

40  
18

E 3271483 B 7554 P 2348-2365  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
07/15/2020 03:10 PM  
FEE \$40.00 Pgs: 18  
DEP RT REC'D FOR FIRST AMERICAN T  
TLE-NCS

RETURNED  
JUL 15 2020

06-039-0230

Drawn By ~~and Return To:~~  
Gregory Faltin, Esq.  
Moore & Van Allen, PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, NC 28202-4003

Return To: First American Title NCS  
601 Travis St. Ste. 1875  
Houston, TX 77002  
Attn: Sharon Mork  
NCS No. 1009278-UTA

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

Address(es): 391 North 500 West, Bountiful, UT

Store Number(s): 875

THIS AGREEMENT AMENDS, MODIFIES, RESTATES AND REPLACES THAT CERTAIN DEED OF TRUST, SECURITY AGREEMENT, FIXTURES FINANCING STATEMENT AND ASSIGNMENT OF RENTS AND LEASES DATED FEBRUARY 22, 2016 EXECUTED BY GRANTOR IN FAVOR OF CAPITAL ONE NATIONAL ASSOCIATION, AND RECORDED AT THE DAVIS COUNTY REGISTER OF DEEDS (THE "REGISTRY") AS ENTRY NO. 2923738, BOOK 6463, PAGE 723, AS SUBSEQUENTLY ASSIGNED TO REGIONS BANK, N.A., AS ADMINISTRATIVE AGENT, BY THAT CERTAIN ASSIGNMENT OF DEED OF TRUST, SECURITY AGREEMENT, FIXTURES FINANCING STATEMENT AND ASSIGNMENT OF RENTS AND LEASES DATED AUGUST 24, 2018, AND RECORDED IN THE REGISTRY AS ENTRY NO. 3116090, BOOK 7095, PAGE 368 (THE "EXISTING DEED OF TRUST").

MAXIMUM PRINCIPAL AMOUNT TO BE ADVANCED PURSUANT TO THE LOAN DOCUMENTS IS \$135,000,000.00.

THE MATURITY DATE OF THE LOAN DOCUMENTS, EXCLUSIVE OF ANY OPTION TO RENEW OR EXTEND SUCH MATURITY DATE, IS MAY 14, 2025.

THIS DEED OF TRUST COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING AND IS TO BE FILED IN THE REAL ESTATE RECORDS.

THIS AMENDED AND RESTATED DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENT AND FIXTURE FILING (this "Deed of Trust") is made and entered into as of July 13, 2020, by SUN DEVELOPMENT, L.P., a Texas limited partnership, with an address of 8550 Technology Forest Place, The Woodlands, Texas 77381, Attention of John W. Cook (the "Grantor"), as trustor, to FIRST AMERICAN TITLE COMPANY (the "Trustee"), as trustee, whose mailing address 215 South State Street, Suite 380, Salt Lake City, Utah 84111 for the benefit of REGIONS BANK, N.A. ("Regions"), in its capacity as Collateral Agent for the Lenders (as defined in the Credit Agreement (hereinafter defined)) and any other holder of the Secured Obligations (as hereinafter defined) with an address of Regions Bank, Syndicate Services, 1180 West Peachtree St. NW, Suite 1400, Atlanta, GA 30309, Attention of JoAnn Tehranchi (Regions, in such capacity, together with any successors and permitted assigns, the "Agent"), as beneficiary.

RECITALS:

WHEREAS, Petroleum Wholesale, L.P., a Texas limited partnership, Sun Development, L.P., a Texas limited partnership, and JC Capital, L.P., a Texas limited partnership (collectively, the "Borrowers"), Regions Bank, as collateral agent, and certain of the Lenders are party to that certain Credit Agreement, dated as of February 22, 2016 (as amended by that certain First Amendment to Credit Agreement and Waiver dated as of July 20, 2018, that certain Second Amendment to Credit Agreement and First Amendment to Each of Security Agreement and Guaranty Agreement dated as of August 24, 2018, that certain Third Amendment to Credit Agreement dated as of December 21, 2018, that certain Increasing Lender Supplement and Incremental Term Loan Amendment dated as of February 7, 2019, that certain Fourth Amendment to Credit Agreement and Second Amendment to Security Agreement dated as of April 25, 2019, and as further amended, restated, increased, extended, supplemented or otherwise modified from time to time, the "Existing Credit Agreement").

WHEREAS, the obligations of the Borrowers under the Existing Credit Agreement, were secured, inter alia, by the terms of the Existing Deed of Trust.

WHEREAS, the Borrowers, the Agent and the Lenders have amended and restated the Existing Credit Agreement pursuant to the terms of that certain Amended and Restated Credit Agreement dated as of May 14, 2020 (as further amended, modified, supplemented, extended, renewed or replaced from time to time, the "Credit Agreement"). All terms used but not otherwise defined herein shall have the meanings provided in the Credit Agreement.

WHEREAS, the Grantor is required under the terms of the Credit Agreement to execute and deliver this Deed of Trust modifying, amending and restating the Existing Deed of Trust as security for the Secured Obligations (as defined herein), which the Grantor is willing to do in consideration of the agreement of the Lenders to make such financial accommodations to the Borrowers pursuant to the terms of the Credit Agreement.

WITNESSETH:

The Grantor, in consideration of the indebtedness herein recited and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has irrevocably granted, released, sold, remised, bargained, assigned, pledged, warranted, transferred and conveyed, and does hereby grant, release, sell, remise, bargain, assign, pledge, warrant, transfer and convey to Trustee and Trustee's successors and assigns, in trust, with power of sale, for the benefit of Agent, a lien upon, all of the Grantor's right, title and interest in and to the following described land, real property interests, buildings, improvements, fixtures and other collateral:

(a) All that tract or parcel of land and other real property interests in Davis County, Utah as more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Grantor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired; and

(b) All buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements") and all materials intended for construction, reconstruction, alteration and repair of such Improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures now or hereafter owned by the Grantor and located on or attached to and used in connection with the aforesaid Land and Improvements (collectively, the "Fixtures"), and all articles of personal property now or hereafter owned by the Grantor and attached to or contained in and used in connection with the aforesaid Land and Improvements (including, but not limited to, all furniture, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto), and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personalty") and all proceeds of the Tangible Personalty, and all appurtenances to the Land (the "Appurtenances") and all proceeds and products of the Land, including casualty and condemnation proceeds (collectively, the "Proceeds") (hereinafter, the Land, the Improvements, the Fixtures, the Tangible Personalty, the Appurtenances and the Proceeds may be collectively referred to as the "Premises").

TO HAVE AND HOLD the same, together with all privileges, hereditaments, easements and appurtenances thereunto belonging, subject to the matters set forth on Schedule B of the title policy accepted by Agent (the "Permitted Encumbrances"), to the Trustee and the Trustee's successors and assigns, in fee simple forever, to secure the Secured Obligations (hereinafter defined) and other obligations herein recited; provided that, should (a) the Secured Obligations secured hereby be paid in full after all Commitments have expired or terminated and should the

Credit Parties fully discharge their obligations secured hereby and satisfy the obligations in full or (b) the conditions set forth in the Credit Agreement for the release of this Deed of Trust be fully satisfied, the lien and security interest of this Deed of Trust shall cease, terminate and be void and the Agent shall promptly cause a release of this Deed of Trust to be filed in the appropriate office; and until such obligations or conditions are fully satisfied, it shall remain in full force and effect.

And, as additional security for the Secured Obligations, the Grantor hereby irrevocably assigns to the Agent all the security deposits, rents, issues, profits and revenues of the Premises from time to time accruing (the "Rents and Profits") which assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Notwithstanding the foregoing, so long as no Event of Default shall exist, Grantor shall have a license (which license shall terminate automatically and without notice upon the occurrence and during the continuance of an Event of Default) to collect, but not more than thirty (30) days prior to accrual, all Rents and Profits. In the event, however, that Grantor shall cure any such Event of Default, then the license granted under this paragraph shall be reinstated unless and until another Event of Default occurs, at which time the license shall again terminate.

As additional collateral and further security for the Secured Obligations, the Grantor does hereby assign to the Agent and grants to the Agent a security interest in all of the right, title and the interest of the Grantor in and to any and all insurance policies and proceeds thereof and any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, architects' contracts, technical services agreements, or other contracts, licenses and permits to the extent now or hereafter relating solely to the Premises (the "Intangible Personalty") or any part thereof, and the Grantor agrees to execute and deliver to the Agent such additional instruments, in form and substance reasonably satisfactory to the Agent, as may hereafter be reasonably requested by the Agent to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by the Agent to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Agent any obligation with respect thereto. Notwithstanding the foregoing provisions, such assignment and grant of security interest contained herein shall not extend to, and the Intangible Personalty shall not include, any personalty which is now or hereafter held by the Grantor as licensee, lessee or otherwise, to the extent that such personalty is not assignable or capable of being encumbered as a matter of law or under the terms of the license, lease or other agreement applicable thereto (but solely to the extent that any such restriction shall be enforceable under applicable law); provided, however, that the foregoing assignment and grant of security interest shall extend to, and the Intangible Personalty shall include, any and all proceeds of such personalty to the extent that the assignment or encumbering of such proceeds is not so restricted under the terms of the license, lease or other agreement applicable thereto.

All the Tangible Personalty which comprises a part of the Premises shall, as far as permitted by law, be deemed to be affixed to the aforesaid Land and conveyed therewith. The Grantor hereby grants to Agent a security interest in (a) the balance of the Tangible Personalty, (b) the Fixtures, (c) the Rents and Profits and (d) the Intangible Personalty, and this Deed of Trust shall be considered to be a security agreement which creates a security interest in such items for the benefit of the Agent. In that regard, the Grantor grants to the Agent all of the rights and remedies of a secured party under the laws of the state in which the Premises are located.

The Grantor, the Trustee and the Agent covenant, represent and agree as follows:

## ARTICLE I

### Secured Obligations

1.1 Secured Obligations. This Deed of Trust is given to secure the payment and performance by the Borrowers of (a) all Obligations as such term is defined in the Credit Agreement, (b) all obligations and liabilities of the Grantor under this Deed of Trust, and (c) all obligations and liabilities incurred in connection with the collection and enforcement of the foregoing (all of which whether now existing or hereafter arising, collectively, the "Secured Obligations").

1.2 Future Advances. This Deed of Trust is given to secure the Secured Obligations together with each advance of any Loan or any other extension of credit, any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest and also to secure all future advances and readvances or other extensions of credit that may subsequently be made to any Credit Party by the Lenders.

## ARTICLE II

### Grantor's Covenants, Representations and Agreements

2.1 Title to Premises. Grantor represents and warrants to the Agent (a) that it is seized of the Land and the Improvements and has indefeasible fee simple title to the Land and the Improvements and has the right to encumber and convey the same, and title to such Land and Improvements is free and clear of all liens and encumbrances except for Permitted Encumbrances, (b) that it is the owner of the Tangible Personalty free and clear of all liens and encumbrances except for the Permitted Encumbrances and (c) that it will warrant and defend the title to such property except for Permitted Encumbrances against the claims of all Persons. As to the balance of the Premises, the Rents and Profits and the Intangible Personalty, the Grantor represents and warrants that it will defend such property against the claims of all Persons subject to the Permitted Encumbrances.

2.2 Additional Documents. The Grantor agrees to execute and deliver to the Agent, concurrently with the execution of this Deed of Trust and upon the reasonable request of the Agent from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. The Grantor hereby authorizes the Agent to prepare and file such financing statements, fixture filings, renewals thereof, amendments thereof, supplements thereto and other instruments as the Agent may from time to time deem necessary or appropriate in order to perfect and maintain the security interests granted hereby in accordance with the Uniform Commercial Code as adopted and as in effect in the state in which the Land is located (the "UCC").

2.3 Insurance Proceeds. Subject to the provisions of the Credit Agreement, the Grantor assigns to the Agent any proceeds which may become due by reason of any material loss, damage to or destruction of the Premises to which the Grantor is entitled, and such proceeds shall be applied

as set forth in the Credit Agreement. To the extent such proceeds are applied to the repayment of the balance due under the Credit Documents, if such proceeds exceed the balance due under the Secured Obligations, any such excess shall be repaid to the Grantor.

2.4 Eminent Domain. Subject to the provisions of the Credit Agreement, the Grantor assigns to the Agent any proceeds or awards which may become due by reason of any condemnation or other taking for public use of the whole or any part of the Premises or any rights appurtenant thereto to which the Grantor is entitled, and such proceeds or awards shall be applied in the same manner the insurance proceeds are applied as set forth in the Credit Agreement. To the extent such proceeds are applied to the repayment of the balance due under the Credit Documents, if such proceeds exceed the balance due under the Secured Obligations, any such excess shall be repaid to the Grantor. The Grantor agrees to execute such further assignments and agreements as may be reasonably required by the Agent to assure the effectiveness of this Section. In the event any Governmental Authority shall require or commence any proceedings for the demolition of any buildings or structures comprising a part of the Premises, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Premises, the Grantor shall promptly notify the Agent of such requirements or commencement of proceeding (for demolition, condemnation or other taking).

2.5 Releases and Waivers. The Grantor agrees that no release by the Agent of any portion of the Premises, the Rents and Profits or the Intangible Personalty, no subordination of lien, no forbearance on the part of the Agent to collect on any Loan, or any part thereof, no waiver of any right granted or remedy available to the Agent and no action taken or not taken by the Agent shall, except to the extent expressly released, in any way have the effect of releasing the Grantor from full responsibility to the Agent for the complete discharge of each and every of the Grantor's obligations hereunder.

2.6 Security Agreement.

(a) This Deed of Trust is hereby made and declared to be a security agreement, encumbering each and every item of Fixtures, Tangible Personalty and Intangible Personalty. In furtherance thereof, in order to secure the payment of the Secured Obligations, Grantor hereby grants to Agent a security interest in all of the Grantor's right, title and interest in all Fixtures, Tangible Personalty and Intangible Personalty in compliance with the provisions of the UCC. The Grantor hereby authorizes the Agent to file financing statements in any jurisdiction and with any filing office that the Agent may determine, in its sole discretion, is necessary or advisable to perfect the security interests granted herein. Such financing statements may describe or indicate the collateral to the extent a security interest therein is granted hereby, including without limitation the description "All goods of the debtor that are or are to become fixtures located on the Land, whether now owned or hereafter acquired by Debtor and whether now or hereafter located on the Land" or words of similar import. To the extent permitted by applicable law, the remedies for any violation (beyond applicable notice and/or cure periods) of the covenants, terms and condition of the security agreement herein contained shall be (i) as prescribed herein, (ii) as prescribed by general law or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified under the UCC, all at the Agent's sole election. The Grantor and the Agent agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and

hereby stated intention of the Grantor and the Agent that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, to the extent permitted by law, regarded as part of the real estate irrespective of whether (A) any such item is physically attached to the improvements, (B) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (C) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (x) the proceeds of any fire or hazard insurance policy or (y) any award in eminent domain proceedings for a taking or for loss of value or (z) the Grantor's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Premises, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of the Grantor or the Agent as determined by this instrument or impugning the priority of the Agent's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of the Agent in the event any court shall at any time hold with respect to the foregoing (x) or (y) or (z), that notice of the Agent's priority of interest to be effective against a particular class of persons, must be filed in the UCC records, provided, if there is a conflict between the terms of this paragraph and the terms of the Credit Agreement, the Credit Agreement shall govern.

(b) The Grantor warrants that the name and address of the "Debtor" (which is the Grantor), are as set forth in the preamble to this Deed of Trust; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. Grantor warrants that Grantor's exact legal name is correctly set forth in the preamble of this Deed of Trust.

2.7 Taxes and Other Charges. The Grantor will pay prior to delinquency all ad valorem property taxes, general and special assessments, insurance premiums, permit fees, inspection fees, license fees, water and sewer charges, franchise fees and equipment rents and any other charges or fees against it or the Premises (and the Grantor, upon request by the Agent, will submit to the Agent receipts evidencing said payments) (the "Taxes"), except where the same are currently being contested in good faith by appropriate proceedings by Grantor and during which proceedings the lien of such Taxes is effectively stayed.

2.8 Reimbursement. The Grantor agrees that if it shall fail to pay on or before the date that the same become delinquent any tax, assessment or charge levied or assessed against the Premises or any utility charge, whether public or private, or any insurance premium or if it shall fail to procure the insurance coverage and the delivery of the insurance certificates required hereunder, or if it shall fail to pay any other charge or fee described herein, then the Agent, at its option, may pay or procure the same and will give the Grantor prompt notice of any such expenditures. The Grantor will reimburse the Agent upon demand for any sums of money paid by the Agent pursuant to this Section, together with interest on each such payment at the applicable default rate of interest set forth in the Credit Agreement, and all such sums and interest thereon shall be secured hereby.

2.9 Fees and Expenses. The Grantor will promptly pay upon demand any and all reasonable costs and expenses of the Agent, (a) as required under the Credit Agreement and (b) as necessary to protect the Premises, the Rents and Profits or the Intangible Personalty or to exercise

any rights or remedies under this Deed of Trust. All of the foregoing costs and expenses shall be Secured Obligations.

2.10 Leases and Other Agreements. The Grantor shall faithfully keep and perform, or cause to be kept and performed, in all material respects, all of the covenants, conditions, and agreements contained in each of the leases (other than respect to leases between the Grantor and another Credit Party) and other agreements or contracts affecting all or any portion of the Premises, now or hereafter existing, on the part of the Grantor to be kept and performed (including performance of all covenants to be performed under any and all leases of the Premises or any part thereof) and shall at all times use commercially reasonable efforts to enforce, with respect to each other party thereto, all obligations, covenants and agreements by such other party to be performed thereunder.

2.11 Maintenance of Premises. The Grantor will abstain from and will not permit the commission of waste in or about the Premises and will maintain, or cause to be maintained (subject to reconstruction periods after the occurrence of an act of God), the Premises in good condition and repair, casualty and reasonable wear and tear excepted.

2.12 Insurance; Casualty. The Grantor shall maintain such insurance coverage and policies for the Premises required in the Credit Agreement and, if any part of the Improvements is located in an area having "special flood hazards" as defined in the Federal Flood Disaster Protection Act of 1973, the Grantor shall maintain a flood insurance policy naming the Agent as mortgagee in such amount, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice. The Grantor assigns to the Agent all proceeds to which the Grantor may be entitled under such insurance policies and such proceeds shall be applied to the Secured Obligations.

2.13 Authorizations. All material certifications, permits, licenses, authorizations, orders, exemptions, franchises and/or approvals, including, without limitation, certificates of completion and occupancy, licenses, permits required in order to use, occupy or operate all or any portion of the Premises for its current purpose (the "Authorizations") have been obtained and are in full force and effect. Grantor will not amend, supplement, cancel, surrender, allow to expire (other than expiration of the term thereof), terminate, release or waive any Authorization that is material to the conduct of the Grantor's operations at the Premises.

2.14 Assignment of Leases and Grantor Collection of Rents and Profits.

(a) The Grantor hereby authorizes and directs any lessees or tenants of the Premises that, upon written notice from the Agent, all Rents and Profits and all payments required under the leases, or in any way respecting same, shall be made directly to the Agent as they become due. The Grantor hereby relieves said lessees and tenants from any liability to the Grantor by reason of said payments being made to the Agent. Nevertheless, until the Agent notifies in writing said lessees and tenants to make such payments to the Agent, the Grantor shall be entitled to collect all such Rents and Profits and/or payments. The Agent is hereby authorized to give such notification upon the occurrence of any Event of Default.



(b) Any and all Rents and Profits collected by the Agent may be applied in the manner set forth in the Credit Agreement. Receipt by the Agent of such Rents and Profits shall not constitute a waiver of any right that the Agent may enjoy under this Deed of Trust, the Credit Agreement or under the laws of the state in which the Premises is located, nor shall the receipt and application thereof cure any default hereunder nor affect any foreclosure proceeding or any sale authorized by this Deed of Trust, the Credit Agreement and the laws of the state in which the Premises is located.

(c) The Agent does not consent to, does not assume and shall not be liable for any obligation of the lessor under any of the leases and all such obligations shall continue to rest upon the Grantor as though this assignment had not been made. The Agent shall not be liable for the failure or inability to collect any Rents and Profits.

2.15 Inspection. Except as otherwise permitted in the Credit Agreement, the Grantor will permit the Agent, or its agents, during normal business hours and with reasonable prior notice to enter and pass through or over the Premises for the purpose of inspecting same.

### ARTICLE III Events of Default

An Event of Default shall exist under the terms of this Deed of Trust upon the occurrence and during the continuance of an Event of Default under the terms of the Credit Agreement.

### ARTICLE IV Foreclosure

4.1 Acceleration of Secured Obligations; Foreclosure. Upon the occurrence and during the continuance of an Event of Default, the Secured Obligations and any other obligations due under the Credit Documents, including all accrued interest, may be accelerated by the Agent in accordance with the terms of the Credit Agreement. Upon such acceleration, the Agent may do any of the following:

(a) Give such notice to the Grantor and all co-Borrowers of Event of Default and of election to cause the Premises (together with the Rents and Profits, Intangible Property and all other property subject to this Deed of Trust) to be sold as may be required by law or as may be necessary to cause the Trustee to exercise the power of sale granted herein. The Trustee shall then give such notice of trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the property subject to this Deed of Trust at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by the Agent, or by the Grantor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. The Trustee, from time to time, may postpone or continue the sale of all or any portion of the property subject to this Deed of Trust by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale shall be required except as required by applicable law. Upon any sale, the Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, express or implied, to the purchaser or purchasers at the sale. The recitals in such deed

of any matters or facts shall be conclusive as to the accuracy thereof. Any person, including the Grantor, the Trustee or the Agent, may purchase at the sale.

(b) Commence proceedings for foreclosure of this Deed of Trust in the manner provided by law for the foreclosure of a real property mortgage or deed of trust.

4.2 Proceeds of Sale. The proceeds of any foreclosure sale of the Premises, or any part thereof, will be distributed and applied in accordance with the terms and conditions of the Credit Agreement (subject to any applicable provisions of applicable law).

4.3 Trustee's Fees. If a foreclosure proceeding is commenced by the Trustee but terminated prior to its completion, the Trustee shall be entitled to a reasonable fee in accordance with applicable law.

#### ARTICLE V Additional Rights and Remedies of the Agent

5.1 Rights Upon an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Agent, immediately and without additional notice and without liability therefor to the Grantor, except for gross negligence, willful misconduct or unlawful conduct as determined by a court of competent jurisdiction by final and nonappealable judgment, may do or cause to be done any or all of the following to the extent permitted by applicable law: (a) exercise its right to collect the Rents and Profits; (b) enter into contracts for the completion, repair and maintenance of the Improvements thereon; (c) expend Loan funds and any rents, income and profits derived from the Premises for the payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the Improvements, preservation of the lien of this Deed of Trust and satisfaction and fulfillment of any liabilities or obligations of the Grantor arising out of or in any way connected with the Premises whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Deed of Trust; (d) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in this Deed of Trust, the Credit Agreement or the other Credit Documents, or to aid the execution of any power herein granted; and (e) generally, supervise, manage, and contract with reference to the Premises as if the Agent were equitable owner of the Premises. Any amounts expended by the Agent pursuant to this Section 5.1, together with interest thereon at the Default Rate, shall be secured hereby. The Grantor also agrees that any of the foregoing rights and remedies of the Agent may be exercised at any time during the continuance of an Event of Default independently of the exercise of any other such rights and remedies, and the Agent may continue to exercise any or all such rights and remedies until the Event(s) of Default are cured, until foreclosure and the conveyance of the Premises to the high bidder or until the Credit Agreement is no longer in effect or the Secured Obligations is otherwise satisfied or paid in full, whichever occurs first.

5.2 Appointment of Receiver. Upon the occurrence and during the continuance of an Event of Default, the Agent shall be entitled, to the extent permitted by law, without additional notice and without regard to the adequacy of any security for the Secured Obligations secured hereby, whether the same shall then be occupied as a homestead or not, or the solvency of any party bound for its payment, to make application for the appointment of a receiver to take possession of and to operate the Premises, and to collect the rents, issues, profits, and income

thereof, all expenses of which shall be added to the Secured Obligations and secured hereby. The receiver shall have all the rights and powers provided for under the laws of the state in which the Premises are located, including without limitation, the power to execute leases, and the power to collect the rents, sales proceeds, issues, profits and proceeds of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Grantor, its successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, sales proceeds, issues, proceeds and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. All costs and expenses (including receiver's fees, reasonable attorneys' fees and costs incurred in connection with the appointment of a receiver) shall be secured by this Deed of Trust. Notwithstanding the appointment of any receiver, trustee or other custodian, the Agent shall be entitled to retain possession and control of any cash or other instruments at the time held by or payable or deliverable under the terms of this Deed of Trust to the Agent to the fullest extent permitted by law.

5.3 Waivers. No waiver of any Event of Default shall at any time thereafter be held to be a waiver of any rights of the Agent stated anywhere in this Deed of Trust, the Credit Agreement or any of the other Credit Documents, nor shall any waiver of a prior Event of Default operate to waive any subsequent Event(s) of Default. All remedies provided in this Deed of Trust, the Credit Agreement or any of the other Credit Documents are cumulative and may, at the election of the Agent, be exercised alternatively, successively, or in any manner and are in addition to any other rights provided by law.

5.4 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, the Grantor or the Grantor's heirs, devisees, representatives, successors or assigns are occupying or using the Premises, or any part thereof, each and all immediately shall become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale, notwithstanding any language herein apparently to the contrary, shall have the sole option to demand possession immediately following the sale or to permit such occupants to remain as tenants at will. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the property (such as an action for forcible detainer) in any court having jurisdiction.

5.5 Marshalling. The Grantor hereby waives, in the event of foreclosure of this Deed of Trust or the enforcement by the Agent of any other rights and remedies hereunder, any right otherwise available in respect to marshalling of assets which secure any Loan and any other indebtedness secured hereby or to require the Agent to pursue its remedies against any other such assets.

5.6 Protection of Premises. If Grantor fails to perform the covenants and agreements contained in this Deed of Trust, the Credit Agreement or any of the other Credit Documents, and such failure continues beyond any applicable grace, notice and cure periods, except in the case of an emergency in which event the Agent may act immediately, then the Agent may take such

actions, including, but not limited to, disbursements of such sums, as the Agent in its reasonable discretion deems necessary to protect the Agent's interest in the Premises.

## ARTICLE VI

### General Conditions

6.1 Substitution of Trustee. If, for any reason, the Agent shall elect to substitute for the Trustee herein named (or for any successor to said Trustee), the Agent shall have the right to appoint successor Trustee(s) by duly acknowledged written instruments, and each new Trustee immediately upon recordation of the instrument so appointing him shall become successor in title to the Premises for the uses and purposes of this Deed of Trust, with all the powers, duties and obligations conferred on the Trustee in the same manner and to the same effect as though he were named herein as the Trustee. If more than one Trustee has been appointed, each of such Trustees and each successor thereto shall be and hereby is empowered to act independently.

6.2 Terms. The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, successors and permitted assigns. The term "Agent" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

6.3 Notices. The method and effectiveness of delivery of all notices, requests and other communications which relate to this Deed of Trust shall be governed by the terms of the Credit Agreement.

6.4 Severability. If any provision of this Deed of Trust is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

6.5 Headings. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Deed of Trust nor the intent of any provision hereof.

6.6 Conflicting Terms. In the event the terms and conditions of this Deed of Trust conflict with the terms and conditions of the Credit Agreement, the terms and conditions of the Credit Agreement shall control and supersede the provisions of this Deed of Trust with respect to such conflicts.

6.7 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the internal law of the state in which the Premises are located.

6.8 Application of the Foreclosure Law. If any provision in this Deed of Trust shall be inconsistent with any provision of the foreclosure laws of the state in which the Premises are located, the provisions of such laws shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with such laws.

6.9 WRITTEN AGREEMENT.

(a) THE RIGHTS AND OBLIGATIONS OF THE GRANTOR AND THE AGENT SHALL BE DETERMINED SOLELY FROM THIS WRITTEN DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, AND ANY PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN THE AGENT AND THE GRANTOR CONCERNING THE SUBJECT MATTER HEREOF AND OF THE OTHER LOAN DOCUMENTS ARE SUPERSEDED BY AND MERGED INTO THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS.

(b) THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS MAY NOT BE VARIED BY ANY ORAL AGREEMENTS OR DISCUSSIONS THAT OCCUR BEFORE, CONTEMPORANEOUSLY WITH, OR SUBSEQUENT TO THE EXECUTION OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

(c) THIS WRITTEN DEED OF TRUST AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENTS BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6.10 WAIVER OF JURY TRIAL. THE AGENT AND THE GRANTOR HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THE AGENT AND THE GRANTOR MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE AGENT AND THE GRANTOR (a) CERTIFY THAT NO REPRESENTATIVE, THE AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGE THAT THEY HAVE BEEN INDUCED TO ENTER INTO THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

6.11 Request for Notice. The Grantor requests a copy of any statutory notice of default and a copy of any statutory notice of sale hereunder be mailed to the Grantor at the address specified in the introductory paragraph on the first page of this Deed of Trust.

6.12 State Specific Provisions. In the event of any inconsistencies between this Section 6.12 and any of the other terms and provisions of this Deed of Trust, the terms and provisions of this Section 6.12 shall control and be binding. With respect to the Premises which are located in the State of Utah, notwithstanding anything contained herein to the contrary:

(a) Should Agent elect to foreclose by exercise of the power of sale herein contained, Agent shall notify the Trustee and request that the Trustee commence such proceedings.

(b) Upon receipt of such notice from Agent, the Trustee shall cause to be recorded, published and delivered to Grantor such Notice of Default and Election to Sell as shall then be

required by law and by this Deed of Trust. The Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Premises at the time and place of sale fixed by the Trustee in said Notice of Sale, either as a whole, or in separate lots or parcels or items as the Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. The Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the Premises so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Grantor, the Trustee, Agent or any Lender, may purchase at such sale and Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers. In addition, Agent or any Lender may credit bid at any such sale an amount up to and including the full amount of the indebtedness under the Loan Documents and hereunder, including, without limitation, accrued and unpaid interest, principal, charges, advances made hereunder and the Trustee's fees and expenses.

(c) After deducting all costs, fees and expenses of the Trustee and of this Deed of Trust including costs of evidence of title in connection with such sale, the Trustee shall apply the proceeds of sale in accordance with the provisions of the Loan Documents.

(d) The Trustee may postpone sale of all or any portion of the Premises by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

PROVIDED ALWAYS, and it is the true intent and meaning of the Grantor and the Agent, that if the Secured Obligations shall be fully and finally paid and discharged according to the terms of the Credit Agreement, this Deed of Trust and the other Credit Documents and all Commitments are terminated, then this Deed of Trust shall cease and be void, otherwise it shall remain in full force and virtue.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Grantor has executed this Deed of Trust under seal, as of the above written date.

SUN DEVELOPMENT, L.P.,  
a Texas limited partnership

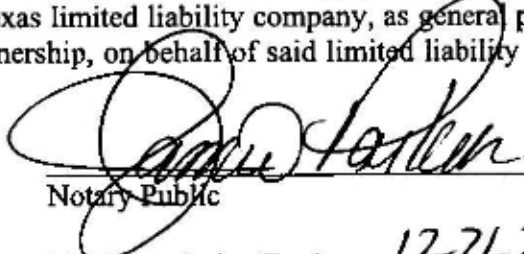
By: SD GP LLC, a Texas limited liability  
company, its general partner

By: \_\_\_\_\_ (SEAL)  
Name: John W. Cook  
Title: Manager

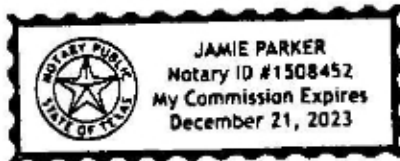
STATE OF TEXAS

COUNTY OF MONTGOMERY

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of July, 2020, by John W. Cook, Manager of SD GP LLC, a Texas limited liability company, as general partner of Sun Development, L.P., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 12-21-2023

[Affix Seal]



[Signature Page to Deed of Trust; Store(s) No. 875]

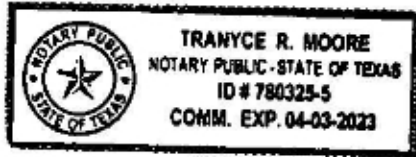
**REGIONS BANK, N.A.,**  
as Collateral Agent

By: *Larry Ellis*  
Name: LARRY ELLIS  
Title: S.V.P.

STATE OF Texas

COUNTY OF Harris

The foregoing instrument was acknowledged before me this \_\_\_ day of July, 2020, by Larry Ellis, as SVP of Regions Bank, N.A., an Alabama banking corporation on behalf of said banking corporation.



[Affix Seal]

*Tranyce R. Moore*  
Notary Public

My Commission Expires: 04/03/2023



Exhibit A

The Land is described as follows: Real property in the County of Davis, State of UT, described as follows:

BEGINNING ON THE WEST LINE OF A HIGHWAY AND THE SOUTH LINE OF PROPERTY CONVEYED TO STATE ROAD COMMISSION IN BOOK 453 AT PAGE 671 OF OFFICIAL DAVIS COUNTY RECORDS, 172 FEET WEST AND 356 FEET NORTH FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE WESTERLY 295 FEET ALONG SOUTH LINE OF SAID PROPERTY; THENCE SOUTH 158 FEET; THENCE EAST 295 FEET TO WEST LINE OF SAID HIGHWAY; THENCE NORTH 158 FEET ALONG SAID HIGHWAY TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM, THE LAND DESCRIBED IN THAT CERTAIN ORDER OF IMMEDIATE OCCUPANCY RECORDED JULY 23, 2015 AS ENTRY NO. 2882100 IN BOOK 6315 AT PAGE 182 OF OFFICIAL RECORDS, AND THAT CERTAIN FINAL JUDGMENT OF COMPENSATION AND CONDEMNATION RECORDED JANUARY 26, 2016 AS ENTRY NO. 2917621 IN BOOK 6439 AT PAGE 898 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. I15-7:150:A

A PARCEL OF LAND IN FEE FOR THE INTERSECTION IMPROVEMENTS OF 500 WEST STREET (US-89) AND 400 NORTH STREET (SR-131) RELATED TO PROJECT NO. F-I15-7(301)313, BEING PART OF AN ENTIRE TRACT OF PROPERTY SITUATE IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID ENTIRE TRACT, SAID CORNER IS 175.33 FEET (172 FEET BY RECORD) WEST ALONG THE QUARTER SECTION LINE AND 356.04 FEET (356 FEET BY RECORD) NORTH FROM THE EAST QUARTER CORNER OF SAID SECTION 24, SAID CORNER IS ALSO 40.00 FEET PERPENDICULARLY DISTANT WESTERLY FROM THE 500 WEST STREET CONTROL LINE OPPOSITE APPROXIMATE ENGINEER STATION 45+36.43; AND RUNNING THENCE SOUTH 00°06'52" EAST (SOUTH BY RECORD) 38.43 FEET ALONG THE EXISTING WESTERLY RIGHT OF WAY LINE OF 500 WEST STREET PARALLEL WITH SAID CONTROL LINE TO A POINT 40.00 FEET PERPENDICULARLY DISTANT WESTERLY FROM SAID CONTROL LINE OPPOSITE ENGINEER STATION 44+98.00; THENCE NORTH 44°41'45" WEST 36.13 FEET TO A POINT 52.50 FEET PERPENDICULARLY DISTANT SOUTHERLY FROM THE 400 NORTH STREET CONTROL LINE OPPOSITE ENGINEER STATION 83+98.00; THENCE NORTH 89°42'39" WEST 128.97 FEET TO A POINT 52.50 FEET PERPENDICULARLY DISTANT SOUTHERLY FROM SAID CONTROL LINE OPPOSITE ENGINEER STATION 82+69.00; THENCE NORTH 80°16'14" WEST 71.73 FEET TO THE EXISTING SOUTHERLY RIGHT OF WAY LINE AND LIMITED ACCESS LINE OF SAID 400 NORTH STREET AT A POINT 39.59 FEET RADially DISTANT SOUTHERLY FROM SAID CONTROL LINE OPPOSITE ENGINEER STATION 81+97.00; THENCE SOUTH 89°59'36" (EAST BY RECORD) 225.00 FEET ALONG SAID EXISTING SOUTHERLY RIGHT OF WAY LINE AND LIMITED ACCESS LINE TO THE POINT OF BEGINNING.

(NOTE: ROTATE ALL BEARINGS IN THE ABOVE DESCRIPTION 00°26'15" CLOCKWISE TO OBTAIN HIGHWAY BEARINGS.)

AS SURVEYED BOUNDARY LEGAL:

ALL THAT LAND IN THE CITY OF WEST BOUNTIFUL, COUNTY OF DAVIS, STATE OF UTAH, BEING A PART OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY RIGHT OF WAY OF 500 WEST STREET (U.S. HIGHWAY 89), POINT BEING N 89°59'16" W 172.49 FEET AND N 0°11'26" W 2838.23 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE, FROM THE SOUTHEAST CORNER OF SAID SECTION 24, POINT ALSO BEING S 0°11'26" E 197.35 FEET ALONG THE CENTERLINE OF SAID 500 WEST STREET AND S 89°48'34" W 40.00 FEET FROM A FOUND BRASS CAP MONUMENT IN THE INTERSECTION OF 400 NORTH STREET AND 500 WEST STREET; AND RUNNING THENCE S 89°55'50" W 295.00 FEET; THENCE N 0°11'26" W 158.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF 400 NORTH STREET; THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING FOUR (4) COURSES, (1) N 89°55'50" E 70.00 FEET, (2) S 80°20'48" E 71.73 FEET, (3) S 89°47'13" E 128.97 FEET AND (4) S 44°46'19" E 36.13 FEET, TO A POINT ON THE SAID WESTERLY RIGHT OF WAY LINE OF 500 WEST STREET; THENCE S 0°11'26" E 119.57 FEET ALONG SAID LINE, TO THE POINT OF BEGINNING.