

pkc  
19  
1st

WHEN RECORDED, MAIL TO:

Cypress Capital XI, LLC  
Attn: Todd Jackson  
10421 S. Jordan Gateway, Ste. 630  
South Jordan, Utah 84095

DOC # 20070058952

Trust Deed Page 1 of 16  
Russell Shirts Washington County Recorder  
12/14/2007 02:42:33 PM Fee \$ 49.00  
By SOUTHERN UTAH TITLE CO



DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (this "Trust Deed") is made as of December 13, 2007, by MELLON VALLEY II, LLC, a Utah limited liability company, as Trustor ("Trustor"), whose address is 1165 S. Utah Ave., Idaho Falls, Idaho 83402, in favor of SOUTHERN UTAH TITLE COMPANY, as Trustee ("Trustee"), whose address is 20 N. Main St., St. George, Utah 84770, for the benefit of CYPRESS CAPITAL XI, LLC, a Utah limited liability company, as Beneficiary ("Beneficiary"), whose address is 10421 S. Jordan Gateway, Ste. 630, South Jordan, Utah 84095.

WITNESSETH

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Trustor, Trustor hereby irrevocably CONVEYS, GRANTS, BARGAINS, TRANSFERS, SELLS, ASSIGNS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the tract or tracts of real property situated in WASHINGTON County, State of UTAH which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land").

Together with all buildings, fixtures and improvements thereon and all water rights, water company stock, rights of way, easements, leases, rents, revenues, issues, profits, income, permits, licenses, accounts, general intangibles, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with the Land or any part thereof (the Land and such other property, together with all personal property rights and assets in which a security interest is granted under this Trust Deed, being collectively referred to in this Trust Deed as the "Property"). SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, revenues, issues and profits.

This Trust Deed is given for the purpose of securing the full and timely payment and performance each of the following (collectively, the "Obligations"):

(1) each and every obligation of Trustor or DOS LAGOS, L.L.C., a Utah limited liability company ("Co-Borrower" and, collectively, together with Trustor, "Borrower"), pursuant to that certain Secured Promissory Note (together with all substitutions, consolidations, modifications, amendments, replacements, restatements, increases, renewals, and extensions thereof, in whole or in part, the "Note") executed jointly and severally by Trustor and Co-Borrower in favor of

47009

Beneficiary as of, on or about even date herewith, in the stated original principal amount of \$12,531,517;

(2) the obligations of Trustor under any other document, instrument or agreement executed by Trustor in favor of Beneficiary and referring to this Trust Deed as security therefor (each, an "**Additional Agreement**"); and

(3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

**To Protect the Security of This Trust Deed, Trustor agrees as follows:**

1. Except as otherwise expressly permitted by the terms of this Trust Deed or consented to by Beneficiary in writing, Trustor shall (a) keep the Property in good condition and repair; (b) not remove or demolish any fixture, building or other structure thereon; (c) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; (d) comply with all laws, covenants and restrictions affecting the Property or requiring any alterations or improvements to be made thereon; (e) not commit or permit waste thereof; (f) not perform any material demolition, addition, alteration or remodeling of the improvements on the Property except for ordinary and reasonable repairs, maintenance, painting or other incidental improvements; (g) not commit, suffer or permit any act upon the Property in violation of law; and (h) cultivate, irrigate, fertilize, fumigate, prune and 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.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this Paragraph 1 is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

2. To provide and maintain insurance, with such insurers, of such type or types and in such amounts covering such risks and perils, with such deductibles, and with such loss payable clauses and endorsements, all as Beneficiary may reasonably require in its discretion, on or with respect to the Property and/or the improvements now existing or hereafter erected or placed on the Property. All such policies of insurance shall name Beneficiary as an additional insured or loss payee, as appropriate, and shall contain a provision that such policies will not be cancelled or amended (which term shall include any reduction in the scope or limits of coverage) without at least thirty (30) days' prior written notice to Beneficiary. In the event of loss or damage to the Property, or any portion of the Property, Trustor shall immediately give notice thereof to Beneficiary, who may make proof of loss. All proceeds of insurance on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property, or for any damage or injury to it or for any loss or diminution in the value of the Property, are hereby assigned to and shall be paid to Beneficiary for application in its discretion against any unpaid Obligation. Beneficiary may in its discretion participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries. In the event Beneficiary

exercises the power of sale or foreclosure provisions of this Trust Deed or makes any other transfer of title or assignment of the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Trustor in and to the policies of insurance required by this Paragraph 2 shall inure to the benefit of and pass to the transferee of the interests conveyed under this Trust Deed or to the Auction Purchaser (as defined below) at the foreclosure sale, as the case may be.

3. Trustor shall deliver to, pay for and maintain with Beneficiary until the Obligations secured hereby are 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 or endorsements thereto. Upon the request of Beneficiary hereunder, Trustor shall cause the following to be performed, prepared, completed and delivered to Beneficiary: (a) an M.A.I. appraisal of the Property, (b) an A.L.T.A. survey of the Property, (c) an environmental or geological report of the Property, or (d) if applicable, appropriate updates to any of the foregoing, in the case of items under clauses (a), (b) or (c) above, within 45 days of Beneficiary's request and, in the case of items under clause (d) above, within 21 days of Beneficiary's request.

4. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Beneficiary or Trustee, and should Beneficiary or Trustee elect to appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum incurred by Beneficiary or Trustee.

5. Trustor shall pay (a) at least ten (10) days before delinquency, all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; (b) when due, all encumbrances, charges and liens with interest, on the Property or any part thereof, which at any time appear to be prior or superior hereto; and (c) within five (5) days after written demand, any and all costs, fees, and expenses of this Trust Deed and any and all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of interest then most recently applicable under the Note (the repayment thereof being secured hereby).

6. The occurrence of any of the following shall constitute an "**Event of Default**" hereunder: (a) the failure of Trustor or Co-Borrower to make any payment required by this Trust Deed, the Note or any Additional Agreement on the due date for such payment, (b) the failure of Trustor or Co-Borrower to do any other act required by, or comply with any other provision of, this Trust Deed or to perform any other Obligation under the Note or any Additional Agreement, and the subsequent failure of Trustor to cause such failure to be cured within ten (10) business days of receipt of notice from Beneficiary or Trustee of such failure, (c) the failure of Trustor to reimburse Beneficiary or Trustee within ten (10) business days of receipt of notice from Beneficiary or Trustee for any loss, liability or expense due to any representation or warranty of Trustor proving to have been materially false or inaccurate at the time made, (d) the occurrence of any other Event of Default (as defined in the Note) under the Note, or (e)

the occurrence of any default under any document or instrument governing any Other Lien (as such term is defined below in Paragraph 10).

Upon the occurrence and during the continuance of any Event of Default, 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: (1) make any payment or perform any act required to be made or performed by Trustor hereunder, 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; (2) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (3) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and (4) in exercising any such power, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title and reasonable attorneys' fees.

7. Trustor shall keep and maintain or cause to be kept and maintained at its place of business set forth in the introductory paragraph of this Trust Deed, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Property, whether such income and expenses are realized by Trustor or by any other person or entity. Beneficiary or its designees shall have the right, from time to time upon reasonable notice during normal business hours, to examine such books, records and accounts at the office of Trustor or such other person or entity maintaining such books, records and accounts and to make copies of any such books, records or accounts, and Trustor shall avail its personal and independent accountants to discuss the affairs, finances and accounts of Trustor with Beneficiary.

8. Trustor represents and warrants that the following are true and accurate, and covenants and agrees that the following will continue (unless specifically waived in writing by Beneficiary) to be true and accurate so long as any Obligation remains outstanding:

(a) Trustor has all right, power and authority to execute this Trust Deed and grant the security interest in the Property created hereby.

(b) Trustor is the sole legal owner of fee title to the Property and holds such title free and clear of liens, encumbrances and defects, except for the following (each of which is hereby expressly permitted hereunder and consented to by Beneficiary) (each, a "Permitted Exception"):

(1) liens for real property taxes and assessments accrued but not yet due;

(2) the lien of this Trust Deed and other liens (including options or other interests) for the benefit of Beneficiary or any of its affiliates; and

(3) easements, rights of way, or other similar restrictions or encumbrances currently of record and accepted specifically by Beneficiary (in its sole

and absolute discretion) as listed exceptions to Beneficiary's lender title policy, none of which shall (i) customarily be considered to render property uninsurable or unmarketable in the jurisdiction in which the Property is located or (ii) interfere in any material respect with Trustor's intended development or use of the Property.

(c) There is no pending or, to the knowledge of Trustor, threatened action or proceeding before any court or administrative agency, and there are no final judgments of record, against Trustor or relating to or affecting the Property.

(d) Except as specifically listed as an exception to title in Beneficiary's title insurance policy, to Trustor's knowledge, the Property (1) and the present use thereof comply in all material respects with all applicable laws, (2) is not the subject of a pending or proposed condemnation or special or other assessments for public improvements or otherwise, (3) has adequate rights of access to public ways and is served by all utilities required for the current use thereof, (4) is comprised of one or more parcels which constitute separate tax lot(s) and none of which constitutes a portion of any other tax lot, and (5) is not located in a flood hazard area as designated by the Federal Emergency Management Agency.

(e) Trustor is not a "foreign person" within the meaning of §1445(f)(3) of the Internal Revenue Code of 1986, as amended, and any successor statutes thereto.

(f) Neither Trustor nor any other person or entity owning a direct or indirect interest in Trustor is currently identified on the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control or any other similar restricted list.

(g) Neither Trustor nor any affiliate thereof nor any holder of direct or indirect equity interest therein is, maintains, has any obligation to contribute to, has any direct or indirect liability with respect to, or has any assets that constitute any "employee benefit plan," "multiemployer plan," "governmental plan," any other "plan" (within the meaning of Employee Retirement Income Security Act of 1974, as amended or re-codified from time to time, and the regulations promulgated thereunder, or the Internal Revenue Code of 1986, as amended, and any successor statutes thereto) or "plan assets" (within the meaning of 29 C.F.R. Section 2510.3-101 or otherwise).

(h) There is no management agreement in effect with respect to, and no property management fee is or will be payable in connection with, the management of the Property.

(i) The Property is not, and will not be, used principally or primarily for agricultural, farming or residential purposes.

9. Trustor hereby agrees that, so long as the lien of this Trust Deed is not discharged in full, it will not, without the prior written consent of Beneficiary, sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer the Property or any part thereof or permit the Property or any part

thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned or otherwise transferred to any person or entity other than Trustee and/or Beneficiary, except for the Permitted Exceptions.

10. So long as the lien of this Trust Deed is not discharged in full, (1) Trustor shall at all times comply with the terms and conditions of the documents governing any other lien, encumbrance, charge or assessment on the Property (each, an "**Other Lien**" and such documents being, collectively, the "**Other Lien Documents**") and the obligations secured thereby, (2) Trustor agrees that, if Trustor fails to so comply with the documents governing any Other Lien, Beneficiary may in its sole discretion pay or perform, on behalf of Trustor, the obligation of Trustor under the documents governing such Other Lien that Trustor so failed to pay or perform, in which case Trustor shall reimburse Beneficiary upon demand for all amounts expended by Beneficiary in connection therewith together with interest at the then-applicable rate of interest under the Note (and such reimbursement obligation, together with such interest, shall constitute additional Obligations hereunder), and (3) Trustor agrees that, with respect to any Other Lien with priority over the lien of this Trust Deed, without the prior written consent of Beneficiary, it will not amend or modify, or consent or agree to any amendment or modification, of any Other Lien Document that would operate to accelerate any due date thereunder or increase the amount of any obligations secured by any Other Lien. This Paragraph shall not be construed as permitting Trustor to further encumber the Property except as otherwise expressly permitted by the terms of this Trust Deed.

11. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, 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. All such compensation awards, damages, rights of action and proceeds, including the proceeds of any policies of insurance affecting the Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorneys' fees, apply the same in its discretion against any unpaid Obligation. Trustor agrees to execute such further assignments of any compensation, award, damages and rights of action and proceeds as Beneficiary or Trustee may require.

12. At any time and from time to time upon (i) written request of Beneficiary, (ii) payment of its fees and (iii) presentation of this Trust Deed, the Note and any Additional Agreement for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment or performance of the Obligations secured hereby, and without releasing the interest of any party joining in this Trust Deed, 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 any extension or modification of the terms of this loan; and/or (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 the truthfulness thereof. Any partial reconveyance shall not diminish Trustor's liability for the obligations evidenced hereby and by the Note and any Additional Agreement and

shall not affect or impair the lien of this Trust Deed with respect to the remaining portion of the Property. Trustor agrees to pay reasonable trustee's fees for any of the services mentioned in this Paragraph.

13. As additional security, Trustor hereby assigns to Beneficiary, and grants to Beneficiary a security interest in, during the continuance of this Trust Deed, each and all of the following, whether now owned by Trustor or hereafter acquired (collectively, the "**Secured Personal Property**"): (a) all leases, rents, revenues, income, issues, royalties and profits of and from the Property, (b) all rights, interests and titles of Trustor under any leases or other agreements described above, including without limitation contract rights and security deposits, (c) all plans, designs, specifications, entitlements, plat maps, architectural, engineering and environmental studies, surveys, drawings, sketches, renderings, permits, licenses, utility deposits, trademarks, service marks, trade names, and other rights, documents or similar items and general intangibles relating to the Property, (d) all rights and interests under development agreements, development and zoning applications, contracts for development, construction, engineering or architectural work, reservation agreements (including reservation deposits), sales agreements (including earnest money deposits), bonds and sewer connection agreements, (e) the Development Reserve and the Development Reserve Account, if any, established pursuant to Paragraph 7 above, and (f) all proceeds, products and replacements and substitutes of any of the foregoing and any property of any character whatsoever into which any of the foregoing may be converted. Until the occurrence of an Event of Default, Trustor shall have a revocable license to collect all such rents, revenues, issues, income, royalties and profits earned prior to the occurrence of such Event of Default as they become due and payable. If an Event of Default shall occur as aforesaid, Trustor's license and right to collect any of such monies shall automatically cease and Beneficiary shall have the right, with or without taking possession of the Property, to collect all rents, revenues, royalties, income, issues and profits and exercise all rights of lessor (or of Trustor in whatever other capacity) under leases of the Property or under any other contract, agreement, bond, application, permit or other arrangement relating to the Property or under any other Secured Personal Property, and Trustor agrees that presentation by Beneficiary of a copy of this Trust Deed to the other party under any such contract or other item of Secured Personal Property shall confirm such rights of Beneficiary to exercise such rights of Trustor hereunder. Trustor shall, promptly upon the request of Beneficiary, provide Beneficiary with complete and accurate copies of all documents evidencing or constituting Secured Personal Property. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies 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. Should Beneficiary so request, Trustor shall promptly execute, acknowledge and deliver to Beneficiary separate written instruments in recordable form and otherwise satisfactory to Beneficiary confirming such assignment of leases and rents and/or such general assignment of contracts and other rights.

14. This Trust Deed constitutes and shall be effective as a security agreement and "fixture filing" with respect to the Secured Personal Property and any other

Property as to which a security interest can be created or perfected under Revised Article 9 of the Uniform Commercial Code, as adopted in Utah (or, to the extent that the Uniform Commercial Code of another state is applicable, under Article 9 of such state's Uniform Commercial Code) (as the case may be, the "UCC"). This Trust Deed constitutes a financing statement and "fixture filing" pursuant to the UCC, with Trustor as "debtor" and Beneficiary as "secured party". Trustor hereby authorizes Beneficiary to file separate UCC-1 financing statements (and continuation statements) with respect to the lien on the Secured Personal Property as granted hereunder (and Trustor hereby confirms that Beneficiary is a person entitled to file a record, and that Trustor has authorized all such filings, within the meaning of Section 9a-509 of the UCC). The security interest granted to Beneficiary by Trustor hereunder in the Secured Personal Property shall be the only security interest encumbering such Secured Personal Property. Without limiting the generality of the foregoing, in light of Trustor's special purpose entity character, Trustor hereby authorizes Beneficiary to describe the collateral under any such UCC-1 financing statement as "All Assets" of Trustor. The principal places of business and mailing addresses of Trustor, as debtor, and Beneficiary, as secured party, respectively, are as set forth in the introductory paragraph of this Trust Deed. Trustor's location, for purposes of Section 9a-307 of the UCC, is Trustor's state of organization as set forth in the introductory paragraph hereof. Information relative to the security interest created hereby may be obtained by application to Beneficiary. Trustor is a "registered organization" (within the meaning of the UCC) in the state where Trustor is organized, and Trustor's organizational identification number issued by such state is set forth under its signature hereto. This Trust Deed is to be recorded in the real estate records in the County Recorder's office of the county in which the Land is located. Trustor is the record owner of the Property.

15. Upon the occurrence of an Event of Default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby irrevocably consenting to such appointment and to the appointment of Beneficiary or its designee as such receiver), as a matter of right, without regard to the interest of Trustor therein and without regard to the adequacy of any security for the Obligations hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect said rents, revenues, issues, income, royalties and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, as provided herein or in the Note or the Additional Agreements, as applicable. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Property or the foreclosure proceeding, unless the receivership is sooner terminated. Notwithstanding any provision of this Trust Deed to the contrary, with respect to all items of the Property constituting personal property, Beneficiary shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary as a secured party under the UCC and any and all rights and remedies available to Beneficiary under any other applicable law.

16. The entering upon and taking possession of the Property, the collection of such rents, revenues, issues, income, royalties 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 (including an Event of Default) or notice of default hereunder or invalidate any act done pursuant to such notice.

17. 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 or Event of Default shall not constitute a waiver of any other or subsequent default or Event of Default.

18. Time is of the essence hereof. Upon the occurrence of an Event of Default, (a) all sums secured hereby shall immediately become due and payable at the option of Beneficiary and (b) Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the 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, or as otherwise required by applicable law. Beneficiary also shall deposit with Trustee a copy of the Note, any Additional Agreement and all documents evidencing expenditures secured hereby.

19. After the lapse of such time as may then be required by law following the recordation of said 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 said 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 the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder (the "Auction Purchaser"), the purchase price payable in lawful money of the United States at the time provided by applicable law. 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 such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale in accordance with applicable law. Trustee shall execute and deliver to the Auction Purchaser its deed conveying the Property so sold, but without any covenant of 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 the Trustee's and attorneys' fees; (b) cost of any evidence of title procured in connection with such sale and revenue stamps or recording fees (if any) on Trustee's deed; (c) all sums expended under the terms hereof, not then repaid, with accrued interest from the date of expenditure at the then most recently applicable rate of interest under the Note; (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.

20. Trustor agrees to surrender possession of the Property to the Auction Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

21. Upon the occurrence of any Event of Default, Beneficiary shall have the option 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 or deeds of trust on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys fees and expenses.

22. Beneficiary may appoint a successor Trustee at any time by filing a substitution of trustee for record in the office of the County Recorder of each county in which the Property or some part thereof is situated. 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.

23. 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. In this Trust Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. To the extent Trustor is composed of more than one individual or entity, the obligations of Trustor hereunder shall be joint and several with respect to each such individual and/or entity.

24. 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 deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

25. This Trust Deed shall be construed according to the laws of the State of Utah without regard to the principles of the conflict of laws thereof. Venue of any dispute involving this Trust Deed or any provision or interpretation thereof, or involving any matter arising out of or connected in any way with this Trust Deed, and jurisdiction over the parties hereto, may be in any court of competent jurisdiction in the State of Utah. Trustor hereby irrevocably consents and submits to the jurisdiction and venue of said courts, hereby waiving any rights it may now or hereafter have to object to, or seek a change of, such jurisdiction and venue. TRUSTOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS TRUST DEED OR ANY OTHER LOAN DOCUMENT (as defined in the Note) OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS TRUST DEED AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

26. Subject to provisions of applicable law to the contrary, the rights and remedies provided for in this Trust Deed upon default shall not be exclusive but rather cumulative and Trustee and Beneficiary may exercise all rights and remedies available to them under applicable law, this Trust Deed, the Note, any Additional Agreement or any other instrument, agreement or document executed by Trustor, Co-Borrower or any other party in connection herewith or therewith. Trustor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all obligations secured by this Trust Deed.

27. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address hereinbefore set forth. Beneficiary requests that a copy of any notice of default and of any notice of sale relating to the Property be mailed to it at the address hereinbefore set forth.

28. Trustor acknowledges that the proceeds of the Loan are intended to be and shall be, used exclusively for commercial and business purposes, and not for personal, family or household purposes. It is the specific intent of Trustor and Beneficiary that the Note bear a lawful rate of interest. If any court of competent jurisdiction should determine that the rate therein provided for exceeds that which is statutorily permitted for the type of transaction evidenced thereby, the interest rate shall be reduced to the highest rate permitted by applicable law, with any excess interest theretofore collected being applied against the Note principal or, if such principal has been fully repaid, returned to Trustor on demand.

29. Trustor shall, and does hereby, indemnify, defend and hold harmless each of Trustee, Beneficiary and their respective officers, directors, members, managers, affiliates, employees and agents (each, an "*Indemnified Party*"), for and from any cost, expense, liability, loss, cause of action or claim which may or might arise or be incurred (a) with respect to the Property or by reason of this Trust Deed or the Obligations, (b) by reason of the alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements affecting the Property, (c) due to or arising from any violation of environmental or zoning laws, regulations, codes or ordinances, or (d) due to or arising from any default of Trustor hereunder or under the Note or any Additional Agreement (each of the above being a "*Loss*"). Should an Indemnified Party incur any Loss, the amount thereof, including costs, expenses and reasonable attorneys' fees, including any fees from the appeal on any judicial action, shall be included in the Obligations secured hereby and shall be immediately payable on demand with interest at the most recently applicable rate of interest under the Note. Notwithstanding any provision herein to the contrary, Trustor shall not be required to indemnify any Indemnified Party for any liability or defense of any claim arising out of or resulting from the gross negligence or willful misconduct of such Indemnified Party. For the sake of clarity, the rights of the Indemnified Parties hereunder are cumulative to any and all other rights of such parties under any other Loan Document.

30. Trustor acknowledges that this Trust Deed is absolute and unconditional, there are no conditions precedent to the effectiveness of this Trust Deed, and this Trust Deed is in full force and effect and is binding on Trustor as of the date first set forth above, regardless of whether Beneficiary obtains collateral or any guaranties from others or takes any other action contemplated by Trustor or Co-Borrower. The liability of Trustor hereunder shall be reinstated and revived and the rights of Trustee and/or Beneficiary shall continue if and to the extent that for any reason any amount at any time paid on account of any Obligation secured hereby is rescinded or must be otherwise restored by Trustee and/or Beneficiary, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. There are no oral agreements between or among Trustor, Trustee or Beneficiary with respect to the matters set forth herein.

31. Notwithstanding any provision of this Trust Deed to the contrary, in the event that Borrower has made payments on the Note in such amounts as to bring the then-outstanding Obligations to an amount not exceeding \$6,000,000, then, so long as no Event of Default has occurred hereunder and no Default or Event of Default has occurred under the Note (as such terms are defined therein), Beneficiary shall cause the portions of the Property identified as "Parcel G-1", "Parcel G-2" and "Parcel G-3" in Exhibit A hereto (such three parcels being the "Release Parcels") to be released and reconveyed from the lien of this Trust Deed to Trustor. Any such release and reconveyance shall not constitute (a) a release, waiver or discharge of any obligation of Trustor, Co-Borrower or any other person or entity under any Loan Document other than this Trust Deed, or (b) a release or discharge of any lien or security interest hereunder or under any other Loan Document except for the lien of this Trust Deed with respect to the Release Parcels.

*[Remainder of Page Intentionally Blank - Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned Trustor has caused this Deed of Trust, Security Agreement and Fixture Filing to be executed on the date indicated below, to be effective as of the date first above written.

"TRUSTOR":

MELLON VALLEY II, LLC

By: [Signature]  
Roland N. Walker, Manager

Date: December 13, 2007

Utah Organizational I.D. No.: 6736950-0160

STATE OF Utah )  
 ) : ss.  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of December, 2007, by Roland N. Walker, as manager of MELLON VALLEY II, LLC, a Utah limited liability company.

[Signature]  
NOTARY PUBLIC

My Commission Expires:

Residing at: \_\_\_\_\_

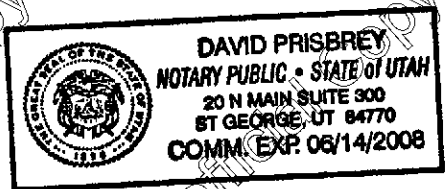


EXHIBIT A  
TO  
DEED OF TRUST

Legal Description of Land

The following real property located in WASHINGTON County, State of UTAH:

**Lender SR-9 Parcel C**

Beginning at a point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 525.87 feet along the section line and West 865.44 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running; thence South 16°20'36" East 1306.80 feet; thence South 73°39'24" West 500.00 feet; thence North 16°20'36" West 1306.80 feet to a point on the Southerly line of SR-9; thence North 73°39'24" East 500.00 feet along said Southerly line to the Point of Beginning.

**Lender SR-9 Parcel D**

Beginning at a point on the Southerly line of Highway SR-9, said point being South 00°15'22" West, 385.18 feet along the Section line and West 386.27 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East, 29.75 feet; thence South 73°53'22" West, 41.88 feet; thence South 00°15'22" West, 200.00 feet; thence North 73°53'22" East, 99.01 feet; thence South 16°20'36" East, 1112.19 feet; thence South 73°39'24" West, 500.00 feet; thence North 16°20'36" West, 1333.84 feet to a point on the Southerly line of said SR-9; thence North 73°39'24" East, 500.00 feet along said southerly line to the point of beginning.

**LESS AND EXCEPTING THEREFROM** the following described property:

Beginning at a point 300.0 feet South of the Northeast corner of Lot 1, Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, which is the point of intersection of the East boundary line of said Lot 1 and the Southerly right of way line of Highway U-17, and running thence South along the East boundary line of said Lot 1 a distance of 200.0 feet; thence South 73°38' West and parallel to the Southerly line of said highway a distance of 435.6 feet; thence North 200.0 feet, more or less, to the Southerly line of said highway; thence North 73°38' East along said Southerly line of said highway a distance 435.6 feet, more or less, to the point of beginning.

**Lender SR-9 Parcel E:**

Beginning at a point on the Southerly line of Highway SR-9, said point being South 00°15'22" West, 244.48 feet along the Section line and East 92.90 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running; thence South 16°20'36" East, 1446.95 feet; thence South 73°39'24" West, 500.00 feet; thence North 16°20'36" West, 1225.30 feet; thence North 73°53'22" East, 336.59 feet; thence North 00°15'22" East, 200.00 feet; thence South 73°53'22" West, 393.72 feet; thence North 16°20'36" West, 29.75 feet to a point on the Southerly line of said SR-9; thence North 73°39'24" East, 500.00 feet along said Southerly line to the point of beginning.

**LESS AND EXCEPTING THEREFROM the following described property:**

Beginning at a point 300.0 feet South of the Northeast corner of Lot 1, Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, which is the point of intersection of the East boundary line of said Lot 1 and the Southerly right of way line of Highway U-17, and running thence South along the East boundary line of said Lot 1 a distance of 200.0 feet; thence South 73°38' West and parallel to the Southerly line of said highway a distance of 435.6 feet; thence North 200.0 feet, more or less, to the Southerly line of said highway; thence North 73°38' East along said Southerly line of said highway a distance 435.6 feet, more or less, to the point of beginning.

**Lender SR-9 Parcel F:**

Beginning at a point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 244.48 feet along the section line and East 92.90 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running; thence North 73°39'24" East 500.00 feet; thence South 16°20'36" East 1306.80 feet; thence South 73°39'24" West 500.00 feet to a point on the Southerly line of said SR-9; thence North 16°20'36" West 1306.80 feet to a point on the Southerly line of said SR9 and the point of beginning.

**Lender SR-9 Parcel G:**

Beginning at a point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 103.78 feet along the section line and East 572.06 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running; thence North 73°39'24" East 500.00 feet; thence South 16°20'36" East 1306.80 feet; thence South 73°39'24" West 500.00 feet to a point on the Southerly line of said SR-9; thence North 16°20'36" West 1306.80 feet to a point on the Southerly line of said SR9 and the point of beginning.

**Parcel G-1:**

Beginning at a point on the section line said point being North 00°01'19" West 549.68 feet along said section line from the East Quarter Corner of Section 11, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running; thence North 44°32'42" West 16.39 feet; thence northerly 484.61 feet along an arc of a 473.46 foot radius curve to the right (center bears North 45°27'18" East long chord bears North 45°13'21" West 463.73 feet with a central angle of 58°38'42"); thence northerly 138.29 feet along an arc of a 1,495.20 foot radius curve to the right (center bears South 75°54'00" East long chord bears North 16°44'59" East 138.24 feet with a central angle of 05°17'57"); thence westerly 641.88 feet along an arc of a 1,326.50 foot radius curve to the left (center bears South 32°46'22" West long chord bears North 71°05'23" West 635.63 feet with a central angle of 27°43'29"); thence North 04°42'59" East 397.49 feet; thence East 661.60 feet to the section line; thence South 00°01'19" East 1,193.65 feet along the section line to the Point of Beginning.

**Parcel G-2:**

Beginning at a point being North 00°01'19" West 918.63 feet along the section line and West 861.31 feet line from the East Quarter Corner of Section 11, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running; thence North 00°03'21" West 401.22 feet to the 1/16<sup>th</sup> line; thence South 89°54'53" West 134.63 feet along said 1/16th line; thence North 00°02'54" West 423.69 feet; thence East 240.45 feet; thence South 04°42'59" West 492.09 feet; thence southerly 341.14 feet along an arc of a 1,570.54 foot radius curve to the right (center bears North 85°17'01" West long chord bears South 10°56'21" West 340.47 feet with a central angle of 12°26'43") to the Point of Beginning.

**Parcel G-3:**

Beginning at a point on the 1/16th line said point being South 89°45'34" West 1,327.43 feet along the center section line from the East Quarter Corner of Section 11, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running; thence North 00°03'28" West 858.04 feet along the 1/16th line; thence North 89°54'53" East 444.81 feet; thence southwesterly 350.88 feet along an arc of a 1,570.54 foot radius curve to the right (center bears North 70°19'10" West long chord bears South 26°04'52" West 350.16 feet with a central angle of 12°48'03"); thence southwesterly 594.64 feet along an arc of a 1,847.00 foot radius curve to the left (center bears South 57°31'07" East long chord bears South 23°15'30" West 592.08 feet with a central angle of 18°26'47") to the 1/16th line; thence South 89°45'34" West 56.20 feet along said 1/16th line to the Point of Beginning.

Tax ID H-4-2-11-2102  
H-4-2-1-1103