

Amendment to Trust Deed Page 1 of 9
Gary Christensen Washington County Recorder
05/20/2021 04:32:56 PM Fee \$40.00 By
SOUTHERN UTAH TITLE COMPANY

WHEN RECORDED PLEASE RETURN TO:

Joshua E. Little
DENTONS DURHAM JONES PINEGAR P.C.
192 East 200 North, Third Floor
St. George, Utah 84770

Parcel No. SG-7271-B-2-A-1-A
~~SG-7271-B-3-A-1~~

**AMENDMENT OF PERFORMANCE TRUST DEED,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FILING**

THIS AMENDMENT OF PERFORMANCE TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Amendment") is made and given this 17th day of May, 2021, between THE LEDGES AT SNOW CANYON, LLC, a Utah limited liability company, as trustor ("Trustor"), whose address is 1472 East 3950 South, St. George, Utah 84790, SOUTHERN UTAH TITLE COMPANY, as trustee ("Trustee"), whose address is 20 North Main, Suite 300, St. George, Utah 84770, and JENCO, LC, as to an undivided 53.3% interest, and DEAN GARDNER INVESTMENT, LC, as to an undivided 46.7% interest, both of which are Utah limited liability companies, as beneficiaries (collectively referred to herein as the "Beneficiary"), and all of whose address is 335 E. St. George Blvd., Suite 301, St. George, Utah 84770.

RECITALS

A. On or about September 16, 2013, Trustor and Beneficiary entered into that certain Real Property Option Agreement (the "Option Agreement") pursuant to which Trustor was granted an option to acquire from Beneficiary certain real property situated in Washington County, Utah (the "Option Property"), subject to the terms and conditions of the Option Agreement.

B. Pursuant to the terms of the Option Agreement, Trustor exercised an option to purchase (the "Purchase") a 13.921 acre portion of the Option Property (the "Purchased Property") identified as the proposed Yellow Knolls – Phase 1 property and the proposed Fish Rock – Phases 3 & 4 property, as described in that certain Performance Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing among Trustor, Beneficiary and Trustee, recorded in the Office of the Recorder of Washington County, State of Utah on March 10, 2021 as Document No. 20210017326 (the "Trust Deed"), which Trust Deed secures Trustor's payment and other obligations to Beneficiary in connection with the Purchase.

C. Following the consummation of the Purchase, Trustor discovered that the legal description of the portion of the Purchased Property identified as the proposed Yellow Knolls – Phase 1 property did not include an approximately 0.432 acre portion of the real property intended to be included in such property.

D. Pursuant to the terms of the Option Agreement, Trustor was required to pay Beneficiary a Minimum Payment of \$556,840.00 for the Purchased Property.

E. In light of the foregoing, the parties desire to amend the Trust Deed to (i) correct the legal description of the Purchased Property to include all of the real property intended to comprise the proposed Yellow Knolls – Phase 1 property, and (ii) amend the amount of the Minimum Payment required to be paid for the Purchased Property to reflect the additional 0.432 acre parcel of property added to the Yellow Knolls – Phase 1 property.

F. Any capitalized terms otherwise not defined herein shall have the meanings given to them in the Trust Deed.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the payment of TEN AND NO/100 DOLLARS (\$10.00) and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** All of the terms and representations set forth in the above recitals are incorporated herein by this reference.

2. **Amendment of Trust Deed – Legal Description of Property.** The term Property (as defined in the Trust Deed) shall be amended to incorporate the legal description of the additional 0.432 acre parcel of property intended to be included in the property identified as the proposed Yellow Knolls – Phase 1 property. In furtherance of such amendment, Exhibit A attached hereto shall replace and supersede in its entirety the original Exhibit A attached to the Trust Deed.

3. **Amendment of Trust Deed – Section 20(d).** Section 20(d) of the Trust Deed is hereby amended in its entirety to read as follows:

(d) Minimum Payment; Credit Against Percentage Payments; Audit Right. Trustor and Beneficiary acknowledge and agree that Trustor has purchased the Property from Beneficiary pursuant to that certain Real Property Option Agreement dated September 16, 2013, between Trustor and Beneficiary (the “*Option Agreement*”). In connection with that purchase, Trustor is required to pay to Beneficiary a minimum payment for the Property in the amount of Forty Thousand Dollars (\$40,000) per acre which equates to Five Hundred Seventy-Four Thousand One Hundred Twenty and 00/100 Dollars (\$574,120.00) for the 14.353 acre Property (the “*Minimum Payment*”). Unless Trustor paid the Minimum Payment at the time of the purchase of the Property,

Trustor shall pay the Minimum Payment to Beneficiary within one hundred seventy (170) days of the closing of the purchase. In that case, all Percentage Payments received by Beneficiary under Section 20(b) during that 170-day period shall be applied to the Minimum Payment. If those Percentage Payments received during that 170-day period do not equal or exceed the Minimum Payment, Trustor shall pay Beneficiary the shortfall prior to the end of that 170-day period. The amount of that shortfall paid by Trustor, or the amount of the Minimum Payment paid by Trustor at the time of purchase, is herein referred to as the "**Percentage Payment Credit**". Thereafter, all Percentage Payments due hereunder shall be charged against the amount of the Percentage Payment Credit, if any, with no Percentage Payments being due and payable to the Beneficiary until the Percentage Payment Credit is used. After Percentage Payments totaling the amount of the Percentage Payment Credit have been charged, then the full Percentage Payments for every Lot sale shall be due and payable by Trustor to Beneficiary as provided in Section 20(b). The parties acknowledge and agree that Trustor shall maintain an accurate and complete accounting of the credited payments. Trustor shall provide Beneficiary with copies of all sales contracts and settlement statements certified by Trustor to be true and complete. Provided Beneficiary provides Trustor with at least three (3) days notice, Beneficiary shall have the right, at Beneficiary's sole cost and expense, to audit, review and photocopy Trustor's records pertaining to sales at the Property.

4. **Remaining Terms Unchanged.** Except as modified hereby, all of the remaining terms and conditions set forth in the Trust Deed shall remain unchanged and in full force and effect.

[Signature and acknowledgement pages follow]

IN WITNESS WHEREOF, the parties hereto hereby execute this Amendment as of the day and year first written above.

TRUSTOR:

THE LEDGES AT SNOW CANYON, LLC,
a Utah limited liability company

By: Ed Burgess
Name: Ed Burgess
Its: Manager

By: _____
Name: _____
Its: _____

BENEFICIARY:

DEAN GARDNER INVESTMENT, LC,
a Utah limited liability company

By: _____
Name: _____
Its: _____

JENCO, LC,
a Utah limited liability company

By: _____
Name: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto hereby execute this Amendment as of the day and year first written above.

TRUSTOR:

THE LEDGES AT SNOW CANYON, LLC,
a Utah limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

BENEFICIARY:

DEAN GARDNER INVESTMENT, LC,
a Utah limited liability company

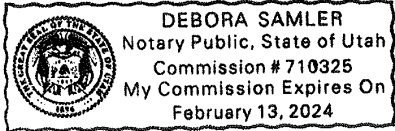
By: *Larry H Gardner*
Name: LARRY H GARDNER
Its: _____

JENCO, LC,
a Utah limited liability company

By: *Gilbert M Jennings*
Name: GILBERT M JENNINGS
Its: MANAGER

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 17th day of May, 2021, by Ed Burgess and _____, the managers of The Ledges at Snow Canyon, LLC, a Utah limited liability company.



NOTARY PUBLIC

Debora Samler

My commission expires:

2-13-2024

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

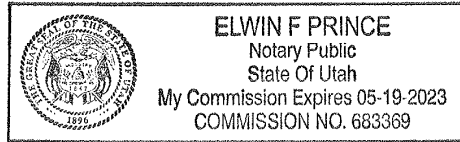
The foregoing instrument was acknowledged before me this 14th day of May, 2021, by Gilbert M. Jennings the Manager of JENCO, LC, a Utah limited liability company.

NOTARY PUBLIC

Elwin F Prince

My commission expires:

5-19-23



STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 14th day of May, 2021, by LARRY H. Gardner, the Manager of Dean Gardner Investment, LC, a Utah limited liability company.

NOTARY PUBLIC



My commission expires:

5-19-23

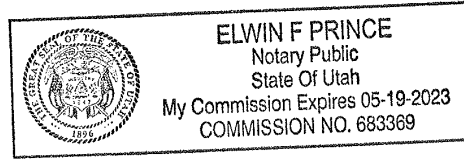


EXHIBIT A
(Description of Property)

PROPOSED YELLOW KNOLLS – PHASE 1 DESCRIPTION

BEGINNING AT A POINT ON THE EASTERLY BOUNDARY OF THE LEDGES OF ST. GEORGE SAND COVE – PHASE 1 SUBDIVISION, AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER’S OFFICE SAID POINT BEING SOUTH 88°52’06” EAST ALONG THE SECTION LINE, A DISTANCE OF 264.486 FEET AND SOUTH 1121.149 FEET FROM THE NORTH QUARTER CORNER OF SECTION 26, TOWNSHIP 41 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN, (BASIS OF BEARING BEING SOUTH 88°40’34” EAST BETWEEN THE NORTH QUARTER CORNER OF SECTION 27 AND THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 41 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN), AND RUNNING THENCE SOUTH 86°42’55” EAST 65.563 FEET; THENCE SOUTH 85°48’16” EAST 107.723 FEET; THENCE NORTH 53°39’44” EAST 38.856 FEET; THENCE SOUTH 86°42’25” EAST 161.890 FEET; THENCE SOUTH 03°17’35” WEST 16.621 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 272.500 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 12°56’09”, A DISTANCE OF 61.523 FEET; THENCE SOUTH 73°46’16” EAST 180.600 FEET; THENCE SOUTH 40°24’11” WEST 44.846 FEET; THENCE SOUTH 49°35’49” EAST 375.034 FEET; THENCE NORTH 40°24’11” EAST 16.000 FEET; THENCE SOUTH 49°35’49” EAST 162.500 FEET; THENCE SOUTH 40°24’11” WEST 111.899 FEET; THENCE SOUTH 49°35’49” EAST 103.603 FEET; THENCE SOUTH 40°24’11” WEST 100.00 FEET; THENCE NORTH 49°35’49” WEST 103.603 FEET; THENCE NORTH 40°24’11” EAST 25.899 FEET; THENCE NORTH 49°35’49” WEST 135.000 FEET; NORTH 40°24’11” EAST 50.000 FEET; THENCE NORTH 49°35’49” WEST 390.034 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG THE ARC OF A 525.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 35°48’57”, A DISTANCE OF 328.181 FEET; THENCE NORTH 85°24’47” WEST 132.510 FEET TO THE EASTERLY BOUNDARY OF SAID THE LEDGES OF ST. GEORGE SAND COVE – PHASE 1 SUBDIVISION; THENCE NORTH 04°35’13” EAST ALONG SAID SUBDIVISION BOUNDARY, A DISTANCE OF 117.265 FEET TO THE POINT OF BEGINNING.

CONTAINS APPROXIMATELY 3.500 ACRES

PROPOSED FISH ROCK – PHASES 3 & 4 DESCRIPTION

BEGINNING THE NORTHEASTERLY BOUNDARY CORNER OF THE FISHROCK – PHASE 2 SUBDIVISION AND A POINT ON THE SOUTHEASTERLY BOUNDARY OF THE LEDGES OF ST. GEORGE SAND COVE – PHASE 1 SUBDIVISION, AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER’S OFFICE SAID POINT BEING SOUTH 88°52’06” EAST ALONG THE SECTION LINE, A DISTANCE OF 82.447 FEET AND SOUTH 1625.811 FEET FROM THE NORTH QUARTER CORNER OF SECTION 26, TOWNSHIP 41 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND

MERIDIAN, (BASIS OF BEARING BEING SOUTH 88°40'34" EAST BETWEEN THE NORTH QUARTER CORNER OF SECTION 27 AND THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 41 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN), AND RUNNING THENCE ALONG THE BOUNDARY OF SAID THE LEDGES OF ST. GEORGE – SAND COVE – PHASE 1 SUBDIVISION THE FOLLOWING (2) TWO COURSES: (1) NORTH 34°41'04" EAST 281.867 FEET; AND (2) NORTH 04°35'13" EAST 152.889 FEET; THENCE SOUTH 85°24'47" EAST 132.510 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 525.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 35°48'57", A DISTANCE OF 328.181 FEET; THENCE SOUTH 49°35'49" EAST 390.034 FEET; THENCE SOUTH 40°24'11" WEST 344.275 FEET; THENCE SOUTH 31°40'38" WEST 235.469 FEET; THENCE SOUTH 43°00'23" WEST 118.104 FEET; THENCE SOUTH 50°11'27" WEST 118.104 FEET TO THE NORTHEASTERLY BOUNDARY OF SAID FISHROCK – PHASE 2 SUBDIVISION; THENCE ALONG SAID SUBDIVISION BOUNDARY THE FOLLOWING (9) NINE COURSES: (1) NORTH 36°13'01" WEST 170.000 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 53°23'43" WEST); (2) RUNNING NORTHEASTERLY ALONG THE ARC OF A 772.500 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 02°31'54", A DISTANCE OF 34.133 FEET; (3) NORTH 38°44'55" WEST 44.853 FEET; (4) NORTH 38°31'03" WEST 130.030 FEET; (5) NORTH 46°29'09" EAST 99.732 FEET; (6) NORTH 36°54'29" EAST 20.871 FEET; (7) NORTH 53°23'43" WEST 160.787 FEET TO A POINT ON THE ARC OF A NONTANGENT CURVE, (RADIUS POINT BEARS NORTH 53°23'43" WEST); (8) RUNNING NORTHEASTERLY ALONG THE ARC OF A 1020.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 02°03'31", A DISTANCE OF 36.648 FEET; AND (9) NORTH 55°27'14" WEST 214.449 FEET TO THE POINT OF BEGINNING.

CONTAINS APPROXIMATELY 10.853 ACRES