

Trust Deed Page 1 of 6

Russell Shirts Washington County Recorder

07/02/2020 04:31:54 PM Fee \$40.00 By BACKMAN

NTP

Tax Serial No. SG-6-2-23-4126

WHEN RECORDED MAIL TO:

NAME UNITED STATES SMALL BUSINESS
ADMINISTRATION
ADDRESS 1720 Broadway, 3rd Floor
**CITY &
STATE** Oakland, CA 94612
39807570-05

DEED OF TRUST, FIXTURE FILING AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST FIXTURE FILING AND ASSIGNMENT OF RENTS, MADE THIS 19th DAY OF JUNE, 2020 BY AND BETWEEN:

TRUSTOR: Sunset Bowling Properties, LLC, a Utah limited liability company

TRUSTOR'S MAILING ADDRESS: PO Box 7, Magna, UT 84044-0007

BENEFICIARY: The Mortgage Capital Development Corporation

TRUSTEE: United States Small Business Administration

PROPERTY in the City of Saint George in Washington County, in the State of Utah, described as:

1476 W. Sunset Blvd, St. George, UT 84770 and
more particularly described on the attached Exhibit A

This Deed of Trust, made on the above date between the Trustor, Trustee, and Beneficiary above named,
WITNESSETH:

That Trustor irrevocably grants and conveys to Trustee in Trust, with Power of Sale, Trustor's interest in the above described real property, including, without limitation, all of Trustor's right title and interest in all fixtures, any and all buildings and other improvements now or hereafter erected on the premises, and all of Trustor's water rights related to the real property and together with all of Trustor's estate, and all of Trustor's right, title and interest in all leases, subleases, rents, issues, profits, or income thereof, (all of which are hereinafter called "property income"); **SUBJECT, HOWEVER,** to the right, power, and authority hereinafter given to and conferred upon beneficiary to collect and apply such property income, **FOR THE PURPOSE OF SECURING:**

A. Payment of the indebtedness in the principal sum of ONE MILLION ONE HUNDRED FIFTY-NINE THOUSAND and No/100 DOLLARS (\$1,159,900.00), evidenced by that certain promissory note of even date herewith made by Trustor, or any one of them, payable to Beneficiary or order, and any extension or renewal thereof;

B. Performance of each agreement of Trustor contained or incorporated herein by reference;

C. Payment of such sums as may be advanced by Beneficiary or Trustee to protect the security in accordance with the terms of this Deed of Trust, plus interest thereon at the rate set forth in said promissory note; and

D. Payment of such further sums as may be advanced by Beneficiary when evidenced by another promissory note(s) reciting it is secured by this Deed of Trust.

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

1) To keep said 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, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said property in violation of law; and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder to invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

4) To pay: before delinquent, all taxes and assessments affecting said property; when due, all encumbrances, charges, and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; and all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

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, 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 said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, pay necessary expenses, employ counsel, and pay his reasonable fees.

5) To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from the date of expenditure at the same rate as is provided for in the note secured by this Deed of Trust or at the high legal rate, whichever be the greater rate. Any amounts so paid by Beneficiary or Trustee shall become a part of the debt secured by this Deed of Trust and a lien on said premises or shall become immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

6) That any award of damages in connection with any condemnation or any such taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and the ownership thereof subject to the Deed of Trust), and upon receipt of such moneys Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

7) That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8) That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, and without liability therefor, and

without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: a) release and reconvey all or any part of said property; b) consent to the making and recording, or either, of any map or plat of the property or any part thereof; c) join in granting any easement thereon; and/or d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof.

9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation and retention, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such property income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such property income, and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

11) Fixture Filing. The Personal Property in which Beneficiary has a security interest includes goods which are or may become fixtures on the Property. This Deed of Trust is intended to serve as a fixture filing pursuant to the terms of Utah Code Annotated Section 70A-2a-309 and all relevant sections of the Utah Code Annotated. This filing is to be recorded in the real estate records of the county in which the Property is located. Trustor warrants and agrees that there is no financing statement covering the Trust Estate or any part thereof on file in any public office.

12) That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s), and all documents evidencing expenditures secured hereby.

Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, said property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust to the extent permitted by law, including the cost of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the rate set forth in the aforesaid promissory note; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

Immediately after such sale, Trustor shall surrender possession of the property to the purchaser, in the event possession has not previously been surrendered by Trustor, and upon failure to vacate the property, Trustor shall pay to the purchaser the reasonable rental value of the property, and/or at purchaser's option, may be dispossessed in accordance with the law applicable to tenant's holding over.

13) That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

14) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter and the singular number includes the plural.

15) That Trustee accepts this Trust when this Deed of Trust, 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 any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

16) Without affecting the liability of Trustee or any other party now or hereafter bound by the terms hereof for any obligation secured hereby, Beneficiary may, from time to time and with or without notice as he shall determine, release any person now or hereafter liable for the performance of such obligation, extend the time for payment or performance, accept additional security, and alter, substitute or release any security.

17) Trustee or Beneficiary may enter upon and inspect the premises at any reasonable time.

18) No remedy hereby given to Beneficiary or Trustee is exclusive of any other remedy hereunder or under any present or future law. No delay on the part of Trustee or Beneficiary in enforcing their respective rights or remedies hereunder shall constitute a waiver thereof.

19) Trustor waives the right to assert at any time any statute of limitations as a bar to any action brought to enforce any obligation hereby secured.

20) This Deed of Trust is subject to a Promissory Note. All amounts owing under this Deed of Trust and/or the Promissory Note shall become immediately due and payable upon the sale, encumbrance or other transfer of any interest in the Real Property, whether voluntary or involuntary. This Deed of Trust is also a security agreement and a financing statement to be filed in the office of the county recorder to include all fixtures as collateral.

21) The invalidity or unenforceability of any provision herein shall not affect the validity and enforceability of any other provision.

22) The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:


a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

b) CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

The undersigned Trustor(s) request that a copy of any notice of Trustee's sale hereunder be mailed to them at the address hereinbefore set forth.

Sunset Bowling Properties, LLC

By: 
Myron Mitchell, Manager

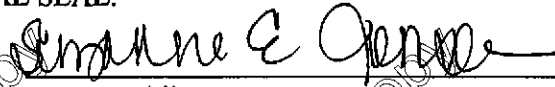
STATE OF UTAH)

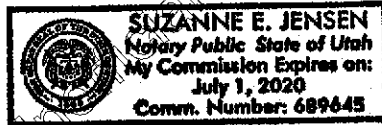
) ss.

COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me by Myron Mitchell as Manager of Sunset Bowling Properties, LLC on June 19, 2020.

WITNESS MY HAND AND OFFICIAL SEAL.


Notary Public



Order No.: 8-004666

EXHIBIT "A"

LEGAL DESCRIPTION

Beginning at a point which lies North 89 deg. 28' 15" East long the section line 70.54 feet and South 348.14 feet from the North quarter corner of Section 23, Township 42 South Range 16 West Salt Lake Base and Meridian, said point being the true point of beginning and running thence South 300.0 feet to a point on the North right of way line of Sunset Blvd., said point being on a curve to the right whose radius point bears North 11 deg. 56' 30" West 2814.90 feet; thence along the arc of said curve and said North line of Sunset Blvd. 367.02 feet; thence North 291.944 feet; thence North 80 deg. 33' 06" East 367.99 feet to the true point of beginning.

Parcel No.: SG-6-2-23-4126