deed recorded August 10, 1981 as Entry No. 22930 in Book 1929 at Page 864 of official records.

**PARCEL 2:**

Commencing 1320 feet South of the Northeast corner of Section 27, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence West 1320 feet; thence South 1980 feet; thence East 1320 feet; thence North 1980 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM that portion conveyed to Payson City, a Municipal Corporation in that certain Warranty Deed recorded April 8, 1986 as Entry No. 10369 in Book 2294 at Page 141, more particularly described as follows:

Beginning at a point which is South 00°49'46" East along the section line 1319.34 feet from the Northeast corner of Section 27, Township 9 South, Range 2 East, Salt Lake Base and Meridian, and running thence South 00°49'46" East along said section line 92.52 feet; thence South 40°00'00" West 180.48 feet; thence South 07°15'30" East 694.64 feet; thence North 54°03'30" East 48.90 feet to the East line of said Section 27; thence South 00°49'46" East along said section line 769.45 feet; thence West 246.54 feet; thence North 09°00'00" West 714.00 feet; thence North 05°00'00" West 298.00 feet; thence North 09°00'00" West 440.00 feet; thence North 25°20'16" West 248.84 feet; thence North 89°53'57" East 535.46 feet to the point of beginning.

EXCEPTING from the herein described land all oil, gas and minerals and all rights incidental thereto, as heretofore reserved or conveyed in Deed recorded August 10, 1981 as Entry No. 22931 in Book 1929 at Page 865 of official records.

**PARCEL 3:**

Commencing North 01°15'00" East 908.25 feet and North 88°45'00" West 19.82 feet from the South quarter corner of Section 27, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence West 632.25 feet; thence North 28°41'42" West 16.17 feet; thence South 88°45'00" East 584.75 feet; thence North 28°41'42" West 1263.19 feet; thence South 80°17'11" West 482.19 feet; thence North 79°02'11" East 150.46 feet; thence North 06°49'43" West 467.5 feet; thence North 25°00'00" West 320 feet; thence West 160 feet; thence North 2560 feet; thence East 1340 feet; thence South 4371.6 feet to beginning. (this legal has description has been rotated to State Plane Bearings)

TOGETHER WITH a right of ingress and egress granted in that certain Easement for Ingress & Egress recorded February 6, 2008 as Entry No. 13907:2008.

EXCEPTING from the herein described land, all oil, gas and minerals and rights incidental thereto as heretofore reserved or conveyed in Deed recorded August 10, 1981 as Entry No. 22929 in Book 1929 at Page 863 of official records.

Tax Id No.: 30-079-0003, 30-079-0017 and 30-079-0061