



W2955529

When Recorded Mail To:
Michael S. Malmborg
Durham Jones & Pinegar
372 24th Street, Suite 400
Ogden, Utah 84401

E# 2955529 PG 1 OF 10
Leann H. Kiltz, WEBER COUNTY RECORDER
05-Dec-18 0122 PM FEE \$28.00 DEP TN
REC FOR: DURHAM JONES & PINEGAR - OGDEN
ELECTRONICALLY RECORDED

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

THIS DEED OF TRUST, made this 16 day of October, 2018, by **BCP Sunset Holdings, LLC**, a Utah limited liability company, (“Trustor”), whose address is 3322 W. Neider Canyon Drive, South Jordan, Utah 84095, **Michael S. Malmborg**, attorney at law (“Trustee”), whose address is 372 24th Street, Suite 400, Ogden, Utah 84401, and **Dennis H. Mansfield** (“Beneficiary”), whose address is 2327 W. 5600 S., Roy, Utah 84067,

WITNESSETH: That Trustor **conveys and warrants to Trustee in trust, with power of sale**, the property, situated in Weber County, State of Utah, more particularly described on Exhibit “A”, attached hereto and by this reference incorporated herein (the “Property”),

Together with all buildings, fixtures and improvements thereon and 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 said 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;

For the purpose of securing for the benefit of Beneficiary the following obligations (the “Obligations”): (i) the timely payment and performance of the obligations of Trustor with respect to that certain promissory note (the “Note”) made by Trustor of even date herewith and in the principal sum of One Million Four Hundred Twenty-Seven Thousand Five-hundred dollars (\$1,427,500) and payable to the order of Beneficiary at the time, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; (ii) the payment of any sums expended or advanced by Trustee or Beneficiary to protect the security of this instrument; and (iii) the timely performance of any and all of the duties and obligations of Trustor contained in this Trust Deed.

To protect the security of this Deed of Trust, Trustor agrees:

1. To keep the Property in good condition and repair; 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 to allow Beneficiary to inspect the Property at all times. 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. 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 clauses in favor of and in form acceptable to Beneficiary as well as naming Beneficiary as an additional insured. 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.

3. 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.

4. To 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 also appear in and defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

5. To pay at least ten (10) days before delinquency all taxes and assessments affecting the Property, including all "rollback" taxes payable upon removal of all or any part of said property from assessment under the Utah Farmland Assessment Act (Utah Code section 59-2-501 et seq.) and all rents, assessments and charges for water appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges and liens with interest on the Property or any part thereof, to which at any time appear to be prior or superior thereto; to pay all costs, fees and expenses of this Trust Deed.

6. To provide Beneficiary with copies of receipts showing payment of all taxes and assessments affecting the Property and all premiums on insurance therefor, within thirty (30) days of such payment.

7. To comply and insure that the Property complies at all times and in all respects with all applicable local, state, and federal laws, ordinances, regulations and orders relating to the protection of human health or the environment, including, without limitation, all requirements pertaining to the protection of the health and safety of employees or the public and all requirements pertaining to the use, presence, analysis, generation, manufacture, storage, treatment, disposal, transportation, release or threatened release of any "Hazardous Substances" (as that term is defined in Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended from time to time (42 U.S.C. §§ 9601 et seq.) (collectively, "Environmental Laws").

8. To indemnify, defend (by counsel acceptable to Beneficiary), protect, and hold harmless Beneficiary, and each of Beneficiary's directors, officers, employees, agents, attorneys, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, settlement of claims or judgments, losses (including, without limitation, diminution in the value of the Property), damages (including, without limitation, damages for the loss or restriction on use of any area, of any rentable or usable space or of any amenity of the Property), costs or expenses (including, without limitation, attorneys' fees, consultant fees, expert fees, court and appeal costs, and costs of investigating, remediating or otherwise responding to releases or threatened releases of Hazardous Substances) for the death of or injury to any person or damage to any property or natural resources whatsoever, arising from or caused in whole or in part, directly or indirectly, (a) by the presence in, on, under, or about the Property, or any discharge, release or threatened release in or from the Property of any Hazardous Substances or Trustor's use, analysis, storage, transportation, disposal, release, threatened release, discharge, or generation of Hazardous Substances to, in, on, under, about, or from the Property, or (b) Trustor's failure to comply with any Environmental Law. Trustor's obligations under this Section shall include, without limitation, and whether foreseeable or unforeseeable, any and all costs incurred in connection with any investigation of site conditions, and any and all costs of any required or necessary repair, cleanup, detoxification, or decontamination of the Property, and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. For purposes of the release and indemnity provisions hereof, any acts or omissions of Trustor, or by employees, agents, assignees, contractors, or subcontractors of Trustor or others acting for or on behalf of Trustor (whether or not they are negligent, intentional, willful, or unlawful), shall be strictly attributable to Trustor.

9. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of eighteen percent (18%) per annum until paid, and the repayment thereof shall be secured hereby.

10. To comply with each and every term, condition, procedure, promise and covenant set forth in the Note.

Trustor further agrees, covenants, represents and warrants as follows:

11. 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. 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 attorney's 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.

12. 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 (i) join in granting any easement or creating any restriction thereon; (ii) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (iii) 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 Trustee's reasonable fees for any of the services mentioned in this paragraph.

13. Trustor hereby assigns and grants to Beneficiary a security interest in all of the following: (i) all furnishings, fixtures, equipment, materials, supplies, goods, and any other personal property now or hereafter located on, attached to, or used in connection with the Property or the construction of any improvements thereon, whether or not stored or located on or off the Property; (ii) all accounts, contracts and contract rights (including without limitation contracts for architectural, engineering, soils, and landscaping reports, plans, designs, and services; contracts for environmental site assessments, inspections, reports, and related matters; contracts for maintenance and service; and contracts for the construction, remodeling, refurbishing, or demolition of any improvements on the Property), permits, licenses, plans, drawings, specifications, models, performance and payment bonds, security deposits, escrow and impound funds and accounts, documents, instruments, chattel paper, and general intangibles in any manner pertaining to the Property, the construction of any improvements thereon, or the management, use, maintenance, or operation thereof; (iii) all insurance policies, insurance proceeds, unearned premiums, and condemnation awards with respect to the Property; and (iv) all products and proceeds from any of the foregoing (collectively, the "Personal Property"). Trustor shall execute and deliver to Beneficiary such further instruments, including without limitation Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may be reasonably required by Beneficiary to carry out more effectively the purposes of this Trust Deed and to subject to the lien, security interest and mortgage created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Trust Deed. Trustor authorizes (to the extent such authorization is valid under applicable law) Beneficiary to execute and file, without Trustor's signature, such Uniform Commercial Code Financing Statements and Continuation Statements as Beneficiary may deem necessary in order to perfect, or continue the perfection, of the security interests created by this Trust Deed. Trustor shall not, during the existence of this Trust Deed and without the written consent of Beneficiary, remove from the Property or any improvements thereon, any fixture, structure, or other improvement at any time affixed or constructively affixed to the Property or its improvements or any portion thereof, or any Personal Property, except in the ordinary course of Trustor's business.

14. This Trust Deed constitutes a Security Agreement with respect to the Personal Property and any of the Property, to the extent that it constitutes property subject to Article 9 of the Utah Uniform Commercial Code, and Beneficiary shall have all of the rights and remedies with respect thereto of a secured party under the Utah Uniform Commercial Code, as well as all

other rights and remedies available at law or in equity. Trustor agrees that Beneficiary may file this Trust Deed or a reproduction or photocopy thereof in any governmental office necessary to perfect Beneficiary's security interest in the Personal Property, and that the same shall be sufficient as a financing statement.

15. As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the Property affected by this Trust Deed and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, 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, royalties, issues, and profits. 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.

16. 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 his reasonable fees. In addition, upon any default by Trustor 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, in its own name sue for or otherwise collect said rents, issues, and profits, including those 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.

17. 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 notice of default hereunder or invalidate any act done pursuant to such notice.

18. Notwithstanding anything to the contrary contained herein, Beneficiary, with regard to all Personal Property, 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 Utah Uniform Commercial Code, and any and all rights and remedies available to Beneficiary under any other applicable law. Upon written demand from Beneficiary, Trustor shall, at Trustor's expense, assemble such Personal Property and make it available to Beneficiary at a reasonably convenient place designated by Beneficiary.

19. A sale or disposition of the Property, or a change of control of Trustor, would constitute a material impairment of the Property as security for the loan. Accordingly, Trustor shall not sell, convey or otherwise transfer the Property or any part thereof or interest therein, without the prior written consent of Beneficiary. If the Property, or any part thereof, or any interest therein, is sold, conveyed or otherwise transferred without the prior written consent of Beneficiary, or if Trustor be divested of title to the Property, or any part thereof or interest therein, in any manner, whether voluntarily or involuntarily, then the full principal indebtedness of the Note and the other obligations of Trustor hereunder, at the option of Beneficiary and without demand or notice, shall immediately become due and payable.

20. 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.

21. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, 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 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. Beneficiary also shall deposit with Trustee, the Note and all documents evidencing expenditures secured hereby.

22. 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 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. Trustee shall execute and deliver to the purchaser its Deed conveying the 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 (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at eighteen percent (18%) per annum from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the County in which the sale took place.

23. In addition to the exercise of the power of sale and foreclosure of this Trust Deed, upon the occurrence of any default hereunder, 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 on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court. The procedures relating to the exercise of the power of sale or foreclosure of this Trust Deed as a mortgage shall be governed by then existing law, or to the extent such procedures are not covered by then existing law, by law existing as of the date of this Trust Deed. Following foreclosure of this Trust Deed as a mortgage, the purchaser at the sale held pursuant to judicial decree shall be entitled to possession of the Property during any period of redemption.

24. 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.

25. In addition to anything else contained in this Trust Deed, the following shall constitute an event of default hereunder and shall automatically permit Beneficiary and/or Trustee to make use of all of its remedies at law or contained in this Trust Deed: (a) Trustor fails to timely make a payment required hereunder or timely perform any of the Obligations; (b) Trustor (i) files a voluntary petition in bankruptcy or files a petition or answer seeking or acquiescing in a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation relating to bankruptcy, insolvency or other relief for debtors, (ii) consents to or acquiesces in the appointment of a trustee, receiver or liquidator of Trustor or the Property (iii) makes a general assignment for the benefit of creditors, or (iv) admits in writing its inability to pay its debts generally as they become due; (c) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Trustor seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation relating to bankruptcy, insolvency or other relief for debtors; or (d) a trustee, receiver or liquidator of Trustor or the Property is appointed without the consent or acquiescence of Trustor.

26. This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successor and assigns. All

obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall include any owner, holder, pledge or assignee of the Note secured hereby. In this Deed of Trust, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

27. 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.

28. This Deed of Trust shall be construed according to the laws of the State of Utah.

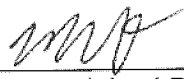
29. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address hereinbefore set forth.

30. Trustor shall assign to Beneficiary, as additional security for Trustor's performance of its obligations hereunder, any and all future lease agreements entered into by Trustor, as landlord, which pertain to the Property or the improvements thereon, or any portion thereof, and all such leases shall contain a covenant on the part of the tenant thereunder, enforceable by Beneficiary, obligating such tenant upon request of Beneficiary, to attorn to and become a tenant of Beneficiary, or any purchaser from Trustee or through foreclosure of this Trust Deed or deed-in-lieu of foreclosure, for the unexpired term of, and subject to the terms and conditions of such future lease agreements. The assignments of lease shall be in form and content satisfactory to Beneficiary.

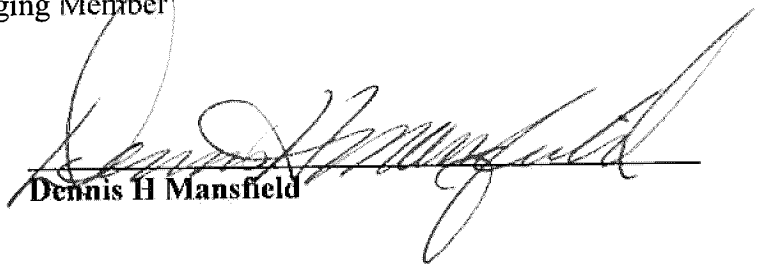
Trustor and Beneficiary have executed and acknowledged this instrument as of the date first set forth above.

Trustor:

BCP Sunset Holdings, LLC,
a Utah limited liability company

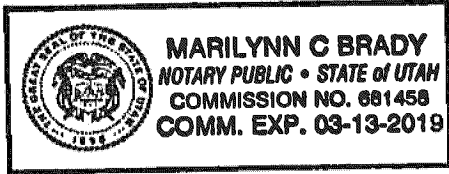
By: 
Name: Michael Richard Lunt
Title: Managing Member

Beneficiary:


Dennis H Mansfield

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

The foregoing instrument was acknowledged before me this 16th day of October, 2018, by **Michael Richard Lunt**, as the **Managing Member of BCP Sunset Holdings, LLC.**



Marilynn C. Brady

NOTARY PUBLIC

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

The foregoing instrument was acknowledged before me this 15th day of October, 2018, by **Dennis H Mansfield.**

Jill S. Hill

NOTARY PUBLIC



EXHIBIT "A"

All of the following described real property located in Weber County, Utah, to-wit:

Part of the South half of the Northeast quarter of Section 11, Township 6 North, Range 2 West, Salt Lake Base and Meridian; Beginning at a point on the West side of the State Highway, said point being East 1374.78 feet, from the Southwest corner of said Northeast quarter to the center line of 4 Mile Creek; East to a point 167 feet West of the center of the State Highway, North 200 feet; East 117 feet to West line of said Highway and North 00°15'00" East 724.24 feet to the true point of beginning; thence North 85°32'51" West 236.17 feet; thence North 00°41'26" East 232.35 feet; thence South 89°00'21" East 236.23 feet to State Highway; thence South 00°15'00" West 232.43 feet, more or less, to the point of beginning.
(Parcel No. 15-030-0128)