

WHEN RECORDED MAIL TO:

SDP REIT, LLC  
Attn: Michael C. Nixon  
1240 East 2100 South, Suite 300  
Salt Lake City, UT 84106

File No.: 139036-DMP

ENT52591:2021 PG 1 of 23

**Andrea Allen**  
**Utah County Recorder**

2021 Mar 19 04:26 PM FEE 40.00 BY MG  
RECORDED FOR Cottonwood Title Insurance Agency, Inc.  
ELECTRONICALLY RECORDED

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

In Reference to Tax ID Number(s):

13-040-0058, 13-040-0060, 13-040-0061, 13-040-0059 and 35-280-0006

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 Attn: Michael C. Nixon  
 1240 East 2100 South, Suite 300  
 Salt Lake City, Utah 84106

CTIA 139036-DMP

APN: 35-280-0005, 35-280-0006, 13-040-0038, 13-040-0058, 13-040-0059,  
 13-040-0060 and 13-040-0061

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

THIS TRUST DEED CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT (this "*Trust Deed*"), made as of February 26, 2021, is given by BLUE PEAK HOLDINGS, LLC, a Utah limited liability company, whose address is 520 South 850 East, Suite A4, Lehi, Utah 84043, as "*Trustor*," to Jonathan K. Hansen, a member of the Utah State Bar, with an address of 3051 West Maple Loop Drive, Suite 325, Lehi, Utah 84043, as "*Trustee*," for the benefit of SDP REIT, LLC, a Delaware limited liability company, with an address of 1240 East 2100 South, Suite 300, Salt Lake City, Utah 84106, as "*Beneficiary*."

WITNESSETH: That Trustor hereby CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of Trustor's right, title and interest, whether fee, leasehold or otherwise, in and to the following described property, situated in Utah County, State of Utah:

See Exhibit A attached hereto.

TOGETHER WITH all of Trustor's right, title, and/or interest in the following (all of which, together with such real property described on Exhibit A, is referred to herein collectively as the "*Property*"):

(a) all buildings, structures, and improvements of every nature whatsoever now or hereafter situated thereon, including, without limitation, fixtures, attachments, appliances, equipment, mobile homes, trailers, trailer homes, modular homes, machinery, and other personal property attached to such buildings and other improvements, all of which shall be deemed and construed to be a part of the real property;

(b) all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with such property or any part thereof; SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits;

(c) all leasehold estate, right, title and interest of Trustor in and to all leases, or subleases covering the Property or the improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "**Leases**");

(d) all existing and future real estate purchase agreements and other agreements for the sale of all or any portion of or interest in the Property, together with any and all extensions, modifications, amendments, assignments and renewals thereof, and all cash or other earnest money deposited to secure performance by the purchaser of their obligations thereunder ("**Deposits**"), whether such cash or security is to be held until the closing of such transactions or released prior to the closing of such transaction (collectively, the "**Purchase Agreements**");

(e) 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**"), and whether existing now or in the future) now or in the future located at, upon, or about or affixed or attached to or installed in the real property described on Exhibit A, including, without limitation, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating, ventilating and air conditioning equipment, mobile homes, trailers, trailer homes, modular homes, and all other types of fixtures of any kind or nature and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements, and substitutions of or to any such property (the "**Fixtures**"); and

(f) all insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of such real property and improvements or any business now or hereafter conducted thereon by Trustor; all real estate purchase contracts and other rights to purchase all or any portion of the Property, including all reservation deposits collected with respect thereto; all development rights and credits, development agreements, bonding agreements, other applicable agreements, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to such real property and improvements; all licenses, permits, approvals, or other authorizations (federal, state, and local) used or useful in connection with or in any way relating to the Property, including any building permits relating to the development of the Property and all improvements thereon; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with such real property and improvements, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to such real property

and improvements; all advance payments of insurance premiums made by Trustor with respect to such real property and improvements; and all reports, plans, drawings and specifications relating to such real property and improvements and all contracts and agreements related thereto, Trustor hereby granting to Beneficiary a security interest in and to the same as a secured party under the UCC, in addition to and not in limitation of Trustee's rights and remedies hereunder. Beneficiary shall have the right to file and record such financing statements and other instruments desired by Beneficiary for the purpose of perfecting Beneficiary's security interest in and to any fixture or other item of personal property comprising the Property.

**FOR THE PURPOSE OF SECURING:**

(1) payment of indebtedness and all other lawful charges evidenced by that certain Secured Promissory Note of even date herewith in the original principal amount of \$7,021,847.00 made by Trustor and payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth (as amended, the "*Note*") and any extensions and/or renewals or modifications thereof; (2) the performance of all other covenants and obligations of Trustor under that certain Revolving Line of Credit Agreement of even date herewith and entered into by and between Trustor and Beneficiary (as amended, the "*Loan Agreement*") and all other documents entered into by and between Trustor and Beneficiary as set forth therein; (3) the performance of each agreement of Trustor herein and therein contained; (4) the payment of such additional loans or advances as hereafter may be made to Trustor or its successors or assigns, which additional loans or advances may or may not be related to the loan evidenced by the Note and may be in any amount, when such additional loans or advances are evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; (5) performance of every obligation of Trustor contained in any agreement, document, or instrument now or hereafter executed by Trustor regardless of whether the agreement, document, or instrument recites that the obligations thereunder are secured by this Trust Deed; (6) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided; and (7) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

AND, Trustor hereby warrants, covenants and agrees that Trustor is the lawful owner of the Property, with good and marketable title, free and clear of all encumbrances, liens or charges, excepting only those matters currently of record.

For purposes of Utah Code Annotated Section 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees, and similar amounts, if any, owing from time to time under the Note, Loan Agreement, or Trust Deed shall constitute a part of and be entitled to the benefits of Beneficiary's Trust Deed lien upon the Property and Beneficiary may add all such amounts to the principal balance of the Note, in its sole discretion, and Beneficiary may include such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Trust Deed. For purposes of Utah Code Annotated Section 57-1-25 and 78B-6-901.5, Trustor agrees that the stated purpose for which this Trust Deed was given is not to finance residential rental property.

TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:

1. **Maintenance and Repair.** To keep the Property in good condition and repair; not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on the Property, Trustor further agrees:

a. To commence construction promptly and to pursue the same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary; and

b. To allow Beneficiary to inspect the Property at all times during construction.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

2. **Required Insurance.** To provide and maintain 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 and cancellation protection clauses in favor of and in form acceptable to Beneficiary. In event of loss, Trustor 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.

To keep the buildings and improvements now existing or hereafter erected or placed on the Property insured against loss by fire, and such other casualties and in such types and forms of insurance, and in such amounts as may be required by, and in such companies as may be satisfactory to Beneficiary, with loss payable clauses in favor of Beneficiary, and to pay the premiums therefor promptly when due, and the policies of insurance shall be held by Beneficiary, it being understood, however, that Beneficiary shall in no event be responsible for the sufficiency or form or substance of any policy of insurance, or for the solvency or sufficiency of any insurance company with respect to the insurance herein provided. In event of loss, Trustor 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 the reduction of the indebtedness hereby secured or to the restoration or repair of the Property damaged.

Beneficiary is hereby authorized to settle all insurance claims and collect all insurance funds accruing to the benefit of Trustor and/or Beneficiary, and to facilitate the collection of such insurance, Trustor hereby authorizes Beneficiary to execute, sign and deliver all necessary and proper proofs of loss, claims, waivers, and all other documents necessary for or incidental to the collection of such insurance, and if necessary to institute such proceeding in law or equity as may be necessary for the collection of such insurance, to receive all insurance proceeds, and to make such compromise and/or settlements as may be deemed necessary and advisable, and to sign, endorse and cash, in its own name or as attorney-in-fact for Trustor, any and all drafts, checks, or other instruments delivered in payment of any insurance claim.

In the event Trustor or any subsequent owner or purchaser of the Property shall desire to substitute for a then existing policy of insurance, a policy of insurance issued by another insurance carrier, Beneficiary will be entitled to charge and collect a substitution fee for each substitution in an amount not to exceed \$250.00, to compensate Beneficiary for additional clerical and record keeping services occasioned by such substitution. Such fee shall become part of the indebtedness due from Trustor and payment thereof will be and is hereby secured by this Trust Deed and will be payable upon demand of Beneficiary. Failure to pay such fee upon demand shall constitute a default under this Trust Deed. All substituted policies of insurance shall be in such amounts, in such forms and will be issued by such insurance carriers as may be required by and as may be satisfactory to Beneficiary.

3. **Evidence of Title.** To deliver to, pay for, and maintain with Beneficiary until the indebtedness secured hereby is paid 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 thereto. Without limiting the foregoing, Trustor agrees to pay the premium applicable to any policy of title insurance required to be issued by Beneficiary and applicable to Beneficiary's interest in the Property granted hereunder.

4. **Actions Affecting the Property.** To appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, the priority of the security interest created by this Trust Deed, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum incurred by Beneficiary or Trustee.

5. **Taxes and Assessments.** To pay at least fifteen (15) days before delinquency all taxes and assessments affecting the Property, including without limitation greenbelt rollback taxes, assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges (including without limitation charges for utility services), and liens with interest, on the Property or any part thereof; to pay and at all times be current with respect to all impact fees, park fees, and any other fees and assessments levied against or otherwise related to the Property and any penalties and interest associated with such taxes; to provide proof of such payments to Beneficiary not later than fifteen (15) days prior to the due date for each such payment; and to pay all costs, fees, and expenses of this trust. Trustor will deliver to Beneficiary, within fifteen (15) days after their respective due dates, evidence satisfactory to Beneficiary that the taxes, assessments, encumbrances, and other charges and expenses to be paid by Trustor hereunder have been timely paid.

6. **Hazardous Materials.** Not to cause, permit, allow or suffer the presence, use, generation, manufacture, release, discharge, storage or disposal of any hazardous or toxic materials, substances or wastes as designated or regulated by applicable federal, state or local environmental laws (collectively "*Hazardous Materials*") on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property. Trustor shall immediately notify Beneficiary in writing of: (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened in connection with any Hazardous Materials; (b) any claim made or threatened by any third party against Trustee or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; and (c) Trustee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause all or any portion of the Property to be subject to any restrictions on the ownership, occupancy, transferability or use.

7. **Self-Help.** Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: (a) 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; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and (d) in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay its reasonable fees.

8. **Default Interest.** To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of twenty-four percent (24%) per annum until paid, and the repayment thereof shall be secured hereby.

9. **Late Charge.** To pay Beneficiary a "late charge" of five percent (5%) of each payment due hereunder, or amounts due pursuant to the Note (whether principal, interest, or fees) which is more than five (5) days in arrears. This payment shall be made to cover the extra expense involved in handling delinquent payments.

IT IS MUTUALLY AGREED THAT:

10. **Condemnation; Property Damage.** Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage.

In applying the proceeds of any award on account of the indebtedness secured hereby, Beneficiary shall be entitled to collect out of the proceeds of the award a premium on the amount prepaid at the same rate as though Trustor had elected at the time of such application of proceeds to prepay the indebtedness in accordance with the terms of the Note secured hereby, or if Trustor

then has no such election, at the first succeeding date on which Trustor could so elect. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorneys' fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

11. **Certain Trustee Rights.** At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the Note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may: (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) grant an extension or modification of the terms of this Trust Deed upon written request of Beneficiary; and (e) reconvey, without warranty, all or any part of the Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

12. **Subdivision Maps.** Prior to recording any final map, plat, parcel map, lot line adjustment or other subdivision map of any kind covering any portion of the Property ("**Subdivision Map**"), Trustor shall submit such Subdivision Map to Beneficiary for Beneficiary's review and approval, which approval shall not be unreasonably withheld. Within ten (10) business days after Beneficiary's receipt of such Subdivision Map, Beneficiary shall provide to Trustor written notice if Beneficiary disapproves of said Subdivision Map. Within ten (10) business days after Beneficiary's request, Trustor shall execute, acknowledge and deliver to Beneficiary such amendments to the Loan Documents (as defined in the Loan Agreement) as Beneficiary may reasonably require to reflect the change in the legal description of the Property resulting from the recordation of any Subdivision Map. In connection with and promptly after the recordation of any amendment or other modification to the Trust Deed recorded in connection with such amendments, Trustor shall deliver to Beneficiary, at Trustor's sole expense, a title endorsement to any title policy issued to in connection with this Trust Deed in form and substance satisfactory to Beneficiary insuring the continued first-priority lien of this Trust Deed. Subject to the execution and delivery by Trustor of any documents required under this section, Beneficiary shall, if required by applicable law, sign any Subdivision Map approved by Beneficiary pursuant to this section.

13. **Assignment of Rents, Leases and Purchase Agreements.** As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all Purchase Agreements, Leases, rents, issues, royalties, and profits of the Property affected by this Trust Deed and of any personal property or improvements located thereon (collectively, the "**Rents**"). Such assignment is made concurrently with the granting by Trustor to Beneficiary of a security interest in such Rents, Leases, and the Purchase Agreements pursuant to this Trust Deed, which security interest shall be subject and subordinate to this assignment. Until the occurrence of an Event of Default (as defined below), Trustor shall have the right to collect all such Rents earned prior to such Event of Default as they become due and payable. If any Event of Default



shall occur, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the Property affected hereby, to collect all Rents. In furtherance thereof, Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact (which appointment is coupled with an interest), at the option of Beneficiary at any time and from time to time following any Event of Default, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of Trustor's obligations to Beneficiary in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under any Leases affecting the Property directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option. Trustor agrees that it will not collect rent on the Property more than one month in advance or lease the Property other than on commercially reasonable terms.

The assignment of the Rents of the Property in this Section is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest. Beneficiary's rights to the rents are not contingent upon and may be exercised without possession of the Property.

The lien of this Trust Deed shall be senior to any new Lease and Purchase Agreement and to any existing Lease and Purchase Agreement that hereafter may be extended, amended, or supplemented unless Beneficiary elects for the lien of this Trust Deed to be subordinate to any particular new, extended, amended, or supplemented Lease by delivering written notice of such election to Trustor at any time before the date of any judicial or non-judicial foreclosure sale hereunder or the date of any conveyance of the Property in lieu of foreclosure. Any such notice need not be recorded to be effective. Trustor shall furnish, from time to time at Beneficiary's request, (a) a rent schedule for the Property, certified by Trustor, showing the name of each lessee and, for each lessee, the unit occupied, the Lease expiration date, the amount of the security deposit, the rent, the amount of any prepaid rent and the period for which such rent was prepaid, any unexpired free rent period and any renewal or extension options; and/or (b) a schedule of all lots or parcels within the Property under contract, including the name of the purchaser, the purchase price, the real estate commissions and other costs payable by Trustor related to such transaction, and the proposed settlement/closing date.

Upon the occurrence of an Event of Default, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court (Trustor hereby consenting to the appointment of Beneficiary or another receiver designated by a court and agreed to by Beneficiary as such receiver upon the occurrence of any Event of Default), and without regard to the adequacy of any security for the obligations secured hereby, enter upon and take possession of the Property, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (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 payment of the obligations secured hereby in such order as

Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Property, or the application of the Rents 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. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Property and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new Leases, to cancel, surrender, alter or amend the terms of, and/or renew existing Leases, and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

It is not the intention of the parties hereto that an entry by Beneficiary upon the Property under the terms of this instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Property by Beneficiary, this assignment shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Property or any portion thereof, and the execution of this assignment by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Trustor, prior to such actual entry and taking of possession.

This Section is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated Section 57-26-101 et seq. (the "*Act*"), and in the event of any conflict or inconsistency between the provisions of this Section and the provisions of the Act, the provisions of the Act shall control.

Trustor acknowledges that Beneficiary has taken all actions necessary to obtain, and that, upon recordation of this Trust Deed, Beneficiary shall have (to the extent permitted under applicable law) a valid and fully perfected first priority present assignment of all Rents and all security for the related Leases, and that Beneficiary's interest in the Rents shall be deemed fully perfected, "choate" and enforced as to Trustor and all third parties, including without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "*Bankruptcy Code*"), without the necessity of commencing a foreclosure action with respect to this Trust Deed, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action. Trustor agrees that (a) this Trust Deed shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Trust Deed extends to the property of Trustor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents, and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy. So long as part of the Note remains unpaid and undischarged, the fee and leasehold estates to the Property shall not merge, but shall remain separate and distinct, notwithstanding

the union of such estates either in Trustor, Beneficiary, any tenant or any third party, by purchase or otherwise.

14. **No Encumbrance.** As an express condition of Beneficiary making the loan secured by this Trust Deed, Trustor shall not further encumber, pledge, mortgage, hypothecate, place any lien (or permit any lien to be placed, or fail to promptly remove any lien that is placed without Trustor's permission), 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 Trust Deed. Encumbrance of the Property contrary to the provisions of this paragraph without the express written consent of Beneficiary shall constitute a default hereunder and at Beneficiary's option, Beneficiary may declare the entire balance of principal and interest secured hereby immediately due and payable, whether such default is 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; *provided that* Beneficiary shall not exercise such option if such exercise is prohibited by applicable law.

15. **Mechanic's and Materialmen's Liens.** Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices and further agrees that Beneficiary may file a Notice of Intent to Obtain Final Completion, and Notice of Completion, in each case in the State Construction Registry of the State of Utah. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with Utah Code Annotated § 38-1a-2. Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contactor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Trustor. Trustor shall, upon completion of the Improvements (as defined in the Loan Agreement), promptly file a Notice of Intent to File Notice of Completion, and Notice of Completion in the State Construction Registry.

Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction services lien or a construction services lien). Trustor further represents and warrants that no mechanic's lien claim, notice of lien, *lis pendens* or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Property.

If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice and Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished before the recording of this Deed of Trust and that such lien claimant has agreed to re-file its withdrawn preliminary notice within 20 days of the date of withdrawal such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

Trustor shall cooperate with Beneficiary and any title insurer to facilitate the filing of a notice of construction loan in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Property secured hereby, the address of the Property, and the County in which the Property is located.

Trustor shall cause, as a condition precedent to the closing of the loan secured hereby, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of Mortgagee's Title Insurance Policy.

Trustor shall pay and promptly discharge, at Trustor's sole cost and expense, all liens, encumbrances and charges upon the Property (other than the exceptions expressly permitted by Beneficiary), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security and otherwise complies with the applicable requirements of Utah Code Annotated to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Annotated without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by the applicable provisions of Utah Code Annotated or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

16. **Due on Sale.** Should Trustor sell or convey, or agree to sell or convey any portion of the Property, or of any building or improvement now or hereafter located thereon, or any interest whatever therein to any person, firm, or corporation, or should Trustor permit or suffer the occupancy of any portion of the Property by anyone, whether as a tenant or otherwise, then each such occurrence shall be deemed a default by Trustor, and the entire indebtedness secured by this Trust Deed at the option of Beneficiary shall become immediately due and payable, and thereupon, Beneficiary may demand immediate payment in full of such indebtedness and may exercise all legal limits to collect such indebtedness, including but not limited to foreclosure of this Trust Deed. It is expressly acknowledged and agreed that, if Trustor is an entity, any direct or indirect transfer of more than forty-nine percent (49%) of the capital stock, partnership or member interests of Trustor (whether in a single transaction or a series of separate transactions), as the case may be, shall constitute a transfer of the entire Property within the meaning of this paragraph.

17. **Right of Entry.** Upon the occurrence of any Event of Default hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, take any action it deems necessary, in its sole discretion, to prepare the Property for sale, in its own name sue for or otherwise collect the rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (and preparation for sale), including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

18. **No Invalidation.** The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

19. **Certain Remedies.** In addition to all other remedies available to Beneficiary hereunder or at law, upon any (a) Event of Default (in this case only as such term is defined in the Note), (b) breach of any representation, warranty, or covenant of Trustor hereunder, or (c) any breach of any representation, warranty, or covenant of Trustor or any other loan party under any Loan Document, (each of which shall constitute a "default" hereunder for purposes of the UCC) (each an "*Event of Default*"), Beneficiary may dispose of any Fixture or other personal property comprising the Property (including without limitation all reports, plans, and specifications related to the Property or any improvements thereon) in any manner now or hereafter permitted by the UCC or in accordance with any other remedy provided by law. Both Trustor and Beneficiary shall be eligible to purchase any part or all of such personal property at any such disposition. Any such disposition may be either public or private as Beneficiary may so elect, subject to the provisions of the UCC. Beneficiary shall give Trustor at least ten (10) days prior written notice of the time and place of any public sale or other disposition of such personal property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor, it shall constitute reasonable notice to Trustor.

20. **Security Agreement.** This Trust Deed shall be self-operative and shall constitute a Security Agreement as defined in the UCC with respect to all Rents, Leases, Purchase Agreements, Deposits, and all of those portions of the Property which constitute personal property or Fixtures governed by the UCC, provided, however, Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor (such power coupled with an interest) to execute, deliver and, if appropriate, to file any agreement, financing statement, continuation statement, or other instruments as Beneficiary may request or require in order to impose or perfect the lien or security interest hereof. Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the UCC. Notwithstanding the foregoing, this Trust Deed is intended to serve as a financing statement filed as a fixture filing pursuant to the terms of the UCC. This filing is to be recorded in the real estate records in the county in which the Property is located. In addition, a carbon, photographic or other reproduced copy of this Trust Deed 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. Certain financing statement information is set forth on Exhibit B to this Trust Deed.

21. **Leasehold.** If a leasehold estate constitutes any portion of the Property, Trustor agrees not to amend, modify, extend, renew or terminate such leasehold estate, any interest therein, or the lease granting a such leasehold estate without the prior written consent of Beneficiary, which consent may be withheld by Beneficiary in its absolute and sole discretion. Consent to one amendment, modification, extension or renewal shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Trustor agrees to timely pay any sums due under any lease creating the leasehold estate on or before the date due and to timely perform all obligations and agreements under said leasehold. Trustor shall not take any action or omit to take any action which would effect or permit the termination of said leasehold estate. Trustor agrees to promptly notify Beneficiary in writing with respect to any default or alleged default by any party thereto and to deliver to Beneficiary copies of all notices, demands, complaints or other communications received or given by Trustor, within three days of its receipt, with respect to any such default or alleged default. Beneficiary shall have the option, but not the obligation, to cure any such default and to perform any or all of Trustor's obligations thereunder. All sums expended by Beneficiary in curing any such default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from date of expenditure at the default rate specified in the Note.

22. **No Waiver.** The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

23. **Time of the Essence.** Time is of the essence hereof. Upon the occurrence of any Event of Default, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause such property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the Note and all documents evidencing expenditures secured hereby.

24. **Acceleration; Costs.** Upon the occurrence of any Event of Default, Beneficiary shall have the option, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or any other action, all of which are hereby waived by Trustor and all other parties obligated in any manner whatsoever, to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages in real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be fixed by the court.

25. **Foreclosure.** After the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of default and notice of sale having been given as then required by law, 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, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustor agrees to surrender possession immediately after any such sale of the Property, if possession has not previously been surrendered. Trustee shall execute and deliver to the purchaser its Deed conveying such 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 (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees and all costs incurred to prepare the Property for sale (including without limitation any costs incurred to remove equipment, clean the Property, stage the Property, and otherwise prepare it for sale, as determined by Beneficiary in its sole discretion); (b) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (c) all sums expended under the terms hereof, not then repaid, with accrued interest at twenty-four percent (24%) per annum from date of expenditure; (d) all other sums then secured hereby; and (e) 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.

Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any Trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Annotated Section 57-1-32 or other applicable law. Trustor agrees for purposes of Utah Code Annotated Section 57-1-32 that the value of the Property as determined and set forth in an MAI appraisal of the Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of Utah Code Annotated Section 57-1-32.

Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Annotated Section 78B-6-901 and any successor or replacement statute or any similar laws or benefits.

26. **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 Property or some part thereof is situated, 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 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.

27. **Reconveyances.** From time to time, Beneficiary may require Trustee to reconvey, release and discharge from the operation of this Trust Deed any part or parts of the property described in this Trust Deed, given to secure payment of the indebtedness evidence by the Note. Notwithstanding the foregoing, Beneficiary may require that Trustor provide a general release of claims against Beneficiary as a condition to providing a reconveyance of all or any portion of the Property. Beneficiary may also require that Trustor provide proof that the funds used to repay the obligations secured by this Trust Deed will not cause Beneficiary to be deemed to have received a preference or be subject to any preference action. In furtherance thereof, if Beneficiary, in good faith, believes that it may be subject to a preference action in conjunction with any payoff, it may wait for as long as it deems to be reasonably necessary to reconvey this Trust Deed following its receipt of payment of the outstanding amount secured by this Trust Deed.

Trustee shall execute and deliver unto Beneficiary a written reconveyance and release upon receiving from Beneficiary a written request therefor. Such written request shall include a description of the Property to be reconveyed or released, a statement of the consideration, if any, received by Beneficiary for such reconveyance or release, and a declaration that Beneficiary is the owner and holder of the debt mentioned in this Trust Deed and that the same has never been assigned or transferred. The partial reconveyance or release executed by Trustee shall identify this Trust Deed and describe the property to be reconveyed or released. A partial reconveyance or release executed and delivered by Trustee under authority of this paragraph shall not affect or impair the security remaining under this Trust Deed. This Trust Deed need not accompany any request for a partial reconveyance or release, but upon demand of Trustee, Beneficiary will exhibit to Trustee the Note. Successive partial reconveyances or releases may be requested by Beneficiary.

28. **Incidents of Title.** Each abstract of title, title insurance policy, or all other evidences of title, and all insurance policies placed or deposited with Beneficiary shall be deemed an incident to the title of the Property herein described and upon sale or foreclosure or otherwise shall pass to the purchaser, and same are hereby pledged as additional security for payment of the indebtedness secured hereby.

29. **Collection Costs.** In the event Beneficiary and Trustee or either of them shall (a) determine to foreclose this Trust Deed by court action, or (b) find it necessary to resort to the courts to secure protection of the security given hereunder or to enforce or protect the rights hereunder of Beneficiary, or (c) be involved in court action involving or affecting this Trust



Deed, the security given thereunder or the indebtedness secured thereby, Trustor agrees to pay all costs and expenses incurred therein and reasonable compensation for the attorneys representing Beneficiary and Trustee, or either of them.

30. **Order of Remedies.** Notwithstanding the existence of any other security interests in the Property held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided in this Trust Deed, the Note, any other document secured hereby, or applicable law. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of such remedies. Trustor and any party who now or in the future acquires a security interest in the Property and who has actual or constructive notice of this Trust Deed waives any and all right to require the marshalling of assets or to require that any of the Property be sold in the inverse order of alienation or that any of the Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Trust Deed.

31. **Successors and Assigns.** This Trust Deed 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 Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. Beneficiary may assign all of its rights and obligations hereunder without the need to obtain Trustor's prior consent to any such assignment. Trustor may not assign its rights or obligations hereunder without Beneficiary's prior written consent to such assignment.

32. **Beneficiary Approval Rights.** Any option, election, notice or right granted to Beneficiary may be exercised only by written approval of Beneficiary.

33. **No Usury.** If the loan secured by this Trust Deed is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Trustor which exceed permitted limits will be refunded to Trustor. Beneficiary may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Trustor.

34. **Indemnification.** Trustor hereby agrees to indemnify and defend Beneficiary and its members, owners, investors, lenders, officers, legal counsel, employees and agents from and against, and Trustor will hold Beneficiary and all such persons harmless from and against, any liability, loss, expense, damage, fees (including reasonable attorneys' fees), suits, action or proceedings, whether pending or threatened, suffered or incurred as a result of Trustor's failure to observe, perform or discharge any of its obligations pursuant to this Trust Deed or any misrepresentation made by or on behalf of Trustor pursuant to this Trust Deed. The foregoing obligations shall survive the repayment of the Note until the applicable statute of limitations has expired.

35. **Riders.** If one or more riders are executed by Trustor and recorded together with this Trust Deed, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Trust Deed as if the rider(s) were part of this Trust Deed.

36. **Sale of Note.** The Note or a partial interest therein (together with this Trust Deed) may be sold one or more times without prior notice to Trustor. There also may be one or more changes of the loan servicer unrelated to a sale of the Note.

37. **Severability.** If any provision of this Trust Deed is declared by a court of competent jurisdiction to be invalid for any reason such invalidity shall not affect the remaining provisions of this Trust Deed. The remaining provisions shall be fully severable, and this Trust Deed shall be construed and enforced as if the invalid provision had never been included herein.

38. **Trustee Acceptance.** Trustee accepts this trust when this Trust Deed, 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 Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

39. **Governing Law.** THIS TRUST DEED AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH EXCLUDING ANY UTAH CONFLICT OF LAWS RULES.

40. **Notices.** The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address hereinbefore set forth.

41. **No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Trust Deed and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Trust Deed on the Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

42. **Cross-Collateral; Cross Default.** Without limiting any of the foregoing provisions of this Trust Deed, and for clarification, Trustor agrees that this Trust Deed is pledged as security for any and all other sums, indebtedness, obligations and liabilities of any and every kind now or hereafter existing owing and to become due, from Trustor as well as any of its Affiliates (as defined in the Loan Agreement) to Beneficiary or to assignees thereof, howsoever created, whether under this Trust Deed, the Loan Agreement, or any other instrument, obligation,

contract, guarantee or agreement of any and every kind among any of Trustor or its Affiliates and Beneficiary, and whether direct, indirect, primary or secondary, fixed or contingent and any renewals, modifications or extensions of any of the foregoing; *provided, however*, that notwithstanding anything to the contrary herein or therein neither any Guaranty (as defined in the Loan Agreement) nor the Environmental Certification and Indemnity Agreement referenced in the Loan Agreement (nor any other similar agreement between Trustor or any of its Affiliates and Beneficiary or any of its Affiliates) are secured by this Trust Deed and, notwithstanding anything to the contrary herein or in any other Loan Document, all obligations arising under any such documents are unsecured obligations. A default, not cured within any applicable curative period by Trustor or any of its Affiliates, as applicable, in any such other instrument, obligation, contract, guarantee or agreement of any kind now or hereafter existing among Trustor or any Affiliate and Beneficiary, shall constitute a default hereunder and, in like manner, a default hereunder not cured within any applicable curative period shall constitute a default under the terms of such other instrument, obligation, contract, guarantee or agreement. All property Trustor or any of its Affiliates which stands as security for any of the loans made by Beneficiary to Trustor or any of its Affiliates, whether currently existing or hereafter advanced, shall stand as cross collateral security for all such loans.

43. **Survival.** The representations, warranties, and covenants of Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan (as defined in the Loan Agreement).

44. **Request for Notice.** Beneficiary requests that copies of notices of foreclosure from the holder of any lien encumbering the Property be sent to Beneficiary's address, as set forth on page one of this Trust Deed.

*[Remainder of page intentionally left blank.]*



**EXHIBIT A****Description of the Property****PARCEL 1:**

Beginning at a point which is North 1691.58 feet and West 328.19 feet from the South quarter corner of Section 22, Township 5 South, Range 1 East; and running thence North 89°13'03" West 98.64 feet; thence North 00°42'16" East 448.37 feet; thence North 00°29'16" East 131.64 feet; thence North 89°40'40" West 117.41 feet; thence North 00°53'51" East 260.23 feet; thence South 89°23'31" East 191.55 feet; thence along the arc of a 20.00 foot radius curve to the right a distance of 30.55 feet (curve having a central angle of 87°21'13" and along chord bearing South 45°40'37" East 27.67 feet); thence South 00°46'02" West 16.30 feet; thence South 06°04'09" East 42.00 feet; thence South 00°46'05" West 762.82 feet to the point of beginning. (aka the Proposed Lakeshore Landing Block 1 Plat A)

(NOTE: All bearings in the above description are based on the NAD 27 bearing of North 89°52'20" East along the section line from the South quarter corner of Section 22, Township 5 South, Range 1 East to the Southeast corner of said Section 22.)

LESS AND EXCEPTING THEREFROM any portion lying within the bounds of the following described tract of land:

A parcel of excess right-of-way of 900 West road, situate in the South half of Section 22, Township 5 South, Range 1 East, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows: Beginning at a point which is North 1691.40 feet and West 333.62 feet from the South quarter corner said Section 22; and running: thence North 00°46'05" East 815.39 feet; thence along the arc of a 20.00 foot radius curve to the left a distance of 31.47 feet (curve having a central angle of 90°08'41" and a long chord bearing North 44°18'43" West 28.32 feet); thence North 89°23'31" West 183.34 feet; thence North 4.50 feet; thence South 89°23'31" East 183.83 feet; thence along the arc of a 20.00 foot radius curve to the right a distance of 30.55 feet (curve having a central angle of 87°21'13" and a long chord bearing South 45°40'37" East 27.67 feet); thence South 00°46'02" West 16.30 feet; thence South 06°04'09" East 42.00 feet; thence South 00°46'05" West 762.82 feet; thence North 89°13'03" West 5.44 feet to the point of beginning.

(Note: All bearings in the above description are based on the NAD 27 bearing of North 00°10'41" East along the section line from the West quarter corner of Section 22, Township 5 South, Range 1 East to the Northwest corner of said Section 22.)

**PARCEL 2:**

Beginning at a point which is North 1687.26 feet and West 30.63 feet from the South quarter corner of Section 22, Township 5 South, Range 1 East; and running thence North 89°13'03" West 218.51 feet; thence North 00°46'05" East 730.43 feet; thence South 89°15'29" East 98.77 feet; thence South 00°44'31" West 418.58 feet; thence South 53°26'45" East 3.91 feet; thence South 00°48'57" West 132.38 feet; thence along the arc of a 21.00 foot radius curve to the left a distance of 33.00 feet (curve having a central angle 90°02'15" and a long chord bears South 44°16'37" East 29.71 feet); thence South 89°17'44" East 95.51 feet; thence South 00°47'10" West 156.40 feet to the point of beginning. (aka the Proposed Lakeshore Landing Block 2 Plat C)

(NOTE: All bearings in the above description are based on the NAD 27 bearing of North 89°52'20" East along the section line from the South quarter corner of Section 22, Township 5 South, Range 1 East to the Southeast corner of said Section 22.)

LESS AND EXCEPTING THEREFROM any portion lying within the bounds of the following described tract of land:

A parcel of excess right-of-way of 900 West road, situate in the South half of Section 22, Township 5 South, Range 1 East, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows: Beginning at a point which is North 1690.18 feet and West 244.65 feet from the South quarter corner said Section 22; and running: thence North 00°46'05" East 730.43 feet; thence North 89°15'29" West 4.54 feet; thence South 00°46'05" West 730.43 feet; thence South 89°13'03" East 4.54 feet to the point of beginning.

(Note: All bearings in the above description are based on the NAD 27 bearing of North 00°10'41" East along the section line from the West quarter corner of Section 22, Township 5 South, Range 1 East to the Northwest corner of said Section 22.)

**PARCEL 3:**

Beginning at a point which is North 1247.17 feet and West 487.83 feet from the South quarter corner of Section 22, Township 5 South, Range 1 East; and running thence South 57°57'04" West 107.51 feet; thence North 39°27'15" West 70.27 feet; thence South 89°16'09" East 67.23 feet; thence North 02°32'00" East 86.36 feet; thence South 89°08'21" East 91.24 feet; thence North 01°38'03" East 75.62 feet; thence North 12°45'06" East 135.61 feet; thence North 00°51'39" East 156.66 feet; thence South 89°13'03" East 98.72 feet; thence South 00°46'05" West 164.55 feet; thence along the arc of a 335.50 foot radius curve to the right a distance of 334.84 feet (curve having a central angle of 57°10'58" and a long chord bearing South 29°21'35" West 321.11 feet) to the point of beginning. (aka the Proposed Lakeshore Landing Block 3 Plat E)

(NOTE: All bearings in the above description are based on the NAD 27 bearing of North 89°52'20" East along the section line from the South quarter corner of Section 22, Township 5 South, Range 1 East to the Southeast corner of said Section 22.)

LESS AND EXCEPTING THEREFROM any portion lying within the bounds of the following described tract of land:

A parcel of excess right-of-way of 900 West road, situate in the south half of Section 22, Township 5 South, Range 1 East, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows: Beginning at a point which is North 1194.28 feet and West 582.59 feet from the South Quarter corner said Section 22; and running: thence North 57°57'04" East 108.16 feet; thence along the arc of a 330.50 foot radius curve to the left a distance of 329.85 feet (curve having a central angle of 57°10'58" and a long chord bearing North 29°21'35" East 316.33 feet); thence North 00°46'05" East 164.04 feet; thence South 89°13'03" East 5.44 feet; thence South 00°46'05" West 164.55 feet; thence along the arc of a 335.50 foot radius curve to the right a distance of 334.84 feet (curve having a central angle of 57°10'58" and a long chord bearing South 29°21'35" West 321.11 feet); thence South 57°57'04" West 107.51 feet; thence North 39°27'15" West 5.71 feet to the point of beginning.

(Note: All bearings in the above description are based on the NAD 27 bearing of North 00°10'41" East along the section line from the West quarter corner of Section 22, Township 5 South, Range 1 East to the Northwest corner of said Section 22.)

**EXHIBIT B**

**FINANCING STATEMENT INFORMATION**

The Beneficiary/Secured Party is:

SDP REIT, LLC  
1240 East 2100 South, Suite 300  
Salt Lake City, Utah 84106  
Attention: Michael C. Nixon

The Debtor is:

BLUE PEAK HOLDINGS, LLC  
520 South 850 East, Suite A4  
Lehi, Utah 84043  
Attention: Michael Horan

The Collateral is the Fixtures and all other personal property described in the Trust Deed, together with all proceeds, replacements, substitutions and additions thereto.